

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Thomas A. Russo, Circuit Court Judge

TROY DARNELL HUNTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002110

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED
SEP 08 2019
S.C. SUPREME COURT

RECEIVED
SEP 08 2019
S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 14-16, 2013.....	1
COURT’S EXHIBIT NO. 1 (NOTE FROM JURY).....	314
COURT’S EXHIBIT NO. 2 (NOTE FROM JURY).....	315
FINAL BRIEF OF APPELLANT FILED MAY 5, 2014.....	316
FINAL BRIEF OF RESPONDENT FILED MAY 1, 2014.....	335
<u>STATE V. TROY HUNTER</u> , UNPUBLISHED OP. NO. 2014-UP-437 (S.C.Ct. App. filed December 3, 2014).....	362
APPLICATION FOR POST-CONVICTION RELIEF FILED JANUARY 8, 2015	364
RETURN.....	375
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	380
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 31, 2017.....	396
ORDER OF DISMISSAL FILED OCTOBER 29, 2018.....	464
INDICTMENT	481

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2012-GS-21-692
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Troy Darnell Hunter	)	)
<u>DEFENDANT</u>	)	January 14-16, 2013
		Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE; and a jury.

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

MATTHEW OZMENT, ASSISTANT SOLICITOR
Attorney for the State

STEVEN DEBERRY, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1				
2				
3	Opening Arguments			
4	Mr. Ozment	49		
5	Mr. Deberry	53		
6				
7	Roderick Titus			
8	Mr. Ozment	59		
9	Mr. Deberry		70	
10				
11	Nathan Orgbon In-Camera			
12	Mr. Ozment	78		
13	Mr. Deberry		79	
14				
15	Nathan Orgbon			
16	Mr. Ozment	83		90
17	Mr. Deberry		89	
18				
19	Andron Brown			
20	Mr. Ozment	91		104
21	Mr. Deberry		97	
22				
23	Idena Titus-Simmons			
24	Mr. Ozment	108		
25	Mr. Deberry		114	

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Deloris Johnson				
4	Mr. Ozment	118			
5	Mr. Deberry		125		
6					
7	Demetrius Holloman				
8	Mr. Ozment	127		158	
9	Mr. Deberry		142		
10					
11	Debra Singleton				
12	Mr. Ozment	160			
13	Mr. Deberry		174		
14					
15	Lee Davis				
16	Mr. Ozment	178			
17	Mr. Deberry		190		
18					
19	Dr. James M. Lawhan				
20	Mr. Ozment	220			
21	Mr. Deberry		239		
22					
23	Closing Arguments				
24	Mr. Ozment	253			
25	Mr. Deberry	261			

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Jury Charge	271			
4	Allen Charge	298			
5	Verdict of the Jury	303			
6	Sentencing by the Court	311			
7	Certificate of Reporter	313			
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	Photograph	40	184
4	S-2	Photograph	40	184
5	S-3	Photograph	40	184
6	S-4	Photograph	40	184
7				
8	C-1	Note from Jury		294
9	C-2	Note from Jury		295
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 THE COURT: Mr. Ozment, you're recognize call
2 your first case please, sir.

3 MR. OZMENT: If it may please the Court, Your
4 Honor. The State calls indictment 2012-GS-21-00692 The
5 State vs. Troy Hunter. The State calls Count 1 and 3 of
6 that indictment.

7 THE COURT: All right. Ladies and gentlemen,
8 The State of South Carolina has called the case of The
9 State of South Carolina vs. Troy Hunter, an indictment
10 number 2012-GS-21-692. Ladies and gentlemen, what I hold
11 in my hand the indictment, let me advise you that the
12 indictment is simply a charging document. It is a
13 charging document by which a case is brought into this
14 court. It is not in any way, shape or form evidence in
15 this case. It is simply the charging document by which a
16 case is brought into this court. Under this indictment,
17 Mr. Troy Hunter is charged with the offense of armed
18 robbery with a deadly weapon, an assault and battery
19 second degree.

20 To these charges, ladies and gentlemen, Mr. Troy
21 Darnell Hunter has pled not guilty. He has pled not
22 guilty. Therefore, The State of South Carolina bears the
23 burden of proving his guilt to the jury beyond a
24 reasonable doubt as to each of these charges. Again,
25 Mr. Troy Darnell Hunter is presumed innocent of these

1 charges and The State of South Carolina bears the burden
2 of proving him guilty beyond a reasonable doubt. Later in
3 the course of this trial, I will explain the elements of
4 those offenses to you all. But for purposes of our jury
5 selection right now the Court is advising you of what he
6 has been charged with and the fact that Mr. Hunter has
7 pled not guilty. And the State of South Carolina bears
8 the burden of proving his guilt beyond a reasonable doubt.
9 Now, before we go any further in selecting a jury for the
10 trial of the case, there are certain questions that I must
11 ask you before we begin selecting a jury.

12 The indictment, ladies and gentlemen, as I said
13 is -- charges the offense of armed robbery with a deadly
14 weapon and the indictment reads as follows: On the armed
15 robbery charge, it alleges that Troy Darnell Hunter did in
16 Florence County on or about November 30, 2011, while armed
17 with a deadly weapon to wit a .357 handgun take and carry
18 away personal property of Demetrius C. Holloman from or in
19 the immediate presence of Demetrius C. Holloman with the
20 intent to deprive Demetrius C. Holloman of possession by
21 use of force, threats or intimidation in violation of
22 South Carolina Code Section 16-11-330(a).

23 The other charge, ladies and gentlemen, the
24 assault and battery second degree alleges that Troy
25 Darnell Hunter did in Florence County on or about

1 November 30th 2011, unlawfully attempt or offer to commit
2 a violent injury to the victim, Demetrius C. Holloman,
3 while having the present ability to complete the act by
4 hitting him in the mouth with the butt of a .357 pistol
5 causing moderate bodily injury. The blow resulted in
6 several teeth being knocked out as well as a broken jaw
7 requiring surgery. This being in violation of South
8 Carolina Code of Laws Section 16-3-600.

9 Again, ladies and gentlemen, Mr. Hunter,
10 Mr. Troy Darnell Hunter has pled not guilty to these
11 charges and the State of South Carolina bears the burden
12 of proving his guilt beyond a reasonable doubt as to each
13 of these charges. First question I need to ask you all
14 has anybody on the jury panel ever been related by blood
15 or connected by marriage to either Mr. Troy Darnell Hunter
16 or Mr. Demetrius C. Holloman, if so please stand?

17 (WHEREUPON, there are none.)

18 THE COURT: Has any member of the jury panel
19 ever had a close personal, social or business relationship
20 with either Mr. Troy Darnell Hunter or Demetrius Holloman
21 C. Hollomon, if so please stand?

22 (WHEREUPON, there are none.)

23 THE COURT: All right. Ladies and gentlemen,
24 the following is a list of potential witnesses in this
25 case. Please listen very carefully. Those individuals

1 include Lee Davis, Princess Benjamin, Officer A. Brown,
2 Corporal T. Myers, Officer K. Carlson, Idena Titus,
3 Demetrius Holloman, Roderick Titus, Deloris Johnson,
4 Nathan Orgbon, Debra Singleton, Dr. Mark Lawhawn, Dr. Lynn
5 Campbell and Charles Hunter. Is there any members of the
6 jury panel that has ever been related by blood, connected
7 by marriage or have a close personal, business or social
8 relationship with any of those potential witnesses, if so
9 please stand?

10 Yes, sir, your name and number please?

11 PROSPECTIVE JUROR: My name is Paul Isgett
12 juror number 66.

13 THE COURT: Okay, hold on, Mr. Isgett. Yes,
14 sir, who on that list do you know, Mr. Isgett?

15 PROSPECTIVE JUROR: Dr. Mark Lawhan.

16 THE COURT: And in what capacity do you know
17 him?

18 PROSPECTIVE JUROR: He's my girlfriend's
19 son-in-law.

20 THE COURT: Do you attend any social functions
21 with Dr. Lawhan?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Any objection to me setting him
24 aside, Mr. Ozment?

25 MR. OZMENT: None from the State, Your Honor.

1 THE COURT: Mr. Deberry?

2 MR. DEBERRY: No, Your Honor.

3 THE COURT: All right. I'm going to set you
4 aside for the trial of this case, okay.

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Yes, ma'am, your name and number?

7 PROSPECTIVE JUROR: My name is Minnie Bobbitt
8 juror number 11.

9 THE COURT: Yes, ma'am.

10 PROSPECTIVE JUROR: I don't know is it
11 reference, but my supervisor's name is Debra Singletary.

12 THE COURT: Hold on just a minute. Debra
13 Singletary?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: The list -- the individual's name is
16 listed here is Debra Singleton.

17 PROSPECTIVE JUROR: Singleton excuse me.

18 MR. OZMENT: Your Honor, that may be because
19 that witness does in fact work at McLeod janitorial, which
20 is I know where that lady works as well.

21 THE COURT: Stand up again, ma'am. Your name
22 and number?

23 PROSPECTIVE JUROR: Minnie Bobbitt juror number
24 11.

25 THE COURT: And where do you work, Ms. Bobbitt?

1 PROSPECTIVE JUROR: In janitorial at McLeod.

2 THE COURT: And a Ms. Debra Singletary is your
3 supervisor?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: As a matter of precaution, I'm going
6 to set her aside for the trial of this case. Any
7 objection by the State?

8 MR. OZMENT: None from the State.

9 THE COURT: Defense counsel?

10 MR. DEBERRY: No, Your Honor.

11 THE COURT: Thank you. I'm going to set you
12 aside for the trial of this case but stay with me, okay.

13 PROSPECTIVE JUROR: Yasmin Jordan juror number
14 75.

15 THE COURT: Hold on a minute. All right, juror
16 number 75. Your name again, ma'am?

17 PROSPECTIVE JUROR: Yasmin Jordan.

18 THE COURT: Yes, ma'am, Ms. Jordan.

19 PROSPECTIVE JUROR: I know Lee Davis. We're not
20 related, but he work with my husband. My husband is a
21 retired police officer from the Florence Police
22 Department. So I didn't know whether I needed to stand.

23 THE COURT: Your husband is retired from the
24 police department?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Do you engage in any social
2 functions with Mr. Davis?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: You just know who he is.

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Let me ask you this, would that in
7 any way affect your ability to be fair and impartial to
8 both State and the defense in this case.

9 PROSPECTIVE JUROR: No, sir, it wouldn't.

10 THE COURT: I'm going to allow you to stay with
11 us, okay.

12 Yes, ma'am, your name and number?

13 PROSPECTIVE JUROR: Loretta Brown juror number
14 16.

15 THE COURT: Yes, ma'am, Ms. Brown?

16 PROSPECTIVE JUROR: The name Idena Titus ---

17 THE COURT: Yes, ma'am.

18 PROSPECTIVE JUROR: No social engagement just
19 know of.

20 THE COURT: You know of who it is?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Would that in any way affect your
23 ability to be fair and impartial to both the State and the
24 defense in this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Okay. Thank you. I'm going to let
2 you stay with us.

3 All right. At this time, Mr. Ozment, if you'd
4 stand and introduce yourself followed by you, Mr. Deberry.

5 MR. OZMENT: Good morning, my name is Matt
6 Ozment. I'm assistant solicitor here in Florence also for
7 Marion County sitting with me is Ed Clements, the
8 Solicitor for the Twelfth Circuit. Also working in our
9 office is Todd Tucker, Catherine Wyse, John Jeperfinger,
10 Bob Wells, Pat Parr, Stephen Hill, Emily Crayton. Thank
11 you.

12 THE COURT: Go ahead.

13 MR. DEBERRY: Thank you, Your Honor. Good
14 morning, ladies and gentlemen. My name is Steven Deberry.
15 I practice law here in Florence County. I have an office
16 here on Coit Street and also an office in Pamplico. I
17 practice law by myself. Sheila Holiday is my legal
18 assistant. Thank you very much.

19 THE COURT: All right. Ladies and gentlemen of
20 the jury, you've heard the attorneys introduce themselves
21 and those individuals with whom they work. Is there any
22 member of the jury panel related by blood, connected by
23 marriage, have a close personal, social or business
24 relationship with any of the attorneys involved in this
25 case, if so please stand?

1 Yes, sir, your name and number?

2 PROSPECTIVE JUROR: Ronald Anderson number four.

3 THE COURT: All right, Mr. Anderson.

4 PROSPECTIVE JUROR: My wife retired as his
5 secretary four years ago, the Solicitor's secretary.

6 THE COURT: And this case indicted in 2011; is
7 that right, Mr. Ozment?

8 MR. OZMENT: Actually indicted in 2012, Your
9 Honor.

10 THE COURT: You can have a seat, sir.

11 Can the lawyers approach for just a minute?

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury panel, but out of the hearing of
14 the jury panel.)

15 THE COURT: All right. Mr. Anderson, I'm going
16 to set you aside for the trial of this case, okay.

17 Yes, ma'am, your name and number?

18 PROSPECTIVE JUROR: Paula Heger number 55. I
19 served as church secretary for Trinity, but it would not
20 affect my service.

21 THE COURT: That was my next question would that
22 in any way affect your ability to be both fair and
23 impartial to both the State and the defense in this case?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Thank you for letting me know. You

1 may be seated.

2 All right. Ladies and gentlemen, let me ask you
3 this question, is any member of the jury panel formed or
4 expressed an opinion about any issue or matter involved in
5 this case, if so please stand?

6 (WHEREUPON, there are none.)

7 THE COURT: Is there any member of the jury
8 panel aware of any bias or prejudice toward either the
9 State or two defendant in this case, if so please stand?

10 (WHEREUPON, there are none.)

11 THE COURT: Is any member of the jury panel or
12 their immediate family ever been prosecuted by this
13 Solicitor's office or charged with an offense regardless
14 of whether or not the case was dismissed or went forward,
15 if so please stand?

16 Yes, ma'am, your name and number?

17 PROSPECTIVE JUROR: Annie Quick.

18 THE COURT: That is juror number 125. Ms.
19 Quick, if you come around please?

20 If the lawyers would approach.

21 Let me ask you this, is it you or somebody in
22 your family?

23 PROSPECTIVE JUROR: It was somebody in my
24 family.

25 THE COURT: Your immediate family?

1 PROSPECTIVE JUROR: My uncle and it's been over
2 15 or 20 years ago, but I just wanted to make you aware.

3 THE COURT: The reason I called you up here, I
4 didn't want to put you on the spot in front of the pool.
5 Let me ask you this question, the fact that your uncle was
6 prosecuted and had some charges 15 years ago would that in
7 any way affect your ability to be fair and impartial to
8 both the State and the defense?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Okay. I'm going to let you stay
11 with us.

12 Yes, ma'am, your name and number please?

13 PROSPECTIVE JUROR: Karyn Wilson number 156.

14 THE COURT: Come forward please, ma'am. Was it
15 you or somebody in your family?

16 PROSPECTIVE JUROR: My son has a case pending
17 this month with the Solicitor's office.

18 THE COURT: And your son's name is what?

19 PROSPECTIVE JUROR: Michael Wilson.

20 MR. OZMENT: He is in P.T.I. for the record.

21 PROSPECTIVE JUROR: I feel I can be impartial.

22 THE COURT: Do you think you be fair and
23 impartial to both the State and the defense?

24 PROSPECTIVE JUROR: I do.

25 THE COURT: Mr. Deberry, what do you think?

1 MR. DEBERRY: It is fine with me.

2 THE COURT: I'm going to let you stay on the
3 jury panel. I've asked you whether or not you been -- you
4 could be fair and impartial. And for the record, there's
5 no hesitancy whatsoever in response to that question, so
6 I'm going to allow you to stay with us, okay.

7 Let me ask this, it is a question ever got
8 unjustly accused. I mean that you see these questions you
9 have any objection?

10 MR. DEBERRY: I don't have any objection.

11 THE COURT: All right. You all can sit down.
12 Is there any member of the jury panel who is a member of
13 or contributor to any group which has as its primary
14 concern the promotion of law enforcement or victim's
15 rights. These groups might include but certainly are not
16 limited to MADD, SADD, CAVE Citizens Against Violent
17 Crime, if so please stand?

18 (WHEREUPON, there are none.)

19 THE COURT: Is there any member of the jury
20 panel based on religious or philosophical views or
21 affiliations unable to render judgment upon another human
22 being, if so please stand?

23 (WHEREUPON, there were none.)

24 THE COURT: Is there any member of the jury
25 panel believe that they are or a member of their immediate

1 family have ever been unjustly accused of committing a
2 crime, if so please stand?

3 (WHEREUPON, there were none.)

4 THE COURT: All right. Does any member of the
5 jury panel know of any reason whatsoever why he or she
6 should not serve as a juror in this case with a particular
7 emphasis being placed upon your ability to be fair and
8 impartial to both the State and the defendant, if so
9 please stand?

10 (WHEREUPON, there are none.)

11 THE COURT: Does the State have any additional
12 questions?

13 MR. OZMENT: Nothing from the State, Your Honor.

14 THE COURT: Defense counsel?

15 MR. DEBERRY: If we could approach, sir.

16 THE COURT: Yes, sir.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury panel, but out of the hearing of
19 the jury panel.)

20 THE COURT: All right. Ladies and gentlemen of
21 the jury panel, is there any member of the jury panel that
22 has a close personal, business, or social relationship
23 with anybody in law enforcement that would prohibit you
24 from being fair and impartial to both the State and the
25 defense in this case, if so please stand?

1 (WHEREUPON, there were none.)

2 THE COURT: All right. Anything further from
3 the State?

4 MR. OZMENT: Nothing from the State, Your Honor.

5 THE COURT: Defense counsel?

6 MR. DEBERRY: Nothing, Judge.

7 THE COURT: All right. Madame clerk, if you
8 generate us a list please, five and ten on the strikes.
9 Doris, two alternates in case -- since may be going into
10 day three here.

11 Ladies and gentlemen, while they are -- what's
12 happening now is after having ask you all those questions,
13 a list of potential jurors to serve on this trial is being
14 generated by our clerk's office. While that's taking
15 place, I want to go through a few things with you. I know
16 when you came in here, you were advised if you had a cell
17 phone to make sure you cut that cell phone off when you
18 came in the courtroom or at least cut it on vibrate. I
19 would ask you or instruct you that when you do come in
20 here to make sure those phones are cut off or at least cut
21 on vibrate. Our Supreme Court -- Chief Justice of our
22 Supreme Court has issued an order regarding phones in the
23 courtroom. If your phone goes off in the courtroom, it's
24 subject to being confiscated, being taken by the Court.
25 And individuals could in fact be held in contempt of court

1 for your cell phone going off. So I would just advise
2 you, just reiterate the importance of that of turning
3 your phone off when you come in here. I understand that
4 some of you may have children and a situation that you may
5 need to have somebody be able to contact you. If that's
6 the case, then you need to let us know and a phone number
7 for the clerk's office can be given to you to provide to
8 whoever you believe that may need to get in touch with you
9 and a situation if anything comes up.

10 In addition, you all during this week of court I
11 know Florence is somewhat of a small community. You all
12 may know lawyers, witnesses or individuals up here at the
13 courthouse who may be involved in some of these cases. I
14 am instructing you and I always instruct the lawyers and
15 the parties involved in cases not to have any contact with
16 each other period, okay. Even innocent conversations,
17 even innocent conversations could be misconstrued and
18 therefore I give instructions to lawyers, the parties
19 involved and jurors as to simply not to have any contact
20 whatsoever because I don't want any innocent conversations
21 to be misconstrued, okay.

22 Also, during this week that you are here, I
23 would certainly ask that you be prompt and be on time when
24 you're asked to be here. I can promise you, ladies and
25 gentlemen, that I will not keep you here any more than is

1 absolutely necessary, okay. I will not keep you here any
2 longer and any more than as absolutely necessary. We
3 cannot -- I told you this from the outset, I can't tell
4 you how important your service is to this country, to this
5 State and this community. I will do my best to get you in
6 and out of here as promptly and as quickly as I can.
7 Having said that, there will be some situations that you
8 may have to sit and wait, okay. But I can promise you if
9 you're sitting up here and you're waiting in some
10 capacity, we're not out here drinking coffee, eating
11 doughnuts and just joking around, okay. Work is being
12 done whether you realize it or not and whether you're in
13 the courtroom or not.

14 Also, again, you need to remain in constant
15 contact with somebody outside of the courtroom. A phone
16 number can be given to you for that -- for that purpose if
17 somebody needs to get in touch with you. Typically,
18 ladies and gentlemen, once we start the trial of a case,
19 we typically run either from nine or 9:30 in the morning
20 until approximately five o'clock in the afternoon. We'll
21 usually take a morning break at about 15 or 20 minutes and
22 then keep going, typically stop and break for lunch break
23 around one o'clock. And there's some people are use to
24 eating at noon, but just want -- and that may be the case
25 in some situations, but just wanted to advise you of that

1 as well. At this time, we are going to move forward now
2 with selecting a jury in this case.

3 Is the State ready to proceed?

4 MR. OZMENT: Yes, Your Honor.

5 THE COURT: Defense counsel ready to proceed?

6 MR. DEBERRY: We are.

7 THE COURT: All right, madam clerk.

8 THE CLERK: Members of the jury as I call your
9 name come through the side rail, come to the microphone
10 and face the back of the courtroom and bring all your
11 belongings.

12 88 JoDee Etheridge.

13 (WHEREUPON, a white female, comes forward.)

14 THE CLERK: What say the State?

15 MR. OZMENT: Please present Ms. Etheridge.

16 THE CLERK: What say the defendant?

17 MR. DEBERRY: Please seat Ms. Etheridge.

18 THE CLERK: Please have a seat in the jury box,

19 ma'am.

20 120 Ronald Poston.

21 (WHEREUPON, a white male, comes forward.)

22 THE COURT: What say the State?

23 MR. OZMENT: Please present Mr. Poston.

24 THE CLERK: What say defendant?

25 MR. DEBERRY: Please seat Mr. Poston.

1 THE CLERK: Please have a seat in the jury box,
2 sir.

3 Thirty-eight Frederick Ferguson.

4 (WHEREUPON, a black male, comes forward.)

5 MR. DEBERRY: Madam clerk, what's the number
6 again please, ma'am?

7 THE CLERK: Thirty-eight.

8 What say the State?

9 MR. OZMENT: Please excuse Mr. Ferguson from the
10 purposes of this case.

11 THE CLERK: You been excused from this trial
12 only, sir. You may return to your seat.

13 Sixty Debra Hopkins.

14 (WHEREUPON, a black female, comes forward.)

15 THE CLERK: What say the State?

16 MR. OZMENT: Please present Ms. Hopkins.

17 THE CLERK: What say the defendant?

18 MR. DEBERRY: Please seat Ms. Hopkins.

19 THE CLERK: Please have a seat in the jury box,
20 ma'am.

21 113 Sandra Paige.

22 (WHEREUPON, a black female, comes forward.)

23 THE CLERK: What say the State?

24 MR. OZMENT: Please excuse Ms. Paige for the
25 purpose of this case only.

1 THE CLERK: You been excuse from this trial
2 only.

3 Six Sylvia Anthony.

4 (WHEREUPON, a black female, comes forward.)

5 THE CLERK: What say the State?

6 MR. OZMENT: Please present Ms. Anthony.

7 THE CLERK: What say the defendant?

8 MR. DEBERRY: Excuse Ms. Anthony from this trial
9 please.

10 THE CLERK: You been excuse from this trial
11 only.

12 117 Gerald Poston.

13 (WHEREUPON, a white male, comes forward.)

14 THE CLERK: What say the State?

15 MR. OZMENT: Beg the Court's indulgence one
16 moment.

17 (WHEREUPON, a pause in the proceedings.)

18 MR. OZMENT: Keep Mr. Poston -- present
19 Mr. Poston excuse me.

20 THE CLERK: What say the defendant?

21 MR. DEBERRY: Please seat Mr. Poston.

22 THE CLERK: Please have a seat in the jury box.

23 Sixteen Lorretta Brown.

24 (WHEREUPON, a black female, comes forward.)

25 THE CLERK: What say the State?

1 MR. OZMENT: Please present Ms. Brown.
2 THE CLERK: What say the defendant?
3 MR. DEBERRY: Please seat Ms. Brown in this
4 trial.
5 THE CLERK: Please have a seat in the jury box.
6 Forty Christopher Fowler.
7 (WHEREUPON, a white male, comes forward.)
8 THE CLERK: What say the State?
9 MR. OZMENT: Please excuse Mr. Fowler for the
10 purposes of this case.
11 THE CLERK: You been excused from this trial
12 only, sir.
13 Forty-three Howard Godwin.
14 (WHEREUPON, a white male, comes forward.)
15 THE COURT: What say the State?
16 MR. OZMENT: Please present Mr. Godwin.
17 THE CLERK: What say the defendant?
18 MR. DEBERRY: Please seat Mr. Godwin.
19 THE CLERK: Please have a seat in the jury box.
20 Eighteen Shirley Cameron.
21 (WHEREUPON, a white female, comes forward.)
22 THE CLERK: What say the State?
23 MR. OZMENT: Please present Ms. Cameron.
24 THE CLERK: What say the defendant?
25 MR. DEBERRY: Excuse Ms. Cameron from this

1 trial.

2 THE CLERK: You been excused from this trial
3 only.

4 103 Barbara McKenzie.

5 (WHEREUPON, a black female, comes forward.)

6 THE CLERK: What say the State?

7 MR. OZMENT: Please present Ms. McKenzie.

8 THE CLERK: What say the defendant?

9 MR. DEBERRY: Please seat Ms. McKenzie for this
10 trial.

11 THE CLERK: Please have a seat in the jury box,
12 ma'am.

13 Eighty-three Sherry Lee.

14 (WHEREUPON, a white female, comes forward.)

15 THE CLERK: What say the State?

16 MR. OZMENT: Please present Ms. Lee.

17 THE CLERK: What say the defendant?

18 MR. DEBERRY: Please excuse Ms. Lee from this
19 trial.

20 THE CLERK: You been excuse from this trial
21 only.

22 111 Irige Myers.

23 (WHEREUPON, a black male, comes forward.)

24 THE CLERK: What say the State?

25 MR. OZMENT: Beg the Court's indulgence.

1 (WHEREUPON, a pause in the proceedings.)
2 MR. OZMENT: Please present Mr. Myers.
3 THE CLERK: What say the defendant?
4 MR. DEBERRY: Please seat Mr. Myers for this
5 trial.
6 THE CLERK: Please have a seat in the jury box,
7 sir.
8 Sixty-five Henry Isgett.
9 (WHEREUPON, a white male, comes forward.)
10 THE CLERK: What say the State?
11 MR. OZMENT: Please present Mr. Isgett.
12 THE CLERK: What say the defendant?
13 MR. DEBERRY: Please seat Mr. Isgett for this
14 trial.
15 THE CLERK: Please have a seat in the jury box.
16 141 Ike Taylor.
17 (WHEREUPON, a black male, comes forward.)
18 THE CLERK: What say the State?
19 MR. OZMENT: Please present Mr. Taylor.
20 THE CLERK: What say the defendant?
21 MR. DEBERRY: Please seat Mr. Taylor for this
22 trial.
23 THE CLERK: Please have a seat in the jury box.
24 Ninety-nine Willie McFadden.
25 (WHEREUPON, a black male, comes forward.)

1 THE CLERK: What say the State?

2 MR. OZMENT: Please excuse Mr. McFadden for the
3 purposes of this case.

4 THE CLERK: You been excuse from this trial
5 only, sir.

6 Fifty-two Valerie Harrell.

7 (WHEREUPON, a black female, comes forward.)

8 THE CLERK: What say the State?

9 MR. OZMENT: Please present Ms. Harrell.

10 THE CLERK: What say the defendant?

11 MR. DEBERRY: Please seat Ms. Harrell for this
12 trial.

13 THE CLERK: Please have a seat in the jury box.

14 140 Bonnie Tanner.

15 (WHEREUPON, a white female, comes forward.)

16 THE CLERK: What say the State?

17 MR. OZMENT: Please present Ms. Tanner.

18 THE CLERK: What say the defendant?

19 MR. DEBERRY: Please excuse Ms. Tanner for this
20 trial please.

21 THE CLERK: You been excuse from this trial
22 only.

23 Seventy-two Cathy Jones.

24 (WHEREUPON, a white female, comes forward.)

25 THE CLERK: What say the State?

1 MR. OZMENT: Please present Ms. Jones.
2 THE CLERK: What say the defendant?
3 MR. DEBERRY: Please seat Ms. Jones for this
4 trial.
5 THE CLERK: Please have a seat in the jury box.
6 An alternate number one two strikes, Judge?
7 THE COURT: One and two.
8 THE CLERK: Forty-four Marilyn Gordon.
9 (WHEREUPON, a black female, comes forward.)
10 THE CLERK: What say the State?
11 MR. OZMENT: Please present Ms. Gordon.
12 THE CLERK: What say the defendant?
13 MR. DEBERRY: Please seat Ms. Gordon.
14 THE CLERK: Please have a seat in the jury box.
15 For alternate number two. Eighty Jerry Klein.
16 (WHEREUPON, a white female, comes forward.)
17 THE CLERK: What says the State?
18 MR. OZMENT: Please present Mr. Klein.
19 THE CLERK: What say defendant?
20 MR. DEBERRY: Excuse Mr. Klien from this trial.
21 THE CLERK: You been excuse from this trial
22 only, sir.
23 116 Chantel Pompey.
24 (WHEREUPON, a black female, comes forward.)
25 THE CLERK: What say the State?

1 MR. OZMENT: Please present Ms. Pompey.

2 THE CLERK: What say the defendant?

3 MR. DEBERRY: Please seat the juror.

4 THE CLERK: Please have a seat in the jury box.

5 THE COURT: There any matters of law we need to
6 take up with regards to jury selection from the State?

7 MR. OZMENT: Nothing, Your Honor.

8 THE COURT: Defense counsel?

9 MR. DEBERRY: No, Your Honor.

10 THE COURT: Can the lawyers approach for
11 scheduling purposes?

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but out of the hearing of the
14 jury.)

15 THE COURT: All right, ladies and gentlemen,
16 those of you who are seated here in front of me, you all
17 have been selected as fair and impartial jurors to serve
18 in the trial of this case and what we're going to do right
19 now is I am going to excuse you all for lunch. I'm going
20 to let you all go ahead and go to lunch. It's about 12
21 after 12. I'm going to ask that you be back up here on
22 the 11th floor and somebody be out in the hall to meet you
23 all when you get off the elevator on the 11th floor and
24 they'll direct you where you need to go, but you'll be
25 coming back into this courtroom. It's a juror room in the

1 back here and we'll get you back there once you return.
2 I'm going to ask that you be back here at two o'clock, at
3 two o'clock. There's some matters that we got to take
4 care of outside your presence. I'm going to let you all
5 go to lunch and be back here at two o'clock.

6 Now, during your lunch break and at any time
7 when you take a break let me give you this further
8 instruction, you are not to discuss this case at all with
9 anyone, with anyone until you are instructed to do so,
10 that means your fellow jurors, family, friends et cetra.
11 You're not to discuss this case at all. You are not to do
12 any independent research or investigation on your own.
13 You are to decide this case based solely upon the evidence
14 that's presented in this case during the course of this
15 trial and the testimony that comes from this witness stand
16 and no where else. So you are not to do any independent
17 investigation on your own or even talk about the case
18 with anyone until you are instructed to do so, okay. Now,
19 I'm going to go ahead and let you all go. I'm going to
20 ask that you be back in this courtroom -- be back up here
21 at two o'clock and we'll start as promptly at that time as
22 possible. Everybody else remain seated while this panel
23 exits the courtroom.

24 (WHEREUPON, the jury panel selected for this
25 trial excused.)

1 THE COURT: All right, ladies and gentlemen,
2 those of you who are seated out in the audience, you all
3 were not selected obviously to serve as jurors in this
4 case. However, that does not mean that you're not going
5 to be selected. What I'm going to do right now is I'm
6 going to excuse you all, excuse you all until two o'clock
7 as well. I'm going to ask that you be back up here at two
8 o'clock and go to the tenth floor, to the tenth floor
9 courtroom at two o'clock where Judge Nettles will pick a
10 jury downstairs in the tenth floor courtroom at two
11 o'clock on a case going to be tried before him. You all
12 are free to go at this time, but again be back at two
13 o'clock in the tenth floor courtroom. Thank you. You all
14 are free to go.

15 (WHEREUPON, the jury panel is excused.)

16 THE COURT: Come on up here, ma'am.

17 Can the lawyers approach with this juror please?

18 PROSPECTIVE JUROR: Judge Nettles my husband was
19 tried by Judge Nettles. He did 18 months.

20 THE COURT: Bring that to his attention when
21 Judge Nettles qualifies the jury down there, that's an
22 issue. What's your name and number?

23 PROSPECTIVE JUROR: Minnie Bobbitt juror 11.

24 THE COURT: Juror number 11 Minnie Bobbitt.
25 Okay. Thank you.

1 MR. OZMENT: You want to put our stuff on the
2 record now?

3 THE COURT: Sir.

4 MR. OZMENT: You want to put our stuff on the
5 record now?

6 THE COURT: Yes, that's what I'm going to do.
7 That jury panel is clear. It's clear from my
8 understanding from Mr. Ozment on behalf of the State
9 there's some matters that need to be put on the record at
10 this time. Mr. Ozment, I'll be happy to hear from you,
11 sir.

12 MR. OZMENT: Thank you, Your Honor and I will
13 try to be concise as possible. The victim in this case is
14 a Demetrius C. Hollomon. Mr. Holloman has a criminal
15 record. Mr. Deberry and I have discussed his criminal
16 record. The only thing we think we agreed on will be
17 admissible is a simple possession second charge from I
18 believe it's 2006. We both agree that Mr. Deberry can ask
19 about that and so as far as be relevant for impeachment
20 purposes. Further, he does have some pending charges. He
21 has a distribution manufacturer or possession with intent
22 to distribute a schedule one through three substance as
23 well as a relating proximity charge to that as well as a
24 simple possession of marijuana second charge. Those are
25 all pending pursuant to U.S.T. the State would disclose

1 there has been no plea negotiation or deal or even
2 discussion with Mr. Holloman for his testimony today. I
3 think it's agreed between myself and Mr. Deberry that he
4 can ask what the charges are. And if there's been any
5 plea negotiation, but we want go into any sort of factual
6 or substitutive questions beyond just the actual charges
7 themselves. A similar agreement has been reached on
8 another witness Mr. Roderick Titus. Mr. Titus in the last
9 ten years has a crack charge from again the mid 2000's.
10 He got five years for that. I think, Mr. Deberry is free
11 to question him on that and so far as is relevant to
12 impeachment purposes.

13 Again, he has pending charges. He has a
14 manufacturing distribution or possession with intent to
15 distribute crack cocaine along with a relating proximity
16 charge. He also has a trafficking crack cocaine charge.
17 He also has a possession of control substance charge.
18 Again pursuant U.S. v. Bigelow, the State would at this
19 time disclose there's been no plea negotiations, no
20 promises, due to implicit or inferred for his testimony.
21 They're completely unrelated to what this trial is about.
22 Again, I think Mr. Deberry would be entitled to ask what
23 the charges are and have there been any plea negotiations
24 or promises. And I think we agree on that.

25 THE COURT: Anything else?

1 MR. OZMENT: That I believe's all, Your Honor.

2 THE COURT: Mr. Deberry.

3 MR. DEBERRY: Your Honor, just so the record is
4 clear, I have clear from when I question these witnesses.
5 I can -- you know, I don't know whether they're PWID's or
6 distributions. I don't have the ability to find those
7 answers out. I can certainly ask the defendant and, you
8 know, a follow-up question to that which I don't think
9 will be getting too far into things as this involve the
10 selling of drugs or illegal substances.

11 THE COURT: Mr. Ozment.

12 MR. OZMENT: Yes, Your Honor, I do think there's
13 a fine line though in asking what he's charged with or
14 what he's accused of as oppose to asking did he do it or
15 did you sell or something like that because obviously that
16 at that point would be commenting on the facts and would
17 potentially put the witnesses in a bind.

18 THE COURT: Is that charge a result of
19 allegations that you sold such and such? I think that's
20 fair. Is this charge a result of an allegation that you
21 sold such and such. His answer may be based upon the
22 weight of the drugs. If his answer is no, then your
23 follow-up question I think is it a result of the amount of
24 alleged drugs that were found on you or something along
25 those lines. Any objection to that, Mr. Ozment?

1 MR. OZMENT: No objection from the State, Your
2 Honor, as long as everything is alleged and not asking of
3 the comment on the case.

4 THE COURT: I think you get into -- he's
5 certainly entitled to claim the protections of the Fifth
6 Amendment. If you start asking him about, did he do it,
7 was he a party to a transaction, et cetra and you just run
8 it a foul of that. Individuals can certainly claim those
9 protections in a courtroom.

10 Anything else, Mr. Ozment?

11 MR. OZMENT: Nothing at this time, Your Honor.

12 THE COURT: Anything else, Mr. Deberry?

13 MR. DEBERRY: No, Your Honor.

14 THE COURT: Well, we talked about -- well, we
15 talked about all of this back in chambers a little while
16 ago. There was also an individual and I don't remember
17 the individual's name, that Mr. Hunter -- is an individual
18 listed as a witness that Mr. Hunter believes has a record.
19 I can't remember that individual's name.

20 Who was it, Mr. Deberry?

21 MR. DEBERRY: Nathan Orgbon.

22 THE COURT: Nathan Orgbon. I had instructed the
23 Solicitor's office to obtain his personal identifying
24 information, so that they could run a rap sheet on him and
25 I think Mr. Ozment conveyed to me that they had in fact

1 done so; is that right, Mr. Ozment?

2 MR. OZMENT: That's correct, Your Honor.

3 THE COURT: And from what Mr. Ozment told me
4 back in chambers in the presence of Mr. Deberry,
5 Mr. Hunter's lawyer, was that there was nothing found on
6 Mr. Orgbon; is that right?

7 MR. OZMENT: That's correct, Your Honor.

8 THE COURT: And therefore, I had indicated to
9 the lawyers in chambers that I would not allow a quote
10 unquote fishing expedition so to speak and going after
11 Mr. Orgbon when the State has run a wrap sheet had nothing
12 indicating Mr. Orgbon said there was may be a seat belt
13 violation?

14 MR. OZMENT: And that wasn't even on his rap
15 sheet, that was in my discussions with him, that's what he
16 disclosed to me his record would show.

17 THE COURT: And that very well could not end up
18 on somebody's record under a local ordinance or something.
19 So without more, I'm certainly not going to allow
20 Mr. Deberry to go on a fishing expedition.

21 MR. DEBERRY: I understand, Your Honor. The
22 only question I have was that we know that we run a recent
23 -- Mr. Ozment has run a recent rap sheet on Demetrius
24 Holloman and his pending charges are not showing we know.

25 THE COURT: I don't know when those charges

1 originated.

2 Mr. Ozment, you better advise the Court of that.

3 MR. OZMENT: And, Your Honor, certainly wrap
4 sheets are not perfect, some of his charges -- Mr.
5 Holloman's charges are on the rap sheets some are not.
6 The State would have no objection with Mr. Orgbon when he
7 takes the stand excusing the jury for a moment. And
8 Mr. Deberry could, you know, elicit any testimony outside
9 the jury's presence that he wanted to satisfy himself and
10 certainly if something different comes out during that
11 testimony, the State's position may change. But from all
12 the State's knowledge at this point, he's never been
13 arrested.

14 THE COURT: If you all -- Mr. Deberry, is that
15 something you wish to do?

16 MR. DEBERRY: Your Honor, we're trying to verify
17 now -- I mean, we're trying to talk to some people that
18 may would know for sure, so, you know, may be resolved by
19 that time.

20 THE COURT: If you'll let me know before Mr.
21 Orgbon is called as a witness so we can address that
22 matter, okay, beforehand.

23 MR. OZMENT: Yes, Your Honor. We would
24 anticipate probably calling him today.

25 THE COURT: Okay. Anything else from the State

1 at this time?

2 MR. OZMENT: Nothing from the State, Your Honor.

3 THE COURT: Defense counsel?

4 MR. DEBERRY: No, Your Honor.

5 THE COURT: We will stand at ease. I would ask
6 that you all be back here at a quarter of two. Be back
7 here and ready to go a quarter to two in case any matters
8 we need to take up before we bring the jury back up.
9 Thank you.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: I had ask the lawyers to be back
12 here at a quarter of two. And for the record on behalf of
13 the State is here as well as Mr. Deberry with his client
14 Mr. Hunter. Any matters that we need to address, Mr.
15 Ozment, before we start the trial of this case at two
16 o'clock?

17 MR. OZMENT: I don't believe so, Your Honor. I
18 have given four photographs to Mr. Deberry to look at to
19 pre-mark with the court reporter but otherwise, no.

20 THE COURT: All right. Any other exhibits if
21 you all would look at those, I would like for you all to
22 have premarked what you agree upon. Those that you don't
23 agree upon I need to know if there are any. You had a
24 chance to look at those Mr. Deberry?

25 MR. DEBERRY: Yes, sir.

1 THE COURT: Any objection to them?

2 MR. DEBERRY: No, sir.

3 THE COURT: All right. If you all will hand
4 those up here for Keshia to mark please. Is that the only
5 thing, Mr. Ozment?

6 MR. OZMENT: Yes, Your Honor.

7 THE COURT: Anything else?

8 MR. OZMENT: Nothing at this time, Your Honor.

9 THE COURT: Mr. Deberry, anything from you at
10 this time?

11 MR. DEBERRY: No, sir.

12 THE COURT: We'll stand down until two o'clock.
13 I just wanted to make sure if you had any issues we needed
14 addressed.

15 (WHEREUPON, State's Exhibits Nos. 1-4 was marked
16 for the record.)

17 (WHEREUPON, a short break was taken.)

18 MR. DEBERRY: Your Honor, may we approach just a
19 moment.

20 THE COURT: Yes.

21 (WHEREUPON, a bench conference was held.)

22 MR. DEBERRY: Can we sequester a witness?

23 THE COURT: Any objection?

24 MR. OZMENT: No, obviously, I would ask that his
25 witness also be sequestered. Mr. Holloman and

1 Investigator Davis should be allowed to stay in.

2 THE COURT: I will allow them to stay in here.

3 MR. DEBERRY: Mr. Holloman.

4 THE COURT: Yes, he's the victim of the crime.

5 MR. OZMENT: And the young lady with him is his
6 girlfriend who we don't intend to call for a -- as a
7 witness.

8 THE COURT: You all instruct your witnesses
9 accordingly.

10 MR. OZMENT: I have one just walked in the
11 courtroom let me get him out, give me a minute.

12 (WHEREUPON, end of bench conference.)

13 (WHEREUPON, a break was taken.)

14 THE COURT: Anything else from the State at this
15 time?

16 MR. OZMENT: Nothing from the State, Your Honor.

17 THE COURT: From defense counsel?

18 MR. DEBERRY: No, Your Honor.

19 THE COURT: Bring me the jury please, ma'am.

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

21 THE COURT: All right. Ms. Gordon and Ms.

22 Pompey, you are the only ones right now that have assigned
23 seating other than you, Mr. Godwin, that is your assigned
24 seat throughout the trial of this case. I'm appointing
25 you, Mr. Godwin, as the foreman of this jury. I will

1 give you further instructions with regards to your
2 responsibilities later on. You three are the only ones
3 that have assigned seating. Everybody else as you come in
4 and out of the courtroom you can sit wherever you so
5 desire.

6 At this time, madame clerk, I'm going to ask
7 that you please swear the jury please.

8 (WHEREUPON, the jury was sworn.)

9 THE COURT: Okay. Ladies and gentlemen, we are
10 about to begin the trial of The State of South Carolina
11 vs. Mr. Troy Hunter. Before we begin this trial though, I
12 want to tell you that this trial will probably be
13 different -- probably be different from what you might
14 expect. Many people do not have the chance to attend
15 actual court sessions as you all are doing now and may
16 think from watching television or movies or reading books
17 that trials are always full of high drama, intense action
18 and riveting circumstances while all of these things may
19 be true at times, this trial is not for entertainment. It
20 is a fundamental part of our democracy. A search for the
21 truth in an effort to make sure that justice is done
22 between the parties before the Court. Searching for the
23 truth and making sure that justice is done is often slow,
24 deliberate and repetitive. The opposite of what you may
25 have seen on television or in movies or read in books.

1 This courtroom is a place of honor dedicated to the
2 protection and preservation of citizens rights through
3 what many have called the greatest justice system every
4 created.

5 The attorneys appearing before you are advocates
6 for the parties that they represent. But first and
7 foremost, they are officers of the court sworn to uphold
8 the integrity and fairness of our judicial system and to
9 help you in the search for the truth. You should expect
10 them to be professional, competent and ethical in the
11 representation of their client's interest. Remember that
12 you have just taken an oath to try this case and reach a
13 fair and just verdict. And you are also expected to be
14 professional, reasonable and ethical.

15 Thank you, ladies and gentlemen, for your
16 accepting the important responsibility of jury service and
17 for your contribution today to our justice system. Now,
18 what I will now say to you is intended to serve as an
19 introduction to the trial of this case. These remarks are
20 not a charge on the law in this case. I will instruct you
21 on the law applicable to this case at the end of the trial
22 before you retire to consider your verdict. This is
23 merely an explanation of the procedure that we will follow
24 in the trial of this case, so that you may better
25 understand what may be happening. I need the indictment

1 please.

2 Ladies and gentlemen, the defendant in this
3 case, Mr. Troy Hunter, is charged by an indictment filed
4 in this court with the crimes of armed robbery with a
5 deadly weapon and assault and battery second degree. The
6 elements of which will be explain to you later. The
7 indictment, ladies and gentlemen, is simply the charge by
8 which the case is brought into this court. And it is not
9 in any sense evidence of any of the allegations it
10 contains. The defendant has pled not guilty to this
11 indictment. The State therefore has the burden of proving
12 each of the elements of the indictment beyond a reasonable
13 doubt. And it will be your duty, ladies and gentlemen, to
14 decide whether the State has met that burden.

15 Your purpose as jurors is to find and determine
16 the facts. You are the sole judge of the facts. If at
17 any time I make any comment regarding the facts, you must
18 disregard it. You are to determine the facts from the
19 testimony you hear and the other evidence introduced in
20 court. It is up to me to determine -- excuse me it is up
21 to you to determine the inferences which you may feel
22 properly be drawn from the evidence. It is especially
23 important that you perform your duty of determining the
24 facts diligently and conscientiously because ordinarily
25 there is no way to correct an erroneous determination of

1 the facts by a jury. On the other hand and with equal
2 emphasis, the same law that makes you the judge of the
3 facts makes me the judge of the law. The law as given by
4 the Court is the only law that you may consider. You must
5 accept and follow it even though you may disagree with it.
6 I cannot tell you all, ladies and gentlemen, what the
7 facts are and you cannot disagree with me about what the
8 law is or should be. Your job is to take the law as I
9 give it to you and apply it to the facts as you find them
10 from the testimony of the witnesses and any other evidence
11 that is introduced. After doing that, you will render
12 your verdict a true and just verdict under the solemn oath
13 that you just took as jurors.

14 Until I advise you to begin your deliberations,
15 you must not discuss this case with anyone including your
16 fellow jurors, friends, family members and anyone involved
17 in this case. This includes discussions face to face and
18 those by telephone, e-mail, text, blogs or any other of
19 method of communication. You may not use a computer, cell
20 phone or other electronic device with communication
21 capabilities at any time while in the courtroom or during
22 your deliberations.

23 During your breaks from meals or overnight if
24 necessary, you may use these devices. However, you may
25 not at any time use these devices to get or send

1 information about the case. This includes information
2 about a party, a witness, an attorney or a court officer,
3 news accounts about the case, research on any topics
4 raised, any topics you may think would be helpful in
5 deciding the case or any testimony presented by any
6 witness.

7 During the trial, I don't think you are going to
8 see anything, but you are instructed that you are not to
9 read, listen to or watch any news reports about the case.
10 This includes anything that may be in the newspapers or on
11 the internet, radio or television. You must not, ladies
12 and gentlemen, consider anything. You may have read or
13 heard about the case outside this courtroom whether before
14 or during the trial. After the case is submitted to you,
15 you must discuss it only in the jury room with your fellow
16 jurors. The attorneys and the parties in the case have
17 been advised that they are not to talk to you at all. So
18 if you see anyone involved in this and they do not speak
19 to you, they are not being unfriendly. They are simply
20 following the instructions of this court.

21 It is important, ladies and gentlemen, that you
22 keep open mind and not decide any issue in this case
23 until all of the evidence has been presented. The parties
24 have made their closing arguments and I have instructed
25 you on the law in this case. It is your solemn

1 responsibility to determine the guilt or innocence of the
2 defendant. And your verdict must be based solely on the
3 evidence as it is presented to you in this trial and on
4 the law as I instruct you during and at the close of this
5 trial.

6 Now, in just a moment, the Solicitor will make
7 what is called an opening statement in which the Solicitor
8 will explain to you the issues in this case or at least
9 what the Solicitor thinks the issues are in this case.
10 The attorney for the defendant may also make an opening
11 statement although he is not required to do so. What the
12 attorneys tell you during their opening statements is not
13 evidence in this case. It is only their contention as to
14 what the issues are. The evidence in this case will be
15 presented to you by the testimony of sworn witnesses from
16 this witness stand and or by exhibits that may be
17 introduced into evidence.

18 Now, from time to time during the trial, you may
19 hear one of the attorneys say something like, Your Honor,
20 I believe that we have a question of law or a matter of
21 law to discuss with you or Your Honor, may we approach the
22 bench or sometimes I, myself, might find it necessary to
23 excuse you from the courtroom for a short while, so the
24 attorneys and I can discuss a matter of law. The reason
25 for this is because you are judge of the facts in this

1 case and sometimes when I am discussing matters of law
2 with the attorneys, it may be necessary for me to make
3 some comment as to the facts in connection with ruling
4 whether or not a particular law applies.

5 I am not suppose to tell you what I think the
6 facts are, so I will excuse you from the courtroom while
7 these discussions take place so that in no way will you be
8 influenced by anything that I might say or do in
9 connection with the facts.

10 Now, in determining what the true facts are in
11 this case, you must decide whether or not the testimony of
12 the witness is believable. It will be my responsibility
13 to rule as a matter of law as to whether certain testimony
14 is admissible at all or not. But once the testimony is
15 admitted whether or not you believe it, is solely for you
16 to determine. In deciding whether to believe a witness,
17 you have the right to consider the interest of any
18 witness, the bias of any witness, the prejudice of any
19 witness, the opportunity for the witness to have seen the
20 matters and things about which the witness may testify,
21 and the way the witness acts on the witness stand. You
22 have the right to consider anything that is in the record
23 that will help you evaluate the testimony of the
24 witnesses, that means that it is your duty, ladies and
25 gentlemen, to pay close attention to these witnesses to

1 observe the witnesses, to listen to the witnesses and to
2 pay close attention to the attorneys and to the Court.
3 Please don't let your thoughts wonder but give strict
4 attention to the testimony in this case. So that at the
5 end of all the testimony, after the arguments of counsel
6 and the charge on the law by the Court, you will then be
7 in a position to determine what the true facts are and to
8 apply the law to those facts and thus render a true and
9 just verdict. It will be your added duty, Mr. Foreman, to
10 preside in the jury room and be the jury spokesperson here
11 in court. It will also be your duty to write the verdict,
12 but I will give you further instructions about that at the
13 conclusion of this case. Now, in order to preserve
14 everyone's rights, I will give the parties an opportunity
15 to object to anything that I have said.

16 Any exception or objection to anything that I
17 have said to the jury by the State?

18 MR. OZMENT: Nothing from the State, Your Honor.

19 THE COURT: By defense counsel?

20 MR. DEBERRY: No, Your Honor.

21 THE COURT: Ladies and gentlemen, we will now
22 begin the trial of this case.

23 Mr. Ozment, you're recognized for opening
24 statements.

25 MR. OZMENT: Thank you, Your Honor. May it

1 please the Court. Mr. Deberry. Good afternoon, I'm going
2 to try not to walk into this microphone. Fear is a
3 powerful emotion. Think about what motives people to do
4 things, what motivates people to say things, fear, true
5 fear is one of the most powerful things a person can feel.
6 Two examples of this we see Apostle Paul -- excuse me
7 Apostle Petter in all four gospels denied Christ three
8 times out of fear before cock crowed. I was thinking
9 about the scene in Saving Private Ryan. I don't know if
10 you've seen that, but Tom Hanks is leading a platoon to
11 defend a bridge. And platoon of American soldiers, they
12 are under numbered, out gunned, the German army is coming
13 with tanks, heavy artillery. More men. They created a
14 defense for the bridge. They're ready, things are going
15 according to plan as well as could be hoped. There's one
16 member of Hank's platoon of the translator wasn't much of
17 a warrior, wasn't there to carry an arm. He wasn't
18 expecting to be depending a bridge. Well, not much use
19 for a translator in the middle of a battle, so they have
20 him run shells up to the machine gun. If you seen the
21 movie, you will remember that the battle was going on
22 around him. He started to get a little hesitant and he
23 starts getting scareder and scareder of what's going on
24 around him, that's not what he signed up for. He signed
25 up to translate. And eventually he just freezes on the

1 stairs and balls up. German soldiers go right by him up
2 the stairs and go take out the machine gunners after they
3 run out of shells and kill him. The whole time he's
4 crippled with fear.

5 Another instance of fear you are going to see in
6 this case. It's going to be several witnesses that you're
7 going to hear from in this case and I'm going to try to
8 kind of tell it like a story. Different people are going
9 to tell different parts of the story because not many
10 people there for the whole thing.

11 Back on November 30th 2011, Demetrius Holloman,
12 who some people may call Tad or Tad Pole because that's
13 his nickname, and one of his friends Roderick Titus went
14 to a funeral. They got back from the funeral about one
15 o'clock. Roderick ran up in the house. Demetrius walked
16 around to the side of the house. Within a minute or two,
17 Demetrius is standing there, out of no where he feels
18 something come up behind him, hit him in the mouth. Hit
19 him in the mouth so hard, he falls to the ground. He can
20 feel his teeth are coming out. He can feel blood pouring
21 out of his mouth.

22 The testimony will show he sees Troy Hunter
23 standing over him with a gun. Mr. Hunter ask Demetrius
24 for money, pointed the gun at his head, takes the money,
25 some money from Demetrius.

1 Now, if I had a gun pointed at my head, I just
2 had my teeth knocked out in broad daylight, I can tell you
3 I'd be scared. But that wasn't the end of it. Just to
4 make sure Demetrius got the message from Mr. Hunter, you
5 will hear testimony that Mr. Hunter fired the gun twice
6 right next to Demetrius' head. I've never had to go
7 through anything like that, but I can imagine the fear of
8 how the gun fire point blank range right next to my head.

9 After that happened, Demetrius went to the
10 hospital later that night. You're going to hear about
11 that. You're going to hear about his damage to his face.
12 You're going to hear about his teeth getting knocked out.
13 You'll see pictures of his teeth knocked out. He'll even
14 get up on the stand and show you that his teeth come out.
15 No question about that. You're going to hear from three
16 or four witnesses that are going to tell you they were in
17 the house and heard the gunshots. You're also going to
18 hear that Demetrius after this happened was scared.
19 You're going to hear that when the police came he didn't
20 want to tell them who did it. He was scared. He just had
21 his teeth knocked out and a gun shot next to his head. He
22 knew what could happen to him if he was on Troy Hunter's
23 list. You're also going to hear from Demetrius' mom and
24 similar to my mom would be after Demetrius doesn't tell
25 the police who did it, tells the rest of it, Demetrius'

1 mom says Demetrius that's not how you handle things

2 MR. DEBERRY: Objection, Your Honor. I think
3 this is getting way past ---

4 THE COURT: Can you all approach?

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

8 THE COURT: I'll allow it. Go ahead. Objection
9 so noted for the record overruled.

10 MR. OZMENT: Demetrius' mom is going to testify
11 from the stand right here that she talked to Demetrius
12 and told him to go tell the law. And finally, you will
13 hear from Investigator Lee Davis from the police
14 department going to be sitting with me through the trial.
15 Investigator Davis will tell you that's exactly what
16 happened. Demetrius came and did the right thing and told
17 us what happened. That's what bring us here today. I
18 appreciate your attention.

19 THE COURT: Mr. Deberry.

20 MR. DEBERRY: Thank you, Your Honor. Mr.
21 Ozment, Investigator Davis. Ladies and gentlemen, I'm
22 Steven Deberry. I want to first start out by telling you
23 I understand and I know that there's many many places
24 where you rather be than sitting here today. I understand
25 that. And for your service here today, I want to just

1 thank you right off the bat. I want to thank you for
2 paying attention, for giving this trial Mr. Hunter's day
3 in court and for being fair and impartial. You have
4 already told us that you could do that and all we can do
5 is trust that you will be fair and impartial. We ask that
6 you be fair and impartial not only for Mr. Hunter but also
7 to Mr. Holloman and the State of South Carolina because if
8 we can't deliver a fair trial for both sides, then this
9 system flawed right out of the gate. We got a big
10 problem.

11 Now, Mr. Ozment came up here and he gave you a
12 pretty good description of what he believes happened. The
13 judge has already told you what I say nor what Mr.
14 Ozment says not now or any time throughout this trial is
15 evidence. It is not and you can't consider it as
16 evidence. What you have to find the facts on throughout
17 this case comes from that witness stand right there. So
18 let's just see if he can follow up what he's promised to
19 deliver for you because I don't believe he can. I don't
20 believe he can. He failed to tell you that Mr. Holloman
21 finally told Mr. Lee Davis that he came around and told
22 him who knocked his teeth out because that was the only
23 way he could get repaid for it. He forgot to tell you
24 that part and there's many many things he left out. And
25 I'm not going to attempt to even stand here and tell them

1 to you because you can't consider them any way. You got
2 to hear them from here. You got to hear them from here.
3 It's all that you can consider.

4 Now, it's going to be up to you as the judge
5 told you as a jury in this case, it's your job. It's
6 solely your job to determine what took place. And he told
7 you you have to do it from the testimony that comes from
8 that witness stand and evidence that's introduced
9 throughout this trial. When this trial gets over, I can
10 promise you that the amount of evidence that you'll have
11 to consider will be very very little, very little. It
12 will leave you wondering if this even took place. It'll
13 leave you wondering where this took place.

14 The evidence in this trial will leave you
15 wondering when did Mr. Holloman lose these teeth. There's
16 going to be evidence in this trial. There's going to be a
17 doctor who comes in here that's going to tell you one
18 thing. And Mr. Holloman's going to go tell them another
19 thing. All of these things are for you to determine what
20 happened. And in our system of justice and the judge has
21 already told you it's the greatest system of justice in
22 the world, but in this system of justice, you have to find
23 a criminal defendant guilty beyond a reasonable doubt. I
24 know you've all heard that. I know we've seen TV and
25 shows and news and all sorts of things that harp on you're

1 innocent until you're proven guilty and you have to be
2 proven guilty beyond a reasonable doubt.

3 Ladies and gentlemen, I'm -- I don't know how to
4 better get this point across to you because this is a very
5 fabric of this system. This is a very building block,
6 it's the very foundation because if we find people guilty
7 and we're not sure, you will be doing a terrible thing.
8 Now, that's exactly what a reasonable doubt means. It
9 means are you sure. Are you firmly convinced of what
10 happened? That is the very definition of reasonable
11 doubt. It's firmly convinced that all this evidence
12 proves what the State has the burden of proving. Troy
13 Hunter doesn't have to prove anything, doesn't have to do
14 a thing. This system of justice is set up where with
15 government brings these charges. And they have to prove
16 them guilty beyond a reasonable doubt.

17 Do you believe there was a gun? If you have any
18 lightest hesitation whatsoever if there was a gun, armed
19 robbery may be out of the picture. If you have any
20 slightest hesitation about whether any money was taken
21 because Mr. Ozment forgot to tell you that Mr. Holloman,
22 said at first nothing was taken. He tried to take some
23 money, but he didn't get any. And then three days later
24 after he finds out it's going to cost \$960 to fix his
25 teeth, he comes back and says, yeah, I got \$900 to pay.

1 And then three months later he comes back and says, yeah,
2 it was a thousand. So what was it? If you don't believe
3 any money was taken, we don't have a robbery, okay. And
4 if you don't believe that it was Troy Hunter because they
5 don't have any evidence to prove that this even happened,
6 then there's no assault and battery.

7 When you go to your jury room for the final time
8 in this case, ladies and gentlemen, it's so important
9 because that is the point in time where you're going to
10 retire to that room with all the evidence in this case and
11 that's the point in time when you're going to determine
12 what your verdict is and a verdict by the very definition
13 of the word verdict means to speak the truth, to speak the
14 truth.

15 Now, there's three possible outcomes that you
16 can come out of that room with at the end of this case, at
17 the end of this trial. One, if you're firmly convinced
18 that they met every burden of proof, every element of both
19 of these crimes, when you come out here and he tells that
20 Troy Hunter is guilty. Two, if you are not sure that is
21 the very definition of a reasonable doubt and the judge
22 will tell you that law is if you have a hesitation to act,
23 if you are not firmly convinced, then you have to find him
24 not guilty. So if you are unsure, it's not guilty, okay.
25 Third, is what we call hung jury, that's where the 12 of

1 you cannot unanimously agree to a verdict of either guilt
2 or not guilty. And when we picked you, ladies and
3 gentlemen, because I believe that each and every one of
4 you will stand up for yourself. But you want be convinced
5 because somebody else thinks one thing or another that
6 this evidence in this case and the way it's provided to
7 you, the way it is given to you from that witness stand
8 that each and every one of you will make up your own mind.
9 And if it's guilty, find him guilty. If you are not sure,
10 then find him not guilty. One of you feels one way and
11 some of you feel another way, it's a hung jury. But I
12 trust that each and every one of you will be fair, that's
13 all that we can ask for. We promise -- I promise not to
14 take any more of your time than is absolutely necessary.
15 It's a very serious case and Mr. Hunter as well as the
16 State of South Carolina deserves a fair and impartial jury
17 to decide the facts in this matter. And we believe that
18 you can do that. I thank you in advance for doing that.
19 Thank you very much.

20 THE COURT: Mr. Ozment, call your first witness
21 please.

22 MR. OZMENT: The State would call Roderick Titus
23 to the stand.

24 THE CLERK: If you will, sir, come to the
25 witness stand, place your left hand on the Bible and raise

1 your right. Do you swear to tell the truth, the whole
2 truth and nothing but the truth so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated right there in the
5 witness chair. And if you will, sir, state your full name
6 for the record.

7 THE WITNESS: Roderick Sicar Titus.

8 WHEREUPON,

9 Roderick S. Titus,

10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. OZMENT:

13 Q How are you today, Mr. Titus?

14 A I'm fine.

15 Q You're a little nervous?

16 A No, sir.

17 Q Where you from?

18 A Florence, South Carolina.

19 Q How long have you lived here?

20 A All of my life.

21 Q All right. Where do you live now?

22 A [REDACTED] North Vista Street.

23 Q Have you ever lived on Dixie Street?

24 A Yes.

25 Q When did you live on Dixie Street?

1 A From 2009 until 2012.

2 Q What was your address on Dixie Street?

3 A [REDACTED] Dixie.

4 Q All right. Is that in Florence County?

5 A Yes, sir.

6 Q Mr. Titus, how long have you known Demetrius

7 Holloman?

8 A All of my life.

9 Q Does he have a nickname?

10 A Yes, Tad.

11 Q All right. When you say all of your life, explain to

12 me how y'all first met and got to know each other?

13 A Elementary school.

14 Q Okay. Did y'all live near each other growing up?

15 A Yeah, we lived in the West Florence area.

16 Q Okay. What about the Defendant Troy Hunter, how long

17 have you known him?

18 A I've known him all of my life too.

19 Q How did you know him all of your life?

20 A Grew up in the same neighborhood.

21 Q Okay. When you say grew up in the same neighborhood,

22 give me on the same street, on the same block, give me an

23 idea?

24 A In the same -- I would say within three, four or five

25 block radius.

1 Q How long did y'all live that close?

2 A Off and on.

3 Q Do you know how well Demetrius knew Troy Hunter?

4 A All of us was like brothers. I mean, this whole
5 situation still has me puzzled.

6 Q Okay. Would y'all hang out as friends do stuff
7 together?

8 A Go to clubs, go out to eat, go see women things like
9 that.

10 Q All three of you would.

11 A On occasions whenever we would run cross each other?

12 Q How old are you now?

13 A Thirty-one.

14 Q Okay. Now, in 31 years have you ever gotten in any
15 trouble?

16 A Yes, sir.

17 Q Have you gotten in any trouble in the last ten years?

18 A Yes, sir.

19 Q Tell me about the first thing you been in trouble for
20 in the last ten years?

21 A Distribution of crack cocaine. I received five years
22 for that October 27, 2003.

23 Q Okay. Did you serve that five years?

24 A Yes, sir.

25 Q Did you do that?

1 A Yes, sir.

2 Q Was that up in this courthouse that you pled guilty
3 to it?

4 A Yes, sir.

5 Q When were you release for that?

6 A I was released in January -- December 2008 I believe.

7 Q All right. Now, you been in a little bit of trouble
8 since then; haven't you?

9 A Yes, sir.

10 Q Do you have any pending charges right now?

11 A Yes, sir.

12 Q Tell me what those are?

13 A Trafficking crack cocaine, distribution of crack
14 cocaine and possession of control substance, which is
15 pills.

16 Q Okay. Do you know if you'll face jail time
17 potentially for those charges?

18 A Yes, sir, I will.

19 Q Okay. Now, you -- are you aware you're testifying
20 for the State today?

21 A Yes, sir.

22 Q Have I promised you anything to testify for us?

23 A No, sir.

24 Q Have I told you we're going to drop anything?

25 A No, sir.

1 Q Have I told you we're going to reduce anything?

2 A No, sir.

3 Q Have I ever mention any sort of number to you be it

4 ---

5 A No, sir.

6 Q Have I ever said the word probation to you?

7 A No, sir.

8 Q Okay. Why are you testifying here today then?

9 A Well, I'm a witness I guess.

10 Q Okay. What is the one thing I did tell you I want
11 for you to do for me today?

12 A Be honest and just tell the truth.

13 Q All right. Are you going to do that for us?

14 A Yes, sir.

15 Q Okay. Let's turn to the date that we're talking
16 about November 30th 2011, what was going on that day?

17 A My kids great grandmother passed away and she had a
18 funeral.

19 Q When you say your kids great grandmother, is that
20 your grandmother or your girlfriend's how is that?

21 A My kid's mother grandmother?

22 Q How many kids do you have?

23 A Three.

24 Q All right. What time was that funeral?

25 A I believe between around 11 and one.

1 Q Okay. Where was it?

2 A On the corner of Coit and Sumter Street Majority
3 Baptist Church.

4 Q All right. Who did you go to the funeral with?

5 A Me and Demetrius.

6 Q All right. After the funeral, did you stay with
7 Demetrius?

8 A Yes, we came back to my residence.

9 Q And what residence was that at the time?

10 A That was [REDACTED] Dixie Street.

11 Q All right. How did you get from the funeral back to
12 that residence?

13 A We caught a cab.

14 Q All right. About what time did you get to the
15 residence? I realize it was a long time, but you can
16 estimate for me.

17 A I would say after about two.

18 Q All right. Where did the cab pull up outside the
19 residence, let's say this is the front of the house here
20 tell me kind of where the cab pulled up?

21 A They pulled up directly right up in front of the
22 door.

23 Q All right. So just dead middle?

24 A Yeah.

25 Q Did you all get out the cab?

1 A We got out of the cab. Demetrius went walking toward
2 the side of the house.

3 Q Let me pause you. If this is the front of the house,
4 where did Demetrius go?

5 A On the side.

6 Q Over here?

7 A Yes, sir.

8 Q What did you do?

9 A I walked in the front door and went to change clothes
10 and get a cigarette. And I heard a loud noise and my
11 sisters ran in there and said ---

12 Q Let me pause you. So you came in the front door.
13 Could you see Demetrius at that point? Could you see
14 where he went?

15 A After he went around the corner of the house, I
16 couldn't see him any more.

17 Q All right. You came in the front door. Why did you
18 go in the house? What were you going to do inside?

19 A I went in the house to change clothes, get out of my
20 church clothes.

21 Q Okay. You were in the house changing. Tell me what
22 happened next?

23 A While I was changing, I heard a loud noise. My
24 sisters came in the house and said that ---

25 MR. DEBERRY: Objection, Your Honor.

1 MR. OZMENT: Your Honor, I'll rephrase.

2 BY MR. OZMENT:

3 Q Don't tell me what your sisters said. But your
4 sisters came in the house?

5 A Yeah.

6 Q Were they showing any kind of emotion?

7 A Yeah, they were screaming.

8 Q Okay. Did they seem upset?

9 A Yeah.

10 Q Okay. You said you had heard a loud noise. Can you
11 describe what that loud noise was?

12 A Loud bang noise.

13 Q Okay. How loud?

14 A Very loud.

15 Q Like a hand clap? What was it?

16 A Like a crash.

17 Q Okay. What did you do when you heard the loud noise
18 and your sisters came in screaming?

19 A I grabbed my kids immediately and I went out the
20 front door and put them in the car with my aunt. And she
21 dropped us off around the corner.

22 Q All right. Why did you want to get your kids out?
23 Why was that important?

24 A Because I was concerned about their safety.

25 Q Okay. What made you concerned about their safety?

1 A I didn't know what was going on.

2 Q Okay.

3 A Didn't want anyone to get hurt?

4 Q Okay.

5 A My main concern was getting them to safety before I
6 could find out what was going on.

7 Q Okay. Where did you take them?

8 A I took them around the corner on Ingram Street where
9 everybody went from the funeral.

10 Q So there was a house there?

11 A Yes.

12 Q Did you see Demetrius that night after you left your
13 house after the noise with your kids?

14 A Yeah, I believe I saw Demetrius later on after he
15 came from the hospital I believe.

16 Q Okay.

17 MR. OZMENT: Beg the Court's indulgence.

18 (WHEREUPON, a pause in the proceedings.)

19 BY MR. OZMENT:

20 Q Let's go back to a little earlier in the day. When
21 you got in the car and went inside, do you remember seeing
22 anybody around the house?

23 A I saw a few people. I believe I saw Nate. A guy
24 name Nate, couldn't recognize the other guys.

25 Q Okay. But there were a couple of people around kind

1 of on the street there in the yard?

2 A Yeah, lingering.

3 Q Okay, do you know Nate's last name?

4 A No, sir.

5 Q Okay. Did you see Troy Hunter that day?

6 A No, sir.

7 Q Okay. And you don't know what happened -- well, you
8 did not see anything. You don't have any direct knowledge
9 of what happened that day that made the loud noise or any
10 of that?

11 A No, sir.

12 Q Okay. After this day, have you talk to Troy Hunter
13 since then at all?

14 A Yes, I talk to him several times.

15 Q Do you remember how many times you talk to him?

16 A Maybe two or three.

17 Q Okay. When was the first time you talk to Troy
18 Hunter after that day?

19 A It was so long, I can't remember any specific dates.

20 Q Do you know where he was calling you from?

21 A The jail.

22 Q Okay. What did he say to you in that phone call?

23 A He didn't say anything particular. He just ask me
24 did I talk to Demetrius and, you know, just basically
25 saying he didn't know why Demetrius said what he said. I

1 basically told him I didn't have anything to do with it.
2 And I told him that I had love for him and Demetrius just
3 like both of them was my brothers. And if I could make
4 all of this disappear, I would, but I can't.

5 Q Okay. What about the next time you talk to him do
6 you remember when that was?

7 A No, sir.

8 Q Okay. Was that again a phone call?

9 A Yes, each time I talk to him on the phone.

10 Q Okay. What did he say the next time you talk to him?

11 A He just ask me did I see Demetrius again and he ask
12 me was I going to testify against him, that was it?

13 Q So about the same conversation as the first one?

14 A Yes, sir.

15 Q When is the last time you talk to Troy?

16 A Probably about two weeks ago.

17 Q Okay. What did he say in that phone call?

18 A Nothing in particular just basically the same.

19 Q Okay. Have you ever been around gunshots?

20 A Yes, sir.

21 Q You know what they sound like?

22 A Yes, sir.

23 Q The loud noise you heard could it have been a
24 gunshot?

25 A It could have been.

1 Q All right. Is that when you heard the noise did you
2 think at the time that could have been a gunshot?

3 A That's what I thought it was, that's why I grabbed my
4 kids and got them to safety.

5 Q Okay.

6 MR. OZMENT: No further questions, Your Honor.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. DEBERRY:

10 Q How you doing, Mr. Titus?

11 A I'm doing all right.

12 Q You know Investigator Lee Davis?

13 A Yes, sir.

14 Q How long have you known Investigator Lee Davis?

15 A I couldn't tell you. Well, ever since he started
16 coming to my house, questioning me about different things
17 that was going on around my house.

18 Q Okay. Ever question you about this incident?

19 A I can't remember. It was so long ago, he may be
20 have. I can't remember.

21 Q When did you get lined up to come here to testify
22 today? Just last week?

23 A No, some months ago.

24 Q When did you first talk to Mr. Ozment about this
25 case? Was it just last week?

1 A I believe in December.

2 Q You spoke with Mr. Ozment about this case in
3 December?

4 A Well, I got a subpoena and it was last month when I
5 spoke to him.

6 Q You got a subpoena?

7 A I got a subpoena in maybe the first or second week of
8 December.

9 Q Okay. Did that subpoena ask you questions about this
10 case?

11 A No.

12 Q What did that subpoena -- what did you understand
13 that meant?

14 A It just said I had to be here.

15 Q You had to be here?

16 A Yes.

17 Q But have you ever talked to Mr. Ozment about this
18 case, about what happened, about what you knew, about what
19 you saw?

20 A Yes, I talk to Mr. Ozment.

21 Q When?

22 A A few weeks ago.

23 Q A few weeks ago?

24 A Yeah.

25 Q All right. And Mr. Ozment is assign to prosecute

1 your pending drug trafficking charges?

2 A Actually, I don't know who my solicitor is on my
3 case.

4 Q Okay. So you don't know if you're going to receive a
5 deal for this or not, do you?

6 A I'm not.

7 Q Are you sure you're not?

8 A Yes, sir.

9 Q All right. When this happened, I'm curious which
10 police officers came to your house?

11 A I was gone, sir.

12 Q You were gone. They never talk to you, did they?

13 A I believe they probably talk to me a few days later
14 but...

15 Q You can't remember?

16 A It was so long ago. I don't remember but exact
17 incident as far as them questioning me.

18 Q So if I told you Investigator Lee Davis, who's the
19 chief investigator, the lead investigator on this armed
20 robbery and assault and battery case, if I told you he's
21 never interviewed you on this case, you couldn't tell me
22 if I was telling you the truth or not?

23 A I didn't say that. He interviewed me, but I don't
24 know when he interviewed me.

25 Q Okay.

1 A It wasn't the same day because I had left.

2 Q But what you told us before was you known him for
3 quite a while. He's asked you a lot of other things, but
4 you not sure about it if he ask about this case?

5 A Yeah, he ask me about this case, but I don't know
6 when. It wasn't the same day. It was a few days later.

7 Q Okay. What did you tell Mr. Ozment or you just
8 testified that you saw a couple people and you think that
9 one of them was this Nate guy; is that right?

10 A Yeah.

11 Q Well, you testified y'all came to the front of the
12 house in a cab?

13 A Uh-huh.

14 Q That you got out and went into the house, right?

15 A Uh-huh.

16 Q So where was these people standing?

17 A In my backyard. I kept a yard full of people at all
18 times. It was always people in my yard.

19 Q What sort of activity was going on there?

20 A None, just mainly family and friends.

21 Q Family and friends?

22 A That's it.

23 Q So you don't know who was in the backyard?

24 A Actually, I don't.

25 Q Okay. And it's safe to say you can't see through the

1 house or around the house if you got out and went inside,
2 right?

3 A We didn't have a back door. We only had a front door
4 and a side door that was toward the front.

5 Q Okay. Now, you testified you heard a crash?

6 A A loud noise, that's what it sounded like. It could
7 have been anything.

8 Q You're not sure what it was? Could have been
9 anything, okay. Could you tell which direction it came
10 from?

11 A No.

12 Q So it could have come from anywhere?

13 A I was inside the house, sir. I don't know where it
14 came from. I mean, it was so loud it sounded like it was
15 in the house.

16 Q Okay. But you're not sure what it was. Now, you
17 said you testified that you saw Mr. Holloman later that
18 night, right?

19 A Yeah, but he couldn't talk. He already -- he was in
20 too much pain. I guess, he was stitched up or whatever.

21 Q Okay. Do you know if the police came and put crime
22 scene tape in your backyard there?

23 A I'm not aware.

24 Q You're not aware?

25 A I'm not aware.

1 Q How much grass is in your backyard or was there on
2 Dixie Street? Is it mostly dirt?

3 A Mostly dirt and grass, grass is on the outside.

4 Q It's probably mostly dirt because so many people stay
5 back there all the time?

6 A Yeah.

7 Q Okay. So did you -- when is the first time you went
8 in the backyard after the incident supposedly took place?

9 A Probably the next day.

10 Q The next day?

11 A Yes, sir.

12 Q Did you see any evidence of a struggle or if he had
13 some teeth knocked out? Did you find any teeth or blood
14 or bullet casings or anything?

15 A No, I wasn't concerned about any of that. I was
16 thinking that the police would have taken care all of
17 that.

18 Q You would have thought that would have happened? But
19 you never noticed them back there, did you?

20 A No.

21 Q All right. You said you took the kids around the
22 corner on Ingram Street. How far is that away?

23 A About two blocks over.

24 Q Two blocks. What would be between your backyard
25 there on Dixie Street and where you took kids on Ingram

1 very much or houses or what would be between there?

2 A Well, actually where I took the kids was going away
3 from my house?

4 Q Okay. Two blocks away, right?

5 A Yeah.

6 Q Okay. There was a crowd of people there?

7 A Yeah.

8 Q That's where ---

9 A That's where everyone went to after the funeral.

10 Q Anybody there say they heard a loud noise?

11 A Actually, all of these people who were there wasn't
12 at my house. They left the church and went there.

13 Q They were just two blocks away. Just for
14 clarification, can you tell us what trafficking in crack
15 cocaine and distribution of crack cocaine does that
16 involve -- what does that involve?

17 A What does that involve?

18 Q Yes.

19 A Drugs.

20 Q And is that involving selling of drugs?

21 A No, not necessarily because I use drugs too.

22 Q Okay.

23 A But I have sold drugs and I've been caught for
24 selling drugs.

25 Q And is that what you're facing jail time for?

1 A I'm not guilty, yeah.

2 MR. OZMENT: Your Honor, I would object to any
3 factual questions about his pending charges.

4 THE COURT: Objection sustained.

5 MR. DEBERRY: Thank you very much. You have a
6 good day.

7 THE COURT: Any redirect?

8 MR. OZMENT: No redirect, Your Honor.

9 THE COURT: All right, sir, you may step down.
10 Thank you.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 MR. OZMENT: Your Honor, may Mr. Titus be
14 relieved from his subpoena?

15 THE COURT: Any objection?

16 MR. DEBERRY: No, Your Honor.

17 THE COURT: Without objection.

18 Sir, you're free to go. You have no further
19 responsibility with regard to your subpoena. You free to
20 go. Thank you for being here.

21 Call your next witness please.

22 MR. OZMENT: The State would call Nate Orgbon to
23 the stand. There's also a matter of law with Mr. Orgbon
24 that we may need to take up outside the presence of the
25 jury.

1 THE COURT: All right. Ladies and gentlemen,
2 I'm going to ask you to step to the jury room for just a
3 minute. Do not discuss the case. I'll get you back out
4 here as quickly as possible.

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

6 THE COURT: Swear him in.

7 THE CLERK: If you will, sir, stop right there.
8 Place your left hand on the Bible and raise your right
9 hand. Do you swear to tell the truth, the whole truth,
10 and nothing but the truth so help you God?

11 THE WITNESS: Yes, ma'am, I do.

12 THE CLERK: Please be seated and state your full
13 name for the record.

14 THE WITNESS: Nathan Omar Orgbon.

15 MR. OZMENT: Your Honor, this is Mr. Orgbon, who
16 been some discrepancy about his record. As we already
17 stated, we ran his NCIC nothing came up. We ran our
18 internal document records nothing came up. And so I guess
19 this would be a proper testimony regarding his record.

20 THE COURT: All right, go ahead.

21 WHEREUPON,

22 Nathan Orgbon,
23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION IN-CAMERA

25

1 BY MR. OZMENT:-

2 Q Mr. Orgbon, how are you doing today?

3 A All right.

4 Q Have you ever been arrested for anything?

5 A No, sir.

6 Q At all?

7 A No.

8 Q Have you ever had any sort of drug arrest or anything
9 like that?

10 A No, sir.

11 MR. OZMENT: No further questions from the
12 State.

13 THE COURT: Mr. Deberry.

14 CROSS-EXAMINATION IN-CAMERA

15 BY MR. DEBERRY:

16 Q Never been charged with any sort of distribution of
17 drugs, been investigated or anything?

18 A No, sir.

19 MR. DEBERRY: That's all I have.

20 THE COURT: All right. Anything else?

21 MR. OZMENT: The State would make a motion in
22 limine that Mister -- the defense not be allowed to ask
23 Mr. Orgbon any questions about an arrest or drug
24 prosecution or anything like that.

25 THE COURT: Mr. Deberry.

1 MR. DEBERRY: I wouldn't -- that's fine.

2 THE COURT: Okay, so granted.

3 I'm going to ask you, sir, to step down for a
4 minute before I bring the jury back in. We're going to
5 call the jury back in here in just a minute. And you'll
6 be re-sworn again, okay. Wanted to ask that question of
7 you under oath.

8 All right, since the jury out. We'll take about
9 a five minute break if you need to go to the bathroom
10 before we start back up.

11 (WHEREUPON, a break was taken.)

12 THE COURT: While we were on our break,
13 alternate number one, Ms. Marilyn Gordon, got a note from
14 the clerk's office that her son has been taken to the
15 hospital for a seizure, that may be something that's
16 customary or ordinary I don't know. Any objection to me
17 pulling her out and at least advising her of what's going
18 on and give her the option as to whether or not she feels
19 like she needs to go. I know certainly if it was my child
20 I want to know. Any objection to that by the State?

21 MR. OZMENT: Absolutely not, Your Honor.

22 THE COURT: Defense counsel.

23 MR. DEBERRY: No, Your Honor.

24 THE COURT: If you'll pull Ms. Gordon out
25 please.

1 (WHEREUPON, Marilyn Gordon juror number 44 came
2 into the courtroom.)

3 THE COURT: Hi, Ms. Gordon, come on up here for
4 just a minute. How are you doing good?

5 JUROR: Good, good, good.

6 THE COURT: I got a note in the clerk's office
7 that your son has been taken to the hospital with a
8 seizure.

9 JUROR: They call you?

10 THE COURT: Yes, ma'am, they called the clerk's
11 office.

12 JUROR: He's at the emergency room.

13 THE COURT: Did you know he was there?

14 JUROR: Yeah, I went up there and I saw him.

15 THE COURT: I didn't know if you were aware of
16 that or not. I wanted to bring you out and make you aware
17 of it.

18 JUROR: When I got up -- when you give us the
19 break as soon as I got in the car, his friend called me.
20 I spent most of my time up there. He was alert and
21 everything. He's a bad diabetic.

22 THE COURT: But you okay staying?

23 JUROR: I'm good. He's good. But he was good
24 and he's alert and everything. And they call since when?

25 THE COURT: I don't know when this call came in.

1 Your family was going to call the clerk's office if they
2 needed to reach you. I want to make sure you knew that.
3 I know if it was my child, I would want to know

4 JUROR: They know I'm up here, but when I left,
5 he was fine. They got him alert and everything, but he's
6 good. If he wasn't, I would have called you and let you
7 know.

8 THE COURT: Well, I appreciate that, but I
9 wanted to let you know in case you didn't. I'll let you
10 return to the jury room and we'll bring you right back out
11 here, okay. Thank you. Thank you, Ms. Gordon.

12 All right. Anything from the State before we
13 bring the jury back out?

14 MR. OZMENT: Nothing from the State, Your Honor.

15 THE COURT: Defense counsel?

16 MR. DEBERRY: No, Your Honor.

17 THE COURT: All right, Ms. Olivia.

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

19 THE COURT: Jurors are present, Mr. Ozment, call
20 your next witness please.

21 MR. OZMENT: Your Honor, the State calls Nate
22 Orgbon to the stand.

23 THE COURT: Come around to be sworn please, sir.

24 THE CLERK: If you will, sir, place your left
25 hand on the Bible and raise your right hand. Do you swear

1 to tell the truth, the whole truth, and nothing but the
2 truth so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated and state your full
5 name for the record.

6 THE WITNESS: Nathan Omar Orgbon.

7 THE COURT: Go ahead, sir.

8 WHEREUPON,

9 Nathan Orgbon,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. OZMENT:

13 Q How are you today, Mr. Orgbon?

14 A Fine.

15 Q How old are you?

16 A Twenty-five.

17 Q Where do you live?

18 A My address?

19 Q Yeah.

20 A [REDACTED] Manner Circle.

21 Q Where is that approximately in the county?

22 A East Florence, West Florence kind of in the middle.

23 Q In the middle of Florence?

24 A Yeah.

25 Q All right. Do you work?

1 A No, sir.

2 Q You do music?

3 A Yes.

4 Q Tell me about that?

5 A I rap ain't much.

6 Q Were you suppose to be working today?

7 A Yes, sir, I suppose to be in California actually.

8 Q All right. Why aren't you in California?

9 A Because I'm here.

10 Q I'm sorry. How long have you known Demetrius

11 Holloman?

12 A For a while.

13 Q What do you know him as?

14 A Tad, T.P.

15 Q All right. And when you say for a while, give me an
16 idea?

17 A Since, I was young. Since, I was little, you know
18 what I mean, but young, you know what I mean, about 17 or
19 18, somewhere up in there.

20 Q What about Troy Hunter? Do you know Troy Hunter?

21 A Yeah, I know him for a while too.

22 Q About the same amount of time?

23 A No not that long, but I know him for a while
24 probably like since I was in my 20's, early 20's.

25 Q Okay. On the afternoon of November 30th where were

1 you of 2011? Where were you?

2 A On Dixie Street.

3 Q Okay. Whose house was that at?

4 A The Titus'.

5 Q Okay. What were you doing there?

6 A Chillin.

7 Q Okay. Who were you with?

8 A Myself.

9 Q All right. Did you see Troy Hunter there that day?

10 A Later on that day, but like not right away.

11 Q All right. About what time do you remember first
12 seeing Troy Hunter?

13 A I can't even tell you the time. I don't know the
14 time. We were just ---

15 Q After lunch, before lunch?

16 A Little after lunch, I guess.

17 Q Okay. Where did you first see Mr. Hunter?

18 A In -- well, when I first seen him when he came in the
19 yard.

20 Q Okay. Do you know where he came?

21 A No, sir. I can't really tell you the direction he
22 came from, but I remember when he came back there?

23 Q All right. Let's say this is the front of the house
24 right here and the road's right here, about where were you
25 standing?

1 A You say road where?

2 Q It's like ---

3 A We in the backyard, we in the backyard.

4 Q So this is the house and you're around back here?

5 A I'm on the back.

6 Q Okay. And where did you see -- if you're the road,
7 this is the house, backyard, where did Troy Hunter come
8 from?

9 A From the side like -- kind of from the front yard,
10 but, you know, I couldn't tell cause I was already
11 standing in the backyard?

12 Q All right. So he was walking around the house?

13 A Yeah.

14 Q Okay. Do you remember if he said anything that day?

15 A Yeah, he ask like -- ask where Tad was, but everybody
16 look for Tad, you know what I'm saying. Everybody always
17 looking for Tad, so nobody don't think nothing of it.

18 Q So he ask ---

19 A Did we see him? Yeah, we see him.

20 Q Okay. Did you say anything to him when he asked?

21 A No, sir, somebody else said something to him.

22 Q All right. Did that person let him know where Tad
23 was?

24 A Yeah.

25 Q What did you see after somebody told him where Tad

1 was?

2 A Well, he walked over.

3 Q Okay.

4 A Like walked over to Tad, you know what I'm saying.

5 Q What happened next?

6 A Well, they started fighting, you know what I mean.

7 Like I told you the other day, they started fighting.

8 Q When you say they started fighting, tell me he walks
9 up -- when I say he, Troy Hunter, walks up to Tad, what
10 happens?

11 A He clean clock, you know what I'm saying, with his
12 fist. He just punched the man, you know what I mean, so
13 they fighting.

14 Q Okay. When he hit him, what happened?

15 A I seen Tad go back, so that when I left.

16 Q Okay. How far were you from when he hit him?

17 A The yard over there and I'm still standing in the
18 same spot on the other side of the house.

19 Q And so you're further than me to you?

20 A Yeah, little further.

21 Q All right. Still farther than me to you?

22 A That's about right, about two steps back, that ain't
23 too much further though.

24 Q Maybe about this far?

25 A Yeah.

1 Q Okay. Is that between you and where this happen?

2 A A fence and bushes.

3 Q Okay.

4 A And a barn, a fence, bushes and barn.

5 Q Could you see through those well enough to know what
6 happened?

7 A Yeah.

8 Q Okay. Are you sure that Mr. Hunter is the one struck
9 Tad?

10 A I ain't -- I just see them swinging you feel me, like
11 when I saw them start fighting, that was my cue to leave,
12 so I jump on my little ride and I left.

13 Q When you say fighting is -- you've only told us about
14 one punch being thrown. Did you see any other fighting?

15 A Well, I just seen a punch. I seen a punch. I don't
16 know if they was fighting before that. But like I say, I
17 seen a punch and that's when I left because I know it was
18 gone escalate maybe, you feel me.

19 Q How quick did you get out of there?

20 A Snap of a finger.

21 Q Where did you go from there?

22 A To Cober Heights.

23 Q Okay. Now, I know you're a music guy. Do you walk
24 around with headphones?

25 A Yes, I do all the time.

1 Q Did you have headphones on once you got there?

2 A Yes, I did.

3 Q Okay.

4 A Bumping Yo Gotti.

5 Q Okay. When you say on your ride, did you have a
6 bicycle or a car?

7 A Bicycle.

8 Q Were you hurrying on that bike to getting out of
9 there?

10 A Was I? I know the police was coming.

11 MR. OZMENT: No further questions, Your Honor.

12 THE COURT: Cross-examination.

13 MR. DEBERRY: Court's indulgence.

14 THE COURT: Yes, sir.

15 (WHEREUPON, a pause in the proceedings.)

16 CROSS-EXAMINATION

17 BY MR. DEBERRY:

18 Q I just got a question or two, Mr. Orgbon. You said
19 everybody was there to see Tad or everybody always looking
20 for Tad.

21 A Yeah, everybody always looking for Tad.

22 Q Why is that?

23 A Man, listen, it ain't no secret, man. You feel me.
24 Y'all know why everybody looking for him. Tad, Tad, you
25 know what I'm saying. Everybody always looking for Tad.

1 It is, what it is.

2 Q Okay.

3 MR. DEBERRY: I don't have any further
4 questions. Thank you.

5 THE COURT: Redirect?

6 MR. OZMENT: Briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. OZMENT:

9 Q A minute ago when I stood back there and you were
10 telling me how far you were. And you were saying that it
11 was those bushes and the fence. Could you tell if
12 Mr. Hunter had anything in his hand?

13 A No, cause he -- when he walked by -- if he had
14 something in his hand when he walk by the first time, I'd
15 seen it, you know what I'm saying.

16 Q So if he put something in his hand after he walked by
17 you ---

18 A Then, you know what I'm saying, that's on him. I
19 didn't know, I was gone. Like I say, when I seen the
20 ruckus start going, I got light.

21 MR. OZMENT: All right. No further questions,
22 Your Honor.

23 THE COURT: Any recross?

24 MR. DEBERRY: No, Your Honor.

25 THE COURT: Sir, you may step down.

1 (WHEREUPON, the witness leaves the witness
2 stand.)

3 MR. OZMENT: Your Honor, I would ask that Mr.
4 Orgbon be relieved from his subpoena.

5 THE COURT: Any objection?

6 MR. DEBERRY: No, sir.

7 THE COURT: Sir, you are free to go. You have
8 no further responsibilities under your subpoena. Have a
9 good day. Thank you.

10 MR. OZMENT: Your Honor, the State would call
11 Officer Brown to the stand.

12 THE CLERK: If you will, sir, place your left
13 hand on the Bible and raise your right hand. Do you swear
14 to tell the truth, the whole truth, and nothing but the
15 truth so help you God?

16 THE WITNESS: I do.

17 THE COURT: Please be seated in the witness
18 chair and state your full name for the record.

19 WHEREUPON,

20 Andron Brown,
21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. OZMENT:

24 Q How are you today, Officer Brown?

25 A Not bad. How you doing?

1 Q Pretty good. What do you do for a living?

2 A Florence police officer with the Florence Police
3 Department.

4 Q How long have you been doing that?

5 A Approximately three and a half years somewhere around
6 in there.

7 Q Are you from Florence?

8 A No, not originally.

9 Q Where are you?

10 A Originally from Philadelphia and then I moved to
11 Marion.

12 Q Were you working on November 30th 2011?

13 A Yes, sir.

14 Q You remember responding to a call on Dixie Street in
15 the City of Florence?

16 A Yes, sir.

17 Q Is that in Florence County?

18 A Yes, sir.

19 Q All right. What was the nature of that call?

20 A We responded to the call in reference to a anonymous
21 complaint of a gunshot that was heard around the area.

22 Q Okay. When you got to the scene, do you recall about
23 what time you got to the scene?

24 A About three somewhere around there. A ---

25 Q Go ahead, sorry.

1 A A little bit after three something like that, around
2 three p.m.

3 Q Who was at the scene when you arrived, if you recall?

4 A I remember a Miss -- the owner of the person that
5 lived at the house. I remember Ms. Titus and her sister,
6 Ms. Johnson, was there also, that's who I saw at the
7 scene.

8 Q Okay. Was there a big crowd there?

9 A Not at all.

10 Q Okay. Were there other officers on the scene that
11 day?

12 A Yeah, maybe approximately -- it was a few officers
13 that responded maybe about four or five.

14 Q Okay. Did you speak to the two ladies that were on
15 the scene?

16 A Yes, sir.

17 Q Did you also prior to speaking to them, did you
18 conduct any investigation of the scene?

19 A We walked around the back -- our officers walked
20 around the back of the house where they said they heard
21 the gunshot come from. We walked around the back to see
22 if we saw any shell casings. We weren't able to locate
23 anything.

24 Q Okay. How long were you there looking for any kind
25 of shell casings?

1 A Maybe about five, ten minutes. I'm not sure exactly
2 how long ago.

3 Q How big was the area you were looking in?

4 A Normal size backyard.

5 Q Big as the round part of the courtroom, bigger,
6 smaller?

7 A Yeah, something like that.

8 Q Okay. From your investigation of the scene, were you
9 able to determine if there had been any sort victim as to
10 what had happened?

11 A Yes.

12 Q Who was that?

13 A Mr. Holloman, Demetrius Holloman.

14 Q Were you able to determine what had happened to him
15 at all? Don't tell me what they told you. But were they
16 able to tell what it sounded like had happened?

17 A Yes.

18 Q Were you able to develop a suspect from your
19 investigation that day?

20 A Yes, sir.

21 Q Who was that suspect?

22 A Mr. Hunter.

23 Q Okay. What else did you do while you were at the
24 scene that day?

25 A At the scene like I said, I walked around the back a

1 little bit search for any shell casings or anything of the
2 struggle or anything, went into the house and I spoke with
3 Titus for a second and I spoke with Ms. Johnson. I did my
4 initial report and that was it.

5 Q Okay. Did you contact Investigator Davis any time?

6 A No, not at the time.

7 Q Okay. Did you look for Mr. Holloman at all?

8 A No, I wasn't able to locate him. He wasn't at the
9 scene.

10 Q And what about Mr. Hunter, did you look for him at
11 all?

12 A No.

13 Q Okay. At any time later, did you come in contact
14 with Mr. Hunter?

15 A It was a little while later sometime during December,
16 maybe about two weeks after that. We got an unanimous
17 call about the subject being at the residence at Dixie and
18 Simmons somewhere over in that area.

19 Q When you say the suspect, what do you mean?

20 A I meant Mr. Hunter, I'm sorry.

21 Q Okay.

22 A We got there. He fled the scene on a bicycle,
23 another officer was able to identify him, so we gave
24 chance to find out where he was going. He was on a
25 bicycle, road maybe about a block and a half to the 1,000

1 block of Harmony Street. And he ditched the bike and ran
2 into the woods. K-9 unit was called out. Officer set up
3 a perimeter. And eventually he came out where I was
4 standing at about the 700 block of Alexander Street,
5 which is in the City.

6 Q Okay. And where -- were y'all identified as police?

7 A Yes, sir.

8 Q Were you driving police cars?

9 A Yes, sir.

10 Q Did you have on uniforms?

11 A Yes, sir.

12 Q Have a badge that showed?

13 A Yes, sir.

14 Q About how many police were on scene?

15 A Six, seven, or eight somewhere around there maybe.

16 Q And you say he went in some woods, kind of describe
17 to me be like in a neighborhood?

18 A He actually ran behind a house on Harmony Street
19 1,000 block of Harmony. And behind that house, you can
20 access the woods and he ran into the woods after he ran
21 behind the house. It's in a residential neighborhood
22 though.

23 Q Okay. So you were able to surround the woods?

24 A Yes, sir.

25 Q Okay. I understand. You said he came out where you

1 were. What happened then?

2 A He was taken into custody.

3 Q Okay. How long would you say from the time that he
4 fled the residence until he finally got him into custody,
5 if you can estimate?

6 A About 30 or 45 minutes something like that.

7 Q Okay.

8 MR. OZMENT: No further questions, Your Honor.

9 THE COURT: Cross-examination.

10 MR. DEBERRY: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. DEBERRY:

13 Q Officer Brown, you testified you arrived on the scene
14 at around three o'clock?

15 A Approximately somewhere in that area.

16 Q How did you know where to go?

17 A We got a anonymous complaint to come over there at
18 that address that day of the gunshot in the backyard.

19 Q You testified earlier they may have heard a gunshot
20 in the area?

21 A Yes.

22 Q Is that right?

23 A Yes, sir.

24 Q Did you ever find any evidence of the gunshot?

25 A No.

1 Q Okay. And I guess sometime later you learn that
2 Mr. Holloman supposedly been injured there?

3 A Uh-huh.

4 Q You said you looked around in the backyard for five
5 or ten minutes and didn't find anything; is that right?

6 A Yes, sir.

7 Q Do you know what he claims the extent of his injuries
8 are?

9 A Say that again?

10 Q Do you know what Mr. Holloman claims the extent of
11 his injuries are?

12 A Yes.

13 Q What is your understanding?

14 A My understanding is that he had some -- lost some
15 teeth?

16 Q Okay.

17 A That was the only injuries that I know about that he
18 had lost some teeth.

19 Q Okay. Do you know how many teeth he lost?

20 A I'm not for sure.

21 Q Did you ever speak with Mr. Holloman?

22 A No.

23 Q Okay. Did you ever find any evidence of a fight that
24 happened at [REDACTED] Dixie Street?

25 A No, I didn't.

1 Q Did you put up your police barrier tape and act as if
2 it was a crime scene?

3 A No, we didn't do police tape and all that.

4 Q Why not?

5 A We didn't find anything at the time.

6 Q Was -- can you explain to the jury what the ground
7 looks like behind the house at [REDACTED] Dixie Street?

8 A It's a little bit of grass, a little bit of dirt.

9 Actually, a lot of dirt mostly dirt. There's a tree back
10 there and a ditch.

11 Q So it's mostly dirt?

12 A Yes.

13 Q When you went back there, did it appear like a lot of
14 people -- I mean, that the dirt was just kind of fresh
15 dirt where a lot of people walk on it all the time?

16 A I didn't see anything out of the ordinary, it look
17 normal.

18 Q Okay. Did you look for any footprints or anything?

19 A I mean, it was just normal footprints there. I mean,
20 people walk through it.

21 Q Did you see any sign of a struggle?

22 A No.

23 Q Did you see any sign of blood or teeth?

24 A We didn't find anything.

25 Q But you just looked for about five or ten minutes?

1 A Somewhere in that area.

2 Q So you can't say for sure if this took place at [REDACTED]
3 Dixie Street or if it took place at all, can you?

4 A I can't -- I just got what statements I got that was
5 it.

6 Q Okay. Did you obtain the warrants from Mr. Hunter's
7 arrest?

8 A No, I didn't do that.

9 Q Okay. You testified earlier that you had a tip that
10 somebody knew where Mr. Hunter was?

11 A Uh-huh.

12 Q And y'all, as in the police department, responded to
13 try to capture him?

14 A Yes, sir.

15 Q At that point in time is there any evidence -- do you
16 know of any reason why Mr. Hunter would have thought that
17 he was being looked for?

18 A That he would have thought, I'm not for sure if he
19 would have known that he was being looked for.

20 Q So if he hadn't been involved and he wouldn't have
21 known any reason why police would have been coming from
22 him?

23 MR. OZMENT: Your Honor, I would object, that
24 question calls for speculation.

25 THE COURT: Objection sustained. Rephrase your

1 question.

2 BY MR. DEBERRY:

3 Q Okay. When you made contact with him, you said he
4 fled on bicycle?

5 A Yes, sir.

6 Q Okay. Officer Brown, you said that he kind of went
7 into some wooded area and for sometime you all set a
8 perimeter up and then he just came out; is that right?

9 A I don't think he just was giving up. We were there
10 for may be like I said 30 or 45 minutes. K-9's were
11 walking through. They walked through a wooded lawn and
12 everything with the K-9. And I think we heard noises as
13 if he was coming out and he came out didn't know we were
14 there told him to get on the ground. He got on the ground
15 and he was taken into custody.

16 Q Was he cooperative?

17 A Yes.

18 Q Did he fight you?

19 A No.

20 Q Did you tell him why you were taking him into
21 custody?

22 A Yes.

23 Q What did you find on his person?

24 A Marijuana.

25 Q And did you arrest him for that?

1 A Yes.

2 Q Do you know that he's pled guilty to possession of
3 marijuana?

4 A No, I didn't know that.

5 Q Okay. So is it possible he was fleeing from you
6 because he had drugs in his pocket?

7 A I don't know why he was fleeing.

8 Q But you don't have any knowledge that he knew that he
9 was implicated in this crime?

10 A I don't have any knowledge of that.

11 Q Okay. Did you all -- in an incident report that you
12 wrote about taking Mr. Hunter into custody, it says that
13 you took his shoes and put them -- log them into evidence?

14 A Uh-huh.

15 Q Why did you do that?

16 A Why did I log his shoe into evidence?

17 Q Uh-huh.

18 A He left without the shoes, so I just logged it into
19 evidence. It was left with me, so I logged it into
20 evidence.

21 Q That wasn't for any purpose of investigation whether
22 or not to try to determine if he was ---

23 A No.

24 Q Okay.

25 A He ran, he lost his shoe. He left. I just logged it

1 into evidence instead of keeping it with me.

2 Q All right. You said when you responded to what you
3 thought was the scene, but you're not sure if anything
4 took place there or not, but Mr. Holloman wasn't there?

5 A No.

6 Q Was he at the police station?

7 A At that time?

8 Q Yeah.

9 A Not that I know of.

10 Q Did he report this crime?

11 A Did he what?

12 Q Did he report this crime?

13 A No.

14 Q He never sought relief from the police?

15 A Not at that time I'm not for sure if he did later,
16 but at that time I didn't know where he was.

17 Q Is that unusual?

18 MR. OZMENT: Your Honor, objection that calls
19 for speculation.

20 THE COURT: Rephrase your question.

21 BY MR. DEBERRY:

22 Q Is it unusual that an individual who's been the
23 victim of a crime not report it?

24 A No, it's not unusual.

25 Q So you're saying that happens quite often?

1 A It happens.

2 Q You testified when you arrived there was nobody there
3 at the scene other than a few people in the house?

4 A It was nobody outside, no.

5 Q Did you ever learn that there were a bunch of people
6 there?

7 A No.

8 Q Okay.

9 MR. DEBERRY: We don't have any further
10 questions. Thank you.

11 THE COURT: Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. OZMENT:

14 Q Officer Brown, Mr. Deberry asked you if it was
15 unusual for a person not to report a crime? Have you
16 spoken to people before who were the victim of a crime and
17 choose not to report it?

18 A Yes, sir.

19 Q What would you say is a reason most of those people
20 have for not reporting a crime of violence?

21 A Usually fear.

22 MR. OZMENT: No further questions, Your Honor.

23 THE COURT: Any recross?

24 MR. DEBERRY: Nothing further.

25 THE COURT: Sir, you may step down. Thank you.

1 (WHEREUPON, the witness leaves the witness
2 stand.)

3 MR. OZMENT: Your Honor, may Officer Brown be
4 relieved from his subpoena?

5 THE COURT: Any objection?

6 MR. DEBERRY: No, Your Honor.

7 THE COURT: Sir, you are free to go. You have
8 no further responsibilities under your subpoena. Thank
9 you for being here.

10 MR. OZMENT: Your Honor, may we approach?

11 THE COURT: Yes.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but out of the hearing of the
14 jury.)

15 THE COURT: All right. Ladies and gentlemen,
16 what we're going to do right now there's a matter that I
17 need to take up rather than not, exactly sure how long it
18 may take, I'm not going to send you back to the jury room
19 this afternoon. I'm going to excuse you for the balance
20 of today. I'm going to excuse for the balance of today.
21 I'm going to ask that you be back up here tomorrow morning
22 at 9:30, at 9:30. We will resume the trial of this case
23 at that time.

24 During your overnight break, my instructions
25 remain the same do not, do not discuss the case at all

1 with anybody. Do not do any investigation, independent
2 investigation on your own. You are to decide this case
3 based solely upon the testimony that you hear from this
4 witness stand along with any exhibits that are introduced
5 during the course of this trial. If overnight anybody
6 tries to talk to you about this case, you let your foreman
7 know upon return in the morning. And he will let one of
8 the bailiff's know and I will handle it accordingly.
9 Okay, Mr. Godwin. You all are free to go.

10 Everybody else remain seated while the jury
11 exits the courtroom.

12 (WHEREUPON, the jury excused for the day.)

13 THE COURT: What we will do I think I told you
14 all a school class is going to be in here for a little
15 while tomorrow to watch some of this trial. I think
16 they're going to be here about nine o'clock. I have asked
17 the jury to come in here at 9:30 as you all heard. I am
18 going to talk to the school class before we start resume
19 the trial of this case, just kind of bring them up to
20 speed on what's going on up here as far as what kind of
21 trial is going on. We will resume the trial of this case
22 at 9:30 in the morning. Mr. Deberry, I know that you want
23 to plow on through this thing and I do too, I can promise
24 you. But it's not unusual for issues relating to
25 witnesses unavailability especially when you talking about

1 doctors, getting doctors up here to testify about injuries
2 et cetra.

3 Mr. Ozment, I could certainly encourage you and
4 ask you to do everything you can to get a doctor here
5 tomorrow, so we can conclude this case if possible. All
6 right.

7 MR. OZMENT: Yes, Your Honor, I will do my best.

8 THE COURT: Anything else before we break right
9 now, Mr. Ozment?

10 MR. OZMENT: Not at this time, Your Honor.

11 THE COURT: Mr. Deberry.

12 MR. DEBERRY: No, Your Honor.

13 THE COURT: I'm going to stand at ease until
14 9:30 in the morning. Please be here on time.

15 (WHEREUPON, the proceedings were concluded for
16 the day to be reconvened on January 15, 2013.)

17 THE COURT: State ready to proceed?

18 MR. OZMENT: Yes, sir.

19 THE COURT: Defense ready to proceed?

20 MR. DEBERRY: Yes, sir.

21 THE COURT: Bring me the jury.

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

23 THE COURT: Mr. Foreman, ladies and gentlemen of
24 the jury, I apologize for you all having to wait back
25 there as long as you been back there. I appreciate you

1 being here when I asked you to be here this morning, but
2 something came up that I didn't have any control over, so
3 I apologize for that. I hope you all had a good evening
4 last night and are ready to start and resume the trial of
5 this case today. If you'll look out in the audience,
6 you'll see a seventh grade class here today observing
7 what's going on. So if you had any questions about who
8 that was out there wanted to advise you of that as well.
9 All right.

10 Mr. Solicitor, you may proceed, call your next
11 witness.

12 MR. OZMENT: Thank you, Your Honor. Your Honor,
13 the State calls Idena Titus to the stand.

14 THE CLERK: If you will, ma'am, go to the
15 witness stand, stop right there. Place your left hand on
16 the Bible, raise your right hand. Do you swear to tell
17 the truth, the whole truth, and nothing but the truth so
18 help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please be seated in the witness
21 chair and state your full name for the record.

22 THE WITNESS: Idena Ann Titus Simmons.

23 WHEREUPON,

24 Idena Titus-Simmons,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. OZMENT:

Q How are you today, Ms. Titus?

A I'm fine.

Q Good. Where do you live?

A [REDACTED] West Vista Street Florence, South Carolina.

Q All right. Did you use to live on Dixie Street?

A Yes.

Q What was that address?

A [REDACTED] West Dixie.

Q Okay. Were you living there on November the 30th

2011?

A Yes.

Q All right. Are you married, Ms. Titus?

A Yes.

Q Kids?

A Yes.

Q Tell me who are your kids?

A I have three children one 31, which is Roderick Titus. A daughter 23, which is Ashley Titus and my baby is 18, she's Adrian Simmons.

Q All right. How long have you known Demetrius Holloman?

A All of his life.

Q How do you know Demetrius?

1 A I went school with his mother and he -- him and my
2 son are cousins.

3 Q What about Troy Hunter, do you know Troy Hunter?

4 A Yes.

5 Q How do you know Troy?

6 A Troy raised up right across the street from where I
7 live.

8 Q All right. How long have you known him?

9 A Every since he was like six or seven.

10 Q All right. Tell me a little bit about your house on
11 Dixie Street? Why did you move from Dixie Street?

12 A Well, first of all, I had to move there because the
13 house that I owned in Darlington had problems with it, so
14 I had to move immediately and that was an available house.
15 So I move there and it went well for like a year. Then
16 after like the first year every day I would home from
17 work, my yard would be swamped. They made a path, there's
18 a path going from one street to the next. And they would
19 be camp out in the yard in the backyard, the front yard.

20 Q Well, tell me like where did this path go like
21 between what streets?

22 A Dixie and Glad Stone.

23 Q Okay. Did the path go through your yard?

24 A I never went through it. It's something back there,
25 people would be traveling back and forth.

1 Q Okay. Did you ever talk to the police about this
2 path?

3 A Well, I told them about the boys in the yard, you
4 know. I didn't mind my son having company, but it got out
5 of hand where it was people I didn't even know that would
6 be in the yard. And I told them that I was afraid when I
7 got home from work, I was afraid that they might have had
8 guns and drugs. And they told me that they couldn't do
9 anything. I put a no trespass sign up and they said that
10 my son had a right to have company.

11 Q Okay.

12 A And I had my granddaughter staying there at the time.
13 My grands came over, so I was afraid. I was afraid to go
14 out and say anything to the guys. I was just really
15 afraid to say anything to them.

16 Q All right. Since, you moved do you still have this
17 problem?

18 A No.

19 Q Okay. Does your son still live with you?

20 A Yes.

21 Q Okay. Let's talk about November 30th 2011, what was
22 going on that day?

23 A My grandchildren's great grandmother was buried that
24 day.

25 Q Okay. Did you go to the funeral?

1 A Yes.

2 Q Do you remember about what time it was?

3 A I think it was at 11 o'clock, I'm not sure. But I
4 got up and we went to the funeral. And I had my
5 grandbaby.

6 Q What time did you get back from the funeral? If you
7 don't remember, I know it was a long time ago?

8 A I really don't remember what time.

9 Q After lunch?

10 A Yeah, somewhere around that time.

11 Q Tell me what happened, what did you do when you got
12 home?

13 A Well, I got home and I went in the house and was
14 talking to, my husband and changing my clothes and then I
15 heard this boom. I said, God, a truck hit a transmitter,
16 that's what I thought had happened. My husband said, no,
17 that sound like a gun.

18 Q Did you -- you said the truck hit -- do you mean it
19 sound ---

20 A I thought something hit, like a pole because it
21 sounded loud.

22 Q Okay.. Could you tell what direction it was coming
23 from?

24 A No, it sounded real close though.

25 Q Okay. How loud was it?

1 A It was pretty loud.

2 Q Okay. What did you do when you heard this loud
3 noise?

4 A I started searching for my grands and my children to
5 make sure my doors was locked.

6 Q Okay. Were they all safe?

7 A Yeah.

8 Q All right. What did you do after you made sure they
9 were all safe?

10 A I think I told somebody to call 9-1-1?

11 Q Okay. Do you know if the police were called?

12 A They came.

13 Q Okay. How quick were they there?

14 A Pretty quick.

15 Q All right. Do you remember how many police came?

16 A I think I remember seeing Mr. Lee Davis and maybe two
17 cars. I'm not sure. I didn't ever go outside. I never
18 come in.

19 Q Okay. Were there some guys in uniform there?
20 Officers in police uniforms?

21 A I'm sure it was.

22 Q Okay. But you said you stayed inside?

23 A Huh?

24 Q You stayed inside?

25 A Yeah.

1 Q Okay. Did you ever see Troy Hunter at your house
2 that day?

3 A No.

4 Q Okay. And don't tell me anything anybody's told you.
5 But, you know, only what you know. Do you know what that
6 boom came from?

7 A No.

8 Q Okay. When we're talking about these people hanging
9 out in your backyard -- in your yard. What's your yard
10 like? I mean, what's the surface of that yard on Dixie
11 Street?

12 A I think I had like a driveway, front porch, a little
13 bit of dirt here and then a side porch when you walk
14 around the side. And then it was dirt. Then you go in
15 the back and there was nothing but dirt back there.

16 Q Okay. How often would you have all these people at
17 your house?

18 A Every day.

19 Q Okay. Would it be -- just give me an idea how of
20 many people five people, 30 people?

21 A Twenty.

22 MR. OZMENT: No further questions, Your Honor.

23 THE COURT: Cross-examination please.

24 MR. DEBERRY: Thank you, Judge.

25 CROSS-EXAMINATION

1 BY MR. DEBERRY:

2 Q Do you go by Ms. Titus or Ms. Simmons?

3 A Ms. Titus mostly.

4 Q Well, thank you for being here. Could you tell us
5 how did you get to the funeral that day?

6 A I drove.

7 Q You drove. And what kind of car did you have?

8 A A 2000 Mitsubishi Diamante.

9 Q And do you know if your son went to the funeral that
10 day?

11 A Yes.

12 Q And how did he get there?

13 A Him and Demetrius Holloman -- and I don't know who
14 drove them.

15 Q Okay. Did you arrive back at the house about the
16 same time they did or do you know?

17 A Yes.

18 Q Do you know if -- did you see Demetrius there that
19 day?

20 A Yes.

21 Q At your house?

22 A Uh-huh.

23 Q Okay. And what time was that?

24 A Right after lunch somewhere around that time.

25 Q Okay. Did he come inside your house?

1 A Yes.

2 Q Okay. Do you know why?

3 A No, him and my son was in my son's room.

4 Q Okay. And is there a back door to your house or was
5 there a back door there?

6 A No, a side door.

7 Q Just a side door?

8 A You have to go back up the hall and then it's a side,
9 then it's the front.

10 Q Okay. So you testified that you didn't know this
11 very common for a lot of people to be at your house and
12 that you didn't know who was outside?

13 A No.

14 Q Okay. So and you don't know if Troy Hunter was
15 there, you didn't see him?

16 A No.

17 Q Okay. When did you learn that Demetrius was hurt?

18 A Somebody came in the house and said that Demetrius
19 face was messed up. I don't remember who because I was
20 just all upset when I found there was a side gunshot.

21 Q Okay. And you said there's nothing but dirt in the
22 backyard?

23 A Yeah.

24 Q How long did the police officers stay at your house?

25 A Maybe between 20 to 30 minutes.

1 Q Okay. Do you know if they found anything there? Do
2 you know if they searched around or you know what they
3 did?

4 A They was in the backyard searching, I don't know what
5 they found.

6 Q Okay. All right. And you testified that you don't
7 know what the loud noise was?

8 A No.

9 Q Okay.

10 MR. DEBERRY: Thank you very much.

11 THE COURT: Any direct examination?

12 MR. OZMENT: Nothing from the State, Your Honor.

13 THE COURT: Ma'am, you may step down. Thank
14 you.

15 (WHEREUPON, the witness leaves the witness
16 stand.)

17 MR. OZMENT: May Ms. Titus be released from her
18 subpoena.

19 THE COURT: Any objection?

20 MR. DEBERRY: No, sir.

21 THE COURT: Ma'am, you are released from any
22 further obligation regarding your subpoena. You are free
23 to go. Thank you for being here.

24 MR. OZMENT: The State would call Deloris
25 Johnson to the stand.

1 THE COURT: Ladies and gentlemen of the jury,
2 the banging you heard a minute ago, they're doing work on
3 the roof of this building. And I had asked them at 9:30
4 to make sure they had stopped doing that. Obviously, they
5 have not, so I apologize for that. Hopefully, they will
6 take care of it now, so it won't disturb you all as you
7 listen to this case.

8 THE CLERK: If you will, ma'am, stop right
9 there. Place your left hand on the Bible and raise your
10 right hand. Do you swear to tell the truth, the whole
11 truth, and nothing but the truth so help you God?

12 THE WITNESS: Yes, I do.

13 THE CLERK: Please be seated in the witness
14 chair and state your full name for the record.

15 THE WITNESS: Deloris Titus Johnson.

16 WHEREUPON,

17 Deloris Titus Johnson,
18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. OZMENT:

21 Q How are you today, Ms. Johnson?

22 A I'm the best I can, pretty good.

23 Q All right. You feeling a little under the weather?

24 A Yes, I am.

25 Q I appreciate you being up here. We'll try to get you

1 out of here quick. I notice your middle name is Titus are
2 you related to Idena Titus?

3 A That's my sister.

4 Q Okay. Where do you live?

5 A I live [REDACTED] North Irby Street.

6 Q All right. And this may seem -- is Roderick Titus
7 your nephew?

8 A Yes, he is.

9 Q How long have you known Demetrius Holloman?

10 A Most of his life.

11 Q Okay. How do you know Demetrius?

12 A Through his mother. We like be around each other all
13 the time, little family.

14 Q What about Troy Hunter, how long have you known Troy?

15 A I known him most of his life.

16 Q How do you know Troy?

17 A Through his family.

18 Q Okay. You know both of them well?

19 A Yes, sir.

20 Q Turning to look at November 30th 2011, did you go to
21 Dixie Street to your sister's house that day?

22 A Yes, I did, sir.

23 Q What was going on that day?

24 A Well, when I pull in the yard, I got on the phone
25 sitting in the yard on my cell phone talking.

1 Q What about what time was this?

2 A Honestly, it's in the afternoon. I don't remember
3 exactly what time it was, sir.

4 Q All right, go ahead.

5 A And I was sitting in my car on the phone. And I was
6 looking I could see the house, I'm facing the house.
7 These people walking around in the backyard like they
8 normally do.

9 Q All right. How many people about?

10 A I can't see because I was in the front yard. They
11 were in the backyard.

12 Q A bunch of people?

13 A I saw like six or seven people maybe.

14 Q Okay. Go ahead.

15 A And I was sitting in the car and on my cell phone.
16 They back there moving around. And Troy pulled up and the
17 guy like he normally do. They comes there every day, come
18 there every day and got out the car and went in the
19 backyard and they talk for a while. I pay no attention to
20 nothing just sitting here.

21 Q Could you see Troy when he was in backyard?

22 A No, sir, I couldn't. I saw him go back, pass by.

23 Q You just saw him arrive?

24 A Yes, sir.

25 Q Was he with anybody?

1 A He was with a guy.

2 Q Do you know who that guy was?

3 A No, sir, I don't.

4 Q Okay. Do you remember what kind of car they pulled
5 up in?

6 A I think it was a burgundy car, if I'm not mistaken.

7 Q Okay. All right. Troy went in the backyard what
8 happened next?

9 A I'm not sure what happened back there because I
10 wasn't back there, but I heard some gunshots everybody
11 run. And then everybody left out, he left out too, just
12 like normal way.

13 Q Okay. When you say you heard some gunshots, could
14 you tell where they were coming from?

15 A It was probably the backyard.

16 Q Okay. How loud were they?

17 A I think I heard two. I was real loud.

18 Q Have you heard gunshots before?

19 A Yes, that's the neighborhood for that kind of stuff.

20 Q Okay. After the gunshot everybody was leaving, tell
21 me how people were leaving?

22 A Some of them left through the backyard because it was
23 a path, some of them left out the front way.

24 Q Okay. Were they walking, running?

25 A Some of them was walking, some of them people was

1 running.

2 Q Okay. What about Troy do you remember seeing him
3 leave?

4 A Yes.

5 Q How was he leaving?

6 A The ones that came out the front door was walking.
7 The people coming out the front door was walking real
8 fast.

9 Q Okay. But was he walking or running?

10 A He wasn't running. The ones came out the front none
11 of them was running.

12 Q What about the guy that Troy was with, he with him
13 still?

14 A Yes, sir.

15 Q Okay. And what did they do once you saw them walking
16 out?

17 A They left.

18 Q Did they get in the same car that they came in?

19 A Well, if I'm not mistaken, yes, sir, they did.

20 Q Okay. What did you do after everybody left?

21 A I got out the car and went in the house with my
22 sister.

23 Q What happened then?

24 A They were discussing -- I left. They was talking
25 about they scared to call the police. They call the

1 police.

2 Q Did the police come?

3 A Yes, sir.

4 Q Okay. How quick were they there?

5 A I recon, I don't know about ten or 15 minutes. I'm
6 not sure. I don't want to lie.

7 Q Short amount of time?

8 A Short amount of time.

9 Q Do you remember how many police came?

10 A If I ain't mistaken, I think it was two or three.

11 Q Okay. How long were they there?

12 A For a little while. Maybe like 20 minute, 25 give or
13 take a little.

14 Q Did they talk to you while they were there?

15 A Yeah, they talk to us.

16 Q What did you tell them?

17 A I was getting ready to tell them what I thought, but
18 then his father came to the door -- his stepfather ---

19 MR. DEBERRY: Objection.

20 THE COURT: What's your ground for your
21 objection?

22 MR. DEBERRY: Your Honor, I think she's about to
23 get into some hearsay. She's talking about ---

24 THE WITNESS: Right, it is hearsay.

25 THE COURT: Hold on, hold on. When I'm talking,

1 don't talk.

2 THE WITNESS: I apologize, Your Honor.

3 THE COURT: That's okay. You cannot say what
4 somebody else told you, okay. Unless, it falls under one
5 of our hearsay exceptions. I hadn't heard anything that
6 qualify for that.

7 Mr. Ozment, you may continue at this time.

8 BY MR. OZMENT:

9 Q When you're saying his father, who's father came in?

10 A Tad's, Demetrius'.

11 Q Okay. So he came over to house that night?

12 A That day when the officers were there.

13 Q Okay. You saying you were talking to the police,
14 what did you tell the police?

15 A Me and my sister talking with her. I was trying to
16 talk, she was talking. Why we talking his father came in
17 and made a statement to the officers, went back out the
18 door. That was hearsay also because he wasn't there.

19 Q Did you make a statement to the officers?

20 A I don't remember. I was getting ready to make a
21 statement like I said. But before I could say anything,
22 his father open the door and made a comment and my sister
23 said it's her house let her speak.

24 Q Okay.

25 MR. OZMENT: No further questions, Your Honor.

1 THE COURT: Cross-examination.

2 MR. DEBERRY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. DEBERRY:

5 Q Ms. Johnson, just have a few questions. You stated
6 you saw six or seven people?

7 A Yes, sir.

8 Q But you were in front of the house at that time?

9 A The house like I'm sitting in the yard. The house
10 facing this way. I could see people moving around in the
11 backyard.

12 Q Okay. So you saw six or seven people, but it may be
13 safe to say there could have been more?

14 A Could have been more.

15 Q Okay. And when you heard a loud noise people you say
16 some left by the path, some came out to the front of the
17 house?

18 A Yes, sir.

19 Q Was there any way that Troy Hunter left there that
20 day that was unlike anybody else?

21 A No, no, sir.

22 Q Okay. So you don't know what happened other than
23 what you heard and the people you saw?

24 A Yes, sir.

25 Q And you certainly didn't see anything take place?

1 A Because I'm in the front yard, sir, and they're in
2 the backyard. I couldn't sit here say I could see
3 anything because I didn't.

4 Q Okay. And were you in the -- when you heard the
5 noise, were you inside your car?

6 A Yes, sir.

7 Q Okay. So could you really tell where it came from?

8 A Honestly, I say from the backyard because they ran.

9 Q That's what made you think that?

10 A Yes, sir.

11 Q Okay. But some ran and some walked?

12 A Yes, sir.

13 Q And the ones who ran where did they go?

14 A Through the path behind the house.

15 MR. DEBERRY: I don't have anything further.

16 THE COURT: Any redirect?

17 MR. OZMENT: No redirect, Your Honor.

18 THE COURT: All right. Ma'am, you may step
19 down. Thank you.

20 (WHEREUPON, the witness leaves the witness
21 stand.)

22 MR. OZMENT: Your Honor, the State would ask
23 that Ms. Johnson be relieved of her subpoena?

24 THE COURT: Any objection?

25 MR. DEBERRY: No, Your Honor.

1 THE COURT: Ms. Johnson, you are free to leave.
2 You have no further responsibilities under your subpoena.
3 Thank you for being here.

4 Call your next witness.

5 MR. OZMENT: Your Honor, the State would call
6 Demetrius Holloman to the stand.

7 THE CLERK: If you will, sir, place your left
8 hand on the Bible and raise your right hand. Do you swear
9 to tell the truth, the whole truth, and nothing but the
10 truth so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please be seated and state your name
13 for the record?

14 THE WITNESS: Demetrius Holloman.

15 THE COURT: Mr. Ozment.

16 MR. OZMENT: Thank you, Your Honor.

17 WHEREUPON,

18 Demetrius Cottrell Holloman,
19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. OZMENT:

22 Q How are you today, Demetrius?

23 A Fine.

24 Q Do you have a nickname?

25 A Yes.

1 Q What's that?

2 A Tad, Tad Pole.

3 Q Where do you live, Demetrius?

4 A In Florence, Florence, South Carolina West Florence
5 area.

6 Q All right. Give me your address?

7 A [REDACTED] Clemmons Street.

8 Q Are you from Florence originally?

9 A Yes, sir.

10 Q All right. How long have you known Troy Hunter?

11 A All my life.

12 Q All right. How did you all first get to knowing each
13 other?

14 A Well, my uncle is married to his aunt. They married
15 in the family, so I know him all my life from being around
16 the family.

17 Q All right. So you all are cousins that would make
18 you?

19 A I thought we were.

20 Q Okay. Did you all go to family events growing up
21 together?

22 A No, sir, I ain't really hang out with him too much
23 unless he came by Dixie Street and I happen to see him on
24 Dixie Street.

25 Q Okay. How old were you do you think you were when

1 you first met him?

2 A Probably about seven or eight.

3 Q Okay. How about Roderick Titus? How long have you
4 known Roderick?

5 A All my life.

6 Q All right. How did you and Roderick get to know each
7 other?

8 A Because my daddy is his cousin, we cousins.

9 Q Okay. Do you all hang out do stuff together?

10 A Yes, sir.

11 Q Let's start talking about November 30th 2011, what
12 was going on that day?

13 A Well, my cousin girlfriend -- her grandma she had a
14 funeral. And then we had went to the funeral, it was like
15 early in the morning.

16 Q Okay. Had you talked to Troy Hunter at all that day?

17 A Yes, sir, he called my phone early that morning right
18 before we went to the funeral.

19 Q What was that phone call about?

20 A Ask me what time the funeral be over, where I'm going
21 to be at, ask me where he gone meet me at after that stuff
22 like that right there.

23 Q Okay. Did you tell him where you were going to be at
24 after the funeral?

25 A I told him I was leaving the funeral and I was gone

1 go to my cousin's house at Roderick house?

2 Q Is that where you went? Where is that house?

3 A That's [REDACTED] Dixie Street.

4 Q Okay. Was that -- when was that phone call that day?

5 A That was like 20 minutes before we walk in the
6 funeral?

7 Q Okay. Where was the funeral?

8 A Funeral was at Majority Baptist Church right there on
9 the corner of Sumter and Coit Street.

10 Q All right. You remember about what time the funeral
11 ended?

12 A I think it started at 11 something or right at
13 probably at 12. I know it was over with by lunch time
14 around about one or two though.

15 Q Okay. How did you and Roderick go to and from the
16 funeral?

17 A We rode with a cab. Her grandson and dude Ron John
18 Cannon he drives cabs.

19 Q Okay. About what time did you get back to Dixie
20 Street, if you remember?

21 A Can't remember exactly what time, but I know it was
22 right after the funeral probably like right at about two
23 something around that time.

24 Q Okay. Now, let's say that this table's the front of
25 the house, where did the cab pull up?

1 A The cap pulled up right in here like in the front of
2 the house.

3 Q Okay. When you got out of the cab, where did you go?

4 A First, I got out. Roderick walked in the house. He
5 came to the door and hand me a cigarette. I walked around
6 to the side of the house.

7 Q All right. Now, I know this house has two doors,
8 which door did Roderick go in?

9 A Roderick went in the front door.

10 Q Okay. Do you know why Roderick went in the house?

11 A Yeah, I guess he wanted to take his shoes off, shoes
12 were hurting. He has his church clothes on.

13 Q Okay. Now, you said went -- you did go inside the
14 house? Where did you go?

15 A I went to the door to get a cigarette. He gave me a
16 cigarette and I went to the side of the house to get my
17 phone charger off the side of the house.

18 Q Okay. Which side of the house, if this is the front?

19 A This right side of the house.

20 Q Okay. After you walked around to the side of the
21 house, tell me what happened next?

22 A Well, after I walked right down to the side of the
23 house and then it's a little plug right there on the side
24 of the house, I was snatching off the phone charger out
25 the plug. So I was like kneeling down and I out of no way

1 Mr. Hunter came behind me, swing like he swinging a
2 baseball bat, hit me in the mouth with a .357.

3 Q Did you know Troy Hunter was there when you were
4 walking around the side of the house?

5 A No, sir, but I know they was gone get ready to call
6 him because I know they was gone call him.

7 Q Okay. So you had not seen him before this happened?

8 A No, sir.

9 Q Okay. Were there other people around?

10 A Yes.

11 Q Who do you remember anybody?

12 A Nate, I remember Nate he was here yesterday. A
13 couple more people was out there in the backyard.

14 Q Can you remember who they were?

15 A No, because I never made it to the backyard. I stop
16 right there on the side of the house.

17 Q Okay. And so you were -- described to me you said
18 that he kind of came up, were you facing him or to the
19 side?

20 A No, he came behind him, yes, sir.

21 Q He swung and hit you in the mouth?

22 A With the butt of a .357.

23 Q What happened next?

24 A I fell back, fell to the ground. He hit me right on
25 top of the head again with the gun. I fell all the way to

1 the ground. He stand over me with the gun. And being
2 that the kids here, I can't exactly say what he say cause
3 he curse. He did like say where is it at. And when he
4 say where is it at, I was leaning down on the ground, so
5 he shot right by my head, boom. So I know it wasn't no
6 game because my mouth full of blood. I'm really scared to
7 spit because all my teeth knocked out off the first swing
8 of the gun. So he like where is it at. So I'm laying
9 down on the ground, he like shot right by my head, boom.
10 So he reach right from my pocket right here. I had these
11 church pants on. I was laying on the pants. The church
12 pants so thin, he snatched and ripped everything out my
13 pocket right there. So that how he come about getting the
14 money, so then he stand back over me again with the gun
15 and said, Say something, I'll kill you. Then I say -- I
16 ain't never said nothing cause my mouth was full of blood
17 at the time. But then he stand over me and as he got the
18 money, he stand over me with the gun and say something,
19 I'll kill you. And as he was walking away, I was still
20 laying on the ground and he had the gun pointed at me when
21 he was walking to get back in the car with the boy Charles
22 Hunter in the burgundy car.

23 Q Okay. How do you know it was a .357 Magnum?

24 A Because I was looking straight down the barrel when
25 he was standing over me with it in my face. It was gray

1 and black.

2 Q Was it a revolver?

3 A Yes, sir.

4 Q Were you scared of him?

5 A Scared to death.

6 Q How close were you when that gun was going off?

7 A He was standing right over me probably from right
8 here to the floor.

9 Q Okay. When you say he grabbed your pocket, what was
10 in your pockets?

11 A Cash money that my girl got from the refund check
12 from Tech. It was a thousand dollars cash money.

13 Q Okay. Now, tell me where did that money from came?

14 A It come from like my momma gave me three of it. My
15 girl gave me like seven. Everybody get their school
16 checks around Tech time.

17 Q Tell me what that means school checks from Tech?
18 What is that?

19 A It's like refund checks like to help get their books.
20 It's like 5500. And after they get their books or
21 whatever, they still have about 3500 something like that.

22 Q Okay. Is it like student loan money?

23 A Student loan money.

24 Q Now, you said some of it was from your girlfriend?

25 A Uh-huh.

1 Q How much of it?

2 A Seven Hundred of it from my girl and my momma give me
3 three.

4 Q Was your girlfriend going to Florence Darlington?

5 A Yes, she's in Tech, she's enrolled.

6 Q What is she doing there?

7 A I think she do some kind of physical therapy
8 something like that.

9 Q Okay. And I know you said 300 was from your momma.
10 Why did your momma give you 300?

11 A Because basically was to get my kids transportation.
12 I already have a car, but just happened my motor had died.
13 I was trying to get me another motor and get everything
14 right with my car.

15 Q Okay. And you had it in your pocket?

16 A Yes, sir.

17 Q After Mr. Hunter walked off after pointing the gun at
18 you, what did you do?

19 A Laid right there.

20 Q How long did you lay there?

21 A Until he got close enough to the car to get away.

22 Q Okay. When did you get up?

23 A Right after I seen him got in the car and they was
24 pulling off.

25 Q Where did you get?

1 A I walk towards the front of the house walking down
2 Simmons Street walking toward my momma house on Simmons
3 Street.

4 Q Did you go to your momma's house?

5 A Yes, sir.

6 Q What happened -- don't tell me what your momma said
7 or anybody else said, but what happened when you got to
8 your momma's house?

9 A Well, I walked in the house and I told her what
10 happened. And she couldn't believe it, I guess. So she
11 ran outside and ran toward the door. And I sit there and
12 she finally came back to me. She couldn't believe it, I
13 guess. And then she called a ride or whatever. We went
14 to the hospital.

15 Q Okay. When you got to the hospital, did they gave
16 you some treatment?

17 A Yes, sir.

18 Q I guess, tell me what your injuries were?

19 A I had six teeth knocked out two in the top and four
20 in the bottom.

21 Q Okay. Had you had some teeth knocked loose before?

22 A No, sir.

23 Q Okay. Are your teeth still knocked out?

24 A Yes, sir.

25 Q Can you show us that?

1 A Yes, sir.

2 Q Do you mind taking your teeth out? Show me your --
3 what are you missing there?

4 A Two right here in the top and all four right cross
5 the front of the bottom.

6 Q All right. You can put them back in. Now, other
7 than you teeth, what else was injured?

8 A I think I had a fracture right here across my face.

9 Q Okay. What did you have to do about that?

10 A I first had to go to McLeod. Then once I left
11 McLeod, they send me to Sexton's. And once I got to
12 Sexton's, they start talking about they can't really do
13 nothing for me being that the teeth broke off in the gum,
14 I got to go see a specialist. And once I got to the
15 specialist, they told me they got to do surgery. It's
16 gone be right at 1500 or 2500. And then once they start
17 saying all these prices that I know, I ain't got the money
18 to pay for, that when I made a decision to tell the police
19 what was going on, yes, sir.

20 Q Okay. Let's go back to when you were at the
21 hospital. Did you talk to the police when you were at the
22 hospital?

23 A Yes, I talk to them.

24 Q What did you tell them?

25 A At the time I was scared because if somebody knock

1 six of your teeth out and shot by your head two times, you
2 ain't gone be in no rush to tell on them either, so at the
3 time I told them I ain't know what was going on.

4 Q All right. Why were you scared of Troy Hunter?

5 A Somebody shot by your head and knock all your teeth
6 out, you ain't gone be in no rush to tell on them either,
7 sir.

8 Q Were you afraid that he would retaliate if you got
9 him in trouble?

10 A Yes, sir.

11 Q Why were you afraid he would retaliate?

12 A Because he just did this to me, ain't nothing left
13 but to kill me.

14 Q Okay. When he shot by your head, you think he was
15 trying to kill you?

16 A I thought I was already dead. I ain't gone tell you
17 no story.

18 Q All right. So when you talked to the police at the
19 hospital, after that you went to the doctors. When did
20 you decide to go back and talk to police again?

21 A Once I got to the doctors and this doctor telling me
22 one thing and this doctor telling me all this, but the
23 same time nobody don't know the next day was my son
24 birthday. I had to cancel his party because I had to tell
25 him I can't show up for his party being that I'm sitting

1 in Sexton's fixing to get surgery.

2 MR. OZMENT: All right. Beg the Court's
3 indulgence one moment.

4 (WHEREUPON, a pause in the proceedings.)

5 BY MR. OZMENT:

6 Q After you came back, tell me about you coming in to
7 tell the police what actually happened?

8 A We was at McLeod. Then when he came in front, he ask
9 me did I know what happened. I still like really because
10 he hit me hard and I'm still kind of puzzled. So at the
11 time, I told him I didn't know who did it. But I know who
12 did it the whole time, I was just scared to tell on him.

13 Q All right. Did you tell your mom who did it?

14 A Yeah, I told her as soon as I got in the house. I
15 told her who did it.

16 Q Okay. But then a couple days later when you did go
17 back and I think you talked to Investigator Davis, what
18 did you tell them then?

19 A I told them that -- I told them at first I wasn't
20 gone tell because I ain't really wanted -- he just did
21 that to me, but I told them I would put everything in the
22 Lord's hand. So I did the right thing and I told them
23 what was going on.

24 Q All right. Were you scared after you had told the
25 police that something's going to happen to you?

1 A Yes, sir.

2 Q So after you told the police, what did you do?

3 A Stayed in the house for about, I believe, two weeks
4 before they called me, stayed in.

5 Q All right. Why did you stay in the house?

6 A Scared from my life, sir. I got two kids. I ain't
7 in no rush to get killed.

8 Q Do you know how eventually he got caught?

9 A Yes, sir, I heard ---

10 Q Don't tell me what you heard.

11 A He fled off on a bicycle.

12 Q Okay. Do you know how they knew that day where to go
13 look for him that he got caught? If you don't know...

14 A No, sir.

15 Q You telling me the truth, Demetrius?

16 A I'm tell you the truth.

17 Q Why are you here today to testify?

18 A To make sure justice get served.

19 Q Okay. Are you in some trouble yourself also?

20 A Yes, sir.

21 Q What are you in trouble for?

22 A Distribution of marijuana.

23 Q Okay. Have you been promised anything on those to
24 testify?

25 A No, sir.

1 Q Were you going to testify before you had those
2 charges?

3 A Yes, sir.

4 Q Have you and I ever discussed those charges?

5 A No, sir.

6 Q Have I promised you anything?

7 A No, sir.

8 Q Ever said the word probation?

9 A No, sir.

10 Q Ever given you a number anything like that?

11 A No, sir, I can go forward with that on my own cause I
12 ain't been in trouble in ten years, so it wouldn't be
13 really that serious.

14 Q Okay.

15 MR. OZMENT: Beg the Court's indulgence one
16 moment.

17 (WHEREUPON, a pause in the proceedings.)

18 MR. OZMENT: No further questions, Your Honor.

19 THE COURT: Can the lawyers approach just a
20 minute please?

21 (WHEREUPON, a bench conference was held in the
22 presence of the jury, but out of the hearing of the
23 jury.)

24 MR. OZMENT: No further questions, Your Honor.

25 THE COURT: Cross-examination please.

CROSS-EXAMINATION

BY MR. DEBERRY:

Q Mr. Holloman, how you doing?

A All right.

Q So to make things clear, you do have a pending charge for distribution of marijuana?

A Yes, sir.

Q And that involves the business of selling marijuana?

A Yes, sir.

Q Okay. And have you been convicted of drug possession before?

A That was over 12 years ago.

Q How about in 2007?

A 2007?

Q Yeah.

A What kind of charge it was?

Q Possession of marijuana second offense where you were convicted in this court, did you forget about that?

A I ain't been in trouble so long, sir. All this trouble ain't start happening what he did to me happen.

Q Well, I'm asking you about 2007.

A I miss that, but it ain't about me. It's about what he did to me.

Q I'm asking you if you remember being in trouble in 2007?

1 A I don't remember, no, sir. No, sir.

2 Q So you're telling me I'm probably lying if I say ---

3 A You probably ---

4 MR. OZMENT: I object.

5 THE COURT: Hold on. When multiple people are
6 talking, I can't have multiple people talking because my
7 court reporter can't take down but one person at the time.

8 Mr. Deberry, rephrase your question -- restate
9 your question.

10 MR. DEBERRY: Thank you, Your Honor. I'll move
11 on.

12 BY MR. DEBERRY:

13 Q Mr. Holloman.

14 A Yes, sir.

15 Q You stated here today that this incident took place
16 on the side of the house?

17 A Yes, sir.

18 Q Is that right?

19 A Yes, sir.

20 Q You stated on November the 30th hours after this
21 supposedly took place, that this took place in the
22 backyard?

23 A No, sir, I said on the side of the house.

24 Q Okay.

25 A I never made it to the backyard, sir.

1 Q You told the officers that it happen in the backyard?

2 A I told you on the side of the house, sir. You
3 defending him. You say whatever it take to defend him.
4 You wasn't looking down the barrel of a gun.

5 MR. DEBERRY: Your Honor, I'm going to object.

6 THE COURT: Answer the question, sir.

7 A What the question was?

8 THE COURT: Restate your question.

9 BY MR. DEBERRY:

10 Q You told the officers the day that this supposedly
11 took place, that it happened in the backyard?

12 A Yes, sir. Sir, if somebody hit you on the side of
13 the head with a pistol, your head be puzzle up, so you
14 wouldn't know exactly what to tell them either.

15 MR. DEBERRY: Objection, Your Honor.

16 THE COURT: Hold on. When I say hold on, that
17 means stop, okay.

18 MR. HOLLOMAN: Yes, sir.

19 THE COURT: Answer his question. Go ahead, Mr.
20 Deberry.

21 BY MR. DEBERRY:

22 Q It's true that you're now telling us a different
23 story?

24 A Yes, sir. Yes, sir.

25 Q It's also true that on November the 30th you say that

1 you were scared for your life. And if this happen, I can
2 understand that. Well, why did you tell the police you
3 weren't robbed?

4 A Why I told the police I wasn't robbed?

5 Q Right.

6 A At first, I told the police I ain't know who did it
7 to me.

8 Q I understand that.

9 THE COURT: Let him finish, Mr. Deberry.

10 A I told him I didn't know who did it to me. Who gone
11 be in a rush to tell on somebody who just hit them side of
12 the head with a gun, sir.

13 Q I understand. I understand, but that's not my
14 question. Mr. Holloman, my question is this, that's a
15 believable story while you may not have told who you
16 thought it was, but why didn't you tell them you were
17 robbed to start with?

18 A I did tell them I was robbed. I ain't tell them I
19 know who it was at first and I ain't tell them what he
20 took from me at first. When I made my statement when I
21 told on him, I told them what really actually happened. I
22 told him what he took out my pocket and what he did to me.
23 That's what I told him, but I ain't told him at first
24 because he just hit me side the head with a gun. I ain't
25 gone be in no rush to tell on nobody.

1 Q Okay. So when did you first tell them you were
2 robbed?

3 A When I first tell them I was robbed, when I met with
4 Sergeant Davis.

5 Q Okay. And when was that?

6 A After I left from the hospital.

7 Q After you left from the hospital?

8 A Not the same day but probably like a day or two later
9 when he called me up into the office and put in for the
10 witness program thing.

11 Q All right. And isn't it true that you told Officer
12 Davis that you went to Sexton's and you had to pay \$65 for
13 an x-ray?

14 A Sir, I end up spending a whole lot of money behind
15 that. And then I ain't wait on the victim's advocate
16 thing to come through. My momma help me pay for that out
17 my pocket. The victim thing ain't came through two or
18 three months later.

19 Q Did you tell Officer Davis that it was \$65 x-ray bill
20 at Sexton's?

21 A I paid like two or three x-rays, sir. Plus, how much
22 it cost to pull my teeth. Plus, how much it cost to put
23 them back in. I paid a couple things.

24 Q I'm gone refresh your memory.

25 A Yes, I paid the x-ray and I paid like \$130 x-ray at

1 Lawhan too.

2 MR. DEBERRY: Objection, Your Honor.

3 THE COURT: Answer the question, sir.

4 A I answer the question. He said did I pay the x-ray,
5 I paid the x-ray. Yes, sir.

6 THE COURT: Thank you.

7 BY MR. DEBERRY:

8 Q That's not -- my question was did you tell
9 Investigator Davis that Sexton's was gone cost you \$65?

10 A I paid that, yes, sir.

11 Q Okay. Did you tell Investigator Davis that the
12 specialist charged you \$145 to talk to him?

13 A I paid that, yes, sir.

14 Q Okay. And did you tell him that it was going to take
15 \$750 to fix your feet?

16 A Yes, sir. Yes, sir.

17 Q Okay. And do you realize what the sums of those
18 three totals are?

19 A Uh-huh.

20 Q How much?

21 A It adding up to -- it can't roughly it off, but it
22 end up to around about thousand dollars, but actually it
23 was more than that because I had pay \$300 for each gold
24 teeth that I got back on there. They ain't had that
25 paperwork in there. It was actually more than that. I

1 just wasn't looing for all the help to get all the money I
2 spent. I was just asking to help me period, get my mouth
3 fix.

4 Q So that just happens to be how much money you're out
5 of?

6 A Over a thousand something dollars.

7 Q Is that how much was stolen from you?

8 A Yes, sir, it was.

9 Q This happen to be the same amount?

10 A Yes, sir.

11 Q Okay. Isn't it true that on the recorded statement
12 with Mr. Davis, you told him you were out of \$900?

13 A No, I told him a thousand dollars, sir. When he
14 knock me side the head the first day and I was so puzzle,
15 I probably could have said 900, but it was a thousand. My
16 girl gave me seven and my mother gave me three.

17 Q Okay. But you told Sergeant Davis it was 900?

18 A I probably could, sir. I probably could. I probably
19 was puzzle. I probably could, but I ain't lying about
20 nothing. I said what he did to me though.

21 Q Okay. And then isn't it true that three months later
22 you came and you said, well, it wasn't 900, it was a
23 thousand?

24 A Sir, from 900 to a thousand, ain't too much. You
25 making a big deal about this. He took that money from me,

1 sir. He took that from me. Plus, he ain't only took that
2 from me. He shot at me and hit me on the side of the head
3 and knock all my teeth out my mouth.

4 Q Let me ask you about your teeth being knocked.

5 A Yes, sir.

6 Q You never had any teeth missing?

7 A I ain't never had no teeth knock out. I ain't
8 nothing but 31 year olds. It ain't time for my teeth to
9 start falling out yet.

10 Q So the gold teeth you're talking about, how did those
11 come about?

12 A Them permanent, them screw-in. They was until he
13 knock them all out.

14 Q So in other words, you had to be missing some teeth,
15 before you could get some screw-ins, right?

16 A Sir, ain't nothing never been wrong with my mouth. I
17 got pictures of me from right now until the day I was
18 born. All my teeth was in my mouth. My teeth got knocked
19 out November the 30th. Once the dentist come in here and
20 show you the chart, he'll show you all that.

21 Q Mr. Holloman, you've told the police, you told
22 Mr. Ozment, you told this jury that you had six teeth
23 knocked out?

24 A Yes, sir.

25 Q But before you said you had all your teeth knocked

1 out ---

2 A Sir, all my teeth in the front, sir.

3 THE COURT: Hold on a minute.

4 A All the ---

5 THE COURT: Hey, hold on a minute. Let him
6 finish his question and then you can answer, okay.

7 MR. HOLLOMAN: All right.

8 BY MR. DEBERRY:

9 Q Is it not true on a recorded statement, you said you
10 had eight teeth knocked out?

11 A Sir, my teeth on my partial. I got four in the
12 bottom knocked out right here, two in the top knocked out
13 right here. I understand what you trying to do about
14 getting this clear, but this ain't your mouth you got to
15 wear this in.

16 MR. DEBERRY: Objection, Your Honor.

17 A This real serious.

18 THE COURT: Hold on a minute.

19 A This a serious problem right here, sir.

20 THE COURT: Hold on a minute. Mr. Holloman,
21 hold on a minute.

22 Ladies and gentlemen, I'm going to ask that you
23 step to the jury room for just a minute while I take
24 something up outside your presence, okay. I will get you
25 right back out here.

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

2 THE COURT: Mr. Ozment, can you approach for
3 just a minute please.

4 (WHEREUPON, a bench conference was held.)

5 THE COURT: Mr. Holloman, I understand that this
6 is difficult based upon what you testified to, what
7 happened that day, okay. But this is the way that our
8 system works. Mr. Deberry, who represents Mr. Hunter, has
9 a right to what's called cross-examine and ask you
10 questions. And I understand that you may disagree with
11 some of the questions he ask, but under our system, he has
12 a right to ask you questions, okay. It's not a situation
13 where you get to ask him questions, okay. He gets to ask
14 you questions which in turn means that you answer those
15 questions to the best of your ability.

16 Now, and after answering his questions, if you
17 believe or feel as though you need to explain your answer,
18 you certainly have every right to explain your answer.
19 You have every right to do that. However, first and
20 foremost, I want you to answer his question. And if it's
21 a yes or no answer, provide such an answer. But again,
22 you have every right to explain your answer, but you are
23 not as a witness under our system entitled to ask him
24 questions. You are not entitled to ask him questions.

25 Any exceptions or objections to what I have

1 instructed this witness by the State?

2 MR. OZMENT: Not at all, Your Honor.

3 THE COURT: By defense counsel?

4 MR. DEBERRY: No, Your Honor.

5 THE COURT: Anything before I bring the jury
6 back in?

7 MR. OZMENT: Nothing from the State, Your Honor.

8 THE COURT: Mr. Deberry.

9 MR. DEBERRY: No, Your Honor.

10 THE COURT: Mr. Holloman, do you understand what
11 I've explained to you here?

12 MR. HOLLOMAN: Yes, sir, I was trying to answer
13 the question, but he trying to twist me up. He ain't the
14 one been there.

15 THE COURT: I understand.

16 MR. HOLLOMAN: He ain't the one been through
17 surgery.

18 THE COURT: I understand, but just simply answer
19 his questions the best of your ability. This is not a
20 situation where you and he get into a sparring contest
21 over statements.

22 MR. HOLLOMAN: Thank you.

23 THE COURT: All right. If you will bring me the
24 jury back please.

25 Mr. Ozment, Mr. Deberry, could you all come up

1 here a minute please.

2 (WHEREUPON, a bench conference was held.)

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

4 THE COURT: All right. Mr. Deberry, you may
5 continue with cross-examination.

6 MR. DEBERRY: Thank you.

7 BY MR. DEBERRY:

8 Q I like to start back try to get a time line to
9 establish and just. I'm going to set out a time line and
10 just asking you if that's correct, okay. So
11 November 30th, you say took place, the events of
12 November 30th. The hospital that night then to Sexton's
13 and specialist dentist the next day?

14 A Yes, sir.

15 Q That would have been a Thursday?

16 A Yes.

17 Q And then back to the police station on Friday,
18 December 2nd?

19 A I probably went to the police station before I even
20 went to Sexton's. I went to the hospital first. Then
21 when I went to the hospital, I probably did come to the
22 police station first because I had to do the victim's
23 advocate thing. I don't know which one I went to first,
24 but I know first two or three days I seen all them people
25 the dentists, the doctors, the police and everybody else..

1 Q Okay. And at some point after you realize what was
2 wrong with you and everything, you gave Sergeant Davis a
3 recorded statement, right?

4 A Yes, sir.

5 Q Okay. Now, when you say you went to -- did you say
6 you went to victim's assistance program?

7 A Yes, that's after I talk with Mr. Lee Davis once I
8 told him what was going on, that he was telling me that
9 was obligated -- that you can go through the witness. I
10 ain't know nothing about the witness program. They was
11 telling me that I was probably be qualified for that. I
12 wasn't gone wait on that money because my momma make money
13 herself. She help me go through those dentists and all
14 that. She paid for all that out her pocket, but once he
15 told me the victim thing that I could've did that, then I
16 tried to sign for it. But it still ain't came through,
17 but a couple months later. My son birthday was the next
18 day. I had to get my mouth fix immediately. I couldn't
19 wait on the victim advocate.

20 Q Okay. So you're saying that you told -- you gave
21 this recorded statement before you did the victim's
22 application?

23 A I don't want to get twist up. I know I did it within
24 a couple days, two days. I don't know which one.

25 Q Because on your recorded statement, you said to

1 Sergeant Davis that it was only when you realize that you
2 couldn't get your mouth fix without giving a statement,
3 that you decided to tell that it might have been Troy
4 Hunter?

5 A No, sir. I ain't never quite remember saying that.
6 If I did, I didn't need him to give me no money to get my
7 mouth fix because I don't depend on nobody else. I did
8 that on my own before the victim money even came. Me and
9 my mother had got my mouth fix. I ain't need nothing from
10 Troy Hunter.

11 Q You saying that's not on the recorded statement?

12 A It probably is, sir, but it probably been something
13 he was asking me. He was telling me about the victim
14 thing. I ain't need no money from Troy Hunter. My people
15 work, I got my own mouth fix.

16 Q Okay. So you're telling me that Sergeant Davis told
17 you that if you gave him a name, that he could get some
18 money?

19 A No, sir, no, sir, wasn't even about that. First, I
20 was scared to tell on him for what he did to me. Then I
21 realize I should go and tell on him, I'm afraid what I
22 might do to him, you understand. I ain't scared of him.
23 I'm scared of what I might have to do to him if he come at
24 me again with this.

25 Q Okay. But in your recorded statement, you said that

1 you realize you couldn't get your mouth fix unless you
2 gave a statement?

3 A I know I answer that question for you, but you making
4 it look like I gave you a name just to get my mouth fix,
5 sir. This real a case. My son birthday was yesterday, he
6 had a party. I had to get my mouth fix. I ain't want to
7 say who did what. I ain't wanted to tell on nobody, but I
8 know justice had to be served. Just like that little
9 charge I told you I had, I'm gone handle my own charge.
10 I'm gone pay for that. He need to pay for what he did to
11 me, that's what I'm telling you.

12 Q Tell us how you knew it was a .357?

13 A Cause when he was standing over me shooting it, I
14 look at it. It was long gray and black. We watch movies
15 all day. I know what a .357 is, I'm 31 years old, sir.

16 Q Did anybody else see the .357?

17 A I was the only one standing under the barrel of the
18 gun. Nobody else was down there when he had me at gun
19 point nobody but me.

20 Q There was nobody around?

21 A Sir, you the type of person try to twist something
22 up. Listen to what I'm saying. I say I was the only one
23 there when he hit me in the mouth. I was the only when he
24 was standing over me with that gun. I was the only person
25 there. You try to make it look like I'm the bad guy and

1 this don't got nothing to do with me.

2 MR. DEBERRY: Objection.

3 THE COURT: Hold on. Objection sustained.

4 BY MR. DEBERRY:

5 Q Mr. Holloman.

6 A Yes, sir.

7 Q You testified that you never had any dental problems.
8 It is possible to have a gold tooth without having lost
9 another tooth?

10 A Sir, I don't have screw-ins. I talk too fast, I just
11 have regular teeth. I just got my teeth cement on my
12 white. The gold teeth was cemented on my white teeth.
13 Now, these two still on there. You can still see the
14 white teeth front of it, but the other six that on the
15 partial them got knocked out. The dentist explain all
16 that, them got knocked out. The four in the bottom and
17 the two on the side. These two still real teeth here.
18 These the two that come out.

19 Q So you never lost a tooth before that?

20 A I never had no problems with my health, sir.

21 Q Would it surprise you that the medical records from
22 McLeod will say that you only had three teeth knocked out?

23 A Well, if they show me I got three teeth knocked out,
24 sir, you can dismiss this whole case.

25 MR. DEBERRY: Okay, thank you very much. I

1 don't have any further questions.

2 THE COURT: Any redirect?

3 MR. OZMENT: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. OZMENT:

6 Q Mr. Holmes, will you come down for me. You mind
7 popping your teeth out, so the jury can see.

8 A That's two teeth right here on the side that got
9 knocked out right there when the butt of the gun hit me
10 like I said on this side of the house. And when he swung
11 this way, that's that butt of the gun hit me in the mouth
12 right here. And the whole four teeth in the bottom, the
13 .357 split right through my mouth, that's exactly where he
14 hit me.

15 MR. DEBERRY: Objection, Your Honor.

16 THE COURT: What's your grounds for the
17 objection?

18 MR. DEBERRY: He's not asking a question.

19 THE COURT: You all approach a minute.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury.)

23 THE COURT: Objection overruled.

24 BY MR. OZMENT:

25 Q Mr. Holloman, I'm going to ask you one more question

1 down here. I'm afraid I'm going to make you pop your
2 teeth out one more time.

3 A They already out, sir.

4 Q Would you mind opening your lips for us? Thank you,
5 Mr. Holloman, you can retake the witness stand. Mr.
6 Holloman, why didn't you tell the police what happened to
7 you the first time they talk to you?

8 A Sir, I was scared, sir. He just knocked all my teeth
9 out. I was thinking like I was dreaming being that all my
10 teeth knocked out in the front of my mouth. It's like a
11 dream to me, but once I feel like I don't want to tell on
12 him at first cause he did this to me.

13 Q When you did end up telling Investigator Davis what
14 actually happened, were you still scared of him?

15 A Yes, sir.

16 Q Were you scare of him after that once you knew they
17 were looking for him?

18 A Yes, sir. Cause this ain't no game what happened to
19 me, sir. If that would have happened to one of their
20 son's, they would want justice to get served.

21 Q Are you still scared that he could do something to
22 you even now?

23 A Yes, sir, being that I'm up here on this testifying
24 stand.

25 MR. OZMENT: Thank you, Your Honor. No further

1 questions.

2 THE COURT: Any recross?

3 MR. DEBERRY: Nothing further, Judge.

4 THE COURT: Sir, you may step down. Thank you.

5 (WHEREUPON, the witness leaves the witness
6 stand.)

7 THE COURT: Call your next witness.

8 MR. OZMENT: Your Honor, the State would call
9 Debra Singletary -- Singleton to the stand.

10 THE CLERK: If you will, ma'am, place your left
11 hand on the Bible and raise your right hand. Do you swear
12 to tell the truth, the whole truth, and nothing but the
13 truth so help you God?

14 THE WITNESS: Yes.

15 THE CLERK: Please be seated in the witness
16 chair and state your full name for the record.

17 THE WITNESS: Debra Ann Singleton.

18 THE COURT: Mr. Ozment.

19 WHEREUPON,

20 Debra Singleton,
21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. OZMENT:

24 Q How are you today, Ms. Singleton?

25 A I'm good.

1 Q Where do you live?

2 A [REDACTED] Clements Street, Florence, South Carolina.

3 Q All right. How do you know Demetrius Holloman?

4 A He's my oldest son.

5 Q Okay. Does he live with you?

6 A No.

7 Q Okay. When did he live with you back in 2011?

8 A No, not at that time.

9 Q How do you know Troy Hunter?

10 A Well, through family. My brother and his auntie has
11 been together like 40 something years, you know, family
12 like.

13 Q So through marriage you're family?

14 A Yes.

15 Q Okay. How long have you known Troy?

16 A Probably 20 something years.

17 Q Okay. Going back to November of 2011, had you given
18 Demetrius any money for anything?

19 A Yes, for a big wheeler for my oldest grandson.

20 Q Okay. How much money had you given him?

21 A Probably about 250 and \$300.

22 Q Do you remember the exact amount?

23 A Not exactly.

24 Q Okay. Let's now start talking about November 30th
25 2011, the reason we're here. How did you hear about

1 Demetrius getting injured that day?

2 A Well, not so much of heard. I was home and he came
3 in my house running and I was standing in my kitchen doing
4 dishes and my husband was on the side of me.

5 MR. DEBERRY: Objection, Your Honor. May we
6 approach just a second please.

7 THE COURT: Yes.

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

11 THE COURT: All right. Ladies and gentlemen,
12 I'm going to have to ask you to step to the jury room for
13 just a minute while we take up something outside your
14 presence. Do not discuss the case. I'll get you back out
15 here as quickly as possible,

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

17 THE COURT: All right. Mr. Deberry, state your
18 grounds for your objection. Nothing has been said as yet,
19 but I certainly side bar understand what your concerns
20 are. Go ahead.

21 MR. DEBERRY: Your Honor, my concerns are that
22 this witness testified that on the day of November 30th
23 her son comes home sometime after an incident takes place
24 says that Troy Hunter assaulted him. Your Honor, Mr.
25 Holloman's already taken the stand. He's already

1 testified to that. So the statement we're talking about
2 is absolutely hearsay and it's from an available witness
3 that's already testified to the facts. So this is merely
4 an to attempt bolster his position -- his credibility and
5 it's purely hearsay. So I think she can testify to what
6 she perceived. She certainly can't testify to what
7 somebody told her. She wasn't there. I mean, if she
8 wants to say he had a bloody mouth or whatever, you know,
9 whatever she perceived, that's fine. But to allow her to
10 say what Mr. Holloman comes home and tells her especially
11 in the like that Mr. Holloman's already testified to that
12 fact, it's unfair and that's purely hearsay.

13 THE COURT: Mr. Ozment.

14 MR. OZMENT: Your Honor, during Mr. Deberry's
15 cross, Mr. Holloman the State would argue that he put
16 Mr. Holloman's credibility at issue. He discussed pending
17 charges he has. He discussed a criminal record he has.
18 He also tried to point out disparities in Mr. Holloman's
19 story and the various times you talked to police including
20 even when he came here today. So the State would submit
21 any questions that we're asking her regarding what
22 Mr. Holloman told her the day this happened are not being
23 submitted for the truthfulness that they are in. They are
24 being submitted to corroborate that he said the statement.
25 And that would fall outside the rule of hearsay.

1 MR. DEBERRY: If I can respond, Your Honor?

2 THE COURT: Yes.

3 MR. DEBERRY: That's -- that is way to dangerous
4 of a statement to admit under that exception saying that,
5 yeah, they're just offering it to say that he said it.
6 You know, that goes to the very core of what they're
7 trying to prove, that's not fair. And it's hearsay and
8 it's already been testified to by the declarant.

9 THE COURT: Mr. Ozment.

10 MR. OZMENT: Your Honor, I'll stand by the
11 previous story about we're not submitting them for the
12 truthfulness. We're submitting them to show that he said
13 them in some ways rebuttal to Mr. Deberry attack on Mr.
14 Holloman's credibility. He didn't just attack the story.
15 He actually attacked his credibility by discussing his
16 charges and his record, which the State did not bring in
17 his record on direct.

18 THE COURT: Let me ask this question,
19 Mr. Deberry, assuming it is hearsay, why does it not fall
20 under one of the hearsay exceptions present sense
21 impression or excited utterance?

22 MR. DEBERRY: I understand, Your Honor. I don't
23 think it's excited utterance or present sense impression
24 because of the time lines between the event and when he
25 might have come to her house. She testified she lived

1 somewhere else. She wasn't there. And it wasn't a
2 freshly committed -- I mean, when you're talking about --
3 when you look at the case law under present sense
4 impression, you're talking about something that's
5 happening immediately?

6 THE COURT: What about excited utterance?
7 There's certainly case law out there that is an extended
8 period of time for somebody to give that kind of
9 statement. It falls under the hearsay exception.

10 MR. DEBERRY: Again, I don't think it's an
11 excited utterance. I think, you know, he didn't want to
12 tell anybody what happened. I mean, he's certainly wasn't
13 excited about it. You know, I don't think it was just a
14 knee jerk reaction that he walked in and said that. I
15 mean, there's certainly no evidence that it is. He's
16 already testified to that fact he went there and he told
17 his mother that. I don't understand how it's fair for
18 them to be able now to put the mother up and say the same
19 thing, that's clearly an out of court statement by another
20 witness, that's hearsay. And I don't believe it falls
21 within an exception.

22 THE COURT: Mr. Ozment, anything further?

23 MR. OZMENT: Your Honor, I would stand by that
24 it's not being admitted for the truth of the statement
25 itself for the matter at issue. Additionally, as an

1 excited utterance -- excuse me -- as a present sense
2 impression the rule says the statement describing or
3 explaining the event or condition may involve the
4 declarant was perceiving the events or condition or
5 immediately thereafter. She's already testified which
6 theoretically right now arguing about things that have not
7 been testified to, but she's already testified that he
8 came running to her house out of breath and his mouth was
9 bleeding. I'm certain it appears that this happened right
10 after also Mr. Holloman testified that he left the yard
11 and went straight to his mother's house.

12 THE COURT: All right. Anything else,
13 Mr. Deberry?

14 MR. DEBERRY: No, Your Honor, other than my
15 opposition that their argument that they're just offering
16 this to prove that he said this. Your Honor, clearly if
17 that's true, then this is not fair. I don't believe that
18 that's true for a minute because it goes to the very heart
19 of what they're trying to prove in this case. It's not
20 linking up any evidence to anything else. It goes to the
21 very heart of, you know, identifying my client and I don't
22 think that's proper. I don't think there's any question
23 that's hearsay and I don't think, you know, that if it
24 happen as soon as he walked around the corner of this
25 house or something, you know, an excited utterance maybe

1 or present sense impression. I just don't believe that it
2 was an exception.

3 THE COURT: All right.

4 MR. OZMENT: Your Honor, I have a couple cases I
5 like to point to.

6 THE COURT: All right.

7 MR. OZMENT: Your Honor, the first and I'm
8 giving these out of the con evidence notes. Burton vs.
9 York County Sheriff's Department 358 South Carolina 339,
10 key cited at 356, 357.

11 THE COURT: Under what rule are you looking at?

12 MR. OZMENT: Your Honor, I'm looking at the 801,
13 the main hearsay rule. This is under hearsay generally,
14 but this is a direct quote from the case. Proof of a
15 statement introduced to show a party heard or acted upon
16 the information is not objectionable hearsay. Again, in
17 the next case down Fields vs. Regional Medical South
18 Carolina Orangeburg 354 South Carolina 445. Again, a
19 direct quote from that case. Proof of a statement
20 introduced to show a party heard or acted upon information
21 is not objectable hearsay. We're submitting this to show
22 that she heard this. We are not submitting it as evidence
23 of what actually happened that day.

24 THE COURT: All right. Bear with me just a
25 minute here. Based upon what I've heard here today and

1 based upon counsel's argument and based upon the testimony
2 that's been presented during the course of this trial,
3 testimony from the victim in this case, Mr. Holloman, was
4 that he was struck in the mouth on the side of this house,
5 that he left the scene and went to his mother's house.

6 During cross-examination, Mr. Deberry certainly
7 questioned the credibility of the victim in questioning
8 him as to why he waited a couple of days thereabout of
9 time frame to tell law enforcement that it was Mr. Hunter.
10 Mr. Holloman certainly testified on direct examination
11 that he had told his mother that the defendant had struck
12 him in the mouth immediately thereafter or after this
13 incident occurred.

14 Under State vs. Whisonant or W-H-I-S-O-N-A-N-T
15 335, S.C. 148, states under Rule 803: First of all,
16 whether or not it's hearsay. The Court does not believe
17 it's hearsay based upon what's been testified here to
18 today. I do not believe based upon what I've heard that
19 it is being offered for the truth of the matter asserted,
20 but simply pursuant to the victim's credibility being
21 attacked here.

22 However, even if it is determined or considered
23 to be hearsay, the mere fact that a hearsay statement was
24 made sometime after the incident occurred, does not mean
25 the statement cannot qualify as an excited utterance

1 provided the circumstances surrounding the statement
2 indicate it's reliability, that's under State vs.
3 Whisonant, which is the 335, S.C. 148. Therefore, the
4 Court will allow her to testify to that. I certainly
5 understand your position on that, Mr. Deberry. And
6 understand that your argument about it being prejudicial
7 or unfair about however under the rules I do believe that
8 it is admissible. Therefore, I will allow it. Anything
9 else at this time?

10 MR. OZMENT: Nothing at this time.

11 THE COURT: And I certainly wanted to -- why I
12 had the jury exit the courtroom. If I'm wrong on it,
13 there's a record of it clearly to make sure that this
14 young man's rights are protected on that. But I think I'm
15 right on it and that's my ruling on it. We'll stand down
16 for about ten minutes, stand down for about ten minutes.

17 MR. OZMENT: Your Honor, you instruct ---

18 THE COURT: Yes, sir.

19 Ma'am, you may step off the stand, but I will
20 tell you you are not allowed to discuss your testimony
21 with anyone. You understand?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 (WHEREUPON, a break was taken.)

25 THE COURT: State ready to proceed?

1 MR. OZMENT: Yes, Your Honor.

2 THE COURT: Defense counsel ready to proceed?

3 MR. DEBERRY: Yes, Your Honor.

4 THE COURT: Bring me the jury please, ma'am.

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

6 THE COURT: Mr. Ozment, you may continue.

7 MR. OZMENT: Thank you, Your Honor.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. OZMENT:

10 Q I believe we just started talking about when
11 Demetrius had come in your house that night. I think you
12 just said you were washing dishes. I guess start with you
13 washing dishes. What happened next?

14 A Well, when he came in, it was in the evening. He
15 came in I was washing dishes and my husband was fixing a
16 sandwich and he called me. He said, momma, and when I
17 turned to look at him, I just see blood everywhere. And I
18 say what happened to you, He say momma that boy hit me. I
19 say what boy. He say Troy hit me in my mouth with a gun.

20 Q How much blood was there?

21 A It was just pouring.

22 Q Okay. What did you see -- do after he told you?

23 A After that I went towards him and I was getting ready
24 to touch him and I just went hysterical. You know, and
25 ran out the door. My husband came behind me. And he said

1 Troy ---

2 Q Don't tell me what your husband said.

3 A Okay.

4 Q But your husband came out behind you and then what
5 happened? Don't tell me what he said.

6 A I was getting ready to go to the highway to the road
7 and my niece came across the street. And I told her I
8 said I just need to go there. And what I was saying by
9 going there was to my brother's house where all of them be
10 at. And by that time ---

11 Q Your brother's house is that Troy's aunt?

12 A Yeah, uh-huh.

13 Q Okay, go ahead.

14 A And I said I was going out to his house. I was told
15 no by my husband don't go. And I said, well, we need to
16 talk to him, you know. Because I really wanted to know
17 what caused this and why did he do this because I took him
18 like family, like a little nephew, you know. And when I
19 got there, he wasn't there. So we came back home and
20 Demetrius was in my house, which is my middle son bedroom
21 lying across the bed. And I asked him, I said, you know,
22 you got to get up. You need to go to the emergency room
23 because this part right here was swelling up under his
24 eye. And I said you need to go to the emergency room. He
25 said I don't want to go. And I said, well, you going.

1 Then I said -- I ask something about the cops. He said I
2 don't know if nobody called the cops like that. I said,
3 well, we going to the emergency room and that's when we
4 went to the emergency room.

5 Q Did you go with him to the emergency room?

6 A Yes.

7 Q Do you know if the police came to the hospital?

8 A I know one came in. And one went in to talk to him,
9 but we had to step out in the hall.

10 Q Okay. Did you ever talk to Demetrius about whether
11 or not he had told the police what happened?

12 A Yes, and the reason why I asked because the
13 girlfriend was saying something about he wasn't going to
14 tell. And I said, yes, you do, you need to tell what
15 happened to you. And he told me and he said, well, you
16 know, he didn't -- he said first I didn't want to do
17 anything about it. And I said, well, you gone have to
18 tell. And I said you need to tell about what he did to
19 you and he said he would.

20 Q Okay. How long -- do you know how long it took him
21 to finally tell what happened to him?

22 A I know he didn't say anything that same day. It
23 probably was a day or two later before he did anything.

24 Q Okay. Did he ever tell you or do you know why he
25 didn't want to tell the police?

1 A He just said he just wasn't gone say anything about
2 that. I don't know why, you know, say that.

3 Q Now, you're his mother, you've known him a long time.
4 Did you sense any emotion coming from him as to why he
5 wouldn't want to tell.

6 A Well, when I talked to him a couple of days later
7 before I went to the dentist with him, he told me in the
8 dentist office he wasn't gone say anything because he knew
9 Troy and Troy carries a gun, that's what he told me. And
10 he was kind of scared to say anything.

11 Q Okay. What did you tell him when he said that Troy
12 carried a gun and he was scared?

13 A Because he said, momma, just like he did this, I'm
14 afraid he may come up behind me and he could kill me.

15 Q All right. What did you tell him when he said that?

16 A I told him he need to tell?

17 Q Okay. Were you happy when he finally told?

18 A Yes, I was.

19 Q Okay. Do you know if Demetrius was still scared
20 after he told him?

21 A Well, I kind of sense something because he stayed at
22 my house for about two weeks.

23 Q Did he live at your house normally?

24 A No, he had his own place.

25 Q Okay. Do you know when Mr. Hunter was arrested?

1 A I was at work, I got a call saying that they had him,
2 caught him.

3 Q When did Demetrius move out of your house to go back
4 to living at his house?

5 A He really stayed at my house until after he got his
6 mouth fix, help him get his mouth fix. He must have been
7 there about three weeks.

8 Q Do you know if when Demetrius went back to his house,
9 do you know if that was before or after Mr. Hunter was
10 arrested?

11 A That was after he was arrested.

12 Q Okay.

13 MR. OZMENT: No further questions, Your Honor.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. DEBERRY:

17 Q Mrs. Singleton, when did -- about what time was it
18 when Demetrius came to your house?

19 A It had to be between two and three.

20 Q Between two and three?

21 A Yes.

22 Q All right. You testified earlier it was in the
23 evening or the nighttime?

24 A No, I said in the evening.

25 Q About two or three?

1 A I'm saying around two or three. I know they just
2 came from a funeral and I'm thinking it's in that range
3 two or three.

4 Q Did you notice any teeth?

5 A Sir?

6 Q Did you notice anything about his teeth?

7 A Yes.

8 Q What did you notice?

9 A That he didn't have any.

10 Q Well, how many was he missing?

11 A I know he had the top out and I think two or three to
12 the bottom out.

13 Q When you say the top out, what do you mean?

14 A He was missing teeth from the top of his mouth and
15 the bottom.

16 Q Did he already have dentures at that time?

17 A Did he what now?

18 Q I mean, you saying like his whole top plate or
19 dentures that were out or what?

20 A His own teeth.

21 Q His own teeth?

22 A Yeah.

23 Q When he was growing up, did he ever have any dental
24 problems?

25 A No, never.

1 Q Had he ever lost any teeth?

2 A No.

3 Q Did he have gold teeth at the time?

4 A Yes.

5 Q How -- were those replacement teeth or how did that
6 work, do you know?

7 A I know they went to Florida during a family reunion
8 break and got their mouth done. Now, how he got it done,
9 I don't, but I know he had them done.

10 Q Okay. Did he have his teeth with him?

11 A He had two of them in his hand.

12 Q So two of them must have been back where he lost
13 them?

14 A I beg your pardon.

15 MR. OZMENT: I would object calls for
16 speculation.

17 THE COURT: Rephrase your question.

18 BY MR. DEBERRY:

19 Q All right. So then he only had two teeth with him?

20 A That's what I seen in his hand.

21 Q Okay. He didn't want to go to the hospital?

22 A At first he didn't, no.

23 Q Okay. Was his girlfriend at your house?

24 A No, she was at work.

25 Q Okay. Well, can you explain why he told the police

1 that his girlfriend's mother may ask him to go to the
2 hospital?

3 MR. OZMENT: Your Honor, I object calls for
4 speculation.

5 THE COURT: Objection sustained.

6 BY MR. DEBERRY:

7 Q So you went to the hospital with him?

8 A Yes, I did.

9 Q What was your understanding of what happened to him,
10 you know, what the doctor said at the hospital?

11 A When the doctor came in, I went out into the hall.
12 The doctor talk to him.

13 Q So you don't know?

14 A No, because I had family members coming up there and
15 I went out into the hallway.

16 Q All right.

17 MR. DEBERRY: One second please.

18 (WHEREUPON, a pause in the proceedings.)

19 MR. DEBERRY: Thank you very much for coming.

20 THE COURT: 'Any redirect?

21 MR. OZMENT: No redirect, Your Honor.

22 THE COURT: Ma'am, you may step down. Thank
23 you.

24 MR. OZMENT: Your Honor, may she be released
25 from her subpoena?

1 THE COURT: Any objection by defense counsel?

2 MR. DEBERRY: No, Your Honor.

3 THE COURT: Ma'am, you are free to go. You have
4 no further responsibilities under your subpoena. Thank
5 you for being here.

6 Call your next witness.

7 MR. OZMENT: Your Honor, the State would call
8 Investigator Lee Davis to the stand.

9 THE CLERK: If you will, sir, place your left
10 hand on the Bible and raise your right hand. Do you swear
11 to tell the truth, the whole truth and nothing but the
12 truth so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your full
15 name.

16 THE WITNESS: My name is Lee Davis.

17 WHEREUPON,

18 Lee Davis,

19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. OZMENT:

22 Q How are you today, Investigator Davis?

23 A Very good, thank you.

24 Q What do you do for a living?

25 A I am currently lieutenant with the Florence Police

1 Department. I supervise in the patrol division. When
2 this incident occurred, I was sergeant in investigations
3 unit. In August, I got promoted to lieutenant. Now, I'm
4 currently in the patrol division.

5 Q Congratulations. How long have you been in law
6 enforcement?

7 A Fourteen years.

8 Q Has all that been with Florence?

9 A Yes.

10 Q All right. Investigator Davis, before we go into the
11 facts of this specific case, I'm going to ask you if
12 you're familiar with [REDACTED] Dixie Street?

13 A Yes, sir, I am.

14 Q Is that where this all happen when we get to...

15 A Yes, it is.

16 Q Is it that in Florence County?

17 A Yes.

18 Q Have you ever been to [REDACTED] Dixie Street before this
19 happened?

20 A Yes, I went there on several occasions. We've had
21 some problems at that location because of the trouble in
22 that neighborhood and a lot of people hanging out there.
23 The homeowner had called law enforcement several times and
24 during the course of one of my investigations, Ms.
25 Titus' youngest daughter, she had a boyfriend who was shot

1 and he was at her house. And we went to her house to talk
2 to her and we located him and that's when I first came
3 into contact with Ms. Titus at that location.

4 Q Was that before all this happened?

5 A Yes, it was before.

6 Q Describe to me what the yard is like there?

7 A It's primarily dirt. There's some concrete around
8 the front area. There's grass, but it's primarily a dirt
9 area in the back where a lot of people hang out in the
10 backyard. I think they make like a barbecue stand or
11 something back there, some seats in the backyard. So it's
12 a lot of people sitting and hanging out back there, so
13 there's not a lot of grass in the backyard, it's primarily
14 dirt. And then there's the ditch that goes right in the
15 back of the yard.

16 Q Is there a path through to Glad Stone Street?

17 A Yes, there is.

18 Q When you had respond out there to calls as to people
19 hanging out and trouble in the past going on, in your
20 experience was there a lot of people in the yard at times?

21 A Yeah, there were quite a few people. Primarily what
22 happened, I was in investigation then. Primarily what
23 happened patrol guys would respond, a lot of guys would
24 take off running. They would go through that path, that
25 carried over to Glad Stone Street. And Ms. Titus even put

1 up some no trespassing signs on her door. She wanted us
2 to kind of come up to her house and tape them to her yard,
3 but we told her is that because her son live there and
4 those were his friends, that he was entitled to have his
5 friends in the yard even though it was her house. He was
6 entitled to have friends there. So she asked us to still
7 have patrol guys come through, get out, talk to people who
8 there, find out why they are there. And if they are not
9 illegal -- I mean, if they are doing something illegal to
10 take them to jail because she didn't want them in her
11 yard.

12 Q Okay. Let's now turn to the case at hand. What --
13 how did you get involved with this case?

14 A I was in investigations. Princess Benjamin she's our
15 victim's witness advocate. And what they do is basically
16 if someone is a victim of a crime, they provide them with
17 some kind of services basically if they need a place to
18 stay. They need money or food or whatever, they provide
19 them with that. Mr. Holloman had contacted her and I
20 think he was trying to get some assistance. What she told
21 him though was that in order for him to get assistance, he
22 had to cooperate with law enforcement as far as the
23 investigation is concern and he came to our office that
24 day. When he came over to the office, I spoke with him.
25 She ask me to come and speak with him. I spoke with him

1 at length and he told me that it was Mr. Hunter who had
2 assaulted him. And I asked him, you know, because what
3 happened was when law enforcement responded the first
4 time, he did not say that at the hospital to talk him. He
5 said -- again, he said he didn't know who did it. And at
6 that point, in order for us to go forward with our
7 investigation, the victim has to cooperate. The victim
8 does not cooperate, then we can't go forward with the
9 case.

10 Q Okay. How long was your conversation with him
11 approximately when he came in that day?

12 A Maybe about 10 or 15 minutes.

13 Q Okay. Did he tell you what had happened that day?

14 A Yes, and we took a recorded statement also and
15 photographs of his -- swelling of his eye and mouth as
16 well, sir.

17 Q All right. Who took the photographs?

18 A Princes Benjamin took the photographs.

19 Q Were you there when they were taken?

20 A I was.

21 Q Do you recall what he looked like the day when they
22 were taken?

23 A His eye was kind of -- in this area was swollen. His
24 mouth was very swollen, so it was really hard to see what
25 was going on inside his mouth. It was very swollen in

1 that area.

2 MR. OZMENT: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 BY MR. OZMENT:

5 Q Investigator Davis, I'm going to hand you what's been
6 premarked as State's Exhibits 1 through 4. I'm going to
7 ask you to look at them. Please don't show them to the
8 jury yet and just tell me who's what in the photograph
9 first?

10 A Mr. Demetrius Holloman.

11 Q All right. Do you remember those photographs being
12 taken?

13 A I do.

14 Q Are those the photographs you been talking about?

15 A Yes, they are.

16 Q Do they accurately represent his condition on that
17 day?

18 A Yes, they do.

19 MR. OZMENT: Your Honor, at this point, the
20 State would move for State's Exhibit 1 through 4 be moved
21 into evidence.

22 THE COURT: Any objection?

23 MR. DEBERRY: No objection.

24 THE COURT: Without objection State's Exhibits 1
25 through 4 admitted into evidence.

1 (WHEREUPON, State's Exhibits Nos. 1-4 were
2 admitted into evidence.)

3 MR. OZMENT: May I approach again, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. OZMENT:

6 Q Okay. Actually, we will come back to this.

7 Investigator Davis, on the day that you talked to
8 Demetrius, did he -- had he stated to you that a gun was
9 used during this?

10 A Yes, he did.

11 Q Do you remember did he refer to a type of gun?

12 A He said it was a .357 Magnum.

13 Q Now, you been in law enforcement 14 years. Are you
14 familiar with firearms?

15 A Yes, I am.

16 Q Have you ever carried a revolver?

17 A No.

18 Q Are you familiar with revolvers?

19 A Yes, I am.

20 Q On a .357 Magnum, what happens when you fire a shot
21 out of it?

22 A When you fire a shot and the revolver -- the casing
23 stays inside the cylinder. And unlike on a semi, there's
24 an ejection port, so when you fire it, the semiautomatic
25 the casing comes out of the ejection port. So it usually

1 hits the ground, so there's some casing somewhere usually
2 around. On the revolver, that's not the case. You have
3 to actually physically take the cylinder out and empty the
4 shell casing afterwards?

5 Q So a revolver in case you're not familiar, that's
6 what I think of is a cowboy gun, right?

7 A Basically.

8 Q Okay. So if a .357 Magnum was used at the scene that
9 day, would you expect to find any casings?

10 A No.

11 Q Continued with what Demetrius had told you, after you
12 had this conversation with him, what was the next step of
13 your investigation?

14 A After I had a conversation with him about him saying
15 that there were witnesses to the incident, myself and
16 Sergeant Godwin we went over to [REDACTED] Dixie Street. I spoke
17 with Ms. Idena Titus and Ms. Johnson. They both were --
18 this is like two days after the incident. I think it
19 happen on a Wednesday it was like on a Friday. They were
20 both there. Mr. Roderick Titus was not there at the time.
21 I spoke with them. They both told me that it was Troy
22 Hunter that was there that day. They said they didn't see
23 him actually physically do it, but they saw him come to
24 the house. They saw him leave the house.

25 Q All right. After speaking with them, what was the

1 next step of your investigation?

2 A At that point, I went to city court. I talked to the
3 city judge about the case and asked for a type of warrant
4 issue based upon those circumstances for armed robbery.
5 At that time, I was granted a warrant for the armed
6 robbery, for the discharging firearm.

7 Q And just explain to me briefly what is a warrant?
8 What's the significance of that?

9 A The arrest warrant is what we use, that's the
10 charging -- what we use to arrest him. But we have to go
11 to city court and speak with the city judge. Basically
12 swear out for the judge what happened. The judge has to
13 believe there's probable cause if they think there's
14 probable cause. Then they will issue us a warrant. If
15 they feel like there is not a probable cause, sometimes
16 they'll deny the warrant or they tell us to go back and do
17 further investigation. But on that day, I was granted the
18 warrant.

19 Q All right. And before you had done the warrant, did
20 you also speak with the other officer that had spoken to
21 Demetrius in the hospital?

22 A Officer Carlson.

23 Q Yes.

24 A No, not at that point.

25 Q Did you speak with him subsequently?

1 A Yes.

2 Q Okay. What about officer -- the officer that
3 responded to the scene that day?

4 A Officer Brown. Yes, I spoke with him also.

5 Q Having been to the house and having looked around,
6 did you feel at that point two days later there was any
7 investigation you could do at the scene beyond what you
8 did?

9 A When we were there Sergeant Godwin and I walked the
10 yard, the backyard, the side of the yard because again
11 like I said it happened two days earlier. There's a lot
12 of foot traffic. There's a lot of people in and out of
13 the yard, but we walk the area. We look back there just
14 to see if there was something maybe patrol officers might
15 have missed when they were there. We didn't see any shell
16 casings. We didn't see any sign of a struggle anything
17 like that, but because it's two days later and because of
18 the heavy traffic, it was kind of hard just to tell what
19 happened or if there was anything there at all.

20 Q Would there have been any usefulness in trying to
21 take shoe prints and that kind of thing?

22 A No, not at that point.

23 Q Okay. After you got the warrant, how long was it
24 before Mr. Hunter was taken into custody?

25 A He was arrested on December 15th. Initially, when I

1 got the warrant, what we do we have our -- what we call is
2 our C.A.T. team, that's community action team. When we
3 got warrants to be served, especially for warrants that
4 are violent in nature, we would have the C.A.T. team go
5 out and try and serve those warrants, locate those people
6 and arrest them. They went out, they attempted to locate
7 Mr. Hunter. After a few days, when we could not locate
8 Mr. Hunter, we made the decision from our department head
9 and my major at the time to do a flier, a want flier with
10 his information on it, give it out to our patrol officers
11 and we also gave it to the media. And they ran that
12 information on TV about week after we looking for him it
13 ran on TV saying that he was wanted and we were looking
14 for him, if there was anybody with that information to
15 contact Crime Stoppers or the Florence Police Department.

16 Q All right. You said that was about a week after it
17 was on TV?

18 A Yes.

19 Q Okay. After that, how was he eventually apprehended,
20 if you know?

21 A There was a call that came to 9-1-1 dispatch
22 anonymously. Someone said that he was at a house on Dixie
23 Street or Simmons Street somewhere in that area. Officers
24 respond to that area. When they got over there,
25 Mr. Hunter fled on a bicycle. At one point, he got off

1 the bicycle and went -- he lost one of his shoes and
2 because of that they called the K-9, so the K-9 could
3 track from the scent of the shoe. They went to the woods
4 area trying to locate him and eventually he came out on
5 the other side of the wood area and he was arrested.

6 Q All right.

7 MR. OZMENT: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (WHEREUPON, a pause in the proceedings.)

10 BY MR. OZMENT:

11 Q Lieutenant Davis, I will touch on one more thing and
12 I will sit down. You were not called out at this scene
13 when this actually happened; correct?

14 A No, I was not.

15 Q Is that unusual when shots fired?

16 A Not really. In some areas, we get a lot of calls for
17 shots fired. What happens when patrol officer will
18 respond to that area, try and locate a scene, if there was
19 a scene to be processed. If they can't locate anything,
20 then we'll just clear and call it unfounded. On this
21 particular day, they didn't find anything at the scene
22 that they process or photograph. So based upon that, they
23 did not call an investigator. So no investigator was
24 called when it first occurred.

25 MR. OZMENT: All right. No further questions,

1 Your Honor.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. DEBERRY:

5 Q Investigator Davis, thank you for being here. To
6 follow-up on Mr. Ozment's final two questions, said you
7 weren't -- you didn't respond to the scene on the day this
8 supposedly took place?

9 A That's correct.

10 Q All right. And we heard earlier -- well, you also
11 know that at some point in time that night or early that
12 evening, your officers made contact with Mr. Holloman at
13 McLeod?

14 A Yes.

15 Q Okay. And you learned from that contact that
16 Mr. Holloman said some things that took place at [REDACTED] Dixie
17 Street?

18 A That's correct.

19 Q And he told your officers at that point in time that
20 he didn't know who hit him, that somebody come up behind
21 him and hit him?

22 A That's correct.

23 Q And he didn't know who?

24 A That's correct.

25 Q He didn't tell you at that time that he thought it

1 was a .357?

2 A Officer Carlson didn't put that.

3 Q Okay. And he didn't tell you he was robbed; is that
4 right?

5 A That's correct.

6 Q Okay. But he did tell you that it happened in the
7 backyard at [REDACTED] Dixie Street?

8 A I'm not sure if he said backyard or if he just said
9 [REDACTED] Dixie Street. I am not sure.

10 Q Well, it's in the report in the backyard, so that's
11 safe to say?

12 A Yes.

13 Q Okay. So he did say that there was a shot fired
14 there; correct?

15 A Yes.

16 Q And he said it was fired into the ground?

17 A Yes.

18 Q Okay. And at that point in time, it was evident that
19 he was missing some teeth?

20 A That's right.

21 Q Okay. So at that point in time, it seems to me like
22 it would have been logical to go and do some further
23 investigation at [REDACTED] Dixie Street?

24 A Well, if I'm not mistaken that was later that evening
25 when it happened. Basically, how it works with the

1 Florence Police Department is if there was a scene and the
2 responding officers go there and they can't find anything,
3 that is where a scene occurred and you have a victim
4 that's uncooperative, they don't typically have someone an
5 investigator assigned or come out at that point because
6 the victim still not cooperating.

7 Q Well, why would you say that Mr. Holloman was
8 uncooperative at that point?

9 A Because he said he didn't know who did it.

10 Q Well, what if he really didn't know who did it?

11 A Well, I mean, at that point he just told us he didn't
12 know who did it. And we didn't have any way to go with
13 case at that point.

14 Q Isn't it true throughout your investigations and your
15 14 years with law enforcement that quite often we don't
16 know who commits crimes?

17 A That's true.

18 Q But we know they happen?

19 A Right.

20 Q So the information you gathered after the officers
21 responded to [REDACTED] Dixie Street say they didn't see
22 anything?

23 A Right.

24 Q Then there's a whole lot of information that comes in
25 just a couple of hours later. Wasn't a good idea to go

1 back and maybe investigate what Mr. Holloman was telling
2 you?

3 A Not at that point. They had already went there.
4 They look. They took their time and went over the scene.
5 They stayed there for quite sometime trying to find --
6 like I said shell casings basically -- there was a shot,
7 only thing you're going to find at that point maybe is a
8 shell casing. If there's a bunch of foot traffic in the
9 yard and there's a lot of foot traffic at [REDACTED] Dixie
10 Street, you aren't really going to find anything at that
11 point. And they stay there for about 15 minutes that day
12 trying to find something.

13 Q All right. But if they knew what they were looking
14 for maybe if -- in your experience with a .357 if you just
15 fired it straight into the ground, what's it going to do?

16 A It's probably going to make a little hole in the
17 ground.

18 Q It's going to blow a hole in the ground?

19 A I don't know about hole, not a very a big hole, but
20 the size of a bullet.

21 Q Okay. If there's teeth knocked out there, there's
22 going to be some evidence of that?

23 A Certainly, if they leave them there at the scene.

24 Q Certainly could be some blood?

25 A Yes. And they didn't find any. They didn't find

1 anything that led the process, that's why they didn't call
2 an investigator. Typically, if they find something on the
3 scene, they call an investigation and we call crime scene
4 out to photograph or collect it.

5 Q But isn't it true that when they responded there to
6 ■■■ Dixie Street first, they didn't really know if
7 anything had happened or not? They didn't know there was
8 even a victim.

9 A What they went to, they responded to the shots being
10 fired called -- I think at that point Ms. Titus spoke to
11 them about what had happened?

12 Q Okay. Ms. Titus...

13 A But they could not locate the victim at that point.
14 You right they could not locate the victim.

15 Q And so they just decided that maybe nothing even took
16 place there?

17 A Well, they did the report. They filed a report as to
18 what Ms. Titus said. And at that point, there was nothing
19 else to do once they could not locate the crime scene.

20 Q The only thing that Ms. Titus told law enforcement
21 was that she heard a loud noise?

22 THE COURT: I need a verbal response please,
23 yes.

24 A I am sorry, yes.

25 Q So how would they know there was a victim?

1 A I think the original does say something about him
2 being injured. And in fact, he was not there, but that's
3 how they know there was a victim. I think, Mr. Holloman's
4 name is in the original report.

5 Q Okay. So if they knew at that time, then they should
6 have roped off the area and look for a shell casing or...

7 A That's why they took the 15 minutes there going
8 through the yard, it's like four or five officers that
9 were there and they went over the area. They went round
10 the side of the house, the back of the house, and they
11 couldn't find anything.

12 Q And they found absolutely nothing?

13 A Right.

14 Q So how many teeth did Demetrius Holloman tell you
15 that he had knocked out on your recorded statement for
16 him?

17 A To be honest with you, it's been over a year and I
18 listen to it once, but I can't recall the details. I
19 think it's maybe four or something like that.

20 Q Would you disagree with me if I told you that he
21 explained to you he had eight teeth missing?

22 A If it's on the statement, I believe you.

23 Q And he told you that he had to go to Sexton's Dental
24 Clinic on the statement, it cost him \$65?

25 A Yes.

1 Q He told you he had to go to a specialist dentist and
2 that it cost him \$145 to speak with him and then the
3 dentist told him it was going to cost him \$750 to fix his
4 teeth?

5 A That's correct.

6 Q And you would agree that that adds up to \$960?

7 A Yes.

8 Q And you would agree that at first not only did he
9 fail to tell you who he thought did this to him, but he
10 also failed to tell you that he was robbed at all?

11 A Yes, sir, he did not convey that to Officer Carlton.

12 Q He said that they got no money, that he was not
13 right?

14 A That's correct.

15 Q Okay. And then after he goes to the dentist and he
16 finds out, it's going to cost him \$960, he comes and talks
17 to the victims' assistant advocate?

18 A Yes, victim witness advocate.

19 Q He tells you on the statement he didn't realize that
20 in order to get money from this program, he's going to
21 have to give you -- he's going to have to cooperate with
22 you. He's going to have to cooperate with you, give you a
23 statement?

24 A That's correct there was a mention of the fact that
25 he had to cooperate with law enforcement in order for them

1 to assist him.

2 Q So in order for him to get money that he needed to
3 fix his mouth, he had to give you a statement?

4 A He didn't have to give a statement, but he had to
5 cooperate with law enforcement as far as if he knew who
6 did it, he had to give us that information, so that we can
7 go and investigate it.

8 Q But it was in his mind because he said on your
9 recorded statement that is when I realize that I had to
10 give you a statement, that I could get my money.

11 A If it's on the statement, yes.

12 Q All right. And then when he realize he had been to
13 Sexton's, he been to the specialist dentist and he realize
14 it's going to cost him so much money, he decides to tell
15 you how much money was gone; is that right?

16 A I think he told us in his statement how much money
17 was gone.

18 Q In a statement he told you, it was \$900?

19 A \$900 that's correct.

20 Q Okay. Now, has he changed that amount since that
21 time?

22 A I'm not sure. He could have I'm not sure. I know it
23 was 900, if I remember that stands out.

24 Q Do you remember a previous bond hearing in this
25 matter?

1 A Yes, I do.

2 Q All right. And in at that bond hearing, did
3 Mr. Holloman tell you that he was out one thousand
4 dollars?

5 A It's possible he could have said that.

6 Q All right. So he really doesn't know either way or
7 we don't know?

8 A There's a difference in the amount.

9 Q When did the -- in the record statement, did you ask
10 who was there at the scene that day?

11 A I'm not sure if I ask him that or not.

12 Q Well, on the recorded statement, you ask Mr. Holloman
13 who was at the scene that day and he gave you a name of
14 Roderick Titus?

15 A That's correct?

16 Q Okay. When did you talk to Roderick Titus?

17 A See I went and talk with -- on that Friday, I spoke
18 with Ms. Titus and Ms. Johnson. And Roderick was not
19 there, so it was probably maybe the following week or so
20 when I finally spoke with Roderick.

21 Q So you did speak with Roderick Titus?

22 A Yes.

23 Q Where is the report from where you investigator spoke
24 with Roderick Titus?

25 A There is no statement.

1 Q Is it in your investigative report?

2 A No.

3 Q Why is that?

4 A Well, I'll go into that. The reason there's not any
5 investigative statement on this is because originally this
6 case was not ever assigned. Typically, what happens the
7 lieutenant assigns cases. When the case first comes out
8 on morning briefings when this report read in briefing at
9 the time, there was no cooperation from the victim.
10 Therefore, the case was never assigned. When he came to
11 speak with Ms. Benjamin requesting assistance from the
12 victim's advocate, she ask that I come over to her office
13 because the victim's advocate cannot sign warrants. So
14 what she ask me to do is come over and take a statement
15 from him. And if there were warrants to be signed, she
16 wanted me to take care of the warrants because once upon a
17 time they could, but they no longer can do that?

18 Q Okay. So if a person is murdered or shot in the City
19 of Florence and the victim says that he didn't see what --
20 who exactly it was, that's a case of not cooperating?

21 A If they're murdered, they can't say who did it.

22 Q Well, what if there's another witness that saw some
23 things, but didn't see exactly who it was is that not
24 assigned?

25 A I understand your point. It was investigated. And

1 there should have been some notes and they're not. It's
2 not there because it was never assigned. The case was
3 never assigned to an investigator. I was assisting
4 Ms. Benjamin.

5 Q And is that because it may have never taken place?

6 A No, it's because at first he wasn't cooperating. He
7 was not cooperating with law enforcement. And in average
8 of a month, an investigator is assigned anywhere from 20
9 to 30 cases. And we get a case where a victim is not
10 really cooperating, we don't spend a whole lot of time on
11 that. We move on to another case where we have to spend
12 time on.

13 Q Why did you -- why do you -- when did you talk to
14 Demetrius Holloman?

15 A When ---

16 Q Isn't it true that the first time you spoke with
17 Demetrius Holloman is when he came and gave you a
18 statement?

19 A Yeah, it was that Friday.

20 Q So how can you tell us that he wasn't cooperating?

21 A The case was initially on Wednesday when it occurred
22 and that's when Officer Carlton went to speak to him at
23 the hospital. And he said that he didn't know who did it,
24 so it's two days later when he came to the police
25 department, that's when I spoke with him.

1 Q I'm just having a hard time not understanding how
2 that's not cooperating.

3 A He didn't cooperate initially on the day that the
4 incident occurred, that's what I'm talking about.

5 Q So it was written off, it wasn't even assign?

6 A No. If the victim doesn't cooperate, we don't assign
7 cases, if there's no victim's cooperation.

8 Q All right. There must have been some inclination
9 that he was not telling you the truth?

10 A No, he wasn't cooperating at all. He said he didn't
11 know who did it.

12 Q Okay.

13 MR. DEBERRY: Just a minute please. If I could
14 approach?

15 THE COURT: Yes, sir.

16 BY MR. DEBERRY:

17 Q Mr. Davis, this is State's Exhibit Number 4.

18 MR. DEBERRY: May I show this to the jury?

19 THE COURT: Yes, sir, it's in evidence.

20 BY MR. DEBERRY:

21 Q Before I do, can you count there one, two, three?

22 A Yes.

23 MR. DEBERRY: And, ladies and gentlemen, ask if
24 you pass see one, two ---

25 MR. OZMENT: Your Honor, I object to him

1 testifying to the jury directly.

2 THE COURT: Objection sustained.

3 MR. DEBERRY: I was going to ask a question
4 question.

5 THE COURT: Ask a question.

6 BY MR. DEBERRY:

7 Q Investigator Davis, how many teeth do you see missing
8 there?

9 A It appears there's three.

10 Q Thank you. I'm going to show you State's Exhibit 2.
11 All right. Investigator Davis, when was this photograph
12 taken?

13 A Friday the 31st. It happen on Wednesday and it was
14 taken on the 31st that Friday.

15 Q Okay. Two days later?

16 A Two days later.

17 Q What do you see that's wrong Mr. Holloman in that
18 picture?

19 A There's -- his lips are swollen and there's swelling
20 around the eye. And his eyes are very red. You can't see
21 it on this photo, but it's swelling around his eye also.
22 I hope that photo shows a lot better.

23 Q Okay. This photo shows swelling?

24 A Yes.

25 Q Where?

1 THE COURT: Please make a reference to what
2 exhibit you're referring to for the record.

3 BY MR. DEBERRY:

4 Q For the record, it's State's Exhibit Number 1.

5 A Right up under the eye there, the swelling maybe the
6 photo didn't reproduce it well, but it was swelling in
7 that area.

8 Q Are there any visual signs from these photographs,
9 Investigator Davis, that there's eight teeth missing?

10 A Can I look at them?

11 Q Sure, yes, sir.

12 A No.

13 Q Are there any signs of a busted lip or any outward
14 appearance of lip been damaged in that photograph?

15 A There's some welling right up in there on that lip
16 right there.

17 Q Okay. That's all you see?

18 A Yes.

19 THE COURT: What exhibit you are referring to?

20 A That was number four.

21 Q Are there any signs in any of those photographs that
22 there's six teeth missing?

23 A No, I only see three.

24 Q Okay. And that's the point in time that he came
25 there, he told you -- that he realize with the victim's

1 assistance program, he was going to have to give a
2 statement on who did this in order to receive money for
3 his teeth?

4 A That's what he told he had to cooperate with law
5 enforcement in order for the program to get him
6 assistance.

7 Q And he also said that he had just come from the
8 dentist and that he didn't have the money that the dentist
9 needed to fix his teeth and so he came there to get it.

10 A Well, I know he said it was going to cost him quite a
11 bit of money to get it fixed. I don't know about the --
12 whether he had the money with him or not, but he said it
13 was going to cost him quite a bit of money to get it
14 fixed.

15 Q And the total was \$965 what he said on the recorded
16 statement?

17 A Yes.

18 Q Did it ever cross your mind when he came there he
19 told you he had eight teeth missing and you took those
20 photographs, that he might not be telling the truth?

21 A No, I think what he said something about some of them
22 was also push down in the gum and that was some of the
23 problem also, that the teeth were push down into gum, some
24 of the teeth were.

25 Q Okay.

1 A And I think he said it was going to require some
2 surgery to get those repaired.

3 Q Now, you believe there was a .357 involved?

4 A I mean, I have no way of saying yes or no.

5 Q You have absolutely no evidence?

6 MR. OZMENT: Your Honor, we object to the
7 speculation.

8 THE COURT: Can you all approach a minute?

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury, but out of the hearing of the
11 jury.)

12 THE COURT: Objection sustain. You may continue
13 with your questioning.

14 BY MR. DEBERRY:

15 Q Investigator Davis, what evidence did you find that
16 there was a gun involved in this case?

17 A We did not find anything at the scene that we could
18 process where there was any evidence.

19 MR. DEBERRY: Court's indulgence.

20 THE COURT: Yes, sir.

21 BY MR. DEBERRY:

22 Q When did you speak with Nathan Orgbon?

23 A I never speak with Nate.

24 Q You never spoke with Nathan Orgbon?

25 A No, I did not.

1 Q When did you determine that he was at the scene?

2 A Mr. Ozment spoke with him.

3 Q So you never spoke with Mr. Orgbon?

4 A That's correct.

5 Q Do you know how Mr. Orgbon's name came into
6 existence?

7 A I'm sorry, I'm sorry. I spoke with on the phone and
8 I put him in contact with Mr. Ozment a couple of days ago.

9 Q Just a couple days ago?

10 A Yes.

11 Q And where did you get the information that lead you
12 to believe that Mr. Orgbon was at the scene?

13 A There was -- I think, Mr. Holloman initially said
14 that there was an investigator who work with us or who use
15 to work with us or whatever. He gave the name of a deputy
16 at the Sheriff's Department that was the wrong. Then we
17 find out it was an investigator use to work with us and
18 who would know Nate's full name and I contacted that
19 investigator and he gave me Nate's name.

20 Q Okay. So you knew about Nate. How did you know
21 about Nate?

22 A That's when I find a couple days ago from Mr. Ozment.
23 He said that he talked to Mr. Holloman. Mr. Holloman had
24 a name of somebody who else was a witness. Initially,
25 there was nobody -- there was no other names other than

1 Ms. Titus and Ms. Titus and her sister that was witnesses.

2 Q Isn't it true that you got Mr. Orgbon's name from Mr.
3 Titus?

4 A I'm not sure. I just remember talking Mr. Ozment
5 about it, I'm not sure whose name it came from.

6 Q All right. So if you got Mr. Orgbon's name from Mr.
7 Titus, that just surface last week?

8 A Yes.

9 Q And this happened over a year ago?

10 A November 30th, 2011.

11 Q So at the final hour just before trial, Mr. Titus
12 comes forward has been charged with a crime, has pending
13 charges here, comes forward with a name for you?

14 A I'm not sure if it was Mr. Titus. I spoke to Mr.
15 Ozment, that's where I got it from.

16 Q Well, you testified that you spoke with Mr. Titus
17 after the incident?

18 A That was when it first happened when they say it
19 first occurred.

20 Q He didn't tell you who was there then?

21 A No, he did not.

22 Q He didn't tell you he saw anything, did he?

23 A That's correct.

24 Q So how did he know he was there?

25 A I don't know.

1 Q And you testified earlier, Investigator Davis, that
2 this is a high traffic area. There's lots of foot traffic
3 there many people hang out there all the time; is that
4 right?

5 A That's correct.

6 Q And throughout your investigation and the year that
7 this case coming to trial, how many people did you talk to
8 that might have been there and might have known who would
9 have been there?

10 A I mean, no one said anything basically. If they were
11 there, they didn't say anything. So the only names we had
12 things we got originally. And then the next we got this
13 week -- last week.

14 Q Did you canvass the area and talk to people who
15 frequent the area and try to find out what happened?

16 A On the date it occurred?

17 Q Or thereafter?

18 A No, not afterwards.

19 Q Never did?

20 A No.

21 Q But you agree there would have been a lot of people
22 there?

23 A I definitely have a lot of people there, but the
24 problem is that those people were not there when law
25 enforcement got there.

1 Q Right. But isn't it a common job and duty as law
2 enforcement or investigator to go out and talk to people
3 to try to find out who was there?

4 A Sure, it is.

5 Q It just wasn't done in this case?

6 A This occurred everybody had already left.

7 Q Okay. Well, I understand that, but I'm asking you
8 you didn't go back in the days following to the crowd that
9 was hanging out there and talk with them?

10 A The only one I talked to after the event was Mr.
11 Titus.

12 Q Roderick Titus?

13 A Uh-huh.

14 Q And the only reason you talk to him was because Mr.
15 Holloman told you he was with him that day?

16 A Yes, and he gave that name and he gave the name of
17 his mom Ms. Titus and Ms. Johnson.

18 Q Okay. And Mr. Holloman originally told you that Mr.
19 Titus was a witness, didn't he?

20 A I think he said that originally.

21 Q He did. And that's not the case, was it?

22 A That's not what Mr. Roderick Titus testified to.

23 Q Okay. Never made an investigative case report?

24 A No.

25 Q Never recovered any evidence in this case?

1 A None.

2 Q Never found any bullets?

3 A No, sir.

4 Q No evidence that indicates that if there was a gun it
5 was a .357?

6 A No.

7 Q Did you ever ask Mr. Holloman where he got his money
8 from?

9 A No, I did not.

10 Q Was he working at the time?

11 A I'm not certain he was working or not.

12 Q Did you review the medical report in this case?

13 A No, I did not.

14 Q So you couldn't say that this not true the medical
15 report says there's only three missing?

16 A Right, it's correct. I never seen it, so I can't
17 say.

18 MR. DEBERRY: Just one minute. I may be
19 through.

20 (WHEREUPON, a pause in the proceedings.)

21 MR. DEBERRY: That's all I have. Thank you very
22 much.

23 THE COURT: Any redirect?

24 MR. OZMENT: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. OZMENT:

2 Q Mr. Deberry talked a lot about Nate. How did you get
3 the name Nate? Let me rephrase that. Who gave you the
4 name Nate?

5 A You did.

6 Q All right. Did you do any leg work in the
7 investigation to find the name Nate?

8 A Yes, I asked some other investigators if they knew
9 anybody by that name who might have been in that area who
10 goes by that name and I think initially we didn't have
11 anybody.

12 Q When did I give you the name Nate?

13 A Probably sometime last week before the weekend.

14 Q All right. Do you know precisely how I got the name
15 Nate?

16 A Not directly, I can't remember.

17 Q You've been an investigator and police officer in
18 Florence a long time. Is it common that in some
19 neighborhoods where crime happens that no matter how many
20 people were there somehow nobody saw it?

21 A Very common.

22 Q All right. What do you attribute that too?

23 A Fear of ---

24 MR. DEBERRY: Objection, Your Honor. I think
25 that calls for speculation.

1 THE COURT: Rephrase your question.

2 BY MR. OZMENT:

3 Q In your personal experiences, have you ever had
4 people who you would call non-cooperating witnesses, but
5 later become cooperating witnesses?

6 A Yes.

7 Q Give me factual example of someone who wouldn't
8 cooperate, maybe why they wouldn't cooperate?

9 MR. DEBERRY: Objection, Your Honor. I don't
10 think it's proper.

11 THE COURT: I'm going to allow it. Go ahead.

12 A I've investigated a case where I had a shooting. I
13 worked a case where someone was shot. He was shot several
14 times as a matter of fact. And initially, he did not want
15 to say who did it. I mean, he was literally at the point
16 of death in the hospital, he refuse to cooperate. And
17 after some time had past, I guess his parents had spoken
18 with him, he changed his mind. He gave us the information
19 and as a result that person was arrested and is in prison.

20 Q All right. Do you think it's possible from your
21 investigation that there were people there that day that
22 saw what happened and just never came forward?

23 A I am certain there were people there who saw it and
24 they will not come forward, they will not testify.

25 Q Okay. And you find that common for instance the

1 neighborhood Dixie Street is?

2 A Yes.

3 Q Okay. Mr. Deberry asked you several questions about
4 a gun being involved and what evidence you had. When you
5 sign a warrant, do you only look at physical evidentiary
6 or are you allowed to look at what people tell you also?

7 A Yes, you could look at what statements from witnesses
8 and factor that into it also.

9 Q And then in court when we talk about evidence, we're
10 talking about both physical evidence and what people say
11 from that witness stand; correct?

12 A That's correct.

13 Q All right. So I'm going to ask you the same question
14 Mr. Deberry did. When you got that warrant, had anyone
15 told you which would be evidence that there was a gun
16 involved?

17 A Yes.

18 Q Had anyone told you they had heard gunshots?

19 A Yes, that's correct.

20 Q Had more than one person told you they heard gun
21 shots?

22 A Yes, that's correct.

23 Q So was there evidence that a gun was used?

24 A Statements, yes.

25 Q Okay. Mr. Deberry also asked you a lot of questions

1 about other people's reports. You were not at the scene
2 that day; correct?

3 A That's correct.

4 Q Were you in the hospital when Demetrius gave a
5 statement to Officer Carlson?

6 A No, I was not.

7 Q How were you familiar with the conversation Demetrius
8 had with Officer Carlson?

9 A I read the supplemental.

10 Q All right. So the questions you answered about did
11 he say this, did he say that. You were not there?

12 A That's correct.

13 Q You do not actually know the substance of that?

14 A That's correct.

15 MR. OZMENT: Very briefly may I approach, Your
16 Honor?

17 THE COURT: Yes, sir.

18 BY MR. OZMENT:

19 Q Looking at these pictures, you agree that you could
20 only see three teeth missing and we ask that that being a
21 disparity? Looking at these pictures, the teeth around
22 the teeth that are actually missing and I'm referring to
23 State's Exhibits 3 and 4, which are similar photos, can
24 you see any damage?

25 A Yeah, they appear to be bent forward and a couple of

1 them look like they may be pushed aside.

2 Q Okay. Did you go to dental school?

3 A No, sir.

4 Q Did you go to medical school?

5 A No, sir, I didn't.

6 Q All right. So you don't know looking at that, you
7 have any opinion on the treatment that should be rendered?

8 A No, I do not.

9 Q You have any idea how many teeth actually got changed
10 out or pulled or surgery or anything like that?

11 A No, I do not.

12 Q Could that number be eight?

13 A Yes, it could.

14 Q Could that number be 30?

15 A Yes.

16 Q All right.

17 MR. OZMENT: No further questions, Your Honor.

18 THE COURT: Any recross?

19 MR. DEBERRY: Have just a few, Your Honor.

20 RE CROSS-EXAMINATION

21 BY MR. DEBERRY:

22 Q Investigator Davis, you mentioned a case where you
23 must have been involved with where an individual was shot
24 and you claim to be uncooperative at first?

25 A Yes.

1 Q And then later you say began to cooperate?

2 A Yes.

3 Q And you were able to convict that person who did
4 that?

5 A Yes.

6 Q Was that case assigned?

7 A Yes.

8 Q Why?

9 A Because it was a major incident where someone was
10 almost killed?

11 Q Okay. So this case isn't a major case?

12 A Well, he was not shot. He was shot at. He was not
13 shot, but if he had been shot, then, yeah, it would have
14 been assigned. If someone's actually shot, that's a high
15 and aggravated situation, so it's a different situation.

16 Q So you're telling me that where shots are fired
17 somebody claims to be hit in the mouth with a gun, all his
18 teeth are knocked out, he's robbed, it's not a major case,
19 got to be shot?

20 A Where he was cooperating as a victim, yes, that's how
21 we handle that because he was not cooperating.

22 Q You testified and Mr. Ozment cleared up some things
23 about the presence of a gun. None of your witnesses where
24 you give evidence that a gun was involved, none of them
25 saw a gun; did they?

1 A That's correct. They heard -- they say they heard
2 gunshots or what they believe was gunshots.

3 Q Okay.

4 MR. DEBERRY: That's all I have. Thank you very
5 much.

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

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 THE COURT: Mr. Ozment, Mr. Deberry, can you all
10 approach a minute please?

11 (WHEREUPON, a bench conference was held in the
12 presence of the jury, but out of the hearing of the
13 jury.)

14 THE COURT: All right. Ladies and gentlemen of
15 the jury, I am going to at this time, I'm going to release
16 you for the balance of today. We have one more witness
17 the State anticipates calling who's a doctor who cannot be
18 here until tomorrow morning. So rather or late this
19 afternoon and rather than make you all come back late this
20 afternoon, I'm going to excuse you for the balance of
21 today. I'm going to ask that you be back in your jury
22 room tomorrow at nine o'clock. I promise you you will not
23 sit back there for 35 minutes before I bring you back out
24 in the morning.

25 I will start as promptly at nine o'clock as

1 possible. While you're on your overnight break, do not,
2 do not discuss the case. Do not do any independent
3 investigation on your own. As I told you from the outset,
4 you are to decide this case based solely upon the
5 testimony from this witness stand and any evidence that's
6 introduce by virtue of exhibits, you are to decide this
7 case on nothing else, nothing else. Do not discuss the
8 case, have a good rest of the day. And I will see you all
9 at nine o'clock in the morning.

10 Everybody else remain seated while the jury
11 exits the courtroom.

12 (WHEREUPON, the jury is excused for the day.)

13 THE COURT: Anything else from the State right
14 now before we break in this case?

15 MR. OZMENT: Nothing at this time, Your Honor.

16 THE COURT: Anything from defense counsel at
17 this time?

18 MR. DEBERRY: No, Your Honor.

19 THE COURT: All right. We'll stand at ease with
20 regards to this case. We will stand down on this case
21 right now until tomorrow morning. We will resume the
22 trial of this case at nine o'clock in the morning, make
23 sure Mr. Hunter is here at nine o'clock. I would ask law
24 enforcement to take Mr. Hunter at this time.

25 Everybody else remain seated in the courtroom

1 while he is removed from the courtroom.

2 (WHEREUPON, a pause in the proceedings.)

3 THE COURT: At this times, those individuals
4 family and friends of defendant, victim, you all are free
5 to leave the courtroom at this time.

6 Everybody else remain seated.

7 (WHEREUPON, the proceedings were concluded for
8 the day to be reconvened on January 16, 2013.)

9 THE COURT: All right. It's been brought to my
10 attention that we are missing one juror. What I would
11 like to do is bring the jury out, let Doris call the roll
12 and we'll know who's missing.

13 BAILIFF: Here he comes, Judge.

14 THE COURT: On second thought... Strike that.
15 Now, that we have all 12 jurors plus the two alternates.
16 Is the State ready to proceed at this time?

17 MR. OZMENT: Yes, Your Honor, my victim is in
18 the hallway, but he should be walking in right now.

19 THE COURT: Defense counsel ready to proceed?

20 MR. DEBERRY: Yes, sir, Your Honor.

21 THE COURT: If you will bring us the jury
22 please, ma'am.

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

24 THE COURT: Mr. Foreman, ladies and gentlemen of
25 the jury, I hope you all had a good restful evening last

1 night and are ready to continue with the trial of this
2 case today. At this time, Mr. Ozment, you are recognized
3 to call your next witness please.

4 MR. OZMENT: Thank you, Your Honor. The State
5 calls Dr. Mark Lawhan to the stand.

6 THE CLERK: Place your left hand on the Bible
7 and raise your right hand. Do you swear to tell the
8 truth, the whole truth, and nothing but the truth so help
9 you God?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated in the witness
12 chair and state your full name for the record.

13 THE WITNESS: Dr. James Mark Lawhan.
14 WHEREUPON,

15 Dr. James M. Lawhan,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. OZMENT:

19 Q How are you today, Dr. Lawhan?

20 A Great. Thank you.

21 Q Good. I appreciate you being here. What do you do
22 for a living?

23 A I'm a oral and maxillofacial surgeon.

24 Q I know you had to go to a lot of school to become
25 that.

1 A Fifteen years.

2 Q Okay. Where did you go to college?

3 A I went to Francis Marion. And then I went to
4 M.U.S.C. Dental School. And then I did my surgery
5 training the University of Maryland and also John Hopkins
6 University in Baltimore, Maryland.

7 Q Okay. Are you board certified?

8 A I am.

9 Q Okay. Who certified you for that?

10 A The American Board of Oral and Maxillofacial
11 Surgeons.

12 Q Okay. And then in South Carolina do you have to have
13 some sort of license or certification?

14 A Yes, certified in the state, did the dental process
15 and also a specialist.

16 Q How long have you been practicing after you finished
17 training?

18 A Thirteen years.

19 Q Was all that here in Florence?

20 A Yes.

21 Q Give me an idea kind of what you do, what is your
22 practice?

23 A I do anything from the neck up. The only thing I
24 don't treat is the actual eyeball itself or the brain or
25 the inner ear. Facial fractures, gunshot wounds, cancer,

1 car wrecks, wisdom teeth, from a simple tooth to taking
2 mole and hip grafts, skin grafts, it's pretty broad.

3 Q Okay. Do you primarily do surgery then as oppose to
4 just normal dentist check up?

5 A Yeah, I don't do any what I say normal dentistry
6 stuff like that little more basic.

7 Q Does that mean you have a referral practice being
8 people send things to you?

9 A Yes, my practice is probably 95 percent referral.

10 Q All right. Now, you mentioned gunshot wounds and car
11 wrecks and that sort of stuff. Do you see a lot of trauma
12 type cases?

13 A I do.

14 Q Give me an idea and I realize it's probably going to
15 be a big number, but give me an idea of maybe how many
16 trauma cases you've had in your 14 years of practice?

17 A Probably it's going to be in the thousands, I guess,
18 almost out of both hospitals. I lost count.

19 Q Okay. You mentioned hospitals. Are you on staff at
20 any hospitals?

21 A At McLeod Regional and Carolinas Hospital.

22 MR. OZMENT: Your Honor, at this time, the State
23 would have Dr. Lawhan as an expert in the field of
24 dentistry and facial trauma?

25 THE COURT: Mr. Deberry.

1 MR. DEBERRY: No objection, Your Honor.

2 THE COURT: All right. Ladies and gentlemen,
3 let me advise you of this. Normally, a person cannot give
4 opinion testimony. Normally, when a person testifies,
5 they must testify as to what they either saw, heard or
6 sensed by smell or something of that nature. However,
7 there is an exception when someone is qualified because of
8 education or experience, they are permitted to give their
9 opinion in certain areas if the Court qualifies them that
10 way. This witness will be qualified in the area of
11 dentistry and facial trauma to give opinion testimony in
12 that area. That does not mean that you must accept the
13 opinion, but it is evidence for you to use in any way that
14 you see fit and to give it the weight and credibility you
15 believe is appropriate.

16 Mr. Ozment, you may continue.

17 MR. OZMENT: Thank you, Your Honor.

18 BY MR. OZMENT:

19 Q Okay. Dr. Lawhan, were you practicing back in early
20 December of 2011?

21 A Yes.

22 Q Did you have a chance to see Demetrius Holloman at
23 your office?

24 A Yes.

25 Q What was the nature of that visit?

1 A December 1st 2011, he was referred to me from another
2 general dentist for an evaluation of trauma to his face.

3 Q Okay. Did he come in and you saw him?

4 A Yes, he came in and I examined him.

5 Q Okay. Did you take any x-rays anything like that?

6 A Well, the referring dentist sent me the x-ray they
7 took.

8 Q Okay. And comparing that x-ray and looking in his
9 mouth did that appear to be an accurate representation?

10 A Yes.

11 Q I guess describe to me the nature of the injuries
12 that you observed in Mr. Holloman that day?

13 A I just refer to my notes. What I saw --

14 MR. DEBERRY: Objection, Your Honor. If I can,
15 can we approach just a second?

16 THE COURT: Yes.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury, but out of the hearing of the
19 jury.)

20 THE COURT: Ladies and gentlemen, I'm going to
21 have to ask you to step to the jury room for just a
22 minute, I'll get you back out here as quickly as I can.
23 Do not discuss the case.

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

25 THE COURT: All right. Mr. Deberry, I'll hear

1 your objection.

2 MR. DEBERRY: Your Honor, in receiving discovery
3 in this case, the only medical records I have whatsoever
4 are from McLeod E.R. where he was admitted on November the
5 30th. I have never heard the name Dr. Lawhan. I assume
6 that it was -- that he was coming here to testify that
7 these medical records is fundamentally unfair. It's a
8 Rule 5 violation. I don't think he should be allowed to
9 testify. I've had zero opportunity to investigate this
10 situation. You know, I could only assume when his name
11 first appeared on the witness list at the beginning of
12 this trial, that he's coming here to testify to only the
13 medical records that I have.

14 THE COURT: Mr. Ozment.

15 MR. OZMENT: Your Honor, Rule 5 requires the
16 State only to turn things over that A they intend to
17 introduce at the trial. These records are never going to
18 be introduced by the State. B, are in the custody and of
19 the State. I've never had these records. I don't have a
20 copy of these records. They are not my records, they're
21 Dr. Lawhan's records that he created. So this is outside
22 of Rule 5. As far as Brady violation, I don't think
23 there's any exculpatory nature in them at all. As far as,
24 Dr. Lawhan's name being provided, his name was certainly
25 on the witness list on the first day. Mr. Deberry has

1 even referred to Dr. Lawhan's bill in other people's
2 cross-examination being \$960. Surely, Mr. Deberry didn't
3 think that was an E.R. bill to fix his teeth.

4 MR. DEBERRY: Your Honor, I had no idea.

5 THE COURT: Hold on a minute. I gave you an
6 opportunity to talk and I'll come back to you. I'm going
7 to let Mr. Ozment finish first.

8 MR. OZMENT: Your Honor, I think this is totally
9 outside of Rule 5. And I think Dr. Lawhan -- certainly,
10 I'll be happy to set a foundation for it if I need to, but
11 Dr. Lawhan has every right to refer to his own notes and
12 his own chart in testifying here today.

13 THE COURT: Anything else?

14 MR. OZMENT: No, sir.

15 THE COURT: Now, you, Mr. Deberry.

16 MR. DEBERRY: Your Honor, just to respond to his
17 argument, during the course of this trial, Dr. Lawhan's
18 name has never been mentioned. The only time I was
19 referring to medical bills is with the victim in this
20 case. And those figures were brought out in statements
21 that he made and he never mentioned a doctor's name
22 either.

23 THE COURT: All right. This is what I'm going
24 to do. During the course of this trial and from the
25 outset of this trial, the witness list was provided to me

1 on Monday, which provided Dr. Mark Lawhan's name on this
2 witness list as a potential witness in this case.

3 Mr. Deberry on behalf of his client examined and the state
4 has examined and Mr. Deberry cross-examined the victim as
5 to the extent of his injuries.

6 Under Rule 5(A)(1)(D) referring to reports of
7 examinations and tests upon request of a defendant, the
8 prosecution shall permit the defendant to inspect and copy
9 any results or reports of physical examinations and I'm
10 piecing it together here because part of this rule doesn't
11 apply says physical or mental, but physical examinations
12 which are in the possession, custody or control of the
13 prosecution. Mr. Ozment has indicated they were not
14 within his possession or control. The existence of which
15 is known certainly the prosecution knew or should have
16 known of these documents or by the exercise of due
17 diligence may become known to the attorney for the
18 prosecution and which are material for the preparation of
19 the defense or are intended for use by the prosecution as
20 evidence in chief at the trial.

21 What I am going to do, I am not going to exclude
22 his testimony. However, as I stated a minute ago, Dr.
23 Lawhan was in this courtroom for about 30 minutes before
24 he took the stand. I'm going to stand done. I'm going to
25 ask the prosecution to make a copy of whatever he's going

1 to testify to, provide a copy to Mr. Deberry and give him
2 an opportunity to look at it. I assume I don't know, I'll
3 give you an opportunity to argue afterwards that they are
4 similarly or consistent with what Mr. Deberry has been
5 provided with regards to the injuries that this victim
6 sustained and what diagnosis treatment et cetra came from
7 the emergency room. Dr. Lawhan certainly testified that
8 it was a referral and that's part of his business, but I
9 will give him an opportunity to make a copy of these
10 records to look at them.

11 Dr. Lawhan, how much ---

12 DR. LAWHAN: It's only three or four pages.
13 Actually, my note is one page.

14 THE COURT: If we'll do this, get him a copy of
15 Dr. Lawhan's notes, let him look at them outside of the
16 presence of the jury. I'll let you ask him any questions
17 see what he has to say and we'll go from there. You all
18 let me know when you're ready.

19 (WHEREUPON, a break was taken.)

20 THE COURT: State ready to proceed?

21 MR. OZMENT: Yes, Your Honor.

22 THE COURT: Mr. Deberry.

23 MR. DEBERRY: We are, Your Honor.

24 THE COURT: Anything you want to ask Dr. Lawhan
25 outside your presence of the jury or you been provided a

1 copy of his notes which are about four fifths of a page
2 and handwritten notes?

3 Isn't that right, Dr. Lawhan?

4 DR. LAWHAN: Yes, sir.

5 THE COURT: And those have been provided to
6 Mr. Deberry. Mr. Deberry, do you need any more time to
7 look at these notes?

8 MR. DEBERRY: No, Your Honor.

9 THE COURT: Sir?

10 MR. DEBERRY: No, Your Honor.

11 THE COURT: Is there anything you want to ask
12 him before I bring the jury back in?

13 MR. DEBERRY: No, Your Honor.

14 MR. OZMENT: Briefly, for the record, there were
15 a couple other documents in Dr. Lawhan's file note an
16 in-take document of Mr. Holloman's medical history, so
17 stuff like that. Dr. Lawhan said that had nothing to do
18 with history or any of that. And so we agreed that had --
19 that was not talked about, so that's still in his file,
20 that was not copied.

21 THE COURT: Is that correct, Mr. Deberry?

22 MR. DEBERRY: It's my understanding that they're
23 not going to be talked about.

24 THE COURT: That's right, Mr. Ozment?

25 MR. OZMENT: Right, Your Honor.

1 THE COURT: Understood, Dr. Lawhan?

2 DR. LAWHAN: Yes, yes, sir.

3 THE COURT: Thank you. Olivia, if you will
4 bring us the jury.

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

6 THE COURT: All right. Ladies and gentlemen, I
7 think we ready to proceed at this time. I should have
8 told you all this Monday and I didn't do so. I notice
9 that some of you hear this morning have sweaters and coats
10 on. I keep it right cool. I try to keep it right cool in
11 here. My wife and I quite often argue about the
12 thermostat in our house. And I went undergrad at the
13 Citadel. And when I was at the Citadel, we didn't have
14 air conditioner down there. And so I learned real quickly
15 that you couldn't take off but so much clothes when you
16 got hot. But when you got cold, you could put a lot on.
17 And I promise myself when I left the Citadel as long as I
18 could afford air conditioner, I'd never go without it
19 again. And so these, ladies up here and these people that
20 work in the courtroom with me quite often fuss about how
21 cold it is in here. But it gets hot up here sitting with
22 this on, a shirt, tie and plus the fact that I drink
23 coffee most of the morning, so I stay right warm. So from
24 here on out, it's only Wednesday you got the rest of the
25 week possibly be with me dress warm when you come up here.

1 Mr. Ozment, you recognize, sir.

2 MR. OZMENT: Thank you, Your Honor.

3 BY MR. OZMENT:

4 Q Dr. Lawhan, I think where we left off I ask what your
5 assessment was of Mr. Holloman when he came in?

6 A Okay. The subjective findings from the patient what
7 he told me that he was hit in the mouth with a gun, went
8 to McLeod which will be yesterday. The day before I saw
9 him. At about 5:00 p.m., they took some x-rays, gave him
10 the x-rays and told him to follow with Sexton Dental
11 Clinic.

12 Q Who referred him to you?

13 A The general dentist from Sexton.

14 Q Then at that point did you do a physical examination?

15 A Yes.

16 Q What did you find on that?

17 A On x-ray, I found that tooth number 24 which was a
18 bottom tooth was fractured. He was missing two adjacent
19 teeth to the right of that, which are completely avulsed
20 and fractured two teeth on the top. If you look at your
21 front teeth, number eight which is to the right, your
22 right front tooth was fractured and the tooth adjacent to
23 that was fractured. And those were fractured beyond
24 repair.

25 Q All right. I'm going to ask you what these terms

1 mean. You said first one on the bottom was fractured and
2 two on the top fractured. Explain to me what that means
3 fracture?

4 A You could see the tooth visibly where it was just
5 half way about half way three quarters down the tooth. I
6 don't remember exactly, but they were freshly just jagged
7 right across about half way down fractured the top part of
8 the tooth was missing.

9 Q A layman person would say broken off?

10 A That's right.

11 Q Okay. And then the two that were missing -- I know
12 what missing means, but I guess just to clarify?

13 A Right, the two teeth that were missing you could see
14 in the mouth there was two sites where -- if you take a
15 tooth out, you have a blood clot that forms there. And it
16 was a fresh site where the teeth had just been knocked
17 out.

18 Q Okay. And so there were five total teeth that were
19 damage beyond repair or gone in this?

20 A Yes, two knocked out and three fractured beyond
21 repair.

22 Q Okay. What would the treatment be for someone who
23 has three teeth fractured beyond repair? What would you
24 have to do with those?

25 A You'd have to remove them.

1 Q Okay. Were you able to look at or to tell any kind
2 of time frame for when this trauma had happened?

3 A It looked pretty -- like I believe what he was
4 telling me. It happened yesterday type thing. The two
5 teeth that avulsed or knocked out had fresh blood clots
6 where they were. And these other teeth that were
7 fractured look like recent fractures. There were no --
8 the edges were crisp clean and just fractured right off.
9 Usually, the teeth is fractured over a period of time, you
10 begin to get wear. It smooths off, it's not as sharp.

11 Q Okay. What about any kind of swelling or anything
12 like that?

13 A Yes, I noted here that he had some edema of his upper
14 and lower lips.

15 Q Okay. And edema would mean?

16 A The swelling, sorry. The swelling.

17 Q So observing the swelling of already broken teeth,
18 did that combination of observations lead you to believe
19 what kind of time frame?

20 A Yes, it's recent.

21 MR. OZMENT: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes, sir.

24 BY MR. OZMENT:

25 Q Dr. Lawhan, could I have you step down for a moment,

1 come around for me. I'm going to show in a second. I'm
2 going to show the jury State's Exhibits 3 and 4. These
3 were obviously very similar pictures. Do these
4 approximately show how you remember it?

5 A Yes, according to my notes, this the teeth that are
6 fractured are what I documented the teeth are missing is
7 what I documented.

8 Q All right.

9 A These are up in here.

10 Q Right. All I'm asking is this how you remember it
11 and according to your notes?

12 A Yes.

13 THE COURT: And that's what, Mr. Ozment?

14 MR. OZMENT: Three and four.

15 THE COURT: Okay, thank you.

16 BY MR. OZMENT:

17 Q And these pictures do you note -- can you see any
18 swelling that you were talking about in your notes also?

19 A It's hard to tell.

20 Q What's that area of the lower lip on four what could
21 that be?

22 A I mean, it looks like asymmetrical, but it's hard to
23 tell in the picture. It appears to be swollen if you look
24 at this side of the red versus this side, it's
25 asymmetrical.

1 Q And you're referring to State's Exhibits 4 to the
2 asymmetry and the right left side?

3 A This is more narrow and this looks a little more hard
4 to tell that.

5 MR. OZMENT: Your Honor, permission to publish
6 three and four to the jury?

7 THE COURT: So granted.

8 BY MR. OZMENT:

9 Q You could take the stand again, Dr. Lawhan. Dr.
10 Lawhan, when I was asking you about your qualifications,
11 you said seen thousands of trauma cases over your years?

12 A Yes, sir.

13 Q Okay. Have you seen many impacts of the mouth?

14 A Yes.

15 Q These injuries that we have here would they be
16 consistent with just a closed first punch?

17 A When he told me, he was hit with a gun I would tend
18 to have to believe that because if you look at the
19 mechanism of injury, the actual -- if you take a fist, I
20 mean, the average guy fist is about as big as mine. I
21 mean, you're going to create more damage than you would if
22 I could point ahead. But if you have something --
23 mechanisms of injury is about as big a round as this. If
24 you kind of isolate it to one side of the mouth, so I
25 think it would be doubtful that someone could hit someone

1 in the mouth and break off three teeth and avulse two so
2 sharply and not damage the adjacent teeth.

3 Q Okay. And so you said the mechanism of injuries have
4 to be about that big?

5 A It had to be condensed. It couldn't be -- well, it's
6 possible, but I would lean toward more something being
7 more condense versus a fist.

8 Q Okay. And now I realize you weren't there and you
9 can't say, but would it be consistent with a gun butt?

10 A Yes. I would say yes.

11 Q Looking at your notes, are there any other injuries
12 you observed on Mr. Holloman on that day?

13 A Just the three teeth fractured, two teeth missing and
14 swelling of his upper-lower lip where the mechanism was.

15 Q Okay. Now, moving beyond what was wrong with him.
16 Let's move to how you would fix it. What -- after looking
17 at what kind of treatment plan would you or did you use?

18 A I recommended extraction of the three teeth that were
19 broken off, they were kind of beyond repair. A lot of
20 times when you get hit, you have microfractures. You may
21 see half the tooth missing. Some people say they can
22 restore that, but when you're hit with a mechanism like
23 that, you get the microfractures or smaller injuries of
24 the tooth and they just don't last a long time. So in
25 order to keep the bone or the maxilla or mandible top or

1 lower jaw, we take the tooth out and we place implants or
2 some sort of partial or something like that.

3 Q How -- I guess explain to me what the process is for
4 removing three fractured teeth? What would you have to
5 do?

6 A In my practice, they would come in. I would sedate
7 them, I would start an IV, give them medications to where
8 they want remember what's going on. We would cut the
9 three teeth out, let that heal for about four months and
10 we have to come back and restore all the missing teeth.

11 Q Okay. So you would have to use a sedative and put
12 them to sleep?

13 A Yes.

14 Q Okay. And when you say cut the teeth out, I guess
15 what is that?

16 A Well, a lot of times when you get hit, the teeth are
17 fractured. Well, you know, half the tooth maybe seen, but
18 you go grab the tooth and invariably it breaks off at the
19 gum line because you have lack of fractures and you go to
20 squeeze to get the tooth out with an extraction forcep in
21 it, it kind of crumbles. So you have to remove the bone
22 and surgically remove the tooth.

23 Q Okay. Would you say this is surgery then?

24 A Oh, yes.

25 Q And then so after, you said it would remove three,

1 take four months. Now, you have a hole now five in his
2 mouth. What is the process for pairing for those?

3 A In lower jaw the top jaw, you could probably place
4 implants without any bone grafting. In the lower jaw,
5 when you have evulsed teeth, the bone is very thin on the
6 outside of the mandible, so when you get teeth that are
7 avulsed most of that bone is missing. So in my office, I
8 do bone grafting to make the ridge wide enough to place an
9 implant, if he proceeds with dental implants.

10 Q Okay. And would that again require surgery as we
11 would know it?

12 A Yes, to place implant, you would cut through the gum,
13 pull the gum back, drill a hole in the bone. You place
14 either a bone from the hip or a bone from a bone bank with
15 screws and let that heal. It's about a years process to
16 get it done.

17 Q Okay. Now, what about if I didn't want to do that.
18 Is it a way to do it with what I would call like a
19 retainer or some sort of appliance?

20 A Yes, you could have a partial made something you take
21 in and out, that's removeable. I'm not sure about fixed
22 bridge work, that's not kind of like my forte. The
23 general dentist can answer that.

24 Q Okay. Now, did you do surgery on Mr. Demetrius
25 Holloman?

1 A No, I did not.

2 Q But you did do this consult is from you actual
3 examination?

4 A That's right. One of the reasons I think he was sent
5 to me is because when an E.R. doctor sees a patient, they
6 kind of rule out with C.T. scans and all that with major
7 fractures. But when they find out they don't have any
8 life threatening injuries or major fractures of the face
9 or the jaw, they refer it to a general dentist. And I'm
10 usually the last in line when it comes to that. So
11 generally this is a little bit hesitant to treat anybody
12 like this until I examine them. When I examine them say
13 okay I don't see any fractures or I think he's okay to
14 proceed with treatment, I get second -- I give second
15 opinions to some general dentist before they start.

16 Q Okay. And you didn't find any -- I mean, you said
17 you might find a fracture. Are you talking about
18 fractured teeth or fractures...

19 A Microfractures that are within the tooth that you
20 can't see visibly.

21 Q Okay.

22 MR. OZMENT: No further questions, Your Honor.

23 THE COURT: Cross-examination.

24 MR. DEBERRY: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. DEBERRY:

2 Q Dr. Lawhan, thank you for being here.

3 A Sure.

4 Q So you said you only found two fresh places where
5 teeth were missing?

6 A That's correct.

7 Q And then several fractured teeth?

8 A Three fractured teeth.

9 Q Then you -- I say it's safe to say -- well, you said
10 that his story and his injuries are consistent?

11 A Yes.

12 Q Okay. Could it also be if you were hit with a
13 knuckle that be about the same diameter as to what you --
14 as to how you held your hand up earlier?

15 A Yes.

16 Q Okay. So you have no idea really what came in
17 contact with Mr. Holloman?

18 A I can only go by what he told me.

19 Q Correct. You certainly weren't there?

20 A No.

21 Q Okay. And you say that he didn't treat with you; is
22 that right?

23 A That's correct.

24 Q Okay. If he does the partials is that require
25 surgery?

1 A You would have to remove the teeth first to do the
2 partial.

3 Q Okay. And that would require surgery?

4 A Yes, to take the teeth out.

5 Q Okay. Are there any other possibilities besides a
6 gun or a knuckle that could have caused these injuries?

7 A I'm sure there is. I could only condense it down to
8 -- I think it had to be smaller than a fist because when
9 you look at the fist most of them are about the same. I
10 just think we have more injury adjacent to the teeth.

11 Q But that's assuming that you got hit right square
12 with the fist?

13 A Yes.

14 Q Okay. So if there was a glancing blow or something,
15 it certainly could have been a fist?

16 A Well, enamel is the hardest structure in your body.
17 A glancing blow to a tooth probably wouldn't have
18 fractured it. You got to have a pretty good direct hit.
19 To evulse teeth, it would take more than a glancing blow.

20 Q All right. But if -- say if it was just a blow that
21 wasn't dead center, it's a possibility it could have been
22 anything?

23 A I still think it had to be a condense hit because it
24 was just limited to the right side of those teeth.

25 Q Right. When he came to you, did he tell you that he

1 had eight teeth missing?

2 A He just said he had some teeth knocked out when I was
3 examining him, but he didn't really tell me -- I don't
4 have in my note that he was -- I'm sure he said he had two
5 teeth knocked out, which was evident, but I don't have
6 that in my note. I don't remember eight teeth.

7 Q You don't remember anything about six teeth?

8 A I don't have anything in my note about that.

9 MR. DEBERRY: Thank you very much. I don't have
10 anything further.

11 THE COURT: Any redirect?

12 MR. OZMENT: Just very briefly.

13 REDIRECT EXAMINATION

14 BY MR. OZMENT:

15 Q Mr. Deberry asked you about a punch causing this and
16 you responded that enamel is the hardest substance in the
17 body. If you were to punch someone and land a knuckle as
18 Mr. Deberry said and knock out teeth like this, would it
19 damage the hand that did it?

20 A I mean, it would, you know, if the mouth is open or
21 something like, it's going to mess up the knuckles or cut
22 the knuckles usually or bruise the knuckles.

23 MR. OZMENT: All right. No further questions,
24 Your Honor.

25 THE COURT: Any recross?

1 MR. DEBERRY: No, Your Honor.

2 THE COURT: Dr. Lawhan, you may step down.

3 Thank you.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 MR. OZMENT: Your Honor, the State would ask
7 that Dr. Lawhan be relieved of his subpoena, so he could
8 go back to work.

9 THE COURT: Any objection?

10 MR. DEBERRY: No, Your Honor.

11 THE COURT: All right. Dr. Lawhan, you are
12 excused. You have no further responsibilities regarding
13 your subpoena. Thank you for being here.

14 (WHEREUPON, the witness leaves the witness
15 stand.)

16 THE COURT: Mr. Ozment.

17 MR. OZMENT: Your Honor, at this time the State
18 rest.

19 THE COURT: All right. Ladies and gentlemen of
20 the jury, the State has presented its case. And at this
21 time, it's a matter of law that we need to take up outside
22 of your presence. So what I'm going to do is I'm going to
23 ask that you to step back to your jury room. Do not
24 discuss the case and I'll get you back out here as quickly
25 as possible.

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

2 THE COURT: All right. Mr. Deberry, any motions
3 at this time?

4 MR. DEBERRY: Your Honor, we make a motion for a
5 directed verdict. We believe given all the testimony and
6 evidence in this case, there's not enough evidence to
7 support a conviction.

8 THE COURT: Mr. Ozment, anything in response?

9 MR. OZMENT: Briefly, Your Honor. The State's
10 establish that this happened in Florence County. There is
11 evidence of an attack. There's evidence of an injury that
12 would require surgery supporting assault and battery
13 second. As to the armed robbery, there is evidence
14 Mr. Hunter had a gun. He approached Mr. Holloman. He
15 demanded money, took an amount of money and shot twice and
16 fled the scene, which would support the charge for armed
17 robbery.

18 THE COURT: All right. Based upon what I've
19 heard here during the course of the last three days now,
20 the Court is going to respectfully deny your motion for
21 directed verdict under our law. The Court must view the
22 evidence in the like most favorable to the State. And if
23 there is any substantial evidence which reasonable tends
24 to prove the guilt of the accused or from which guilt may
25 fairly and logically be deduced, then the case should be

1 submitted to the jury.

2 The trial court is not concerned excuse me --
3 the trial court is concerned with the existence of
4 evidence not its weight and there's certainly existence of
5 evidence in this case of an armed robbery as well as the
6 assault and battery and second degree. And therefore, the
7 Court respectfully denies defense counsel's motion for a
8 directed verdict. Anything else at this time,
9 Mr. Deberry?

10 MR. DEBERRY: No, Your Honor.

11 THE COURT: From the State?

12 MR. OZMENT: Nothing from the State, Your Honor.

13 THE COURT: What I'm going to do at this time is
14 I am going to advise Mr. Hunter of his rights.

15 Mr. Hunter, if you will stand, sir.

16 Madam clerk, if you will swear the defendant
17 please.

18 THE CLERK: If you will, sir, raise your right
19 hand. Do you swear to tell the truth, the whole truth,
20 and nothing but the truth so help you God?

21 THE DEFENDANT: I do.

22 THE COURT: All right. Sir, you are Troy
23 Darnell Hunter?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. At this time, I am going

1 to explain to you certain of your rights. If you do not
2 understand anything I say, please let me know. If you
3 want me to explain anything in more detail, please let me
4 know that as well. You understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. We have now reached the stage
7 of the trial where you may present your defense. You have
8 the right to claim the protections given to you by the
9 Fifth Amendment to the Constitution of the United States.
10 This amendment states in part that no person, no person
11 shall be compelled in any criminal case to be a witness
12 against himself. This means that you cannot be required
13 to testify in this case. You have the right to testify on
14 your own behalf. However, no one can make you testify.
15 This is a personal right and no one can waive this right
16 except you. If you decide to testify, you will be subject
17 to the same rule that govern other witnesses and you may
18 be examined and cross examined on any relevant issue in
19 this case.

20 In addition, if you have any convictions
21 involving dishonesty or false statement or for crimes
22 punishable by imprisonment for more than one year and this
23 court determines that the probative value of admitting
24 this evidence outweighs its prejudicial effect to you, the
25 Solicitor will be able to introduce your record to attack

1 your credibility. If you decide to testify, this decision
2 on your part must be freely, voluntarily and intelligently
3 made with the knowledge of the protections given to you by
4 the Fifth Amendment and the consequences of your decision
5 to testify. If you decide not to testify, I will instruct
6 the jurors that they cannot, that they cannot give the
7 fact that you did not testify any consideration whatsoever
8 and that there is to be absolutely no prejudice to you
9 because you did not testify. It is left entirely up to
10 you whether or not you testify. You may talk with your
11 attorney, your family, your friends or anyone else, but
12 the final decision is left entirely up to you. Do you
13 understand what I have explain to you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions about what
16 I have explain to you?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you discussed with your lawyer
19 whether or not you should testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you wish to talk with your lawyer
22 any more at this time?

23 THE DEFENDANT: Yes, sir, I will talk to him.

24 THE COURT: All right. I'm going to give you a
25 few minutes to talk to him. We will stand down for a few

1 minutes. I'm going to give you about ten minutes to talk
2 with him. We will resume at about ten after ten or
3 thereabouts. When I come back, we are at that time going
4 to talk about the jury charge before I bring this jury
5 back out. So irregardless of what defense counsel decides
6 to do here when the defense rest, certainly Mr. Deberry
7 wants you to for the record make a note that your motions
8 are renewed just to protect your client's rights on that.
9 And my rulings will remain the same I assume based upon
10 the testimony that the State -- evidence that the State
11 has put up. I certainly want you to make that motion to
12 protect your client's interest. And then we are going
13 into closing argument and charge. I want to deal with the
14 charge before I bring the jury back out.

15 MR. DEBERRY: Thank you, Judge.

16 THE COURT: I tell you what why don't you all
17 come down to my office at about a quarter after ten
18 because if there's any changes that need to be made to the
19 charge, I need to make them down there on my computer and
20 print them out.

21 I ask Mrs. O'Hara to get a lunch order for the
22 jury and hold on to that. We're not going to submit a
23 lunch order. I want to see where things kind of end up
24 where we stop and when the case concludes, but certainly
25 going to ask her to go ahead and get that order in case we

1 need to place it. She already has it.

2 Any objection to that by the State?

3 MR. OZMENT: Of course not, Your Honor.

4 THE COURT: By defense counsel?

5 MR. DEBERRY: No, Your Honor.

6 THE COURT: Thank you.

7 (WHEREUPON, a break was taken.)

8 THE COURT: All right. We had a charging
9 conference downstairs and I apologize for taking as long
10 as I did. I wanted to think about what we had discussed
11 and look at something on my own. Initially, I had within
12 my charge strong arm robbery as a lesser-included to arm
13 robbery. Mr. Deberry in chambers objected to me including
14 strong arm robbery as a lesser-included offense. And my
15 conclusion to that is that I am not charging strong arm as
16 a lesser-included offense. And this is why. All, all of
17 the evidence in this case, the undisputed evidence is that
18 there was a firearm and that there was a robbery. So I
19 think it's either straight up or down on the arm robbery,
20 period. No evidence of contrary. Therefore, I am not
21 charging strong arm as a lesser-included. On the assault
22 and battery second, I am going to charge assault and
23 battery third as a lesser-included. Anything from the
24 State at this time with regards to my conclusion?

25 MR. OZMENT: Nothing, Your Honor.

1 THE COURT: Mr. Deberry.

2 MR. DEBERRY: No, Your Honor. Thank you.

3 THE COURT: You all did not because I had to
4 change the verdict form. If you all want to come look at
5 this verdict form make sure it is okay.

6 Those of you who are in the courtroom, it is my
7 understanding that when I bring the jury back out that the
8 defense is going to rest. We are at that time going
9 straight into closing arguments and a charge on the law.
10 You will not be allowed to come in and out of this
11 courtroom during that process. I do not want the jury to
12 be distracted in any way during closing argument and my
13 charge on the law to the charge. Therefore, if you need
14 to leave and go to the bathroom, you better go now or
15 you're not going to be allowed to leave once closing
16 arguments and charge start. Everybody clear on that? All
17 right.

18 Any objection or exception to the verdict form
19 from the State?

20 MR. OZMENT: None, Your Honor.

21 THE COURT: Defense counsel?

22 MR. DEBERRY: No, Your Honor. Judge ---

23 THE COURT: Go ahead.

24 MR. DEBERRY: I just want to on the record renew
25 my motions and objections throughout the entire trial.

1 THE COURT: So noted, but I think you need to do
2 that once you rest when the jury comes back out. When
3 you rest, I will tell the jury that they've heard all the
4 evidence in this case that they're going to hear to decide
5 this case. And at that time, you need to renew your
6 objection and I will so note it for the record.

7 How long the State expect on closing arguments.

8 MR. OZMENT: Brief 20 minutes.

9 THE COURT: Defense counsel?

10 MR. DEBERRY: The same, Judge.

11 THE COURT: I would just remind you all to keep
12 your arguments to that which is in evidence and the
13 reasonable inferences to be drawn from that. Certainly, I
14 mean if you feel like in closing you got to object and you
15 got to do what you need to do to protect your client's
16 interest, I understand that. But you all been practicing
17 law long enough to know what the perimeters are. And I'm
18 not one of these judges that puts a time limit on your
19 closing arguments. However, having said that, you start
20 repeating yourself, I'm going to call you on the rug on it
21 so to speak. I'm not going to allow you to stand up there
22 and say the same thing over and over and over. I will
23 stop it at some point if that starts happening. Anything
24 else?

25 MR. OZMENT: Just after Mr. Deberry rest, we

1 going to send the jury back out and just renew motions
2 without saying what they are?

3 THE COURT: I'm not sending them back out,
4 that's what I was saying. You ready to go, Mr. Ozment?

5 MR. OZMENT: Yes, Your Honor.

6 THE COURT: All right. You going to open and
7 defense counsel gets final arguments since no evidence
8 introduced during the course of this trial no testimony.

9 Bring me the jury please ma'am.

10 Mr. Deberry, when you rest, just ahead and say
11 we renew all our motions at this time. And I will so note
12 them rather than me addressing and have to come back to
13 you.

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

15 THE COURT: All right. Mr. Deberry, you're
16 recognize.

17 MR. DEBERRY: Thank you, Your Honor. At this
18 time, the defense rest. We also like to take this
19 opportunity to renew any motions and objections we made
20 throughout this trial.

21 THE COURT: All right. Prior motions and
22 objections are so noted for the record and the Court's
23 rulings as to defense counsel's motions and objections
24 remain the same.

25 All right. Mr. Foreman and ladies and gentlemen

1 of the jury, you all have heard all of the testimony and
2 evidence that you are going to hear in this case. What we
3 are going to do now is we are going to move into closing
4 arguments. And I will charge you on the applicable law in
5 this case for you to determine this decision in this case.
6 I will remind you all, ladies and gentlemen, that closing
7 arguments in this case is not evidence in this case, is
8 not evidence in this case.

9 Mr. Ozment, you're recognized at this time for
10 closing argument.

11 MR. OZMENT: Thank you, Your Honor. May it
12 please the Court.

13 THE COURT: Yes, sir.

14 MR. OZMENT: Mr. Deberry. As in my opening, I'm
15 going to try not to knock over this microphone. Good
16 morning. I started this case talking about fear. I want
17 to end it by talking about the opposite of fear and that's
18 courage. John Wayne said that courage is feeling fear and
19 doing it any way. Mark Twain said courage is resistance
20 to fear, master of fear and not absence of fear.

21 Now, at the beginning, Mr. Deberry said I
22 couldn't tell you who did it, what it was, when it was,
23 where it was, why it was or how it was. So what I'm
24 going to do on this board is answer each one of those
25 questions start with who. There are two people that were

1 involved in this incident. First is Demetrius Holloman.
2 Mr. Holloman was the victim, he testified to that. The
3 doctor testified as to his injury. I don't think there's
4 any question he had his teeth knocked out. Second is Troy
5 Hunter, the defendant. And how do we know who on Troy
6 Hunter? I think the first person who told us they saw
7 Troy Hunter there that day was Nate. If you'll remember,
8 Nate. Nate said Troy Hunter walked up to Dixie Street
9 asked where Demetrius was, walked over popped him in the
10 mouth. That's the first witness who said who Troy Hunter.
11 Who was the next witness? Deloris Johnson sitting in her
12 car saw Troy Hunter walk up, walk around the edge of the
13 house, a minute or two later hears gun shots, see Troy
14 Hunter come back around from the house. Who? Troy
15 Hunter.

16 Finally, we had Demetrius known Troy Hunter
17 since he was a little kid, known him his entire life.
18 What Demetrius Holloman say it's Troy Hunter that walked
19 up. That's three witnesses. Eyewitnesses who saw Troy
20 Hunter there that day. I don't think there's any question
21 as to who.

22 Let's move on to where. ■ Dixie Street in the
23 City of Florence and the County of Florence. I think
24 every witness who was up here said it was at ■ Dixie
25 Street. Now, it was in the yard back whether it was

1 inside the yard, the back of the yard I don't think
2 there's any question about [REDACTED] Dixie Street in the yard,
3 side of the back. I'm not sure if that matters.

4 When? I don't know how many witnesses, but it
5 was there about everyone said it happened November 30th
6 2011, after the funeral ended. It was about 2:00 p.m.
7 everybody said that.

8 Now, we're going to get to the meat, if you
9 will. What happened? Well, again, we had Nate saw Troy
10 arrive, saw the fight take place. He said I don't know if
11 he had the gun. He could have had something in his hand.
12 You know, he was 20 yards away from me through some
13 bushes.

14 What? Demetrius Holloman sat there on the stand
15 and told you exactly what happened. He was walked up
16 behind him, popped him in the mouth, fell down, put the
17 gun on him, and remember Demetrius said I can't say what
18 he said because there's a bunch of kids in here. He said
19 give me that stuff, grabbed it out of his pocket, that
20 stuff was money. That's what happened.

21 Armed robbery. Why? Money, that's simple.
22 Now, there's some other why's I want to talk about in
23 here. You've heard some testimony the first time
24 Demetrius gave a statement in the hospital, he didn't tell
25 them it was money. You also heard from his mother that

1 she had given him 250 to \$300, heard from Demetrius that
2 he got money from his mother or his kids, just like his
3 mom said and that he had gotten some money from his
4 girlfriend that gotten that student loan refund from
5 Florence Darlington Tech, that's where the money came
6 from.

7 Now, robbery is pretty simple, people do it for
8 money, but I also want to talk about more money. There's
9 been some implication by Mr. Deberry that Demetrius got
10 up here today for money. Now, in civil court, you can sue
11 somebody to get money. This criminal court, no matter if
12 you find him guilty, not guilty or in between, we're not
13 here to talk about money. No matter what you did Troy
14 Hunter is not going to have to pay Demetrius anything.
15 Demetrius isn't going to have to pay Troy Hunter anything.
16 It doesn't make any since that Demetrius will be here
17 today testifying from that stand for money. It does make
18 sense that on November 30th 2011, Troy Hunter threw
19 Demetrius to the ground and shot next to his head for
20 money now that makes sense.

21 But why money? I run out of room. Last
22 question when, what, where, why and how. How is where the
23 gun? How do we know there's a gun? Idena Titus heard a
24 gunshot. Roderick Titus heard a gunshot. Police were
25 called. What were they called out to gunshots? Deloris

1 Johnson heard a gunshot. Demetrius Holloman he shot right
2 next to my head.

3 Finally, what do we hear today from the dentist,
4 it's consistent with the story that he got hit in the
5 mouth with a gun. A gun was used. I don't believe
6 there's any question. I don't think there's any witness
7 who says anything other than gun, gun, gun, but that's
8 important for armed robbery.

9 Armed robbery requires you of a deadly weapon.
10 The judge is going to close on the law in a minute and
11 he's going to tell you that. But every witness that has
12 testified heard a gun, saw a gun or saw the results of a
13 gun like Dr. Lawhan. This is the who, what, when, where
14 and why and how of what happened.

15 Now, I'm going to go back to fear just for a
16 minute. When Demetrius testified, he got a little
17 animated. He sat here and kept going back to Mr. Deberry
18 was questioning him. He kept saying you don't understand,
19 the man had a gun at me. The man shot next to my head,
20 you don't understand. You're trying to make me look like
21 the bad guy. You're trying to make me look like a liar.
22 What you saw there that passion is that same fear that
23 started on that day. Ever since that day, Demetrius has
24 been scared of Troy Hunter. He said that on the stand. I
25 said are you still scared of him now. Yes, I am. What

1 did his mom say, he came home, he didn't want to tell the
2 police what happened. Police came and talked to him, he
3 didn't tell them what happened. He was scared. He was
4 scared the whole time. What else did his mom say after he
5 finally told the police? He stayed at her house which was
6 weird because he didn't live there. He didn't leave her
7 house. He was scared. There's no question he was scared.
8 Now, he eventually did the right thing because he said I
9 put it in the law's hands. I went finally and told the
10 truth.

11 Now, again, Mr. Deberry believe it was for
12 money, he did that too. Here is my issue with that, just
13 because you go tell the law, we have in this state -- we
14 have a fund that pays victims who have serious medical
15 bills for what happened to him. If they've already paid
16 the bills, who pay them. If they hadn't paid their bills,
17 it pays the hospital. It's available to everyone in this
18 courtroom for the victim of violent crimes. Because he
19 was a victim of a violent crime and because he got some
20 help on his medical bills months later, doesn't mean it
21 didn't happen. Doesn't mean he wasn't scared. Because he
22 persevered through the fear because he had courage as John
23 Wayne would say. That doesn't mean it didn't happen, that
24 doesn't mean that there's a vast conspiracy of witnesses
25 who make this up to get \$900. Sure, he applied for some

1 money, most victims do. There's nothing wrong with that,
2 that doesn't mean it doesn't happen, that doesn't mean he
3 wasn't scared. I doesn't mean that he's not sitting in
4 this courtroom scared to death. Demetrius and we -- I've
5 talked about this since I first stood up here. The first
6 time Demetrius talked to the police, he didn't tell the
7 same story he told in the courtroom, absolutely that's
8 true because he was scared.

9 So I want to talk about truth and what truth is.
10 Verdict, the word verdict, Judge, probably will tell you
11 this word verdict comes from the Latin word for truth.
12 When you deliver that verdict, you're delivering truth in
13 this case. While many witnesses saw parts of this, many
14 saw it at the start, many saw what happened afterwards,
15 many heard things. The only one who could actually
16 testify as to what went down on the ground literally that
17 day was Demetrius.

18 So did he tell us the truth. I think he did.
19 In fact, I know he did. He came, told me the same story
20 he told Lee Davis. Now, whether it was \$900, \$960 or
21 thousand dollars. This was cash, it was taken 11 months
22 ago. It doesn't matter. If Troy Hunter took one dollar,
23 it's armed robbery. It doesn't matter. But Demetrius
24 Holloman sat here and Mr. Deberry hounded him and hounded
25 him and tried to get under his skin and did get under his

1 skin and what Demetrius Holloman stick with, You don't
2 understand. You weren't there that day. You didn't have
3 a gun smack your teeth out. You didn't have a gun fire
4 next to your head. He got upset and I understand why he
5 got upset. If this had happened to me and I had the
6 courage to come forward and tell the police living in
7 Demetrius' neighborhood, I be upset too if somebody put me
8 here and sat there and tried to make it look like I was
9 lying over and over sat there and tried to make me look
10 like I was lying. I understand everything Demetrius felt
11 because Demetrius was sitting here telling you the truth.

12 I'm going to close now. The judge is going to
13 talk to you about reasonable doubt, that's my burden.
14 Troy Hunter sits there innocent until you come back with a
15 verdict. I've proven Troy Hunter guilty beyond a
16 reasonable doubt. The judge is going to say that's going
17 to leave you firmly convinced, that's what reasonable
18 doubt is. It's not all doubt. Now, there always to be
19 some, you know, but firmly convinced. We said who did it.
20 We said where it happened. We said when it happened. We
21 said why it happened. We said how it happened. We had
22 tons of witnesses that heard the gun. We had witnesses
23 that saw it start. But the most telling to me is when
24 Demetrius sat here and told the truth and defended that
25 truth with his mind and certainly defended the truth with

1 his heart.

2 I ask you as the jury, I appreciate you been
3 attentive this whole trial. Sometimes juries sit here and
4 check the ceiling tiles and check the back of their
5 eyelids. You all been paying attention and I appreciate
6 it. I know Mr. Hunter appreciates it. Mr. Deberry
7 appreciates it. But I ask you to go back to that jury
8 room, think about the evidence, think about how this
9 puzzle fits together, think about the who, what, when,
10 where, why and how. And come back with a verdict that
11 speaks the truth and this case that verdict is guilty on
12 armed robbery. I appreciate your attention.

13 THE COURT: Mr. Deberry, you're recognized for
14 closing arguments.

15 MR. DEBERRY: Thank you, Your Honor. Ladies and
16 gentlemen, on the heels of Mr. Ozment's closing, I like to
17 tell you we appreciate very much your attention in this
18 case. And again, we understand and I understand, there's
19 so many other places you probably rather be than here
20 today, but this is such an important case. Although,
21 Investigator Davis didn't really think it was. Some other
22 people must not really thought it was a very important
23 case. I promise you Troy Hunter needs you to take this
24 seriously. He needs your attention and he needs your
25 decision in this case.

1 Fear, passion, courage, that's what he pends on
2 his star witness, Mr. Demetrius Holloman, and that's why
3 he tells you now he is telling you the truth because he
4 was scared, but now he's courageous. All that falls on
5 death ears the minute Mr. Holloman said I wasn't scared of
6 Troy Hunter. I was scared of what I would do to him if I
7 saw him. Come on, ladies and gentlemen, they want you to
8 believe he stayed inside for three weeks after this thing
9 took place because he was scared. He was scared for his
10 life, that's what they want you to believe is that he was
11 scared for his life so much so that he was scared to even
12 come outside. How about that fear -- what happened to
13 that fear when two days later after he realize how much it
14 was gone cost to get his teeth fixed, he came to the
15 victim's assistance program, gave Investigator Davis a
16 statement that says, well, now, since I realize I can't
17 get my mouth fix, I'm going to tell you what happened. If
18 he was scared for his life, what's more important \$960 or
19 your life. What is it?

20 If he is telling the truth now, ladies and
21 gentlemen, the truth never changes. The truth never
22 changes. When he was in the hospital that day, he told
23 them I don't know who did it, nothing was taken. Three
24 days later, I know who did it now and he stole \$900.
25 Never told them then where he had \$900 or why he had \$900,

1 but, you know, he's got pending charges for distribution
2 of drugs. But he wants you to believe that in November of
3 all times of year in November, there was a girlfriend that
4 had a pocket full of money from a student loan. Why is he
5 lying about these things? Why? He's trying to gain from
6 this situation, there's no question about it. Why I have
7 no idea? But if he was telling the truth, he would have
8 told the truth from day one. It would stay the same. He
9 wouldn't have all these inconsistencies.

10 If I can, just let me point some out for you.
11 He can't ever tell you how many teeth he's missing, okay.
12 At the beginning, it was all of his teeth. Then it was
13 eight of his teeth when he came and told Investigator
14 Davis. Then it was when he came to trial it was six of
15 those teeth. And then comes the dentist who says it's
16 three of his teeth. How many was it? We don't know. He
17 even pulled them out and showed you, so who's lying.
18 Who's lying? Somebody is. Somebody's not being truthful.
19 And what is the motive? We don't know. How many people
20 saw a gun? It's only one up here who's proven to be
21 untruthful. Did Nathan see a gun? No, he said he didn't
22 see a gun, came right by him didn't see a gun, went over
23 there in the other yard somewhere. We don't even know
24 where this happened. There's no evidence it happened at
25 [REDACTED] Dixie Street.

1 The police looked around there for about five
2 minutes. It wasn't even a case to begin with.
3 Investigator Davis told you it didn't even get assigned.
4 The witness was not cooperating. Yet, he was laying in
5 the hospital and said that he didn't know -- said somebody
6 hit him in the mouth and he didn't know who and that
7 nothing was taken from him. How does he know that that's
8 uncooperating, that that's not cooperating. It doesn't
9 add up. You hear from Deloris Johnson, from Idena Titus,
10 from Roderick Titus, that this [REDACTED] Dixie Street, there's
11 20 or 30 people there every day. You hear from Deloris
12 Johnson that people walked off, people ran off. Troy
13 Hunter walked off. No gun. I asked Investigator Davis
14 how many of those people did he find? Well, when the
15 police got there, it was nobody around.

16 Ladies and gentlemen, I will tell you this that
17 I believe that's probably a common situation in law
18 enforcement, that's when you got to go do your job.
19 That's when you need to go and investigate, that's when
20 you need to go find out what happened. How hard would it
21 have been to go around and ask people, to find out who
22 that crowd is that stands around there. Let's go find
23 some more witnesses, let's find out what happened. They
24 didn't do it and now we don't know. But we're here on a
25 serious charge on two serious charges and we don't know

1 what happened. And that, ladies and gentlemen, is a
2 reasonable doubt, that's a reasonable doubt.

3 If you're not sure about what happened, that's
4 the very definition of not being firmly convinced, that's
5 the very definition of hesitating to find this man guilty.
6 And if you hesitate in the slightest amount, the judge is
7 going to tell you you have to find him not guilty. If you
8 don't know, he's not guilty, that's this system of justice
9 that we live in. He's entitle to a not guilty because we
10 don't know what happened.

11 Ladies and gentlemen, I heard a lot of gunshots
12 in my life. I enjoy hunt and fish, being outside around
13 guns. I never heard it sound like -- a gunshot sound like
14 a truck hits a utility pole and a transformer blows up. I
15 never heard a gun shot being described as a loud crash,
16 never heard that. Deloris Johnson says, yeah, she thinks
17 it was a gunshot, but she was in the car on the cell
18 phone. Now, Nathan said I didn't hear any gunshot, I was
19 right there. But I put my headphones on, everybody else
20 was inside. So we don't know what happened, had no idea
21 what happened. And when we don't know what happens in
22 this situation, that is a reasonable doubt. It can't be
23 held against Troy Hunter that the police didn't do any
24 investigation, cant be held against Troy Hunter that
25 Demetrius Holloman wants to profit from this situation.

1 He gave a statement to Investigator Davis agree
2 I didn't realize it, but now I know the only way I can get
3 any didn't realize get any money is if I give you a
4 statement. Again, it goes back to fear. And if you think
5 that's courage, then find him guilty. I ask you to do
6 that. You think this is courage what you saw come from
7 that man, if you think that's the truth, if you think what
8 he's done and his inconsistencies are the result of fear,
9 then find Troy Hunter guilty. But I tell you it's not,
10 it's not. He's lying all across the board.

11 I like to take just a minute and talk to you
12 about this says who. Demetrius Holloman and Troy Hunter,
13 the only thing we know if we believe Nate is that they
14 might have been there and they got in a fight, that's all
15 we know. That's all we know. Nobody else they brought
16 here saw anything. Nathan just came into this existence
17 last week. We're talking about over a year after this
18 thing happened. And he didn't come into existence because
19 of an investigator. He came into existence in this case
20 because of Roderick Titus, who's got trafficking in crack
21 cocaine and distribution charges pending in this court,
22 who decided he's gone give a name about a witness that
23 might have seen something that day at the final hour, the
24 eve before trial. But if you believe Nate, there was no
25 gun. And just a fight between two individuals, that's not

1 armed robbery and that's not assault and battery. That's
2 not what we have.

3 So [REDACTED] Dixie Street absolutely no physical
4 evidence in this case. If shots were fired, we ought to
5 have some physical evidence. They're going to take his
6 words it's a .357 because he saw down the gun end of a
7 barrel, that's incredible. We don't know that. There's
8 no way to know that. When on 11-30, I'll be honest with
9 you, I don't know when he got all his teeth knocked out.
10 I have no idea and there's absolutely nothing in this
11 record that proves when that happened, nothing. Again, if
12 there was a crime scene, a bunch of teeth got knocked,
13 you're going to have some blood, maybe some teeth, maybe
14 it's all dirt, some evidence of a struggle. We don't have
15 it, so we don't know. We have no idea. But they call it
16 an armed robbery. They call it an armed robbery. It's a
17 serious charge. You don't even know if there was any
18 money taken, certainly in any evidence in the record other
19 than what Mr. Holloman tells you after he realize he
20 couldn't get his teeth fixed unless he gave a statement.
21 And then he changes the amount of money that's in his
22 pocket. Then he wants you to believe the money's in his
23 pocket because his momma gave him some to get his car
24 fixed, but then he says his momma says, no, I gave it to
25 him to buy his son a birthday present. And then he says

1 the rest of the money comes because my girlfriend gave it
2 to me, she had just gotten her student loans. Student
3 loans come in September and January. The money, that's
4 exactly why. That's exactly why we're here is because
5 Demetrius Holloman wants money. And that's the only way
6 he figured he could get some.

7 Ladies and gentlemen, think about it when he was
8 in the hospital on 11-30, the police go talk to him. If
9 he was scared, I can understand not going to tell on who
10 did it to you. I'm not going to do that, I'm scared for
11 my life, that's understandable. But why he didn't tell
12 them he was robbed. Why didn't he tell them then that he
13 was robbed, what difference would it have made. Why,
14 that's a reasonable doubt. I tell you why later he told
15 them he was robbed because he comes up here and they tell
16 him, yeah, we got this victim's assistance program. It
17 will pay you for your injuries, but you got to be
18 cooperative. You got to tell us what happened.

19 Ladies and gentlemen, it's not there. It's not
20 there. And how with a gun. It's not evidence of a gun.
21 Most people don't even know what they heard. One of them
22 said they heard it crash. The other one said they heard a
23 transformer, no shell casings. There's no gun. Certainly
24 hadn't been proven that there was a gun. Without that
25 gun, it can't be an armed robbery, can't be armed. So we

1 don't have armed robbery.

2 And then back down to assault and battery second
3 degree, okay. And just a second. In order for you to
4 find this defendant guilty for assault and battery in a
5 second degree, there has to be moderate bodily injury,
6 which means that physical injury requiring treatment to an
7 organ system of the body other than the skin, muscles and
8 connected tissues of the body except when there is
9 penetration of the skin and muscles and connected tissues
10 that require surgical repair of the complex nature or when
11 treatment of the injuries requires use of anesthesia. You
12 all understand that, more power to you. I never
13 understood it. If you believe that they got in a fight,
14 there's no assault and battery if it's mutual. If you
15 believe otherwise, if you believe moderate bodily injury
16 occurred, Mr. Holloman will have you believe that extreme
17 bodily injury occurred and got all his teeth knocked out.
18 We don't even know how it happened or if it happened or
19 who did it. We don't have any idea. We don't have any
20 police work. Thank them for what they do, I know that we
21 need them. Thank the good Lord that we have them, but in
22 a situation where they're bringing these serious charges
23 against a member of the community, we need them to be just
24 a little bit more. We need them to be able to prove what
25 happened.

1 Ladies and gentlemen, they haven't done it.
2 They haven't done it. And if you believe just like --
3 just like Demetrius Holloman told you, that there's only
4 three teeth knocked out, then dismiss this case. Dismiss
5 this case because my six teeth were knocked out. My eight
6 teeth were knocked out. All my teeth were knocked out,
7 but he told you. He said the doctor comes in here and
8 says only three teeth were knocked, then dismiss this
9 case. They want you to believe he told on him because of
10 fear, but then he said, no, I wasn't scared of Troy. I
11 was just scared of what I might do to Troy. It doesn't
12 add up, ladies and gentlemen. It doesn't add up.

13 Now, the judge is gone tell you this is very
14 important. That as jurors in this case, you are the
15 finders of fact, that means you as a jury each and every
16 one of them of the members of the jury decide what
17 happened in this case. You find the facts as you heard
18 from that witness stand and any of the evidence that comes
19 through that witness stand.

20 You find the facts and he's also going to tell
21 you that the credibility of these witnesses is up to you.
22 And what the credibility of the witness means is the
23 believability, how much do you believe a witness. And
24 he's going to tell you that you are entitle by the law to
25 believe any witness you want to. You can believe all of

1 what they say, part of what they say or none of what they
2 say. That's the power of a juror.

3 And when I started this case, I told you that we
4 picked you because we feel like you're all individuals.
5 You all have your own mind and your own ability to make up
6 your own mind. And if there's a doubt in any one of you
7 all minds about what happened and then I ask you to find
8 Troy Hunter not guilty. I ask you to do that because I
9 don't think they have proven what they have to prove to
10 find him guilty of these charges. Thank you very much.

11 MR. OZMENT: Your Honor, the State also have a
12 brief motion, but we can do it at side bar.

13 (WHEREUPON, bench conference was on the record.)

14 MR. OZMENT: The State would like to make a
15 motion for the Court to reconsider the charge for common
16 law robbery.

17 THE COURT: Based upon?

18 MR. OZMENT: Based upon, there's no doubt that
19 whether a gun was used is an issue in this case. Mr.
20 Deberry just outlined the facts that tend to prove the gun
21 was not used. I believe, Your Honor, stated it was based
22 on there is no evidence a gun was not used?

23 THE COURT: I'm not going to, I understand your
24 objection. However, there's no disputed evidence. I
25 understand your position.

1 (WHEREUPON, bench conference ended.)

2 THE COURT: All right. Ladies and gentlemen, it
3 is now my duty as the trial judge under the Constitution
4 of this state to charge and instruct you on the law
5 applicable to this case. It is your duty as jurors to
6 accept and apply the law as I will now state it to you.
7 Furthermore, it is your exclusive duty to decide all the
8 issues of fact in this case and to determine the effect,
9 value, weight and truth of the evidence. Both the State
10 and the defendant have a right to expect that you will
11 carefully consider and evaluate the evidence and apply the
12 law of this case to it, so that in the end both the State
13 of South Carolina and the defendant will receive a fair
14 and impartial trial. I want you to understand that when I
15 use the word defendant, I refer to Mr. Troy Darnell
16 Hunter.

17 Furthermore, it is important to understand that
18 the indictment in this case alleges two different offenses
19 against the defendant. The charges alleged in the
20 indictment are armed robbery and assault and battery in
21 the second degree. To these charges, the defendant has
22 entered a plea of not guilty. This plea of not guilty
23 places the burden of proof on the State to prove the guilt
24 of the defendant to you, the jury, beyond a reasonable
25 doubt.

1 As I mentioned above, the indictment in this
2 case alleges two separate and distinct offenses against
3 the defendant. You must decide each charge separately on
4 the evidence and the law applicable to it, uninfluenced by
5 your decision as to any other charge. The defendant may
6 be convicted or acquitted on any or all of the offenses
7 charged. You will be asked to write a separate verdict of
8 guilty or not guilty for each charge alleged in the
9 indictment.

10 I remind you, ladies and gentlemen, the fact
11 that the defendant was arrested, charged and indicted in
12 this case is not evidence in this case and cannot be
13 considered by you as evidence of guilt in this case, nor
14 does it create any presumption or inference of guilt. The
15 indictment is simply the formal written instrument, which
16 contains the charges made against the defendant. It is
17 the formal document by which this case is brought into
18 this court.

19 Now, during this trial you and I've had separate
20 duties to perform as the trial judge. It is my
21 responsibility to preside over this trial, and I also have
22 the duty to rule upon the admissibility of the evidence
23 offered during the process of this trial. In that regard,
24 you are to consider only the competent evidence before
25 you. And you are to disregard from your mind any

1 testimony ordered stricken from the record of this case
2 during the progress of this trial, if there was any. And
3 you are to consider only the testimony which has been
4 presented from this witness stand together with any
5 exhibits admitted into the record of this case and any
6 stipulations of counsel made into the record, if there
7 were any.

8 Furthermore, I have the additional duty to
9 charge you on the applicable law of this case. And in
10 that regard, I am the sole judge of the law of this case.
11 It is your duty to accept and apply the law as I state it
12 to you. If you have any preconceived ideas as to what the
13 law is or what the law ought to be and it does not agree
14 with what I tell you the law is, you are obligated under
15 your oath to abandon these preconceptions because you are
16 sworn to accept the law precisely as I state it to you.

17 In this trial, you are the sole and exclusive
18 judge of the facts and I am the judge of the law. Do not
19 infer that I have any opinion about the facts in this case
20 from anything I have said during the course of this trial
21 in ruling upon the admissibility of evidence or otherwise
22 or from anything that I say during the course of this
23 charge to you. In this regard, the law simply does not
24 permit me to have an opinion about the facts. As jurors,
25 it is your duty alone to determine the effect, value,

1 weight and truth of the evidence presented to you during
2 the course of this trial.

3 In determining what the facts in this case are,
4 you must judge the credibility, which simply means the
5 believability of the witnesses and the value of weight to
6 be given to their testimony. You alone must decide the
7 force, effect and truth of the testimony. In making this
8 decision, there are many things you may and should take
9 into consideration such as the appearance and manner of
10 the witness on the stand and characteristic often referred
11 to as the demeanor of the witness, was witness the
12 forthright or hesitant, was witness' testimony consistent
13 or did it contain discrepancies, what was the ability of
14 the witness to know the facts about which he or she
15 testified, did the witness have a cause or reason to be
16 biased and prejudiced in favor of the testimony he or she
17 gave, was the testimony of the witness corroborated or
18 made stronger by other testimony and evidence or was it
19 made weaker or impeached by such other testimony and
20 evidence.

21 As jurors please understand, you have the right
22 to believe a small portion of a witness' testimony and
23 disregard the larger portion or vice versa. You may
24 believe all of a witness' testimony or none. You may
25 believe the testimony of a single witness against that of

1 many witnesses or the other way around.

2 In exercising your mental processes and
3 attempting to decide the truth, the law simply requires
4 that you exercise your good judgment, your common sense,
5 your sense of logic and reason, and your experiences in
6 life. You then apply these attributes to the evidence and
7 apply the law as I state it to you and thus arrive at a
8 verdict.

9 Now, it is vital to understand, ladies and
10 gentlemen, that the defendant is presumed under the law to
11 be innocent of these charges. The defendant has no
12 obligation to prove his innocence. It is a fundamental
13 rule of our law that a defendant, irrespective of the
14 seriousness of the charge or charges against him, is
15 always presumed innocent of the crimes for which he is
16 charged, unless and until his guilt has been proven by
17 evidence that satisfies you, the jury, beyond a reasonable
18 doubt.

19 The presumption of innocence is not a mere legal
20 theory or a legal phrase. The presumption of innocence is
21 very important and you need to understand that this
22 presumption accompanies the defendant from the time of his
23 arrest and appearance in this court and continues with the
24 defendant even after you retire to the jury room to
25 deliberate. In other words, the defendant receives the

1 benefit of the presumption of innocence until the very end
2 of this trial. When you, the jury, will deliberate upon
3 the evidence and decide whether the State has proven his
4 guilt beyond a reasonable doubt.

5 Now, ladies and gentlemen, what is a reasonable
6 doubt in the law? A reasonable doubt is the kind of doubt
7 that would cause a reasonable person to hesitate to act.
8 Proof beyond a reasonable doubt is proof that leaves you
9 firmly convinced of the defendant's guilt. There very few
10 things that we know in this world that we know with
11 absolute certainty. So even in criminal cases, the law
12 does not require proof that overcomes every possible
13 doubt. However, if based upon your consideration of the
14 evidence, you are firmly convinced that the defendant is
15 guilty of the crimes charged, you must find him guilty.
16 If on the other hand, you think there is a real
17 possibility that he is not guilty, you must give him the
18 benefit of the doubt and find him not guilty. Jurors
19 please understand that reasonable doubt may arise from
20 evidence which has been presented in the case or from the
21 lack of evidence in the case. It is your responsibility
22 to determine whether or not reasonable doubt exist as to
23 the guilt of this defendant.

24 I charge you that the defendant is entitled to
25 every reasonable doubt arising in the whole case. If upon

1 any issues of fact essential to conviction in a verdict of
2 guilty, you have a reasonable doubt as to how that issue
3 should be resolved. It would be your duty to resolve that
4 reasonable doubt in favor of the defendant.

5 Thus, in summary, it is important to understand
6 that a defendant is not required to prove his innocence.
7 Instead, the State is required by law to prove every
8 essential element of the offenses charged against the
9 defendant by evidence which satisfies you of his guilt
10 beyond a reasonable doubt, only then can you convict the
11 defendant and find him guilty.

12 Now, there are two types of evidence which are
13 generally presented during a trial direct evidence and
14 circumstantial evidence. Direct evidence is the testimony
15 of a person who claims to have actual knowledge of a fact
16 such as an eyewitness. It is evidence which immediately
17 establishes the main fact to be proved. Circumstantial
18 evidence is proof of a chain of facts and circumstances
19 indicating the existence of a fact. It is evidence which
20 immediately establishes collateral facts from which the
21 main fact may be inferred.

22 Circumstantial evidence is based on inference
23 and not on personal knowledge or observation. The law
24 makes absolutely no distinction between the weight or
25 value to be given to either direct or circumstantial

1 evidence.. Nor is a greater degree of certainty required
2 of circumstantial evidence than of direct evidence. You
3 should weigh all of the evidence in the case. If after
4 weighing all of the evidence, you are not convinced of the
5 guilt of the defendant beyond a reasonable doubt, you must
6 find the defendant not guilty.

7 Now, during the course of this trial, you heard
8 the testimony of police officers. Please understand that
9 the testimony of a police officer is not entitled to more
10 weight than that of any other witness. You are the sole
11 judges of the credibility of a witness and you are not to
12 give more weight to a police officer's testimony solely
13 because he or she is a police officer. Rather, you should
14 judge an officer's testimony by the same standards that
15 you apply to all other witnesses.

16 You also heard the testimony, ladies and
17 gentlemen, of an individual that was qualified as a expert
18 witness. As I told you when this individual was
19 qualified, the rules of evidence ordinarily do not permit
20 witnesses to testify to opinions or conclusions. However,
21 an exception exist to the rules for individuals who are
22 qualified as expert witnesses. A witness who by education
23 and experience, who has become an expert in some art,
24 science or profession or calling, may state an opinion as
25 to relevant and material matter in which the witness

1 claims to be expert and may also state the reasons for the
2 opinion.

3 You, ladies and gentlemen, should consider any
4 expert opinion received in evidence in this case like any
5 other evidence, give it the weight that you think it
6 deserves. If you decide that the opinion of an expert
7 witness is not based on sufficient education and
8 experience or if you conclude that the reasons given in
9 support of the opinion are not sound or that the opinion
10 is outweighed by other evidence, you may disregard the
11 opinion entirely.

12 Furthermore, an expert witness' testimony is to
13 be given no greater weight than that of other witnesses
14 simply because the witness is an expert. Further, you are
15 not required to accept an expert's opinion even though it
16 is not contradicted.

17 Now, ladies and gentlemen, you heard testimony
18 of individuals who had past criminal records. Let me tell
19 you that an individual who has a past criminal record is
20 competent to testify during a trial. A past record does
21 not affect the ability of that witness to testify. The
22 past record may only be considered by you, if at all, in
23 determining the witness' believability. Remember, you are
24 the sole judge of facts in this case and of the
25 believability of any and all of the witnesses.

1 There's also been evidence presented that
2 witnesses have made prior statements which are not
3 consistent with the witnesses present testimony. You may
4 use this evidence to decide whether to believe the
5 witness. You may also use evidence of earlier
6 contradictory statements to determine the truth of those
7 statements. It is up to you to decide whether to believe
8 the earlier statements or the testimony given at trial.

9 If a witness has shown to have knowingly
10 testified untruthfully concerning any material matter, you
11 may consider this in determining whether to trust the
12 witness' testimony as two other matters. You may reject
13 all the testimony of that witness or give all or part of
14 the testimony the weight you think it deserves.

15 Now, ladies and gentlemen, I instruct you and
16 emphasize that the fact that the defendant in this case
17 did not testify is not a factor, is not a factor to be
18 considered by you in any way in your deliberation and in
19 your consideration on the question of the guilt or
20 innocence of the defendant. It must not be considered by
21 you in any manner whatsoever. A defendant has the
22 constitutional right to remain silent and the assertion of
23 this right must not be considered by you in your
24 deliberations. I repeat under your oath you are to draw
25 no conclusion whatsoever from the fact that the defendant

1 did not testify. The fact that this defendant did not
2 testify should not even be discussed in the jury room.
3 The burden of proof, as I have stated to you, is on the
4 State. The defendant is not required to prove his
5 innocence. The burden of proof remains on the State to
6 prove guilt beyond a reasonable doubt.

7 Now, ladies and gentlemen of the jury in order
8 to establish criminal liability, criminal intent is
9 required. For example, the mental state required to be
10 proven by the state for a particular crime might be
11 purpose, intent, knowledge, recklessness or criminal
12 negligence. Criminal intent must be proven by the State
13 beyond a reasonable doubt. Criminal intent is always a
14 matter that must be determined by the jury from the
15 circumstances surrounding the situation. There is no way
16 to prove intent to a mathematical certainty. There is no
17 way that medical science can dissect a person's brain and
18 determine what the person had in mind. So the law says
19 that criminal intent may be inferred from the
20 circumstances shown to have existed. This is how you make
21 a determination of whether or not the element requiring
22 intent was present. It is not necessary to establish
23 intent by direct and positive evidence. But intent may be
24 established by inference in the same way as any other fact
25 by taking into consideration the acts of the parties and

1 all the facts and circumstances of the case. Criminal
2 intent is a mental state and conscious wrongdoing. It is
3 up to you to determine what the defendant intended to do
4 based on the circumstances shown to have existed.
5 Criminal intent can arise from action or a failure to act.
6 It may arise from negligence, recklessness or an
7 indifference to duty or to consequences that is considered
8 by the law to be the equivalent of criminal intent.

9 Now, the defendant in this case, ladies and
10 gentlemen, is charged with the offense of armed robbery.
11 In order to prove this offense, the State must first prove
12 beyond a reasonable doubt that the defendant took personal
13 property from the person or took personal property which
14 was in the presence of another person. Properties in the
15 presence of a person if it is within the person's reach,
16 inspection, observation or control so that the person
17 could if not overcome with violence or prevented by fear,
18 keep possession of the property.

19 The State must also prove beyond a reasonable
20 doubt that the defendant carried the property away
21 intending to permanently deprive the owner of the property
22 and to keep the property for defendant's own use. The
23 slightest removal of the property or the complete
24 possession of the property even for an instant by the
25 defendant is sufficient to show taking and carrying away

1 of the property. The taking and carrying away of the
2 property must have been done with violence or by putting
3 the owner of the property in fear of violence.

4 Finally, the State must prove beyond a
5 reasonable doubt that the defendant was armed with a
6 deadly weapon during the robbery. A deadly weapon is any
7 article, instrument or substance, which is likely to cause
8 death or great bodily injury whether an instrument has
9 been used as a deadly weapon depends on the facts and
10 circumstances of each case. The following are examples of
11 instruments, which may be deadly weapons a pistol, a
12 shotgun, a riffle, a dirk, a dagger, a knife, a slingshot,
13 metal knuckles, a razor, gasoline, a fire bomb or Molotov
14 cocktail and lighter fluid. A gun may be a deadly weapon
15 even if it is not operating. The defendant, ladies and
16 gentlemen, is also charged ---

17 Can the lawyers approach for just a minute?

18 (WHEREUPON, a bench conference was held in the
19 presence of the jury, but out of the hearing of the
20 jury.)

21 THE COURT: Ladies and gentlemen of the jury, I
22 just gave examples of what can be considered a dead deadly
23 weapon under the armed robbery charge.

24 Let me also tell you this that a fist can be
25 considered to be a deadly weapon. A hand or a fist does

1 not normally, is not normally considered a deadly weapon.
2 However, under some circumstances depending on the manner
3 and means of its use, the wounds inflicted and other
4 relevant facts a hand or a fist may be considered a deadly
5 weapon. It is for you to decide in this case beyond a
6 reasonable doubt whether or not a hand or a fist is a
7 deadly weapon.

8 Now, the defendant is also charged, ladies and
9 gentlemen, with assault and battery in the second degree.
10 A person commits the offense of assault and battery in the
11 second degree if the person unlawfully injures another
12 person or offers or attempts to injure another person with
13 the present ability to do so and moderate bodily injury to
14 another person results or moderate bodily injury to
15 another person could have resulted.

16 Moderate bodily injury means physical injury
17 requiring treatment to an organ system of the body other
18 than the skin, muscles and connective tissue of the body,
19 except when there is penetration of the skin, muscles and
20 connective tissues that require surgical repair of a
21 complex nature or when treatment of the injuries requires
22 the use of regional or general anesthesia.

23 Now, if you find that the State has failed to
24 prove beyond a reasonable doubt that the defendant
25 committed assault and battery in the second degree, you

1 must then determine whether the State has proven beyond a
2 reasonable doubt that the defendant committed the
3 lesser-included offense of assault and battery in the
4 third degree. A person commits the offense of assault and
5 battery in the third degree if the person unlawfully
6 injures another person or offers or attempts injure
7 another person with the present ability to do so.

8 Now, ladies and gentlemen of the jury, I am now
9 drawing near the end of my charge and I want you to
10 clearly understand that you are not partisans or advocates
11 for the State of South Carolina or the defendant. It is
12 your duty by your joint deliberations to determine the
13 truth in this case, giving to the defendant, giving to the
14 defendant the benefit of every reasonable doubt on each
15 and every issue. Then to the facts which you determine to
16 be true, you should take and apply the law which has been
17 given to you by this Court and thus arrive at a verdict
18 which speaks the truth in this case. In fact, the word
19 verdict, which has a Latin derivative means a true saying.
20 Thus, when you have accomplished these responsibilities,
21 you will have satisfied your oath as jurors. And you will
22 have discharged your duty to this court. Now, once you
23 retire to the jury room, the bailiff will give the verdict
24 form to the foreman. When you, the jury, arrive at a
25 verdict as to the offenses charged in this case, the

1 foreman will select the verdict as to each charge on the
2 verdict form. If the State has failed to prove the guilt
3 of the defendant beyond a reasonable doubt, your verdict
4 will be not guilty. Likewise, if the State has proven the
5 guilt of the defendant beyond a reasonable doubt, your
6 verdict will be guilty. Once a decision has been made,
7 the foreman will check whichever choices the verdict of
8 the jury as to each charge.

9 Now, let me tell you this, the verdict, ladies
10 and gentlemen, that you render in this case must be the
11 verdict of each and every juror. It must be your
12 unanimous verdict. All 12 jurors must agree on the
13 verdict which you authorize the foreman to write for the
14 jury.

15 Now, ladies and gentlemen, I want you to further
16 understand that the order in which the choices of verdict
17 appear on the verdict form are not suggestive of any
18 verdict on the part of this court. The verdict in this
19 case is to be determined by you, the jury, not the Court.

20 Furthermore, ladies and gentlemen, please
21 understand that even though I will give the verdict form
22 to the foreman, it is not his verdict alone. It is the
23 verdict of all 12 of you. And I emphasize again it must
24 be unanimous. I'm also going to give you all a copy of
25 these instructions in written form. During your

1 deliberations, you may refer to the instructions to guide
2 your decision making. You must consider the instructions
3 as a whole and not follow some and ignore others. Please
4 return these instructions to the Court at the time that
5 your verdict is rendered.

6 In just a minute, I'm going to ask that you
7 retire to your jury room. And when you go to the jury
8 room, do not begin your deliberations until you are
9 instructed to do so. The law requires that I consult with
10 the attorneys to make sure that I have not left anything
11 out of these instructions. After I have spoken with the
12 attorneys, the bailiff will bring in a copy of these
13 instructions and the verdict form along with any exhibit
14 admitted into evidence. During your deliberations should
15 you have any questions, pen and paper will be provided in
16 the jury room. Any questions that you may have, you all
17 as a jury may have, Mr. Foreman, you are to write those
18 questions out and date and sign it and knock on the door,
19 let the bailiff know you have a question provide that
20 piece of paper to them and they will get it to me and I
21 will address it accordingly. The bailiff will also be
22 outside the door for when you reach a verdict, again knock
23 on the door and let the bailiff know that you all have
24 reached a verdict. He or she will in turn let me know and
25 I will get you back in the courtroom as quickly as

1 possible for that verdict to be announced.

2 Now, before I let you retire to the jury room,
3 this is the verdict form. First question on the verdict
4 form, as to the charge of armed robbery: We, the jury,
5 unanimously find the defendant, Troy Darnell Hunter,
6 either not guilty or guilty. Once that question has been
7 asked, you proceed to question two. Question two, as to
8 the charge of assault and battery in the second degree:
9 We, the jury, unanimously find the defendant, Troy Darnell
10 Hunter, either not guilty or guilty. Below that are
11 further instructions which read if you find the defendant
12 guilty of assault and battery in the second degree, which
13 is question number two, you do not answer question three.
14 However, if you find the defendant not guilty of assault
15 and battery in the second degree, which is question number
16 two, then you do proceed to question number three to
17 determine whether or not the State has proven beyond a
18 reasonable doubt the lesser-included offense. Once you
19 all have reached a verdict and the boxes as to your
20 unanimous decision has been checked, Mr. Foreman, you need
21 to sign the verdict form and date it.

22 Now, ladies and gentlemen, at this time, you may
23 retire to the jury room. Let me ask this question though
24 everybody on the jury feeling okay? For the record, note
25 that everybody has indicated they are okay. You can

1 retire to the jury room, but do not, do not begin your
2 deliberations until you are instructed to do so. Thank
3 you.

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

5 THE COURT: All right. If the lawyers come
6 forward please. Any exception or objection to the charge
7 by the State?

8 MR. OZMENT: None, Your Honor.

9 THE COURT: By defense counsel?

10 MR. DEBERRY: None, Your Honor.

11 THE COURT: All right. You all -- I had my -- I
12 had to go back down and make a change on the verdict form,
13 none of it's caught initially. There two instances in
14 here under this paragraph under question number two that
15 have reference number three. The first one that you all
16 looked at still had number four up here, so I had to have
17 that changed. I change the one down here not the one
18 before that, so that was a change on the verdict form.
19 You all look at the evidence. Here's the verdict form and
20 the jury charge.

21 Ms. Olivia, I need you to get Ms. Marilyn Gordon
22 and Ms. Chantel Pompey out of the jury room. Once they're
23 out, you can hand them those documents and exhibits that
24 you have. And tell them to begin their deliberations.

25 It's my understanding that these jurors need to

1 be back in the morning.

2 MR. OZMENT: Yes, Your Honor.

3 THE COURT: Ms. Gordon and Ms. Pompey, I want to
4 thank you for your attentiveness throughout the course of
5 this trial. The reason I ask whether or not everybody
6 feels okay, we select alternates. Usually, we select one
7 alternate, but sometimes two. But we select alternates in
8 case somebody has emergencies and get sick, et cetra. I
9 always ask before I send the jury back whether or not
10 everybody feels okay. But our law does not allow once a
11 case goes to the jury, does not allow alternates to stay
12 in and deliberate on the case, okay.

13 Now, having said that, it don't mean you not
14 gone get -- you all got to be back here tomorrow morning
15 at 9:30. We going to pick another jury and we going to
16 start another trial tomorrow. I want to thank you for
17 your service. And if I don't get a chance to tell you
18 that after we start tomorrow, let you know how much I
19 appreciate you all being here. I know it's not
20 convenient, but I can't tell you how important it is.
21 This is not TV, this is real life. I have difficult
22 decisions to make up here. I have to make a lot of them.
23 I tell lawyers all the time. I love for you all to make
24 decisions about your case. But if you can't make a
25 decision, I'll be happy to. Somebody ain't going to be

1 happy. So I want to thank you for being here. I
2 appreciate you being here. Thank you all for being here.
3 You are free for the rest of the day. Be back at 9:30 in
4 the morning in this courtroom. Thank you. Have a good
5 day.

6 (WHEREUPON, alternate jurors were excused.)

7 THE COURT: All right. We will stand at ease
8 right now.

9 (WHEREUPON, the jury began deliberations at
10 12:03 p.m.)

11 THE COURT: All right. Got a question from the
12 jury. The question from the jury is that they would like
13 to see Nate's transcript, which I'm assuming they are
14 referring to Nathan Orgbon. Nobody else testified with a
15 name even close to that, okay. What I can do is bring
16 them back out and advise them that they can listen to his
17 testimony again. Certainly, we don't have a transcript at
18 this point. That's the only option. Any objection by the
19 State on that?

20 MR. OZMENT: No, Your Honor.

21 THE COURT: Defense counsel.

22 MR. DEBERRY: No, Your Honor.

23 THE COURT: And what I would propose is that
24 they listen to his testimony in its entirety, in its
25 entirety if they so desire. I'm debating here of whether

1 or not to respond in written format that we don't have a
2 transcript and they can listen to his testimony in its
3 entirety rather than bring them out here and inform them
4 of that and send them back to discuss that and then bring
5 them back out here. The State have a position on that?

6 MR. OZMENT: Either way, Your Honor, it might be
7 less trouble just write it and pass it back and then see
8 what they say.

9 THE COURT: Mr. Deberry.

10 MR. DEBERRY: No problem.

11 THE COURT: Any preference as to that?

12 MR. DEBERRY: No, sir.

13 THE COURT: Okay. What I'm going to write on
14 here is that there is no transcript. However, if you wish
15 to listen to his testimony, you can listen to it in its
16 entirety. Can the lawyers approach please? Just look at
17 what I have written on here to see if either one of you
18 have any objection to that. Any objection by the State?

19 MR. OZMENT: Should be an S on its but otherwise
20 no.

21 THE COURT: I'm testing you.

22 Mr. Deberry.

23 MR. DEBERRY: No, sir.

24 THE COURT: All right. I'm going to read this
25 into the record just before I pass this note back. And

1 this has been reviewed by both attorneys without
2 objection. There is no transcript. However, if you wish,
3 you may listen to his testimony in its entirety please let
4 the Court know your desire. Ms. Olivia, if you would give
5 this back to them and let them read it. I need this back
6 because I'm going to make this a court's exhibit. They
7 are not to dispose of that.

8 BAILIFF: Do you want them to knock on the door
9 with whatever their response is?

10 THE COURT: Whatever their response is, yes.

11 (WHEREUPON, a pause in the proceedings.)

12 THE COURT: Okay. Foreman of the jury has sent
13 note back out in response to what I wrote to them and
14 their response is no thanks. You're free to look at the
15 note, if you so desire.. I'm going to ask that it be
16 marked as Court's Exhibit Number 1.

17 (WHEREUPON, Court's Exhibit No. 1 was marked for
18 the record.)

19 THE COURT: Anything from the State?

20 MR. OZMENT: Not unless Keshia wants to type it
21 all out real quick for them.

22 THE COURT: Defense counsel?

23 MR. DEBERRY: No, Your Honor.

24 THE COURT: You all can come look at it. Any
25 objection to it being marked as Court's Exhibit Number 1?

1 MR. OZMENT: No, Your Honor.

2 MR. DEBERRY: No, sir.

3 THE COURT: Without objection Court's Exhibit
4 Number 1. Thank you. We will stand at ease.

5 (WHEREUPON, court at ease.)

6 THE COURT: The jury has sent out a note which
7 will be marked as Court's Exhibit Number 2 note reads as
8 follows: What happens when there is a split decision on a
9 charge? In discussing this matter at side bar with the
10 lawyers, this is what my intention is -- first of all, let
11 me mark this as Court's Exhibit Number 2.

12 (WHEREUPON, Court's Exhibit No. 2 was marked for
13 the record.)

14 THE COURT: It is my intention to bring the jury
15 out and give them an Allen charge from reminding them in
16 response to the charge that they have been unable to reach
17 a decision on. And I remind them that their verdict as to
18 each charge must be unanimous, as to each charge must be
19 unanimous. Bear with me just a second here. The Allen
20 charge reads and I'm not reading it in its entirety right
21 now. But this is what I think is applicable. A portion
22 of it says you have a duty to make every reasonable effort
23 to reach an unanimous verdict. And I think it needs to
24 say that you have a duty to make every reasonable effort
25 to reach an unanimous verdict as to each charge. Any

1 objection to that, Mr. Ozment?

2 MR. OZMENT: That statement no, Your Honor.

3 THE COURT: Mr. Deberry.

4 MR. DEBERRY: Your Honor, I don't have any
5 objection to that. I would like to just ask and make sure
6 -- I mean, that's a fair statement, but also I would like
7 to conclude the fact that, you know, if no unanimous
8 verdict can be reached, then that's a mistrial.

9 THE COURT: I'm getting there, I'm just going
10 through the charge right now. As I'm reading through it,
11 I'm pointing out the discrepancies and what I believe
12 needs to be addressed as it pertains. Just bear with me,
13 okay.

14 The next sentence in doing this you should
15 consult one another, express your own views and listen to
16 the opinions of your fellow jurors, tell each other how
17 you feel and why you feel that way, discuss your
18 differences with open minds. Although, the verdict of the
19 jury must be unanimous, every one of you has the right to
20 your own opinion. The verdict you agree to must be your
21 own verdict. The result of your own convictions. And you
22 should not give up your firmly held beliefs merely to be
23 in agreement with your fellow jurors. The majority should
24 consider the minorities position. And the minority should
25 consider the majorities position. You should carefully

1 consider and respect the opinions of each other and
2 reevaluate your position for reasonableness, correctness
3 and impartiality. You must lay aside all outside matters
4 and re-examine the questions before you based on the law
5 and the evidence in this case. If you do not agree on a
6 verdict in this case -- and it says this if you do not
7 agree on a verdict in this case, I must declare a
8 mistrial. I believe that the appropriate statement there
9 if you do not agree on a verdict as to a particular
10 charge, then the Court would declare a mistrial as to that
11 charge. You disagree with that, Mr. Ozment?

12 MR. OZMENT: I agree with that, Your Honor.

13 (WHEREUPON, a pause in the proceedings.)

14 THE COURT: In that case, it does not mean
15 anybody wins, it just means that at some future time says
16 I will try this case with some other jury sitting where
17 you now sit. And I think the appropriate thing is that
18 charge will be tried with some other jury sitting where
19 you sit. You disagree with that, Mr. Ozment?

20 MR. OZMENT: I agree, Your Honor.

21 MR. DEBERRY: I agree, Your Honor, except where
22 you state retry it.

23 THE COURT: I mean, it's up to them, right.
24 This means that at some future time that charge that you
25 cannot unanimously agree upon will be tried with some

1 other jury sitting where you sit now. The same
2 participants will come and the same lawyers will ask
3 basically the same questions and get basically the same
4 answers and we will go the through whole process again.
5 You were selected in the same manner and from the same
6 source as any future jury will be. There is no reason for
7 me to supposed that the case will ever be submitted to 12
8 more intelligent, impartial, conscientious and competent
9 jurors than you or that more clearer evidence will be
10 produced on one side or the other. I therefore ask you to
11 return to your deliberations. Mr. Ozment.

12 MR. OZMENT: No objection from the State, Your
13 Honor.

14 THE COURT: Mr. Deberry.

15 MR. DEBERRY: No, Your Honor.

16 THE COURT: All right. If you will bring me the
17 jury please, ma'am.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:46.)

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen of the jury, I have received your note asking
22 what happens when there is a split decision on a charge.
23 Pursuant to your inquiry, let me answer that question for
24 you with the following charge to you. When you are unable
25 to agree on a verdict in a case as to each charge, let me

1 remind you that your verdict must be unanimous as to each
2 charge. When a matter is in dispute, it isn't always easy
3 for even two people to agree. So when 12 people must
4 agree, it becomes even more difficult. In most cases,
5 absolute certainty cannot be reached or expected.
6 However, you have a duty to make every reasonable effort
7 to reach a unanimous verdict as to each charge. In doing
8 this, you should consult with one another, express your
9 own views and listen to the opinions of your fellow
10 jurors, tell each other how you feel, and why you feel
11 that way, discuss your differences with open minds.
12 Although, the verdict of the jury must be unanimous as to
13 each charge, every one of you has the right to your own
14 opinion.

15 The verdict you agree to must be your own
16 verdict. The result of your own convictions and you
17 should not give up your firmly held beliefs merely to be
18 in agreement with your fellow jurors. The majority should
19 consider the minorities position. And the minorities
20 should consider the majorities position. You should
21 carefully consider and respect the opinions of each other
22 and reevaluate your position for reasonableness,
23 correctness and impartiality. You must lay aside all
24 outside matters and re-examine the questions before you
25 based on the law and evidence in this case. If you do not

1 agree on a verdict in this case as to a particular charge,
2 I must declare a mistrial as it relates to that charge.

3 In that case, it does not mean that anyone wins.
4 It just means that at some future time that charge that
5 you cannot unanimously agree upon will be tried with some
6 other jury sitting where you now sit. The same
7 participants will come and the same lawyers will ask
8 basically the same questions and get basically the same
9 answers and we will go through the whole process again.

10 You are selected in the same manner and from the
11 same source as any future jury will be. And there is no
12 reason for me to suppose the case will ever be submitted
13 to 12 more intelligent, impartial, conscientious and
14 competent jurors than you or that more or clearer evidence
15 will be produced on one side or the other. I therefore
16 ask that you return to your deliberations. Thank you.

17 (WHEREUPON, the jury retire to the jury room at
18 2:49 pm.)

19 THE COURT: Any exception or objection to what
20 I've instructed the jury, Mr. Ozment?

21 MR. OZMENT: No, Your Honor.

22 THE COURT: Mr. Deberry.

23 MR. DEBERRY: No, Your Honor.

24 THE COURT: All right. We will stand at ease
25 with regards to this case. I have given Keshia that

1 second note and it has been marked as Court's Exhibit
2 Number 2.

3 (WHEREUPON, court at ease.)

4 THE COURT: Mr. Deberry, you all come in here
5 please. One of the jurors -- Mr. Deberry, is back in here
6 with his client, and Mr. Ozment. One of the jurors said
7 they need to make a telephone call to call her husband to
8 pick up a kid from school. I'm going to allow Ms. Olivia
9 to pull that juror out. When you get her out, you need to
10 tell the other jurors to stop deliberating until she
11 returns to the jury room. You are to accompany her in the
12 use of that telephone to make that telephone call. Any
13 objection by the State?

14 MR. OZMENT: None, Your Honor.

15 THE COURT: Any objection by defense counsel?

16 MR. DEBERRY: No, Your Honor.

17 THE COURT: Okay. Go ahead, Ms. Olivia.

18 (WHEREUPON, deliberations stopped at 3:06 p.m.)

19 (WHEREUPON, deliberations continued at 3:08
20 p.m.)

21 (WHEREUPON, court at ease.)

22 THE COURT: It is my understanding that the jury
23 has a verdict in this case. Anything from the State
24 before I bring the jury in?

25 MR. OZMENT: Nothing, sir. Mr. Holloman and his

1 mother are on the way up, but I didn't have the prediction
2 of what time exactly they would be here.

3 THE COURT: Sir?

4 MR. OZMENT: I don't have a prediction of
5 exactly what time they would be here.

6 THE COURT: Who?

7 MR. OZMENT: Mr. Holloman and his mother.

8 THE COURT: Okay. Anything from the defense
9 counsel?

10 MR. DEBERRY: No, Your Honor.

11 THE COURT: All right. I will remind everybody
12 in the courtroom, I understand that any case, any criminal
13 case is tried is very serious and emotions can run high.
14 But I will remind you to keep your emotions in check
15 regardless of what the verdict is. Your failure to do so
16 could result in this court holding you in contempt of
17 court and sentencing you to a period of incarceration. If
18 you do not believe that you could keep your emotions in
19 check, now is the time for you to leave the courtroom.

20 Mr. Hunter, that includes you as well as keeping
21 your emotions in check. The Court could hold you in
22 contempt as well and run anything consecutive. You
23 understand? Sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Bring me a jury please,

1 ma'am.

2 (WHEREUPON, the jury came into open court with a
3 verdict at 4:13.)

4 THE COURT: Okay. Madame clerk.

5 THE CLERK: Members of the jury, have you agreed
6 upon a verdict?

7 (WHEREUPON, the jury foreperson gave the jury
8 verdict form to madam clerk.)

9 THE COURT: Madam clerk, you may publish the
10 verdict.

11 THE CLERK: The State of South Carolina vs. Troy
12 Darnell Hunter indictment 2012-GS-21-692, as to the charge
13 of armed robbery, we, the jury, unanimously find the
14 defendant, Troy Hunter, guilty.

15 As to the charge of assault and battery in the
16 second degree, we, the jury, unanimously find the
17 defendant, Troy Darnell Hunter, guilty. Dated January the
18 16th 2013, sign foreperson Howard Godwin.

19 Members of the jury, if this is your verdict,
20 please raise your right hand?

21 That is everyone, Judge.

22 (WHEREUPON, all jurors' hands were raised.)

23 THE COURT: Anything from defense counsel right
24 now, Mr. Deberry?

25 MR. DEBERRY: No, Your Honor.

1 THE COURT: All right. Ladies and gentlemen of
2 the jury, you all have fulfilled your responsibility of
3 jury service. You all have been deliberating, it is
4 approximately 4:14. And this case went back to you all at
5 approximately 12 o'clock or shortly thereafter. However,
6 I realize that you got your lunch at about the time you
7 went back to begin your deliberations. I want to thank
8 you for your service in this case. At this time pursuant
9 to a verdict of guilt at this time, it is now the Court's
10 role and responsibility to handle sentencing. And you all
11 are free to go at this time. I want to thank you for your
12 service. However, you may stay for sentencing, if you so
13 desire. You may stay for sentencing, if you so desire.
14 But if you so desire, you may leave as well. I have been
15 told by the Solicitor's office that we are going to pick
16 another jury tomorrow morning and so you're going to have
17 to be back at 9:30 in the morning. We gone pick another
18 jury and start another trial. I've also been told that
19 trial will not last three days. I promise you we will not
20 be here on Saturday. You may or may not be placed on that
21 jury. They're trying a case downstairs and I don't know
22 what the status of that is, but you may or may not be put
23 on another jury tomorrow. But I need you to be back here
24 tomorrow morning at 9:30, okay. If you so desire to
25 leave, you're free to leave at this time.

1 (WHEREUPON, the jury was dismissed.)

2 THE COURT: If you will bring the defendant
3 around for sentencing.

4 MR. OZMENT: Your Honor, I need to get a
5 sentencing sheet. I think Mr. Tucker just went to print
6 it. I would also ask that I have a chance -- Mr. Holloman
7 said he was on his way up here for sentencing. I think he
8 does have a right to be here and be heard.

9 THE COURT: All right.

10 (WHEREUPON, a pause in the proceedings.)

11 MR. OZMENT: May I approach, Your Honor?

12 THE COURT: Yes.

13 MR. OZMENT: Here's some sentencing sheets on
14 each of them. I have shown them to Mr. Deberry. I just
15 spoke with Mr. Holloman and he was in the parking lot, so
16 he should be here momentarily.

17 (WHEREUPON, a pause in the proceedings.)

18 THE COURT: Is the State ready to proceed now?

19 MR. OZMENT: Yes, Your Honor.

20 THE COURT: Mr. Deberry, if you come around with
21 your client for sentencing please. Before I hear from
22 you, Mr. Deberry ---

23 Anything the State wishes to add at this time?

24 MR. OZMENT: Yes, Your Honor. Certainly, I
25 think Mr. Holloman would like to say a word at the

1 appropriate time. Also, I would like to inform the Court
2 as a matter of housekeeping first the other counts of the
3 indictment attempted murder and possession of a firearm
4 for -- by a person convicted of a violent felony will both
5 be nol-prossed for various reasons. As far as
6 Mr. Hunter's record, his N.C.I.C. makes his record look a
7 little worse than it is. Looking at his N.C.I.C., I
8 originally thought this was going to be LWOP case and had
9 every intention of doing. However, once I went to pull
10 sentencing sheets to serve him with LWOP, things were pled
11 down. So this is -- the record I want to give you does
12 necessarily reflect N.C.I.C., but I can tell you anything
13 that differ from his N.C.I.C. is because I personally I
14 looked at a sentencing sheet. 1993 C.D.V., unlawful
15 pistol, 1994 strong armed robbery and burglary third
16 degree, 1996 ---

17 THE COURT: Slow down please, sir. '94 strong
18 arm.

19 MR. OZMENT: And burglary third.

20 THE COURT: Okay.

21 MR. OZMENT: 1996 common law robbery, 1998
22 assault with intent to kill, and discharging a firearm
23 into a dwelling, 2005 conspiracy to commit murder and 2009
24 criminal domestic violence.

25 THE COURT: 2009 C.D.V.?

1 MR. OZMENT: Yes, Your Honor.

2 THE COURT: All right.

3 MR. OZMENT: Certainly, the State would ask for
4 the maximum sentence in this case, the jury has spoken.
5 This individual has a long record of both violent crime.
6 And certainly not -- it's not a drug record. It's all
7 crimes against persons as oppose to what we would say is a
8 victimless crime. So I think this is a pattern of
9 behavior and we would ask that the Court certainly come
10 down harshly here today.

11 THE COURT: All right. Before I turn it over to
12 you, Mr. Deberry...

13 Mr. Holloman, anything you wish to tell me?
14 Anything you do say I want you to direct your statements
15 to me, okay? Not towards Mr. Hunter. Anything you wish
16 to tell me?

17 MR. HOLLOMAN: Yes, I want to ask him how could
18 he do that to me. When I feel like, I got nothing but
19 love for their family. I probably got people in their
20 family who will never speak to me again. And I have
21 nothing but love for their family, so now it's just messed
22 up for both sides of the family right now.

23 THE COURT: Anything else from the State?

24 MR. OZMENT: Nothing from the State, Your Honor.

25 THE COURT: All right. Mr. Deberry, I will be

1 happy to hear from you, sir.

2 MR. DEBERRY: Thank you, Your Honor. Obviously,
3 the jury spoken and delivered a verdict in this case. And
4 we understandably respect that verdict. Judge, we ask
5 that you take into consideration the facts of this case,
6 some of the doubts that may have been present. We
7 understand that he's been convicted. We ask you to just
8 take and consider the words that are posted in this
9 courthouse, To do justly, to love mercy, to walk humbly
10 with God. We ask that you have mercy on Mr. Hunter here
11 today. I personally don't think that anybody should be
12 punished for exercising their right to go to trial. I
13 think that this was a case where a trial was warranted in
14 every fashion. We ask that you don't hold that against
15 Mr. Hunter in any way. We ask that you have mercy on him
16 and not give the maximum on these sentences. Is there
17 anything you want to say? Mr. Hunter does want me to
18 address the Court on the conspiracy to commit murder. His
19 understanding just a general conspiracy. We ask that you
20 take all these things into consideration when you consider
21 your sentence in this matter.

22 THE COURT: All right. Mr. Hunter, anything you
23 wish to tell me? You certainly are not required to say
24 anything and I don't want you say anything that could
25 possibly affect any appellate rights that you may have.

1 THE DEFENDANT: Your Honor, first of all, I know
2 the jury already came back with their verdict. I
3 disagree, but I know it is what it is. But I'm talking
4 about me and this man did get in a fight. All this other
5 stuff was nothing but lies. I know you got the verdict,
6 but I ask that you don't punish me with all that time for
7 a bunch of lies. It don't make no sense. I know I chose
8 to pick 12 and 12 judge me, but I'm talking about -- I
9 don't know what to say. I'm not going to apologize for
10 fighting this man for doing what he did to me. They don't
11 care about the other side of what happened. I know it
12 probably don't matter now. But I don't know, Your Honor,
13 I just whatever you do, I just am just...

14 THE COURT: All right. Anything from the family
15 members that are standing with Mr. Hunter?

16 VICTORIA HUNTER: Yes, sir, I just ---

17 THE COURT: Please state your name for the
18 record.

19 VICTORIA HUNTER: Victoria Hunter. I'm his
20 sister. I just ask that you take into consideration and
21 have mercy on him.

22 THE COURT: Ma'am, anything you wish to say? If
23 so, please state your name for the record.

24 FAMILY MEMBER: No, sir.

25 THE COURT: Why did the State chose this

1 particular case and not to prosecute under the attempted
2 murder and the possession of a firearm by a person
3 convicted of a violent crime.

4 MR. OZMENT: It's a different reason for each of
5 those. The person convicted of a violent felony, Your
6 Honor, simple answer, that's the issue with the N.C.I.C.
7 Once I pulled sentencing sheets, he technically does not
8 have what we now classify as violent felony on his record.
9 So that charge would not have stood. As far as the
10 attempted murder, that was a tactical decision when we
11 decided to go to trial. As I investigated the case
12 preparing for trial speaking to Mr. Holloman, it became
13 more and more evident to me that the shots that were fired
14 that they were not in an attempt to kill Mr. Holloman.
15 They were in an attempt to scare Mr. Holloman. I felt
16 like trying this case in front of the jury, it was better
17 play a strong suit than throw up something that might
18 succeed. But, you know, might just confuse the jury and
19 give the defense meat. So I chose instead to not try to
20 sell those shots as attempting to kill anyone but instead
21 as an act of intimidation as part of the armed robbery.
22 And that's why we decided not to put that in front of the
23 jury.

24 THE COURT: Mr. Hunter, you are 36 years old
25 now?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Where is your mother, Mr. Hunter?

3 THE DEFENDANT: My mother she has breast cancer.

4 I think she had to go to the doctor.

5 THE COURT: How about your father?

6 COURT REPORTER: I didn't hear him, Judge.

7 THE COURT: Speak up for me, okay.

8 THE DEFENDANT: My father he was working in

9 Darlington and they wouldn't let him off today, but he was

10 here the last two days.

11 THE COURT: How many children do you have?

12 THE DEFENDANT: Two, Your Honor.

13 THE COURT: How old are they?

14 THE DEFENDANT: My oldest daughter 21. My

15 youngest is 11.

16 THE COURT: Anything else from the State?

17 MR. OZMENT: Nothing from the State, Your Honor.

18 THE COURT: Anything further from defense

19 counsel?

20 MR. DEBERRY: No, Your Honor.

21 THE COURT: All right. On indictment

22 2012-GS-21-692, which is the assault and battery second

23 degree, the defendant's committed to the state department

24 of corrections for a period of three years.

25 The armed robbery, which is under the same

1 indictment number indictment 2012-GS-21-692, the defendant
2 is committed to the state department of corrections for a
3 period of 30 years, concurrent in all respects. How long
4 has he been in jail?

5 MR. DEBERRY: Defendant been in jail since
6 December the 15th 2011.

7 THE COURT: I need to know -- December 15th?

8 MR. DEBERRY: Yes, sir.

9 THE COURT: Giving him credit for 13 months.
10 That will conclude this matter.

11 MR. OZMENT: Thank you, Your Honor.

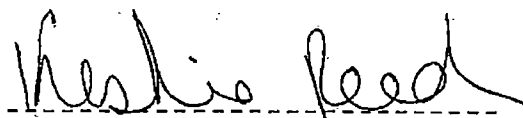
12 END OF REQUESTED TRANSCRIPT
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 313, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Florence County, South Carolina, on the 14th through 16th
days of January, 2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 7th day
of November 2013.



Keshia Reed, Court Reporter

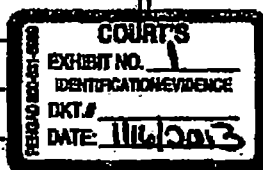
Would like to see Nate's
transcript

Wm D. Dahn 1/16/13

There is no transcript.
However, if you wish,
you may listen to his
testimony in its entirety.
Please let the court know
your desire.

No Thanks

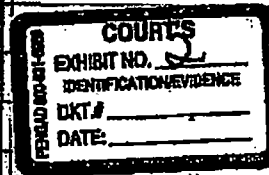
Wm D. Dahn 1/16/13



What happens when
there is a split
decision on a charge?

Harold J. Gubert

1-16-13



ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAY 05 2014

Appeal from Florence County

SC Court of Appeals

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TROY HUNTER,

APPELLANT

APPELLATE CASE NO. 2013-000227

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
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	5
CONCLUSION	16

TABLE OF AUTHORITIES

Cases

<u>Allen v. United States</u> , 164 U.S. 492 (1896).....	12, 15
<u>Jolly v. State</u> , 314 S.C. 17, 443 S.E.2d 566 (1994).....	15
<u>State v. Burroughs</u> , 328 S.C. 489 2 S.E.2d 408 (Ct. App. 1997).....	14
<u>State v. Davis</u> , 371 S.C. 170, 638 S.E.2d 57 (2006).....	13
<u>State v. Dennis</u> , 337 S.C. 275, 523 S.E.2d 173 (1999).....	13
<u>State v. Whisonant</u> , 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999)	14

Rules

Rule 403, SCORE.....	15
Rule 801(c), SCORE.....	12, 13
Rule 802, SCORE.....	13
Rule 803(2), SCORE	13

STATEMENT OF ISSUE ON APPEAL

Whether the court erred in admitting a statement made by the complainant to his mother identifying Appellant as the person who assaulted him since the statement was clearly hearsay and did not meet any of the exceptions to the hearsay rule and since the statement was unduly prejudicial and cumulative?

STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant for armed robbery and second degree assault and battery. R. 236 – R. 237. His case was called to trial on January 14, 2013 before the Honorable D. Craig Brown, and a jury. R. 1. Steven DeBerry represented Appellant and Matthew Ozment was the assistant solicitor. R. 1.

At the conclusion of the trial on January 16, 2013, the jury found Appellant guilty. R. 227, ll. 11-22. Judge Brown sentenced Appellant to thirty years imprisonment for armed robbery and three years concurrent for second degree assault and battery. R. 234, l. 21 – 235, l. 10.

This appeal follows.

ARGUMENT

The court erred in admitting a statement made by the complainant to his mother identifying Appellant as the person who assaulted him since the statement was clearly hearsay and did not meet any of the exceptions to the hearsay rule and since the statement was unduly prejudicial and cumulative.

Relevant Facts

Around midday on November 30, 2011, Demetrius Holloman¹ and Roderick Titus attended a funeral. At the conclusion of the funeral, Holloman and Titus took a cab to Titus' home on Dixie Street in Florence, where he lived with his mother and children.² R. 17, l. 15 – 18, l. 22. Titus testified that he went inside the house to change out of his “church clothes” and that he saw Holloman walk to the side of the residence. Titus claimed that while he was inside the house, he heard a loud noise and his sisters came inside screaming. R. 19, l. 1 – 20, l. 9. Titus said that the loud noise sounded “like a crash” and “could have been” a gunshot. R. 20, ll. 10-16; R. 23, l. 19 – 24, l. 4. Titus testified that he had no direct knowledge of what happened that day and that he never saw Appellant at the residence. The only person Titus remembered seeing that day at his home was Nate Orgbon. R. 21, l. 20 – 22, l. 11.

Nate Orgbon testified that on the afternoon of November 30, 2011, he was “chillin” in the backyard of the Titus' house on Dixie Street when Appellant came into the yard

¹ Holloman is often referred to by his nickname, Tad or Tad Pole, in the record.

² The record established that the backyard of this residence was a local hangout and that law enforcement often had problems with the residence due to the number of people that hung out in the yard. Titus' mother often called the police to report suspicious activity and a man had previously been shot in the backyard. Whenever police would respond to the home, everyone would scatter. R. 125, l. 18 – 127, l. 11.

looking for Holloman. Orgbon claimed that it was not unusual that Appellant was looking for Holloman because "everybody always looking for [Holloman]" and "it ain't no secret" why. After someone in the yard told Appellant where Holloman was, Appellant approached Holloman and the two "started fighting." Orgbon claimed that Appellant "just punched the man" with his fist. After observing the initial punch, Orgbon testified that "that was my cue to leave," so he jumped on his bicycle and left. Orgbon explained that he left because he knew "it was gone escalate maybe" and that "the police was coming." R. 33, l. 25 - 38, l. 25.

Andron Brown, an officer with the Florence Police Department, testified that he responded to Dixie Street on the afternoon of November 30, 2011 in response to an anonymous complaint regarding a gunshot. R. 41, ll. 1-24. After speaking to several witnesses, Brown learned that an altercation had taken place, that Holloman was injured, and that Appellant was the suspect. However, neither Holloman nor Appellant were on scene when Brown arrived. Moreover, Brown, and the four to five other officers that responded to the scene, found no evidence in the yard of shots being fired or of a fight, including no shell casings or blood. R. 42, l. 3 - 44, l. 12; R. 46, l. 24 - 49, l. 5. Holloman did not initially report the incident. R. 52, ll. 2-16.

Idena Titus-Simmons, Roderick Titus's mother, testified that she was inside her home changing clothes after attending the funeral when she heard a "boom" that sounded like "a truck hit a transmitter" or "like a pole because it sounded loud." Her husband, however, thought it sounded like a gunshot. After making sure her children and grandchildren were safe, she told someone to call 911. Titus-Simmons explained that the police came to the house and searched the yard, but she was not sure whether they found

any evidence. She stated that she did not see Appellant at her home that day and that she did not know what caused the loud noise. R. 55, l. 7 – 63, l. 8.

Deloris Titus-Johnson, Roderick Titus' aunt, testified that on the afternoon of November 30, 2011 she was parked outside the front of the Titus' home on Dixie Street talking on her cell phone. She explained that as she was sitting in the car, she saw Appellant and another man pull up to the residence in a burgundy car. Both Appellant and the other man got out of the vehicle and went into the backyard. Titus-Johnson explained that Appellant came to the house every day and that it was normal for him to be there. She testified that she could not see the backyard, but that there were a "bunch of people" back there, at least six or seven. Titus-Johnson claimed that she subsequently heard two gunshots and that after she heard the gunshots, she saw Appellant and the man that he was with walk back to the front yard and leave in the burgundy car. According to Titus-Johnson, the occupants of the yard all left, some walking and some running. Appellant left just like everyone else. R. 65, l. 1 – 72, l. 14.

Demetrius Holloman testified that on November 30, 2011, he went to a funeral with Roderick Titus. He claimed that sometime that morning, Appellant called him and asked him when the funeral would be over and where he would be afterwards. Holloman said that he told Appellant that the funeral was ending and that he was going to the Titus' residence. Holloman and Titus took a cab back to the house on Dixie Street. Holloman explained that when they arrived at the house, Titus went inside, returned with a cigarette for Holloman, and then went back inside the house to take his shoes off and change his clothes. Holloman testified that he went to the front door to get the cigarette and then walked to the side of the

house to get his phone charger that was plugged into the side of the house. R. 75, l. 11 – 77, l. 19.

Holloman claimed that as he was kneeling down to remove the charger from the wall, Appellant came out of nowhere and struck him in the mouth with the butt of a .357 revolver. Holloman said that he fell to the ground and Appellant struck him again on the head with the gun. According to Holloman, Appellant then stood over him with the gun and demanded, "Where is it at?" He claimed that at that point Appellant fired a shot right by his head and then again demanded, "Where is it at?" Appellant then ripped Holloman's pant pocket and took the money that was inside. Holloman testified that Appellant then said, "Say something, I'll kill you" and walked back to the burgundy car. R. 77, l. 20 – 79, l. 22.

Holloman claimed that he had "a thousand dollars cash money" in his pocket that Appellant allegedly stole from him. He explained that his mother had given him three hundred dollars to fix his car so that his children had transportation and that his "girl" had given him seven hundred dollars from her student loan "refund check." R. 80, l. 9 – 81, l. 16.

After Appellant left the scene, Holloman testified that he walked to his mother's house and told her what happened. His mother then "called a ride" and the two went to the hospital. Holloman claimed that he had six teeth knocked out: two on the top and four on the bottom. While at the hospital, he spoke to the police, but he told the police that he did not know who assaulted him. Holloman claimed that he did not tell the police then who assaulted him because he claimed he was afraid of Appellant and feared Appellant would retaliate and kill him. Holloman also failed to tell the police that day that he was allegedly robbed. R. 81, l. 23 – 84, l. 17; R. 90, l. 25 – 92, l. 10.

The hospital referred Holloman to a dental specialist to treat his teeth. The specialist informed Holloman that he would have to undergo surgery to repair his teeth and that it would cost him between fifteen hundred and twenty-five hundred dollars. After learning the cost of the surgery, Holloman went to speak with the Victim's Advocate program to see if the program could assist him in treating his teeth. R. 83, l. 9-19; R. 84, l. 18 – 85, l. 23. He then spoke to the police and allegedly told them the truth about what happened.

Holloman admitted during his testimony that he had a pending charge for distribution of marijuana. He was also impeached with a 2007 conviction for possession of marijuana, second offense. R. 86, l. 19 – 89, l. 11.

Debra Singleton, Holloman's mother, was the next to testify. She stated that she had given Holloman between two hundred and fifty to three hundred dollars "for a big wheeler for my oldest grandson." This was in contrast to Holloman's testimony in which he claimed his mother had given him three hundred dollars to fix his car. Singleton claimed that on November 30, 2011, she was standing in her kitchen doing the dishes when Holloman called her name. Defense counsel, anticipating testimony containing hearsay, immediately objected. R. 107, l. 17 – 108, l. 6.

Appellant objected to Singleton testifying about any statements Holloman may have made to his mother when he came to her home sometime after the incident took place. Defense counsel argued that Holloman had already taken the stand and testified that after the incident he walked to his mother's house and told her that Appellant had assaulted him. Defense counsel argued, "He's already testified to that. So the statement we're talking about is absolutely hearsay and it's from an available witness that's-already testified to the facts.

So this is merely an attempt to bolster his position - - his credibility and it's purely hearsay."

R. 108, l. 2 - 109, l. 12.

The solicitor argued that the statement was not hearsay because it was not being offered for the truth of the matter asserted. He argued that defense counsel had placed Holloman's credibility at issue during cross-examination by discussing Holloman's pending charges and prior record and by highlighting the disparities between Holloman's various accounts of the incident given to law enforcement and his testimony. The solicitor claimed that the state sought to admit the statement to corroborate Holloman's testimony and thus the statement "would fall outside the rule of hearsay." R. 109, ll. 14-25.

The court then questioned defense counsel as to why the statement, assuming its hearsay, did not fall into one of the hearsay exceptions, specifically the present sense impression and the excited utterance exceptions. Defense counsel argued that the statement did not fall under either exception because "of the time lines between the event and when he might have come to her house. [The mother] testified she lived somewhere else. She wasn't there. And it wasn't a freshly committed . . . when you look at the case law under present sense impression, you're talking about something that's happening immediately?" Defense counsel further argued that the statement was not an excited utterance because there was no evidence that it was a "knee jerk reaction" and Holloman "didn't want to tell anybody what happened. . . he certainly wasn't excited about it." R. 110, l. 18 - 111, l. 21.

Additionally, defense counsel argued that to allow the mother to testify as to what Holloman told her would be extremely unfair. He stated, "That is way too dangerous of a statement to admit . . . they're just offering it to say that he said it. You know, that goes to the very core of what they're trying to prove, that's not fair." R. 110, ll. 3-8. Defense

counsel added, "I don't understand how it's fair for them to . . . now put the mother up and say the same thing, that's clearly an out of court statement by another witness, that's hearsay." R. 111, ll.17-21.

The court ultimately ruled that the statement was not hearsay because it was not being offered for the truth of the matter asserted. Rather, the court found that the state sought to admit the statement "simply pursuant to the victim's credibility being attacked." The court, however, held that even if it was hearsay, the statement fell under the excited utterance exception and was admissible. The court also acknowledged defense counsel's argument that admitting the statement would be prejudicial and unfair, but still held the statement was admissible. R. 113, l. 24 – 115, l. 8.

Singleton then continued that when Holloman came into the kitchen "[h]e said, momma, and when I turned to look at him, I just see blood everywhere. And I say what happened to you, He say momma that boy hit me. I say what boy. He say Troy [Appellant] hit me in the mouth with a gun." Singleton testified that she took Holloman to the emergency room due to his injuries. At the hospital, a police officer came to speak with Holloman and Singleton was asked to leave the room. She stated that she tried to persuade Holloman to tell the police what happened, but Holloman was allegedly afraid of Appellant and thought Appellant would kill him. Eventually, Holloman told the police what happened. R. 116, l. 10 – 119, l. 22.

Lieutenant Lee Davis of the Florence Police Department testified that he was contacted by a woman from the Victim's Advocate program who informed Davis that Holloman had contacted the program for assistance. The woman told Holloman that he had to cooperate with law enforcement before he could receive assistance from the program.

Davis went to speak with Holloman. Holloman allegedly told Davis that Appellant had assaulted him and hit him in the mouth with a .357 revolver. Davis recorded Holloman's statement and took photographs of his injuries. R. 127, l. 12 – 128, l. 20. In his statement, Holloman claimed only nine hundred dollars was stolen from him as opposed to the one thousand dollars he claimed during his testimony. R. 143, ll. 12-23. After speaking with Holloman, Davis obtained a warrant for Appellant's arrest and Appellant was subsequently arrested December 15, 2011. R. 132, ll. 2-6; R. 133, ll. 23-25.

James Lawhan, the oral surgeon who examined Holloman, testified that Holloman had three fractured teeth – one on the bottom and two on the top – and two missing teeth, both on the bottom. In total, Holloman had five teeth that were either knocked out or damaged beyond repair as opposed to the six teeth that Holloman claimed he was missing as a result of this incident. R. 169, l. 4 – 170, l. 25. Lawham recommended that the three teeth that were fractured be completely removed. R. 174, l. 15 – 175, l. 24. However, Lawham did not perform any surgery on Holloman. R. 176, l. 24 – 177, l. 1.

The defense put the state to its burden of proof and presented no witnesses. During jury deliberations, the jury sent a note asking, "What happens when there is a split decision on a charge?" As a result, the judge issued an Allen charge. R. 221, l. 6 – 226, l. 16; See Allen v. United States, 164 U.S. 492 (1896).

Discussion

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE.

An excited utterance is a "statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" and may be admitted at trial as an exception to the hearsay rule. Rule 803(2), SCRE. "The rationale behind the excited utterance exception to the hearsay rule is that the startling event suspends the declarant's process of reflective thought and, consequently, reduces the likelihood of fabrication." State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006) (citing State v. Dennis, 337 S.C. 275, 284, 523 S.E.2d 173, 177 (1999)).

Despite the state's argument at trial, Holloman's statement to his mother was hearsay because it was being offered to prove the truth of the matter asserted. That is, the state sought to admit the statement to bolster Holloman's testimony and prove that Appellant was the one who robbed and assaulted him. Because the statement was being used by the state to prove its case, i.e. that "Troy [Appellant] hit me in my mouth with a gun," the statement is hearsay. See R. 116, ll. 14-19. As defense counsel argued at trial, the statement "goes to the very core of what [the state is] trying to prove." R. 110, ll. 3-8.

Furthermore, not only is the statement hearsay, but there is insufficient evidence that Holloman's statement was an excited utterance. There was no evidence presented at trial that Holloman was in an excited state when he made the statement to his mother. Holloman's statement was not spontaneous, but was given in response to his mother's questioning. The evidence showed that Holloman was extremely hesitant about revealing the identity of the man who allegedly attacked him. As defense counsel noted, "he didn't want to tell anybody what happened . . . he certainly wasn't excited about it." R. 111, ll. 10-14. Additionally, a considerable time period had passed between when Holloman was allegedly assaulted and when he allegedly made the statement to his mother. His mother

was not on scene. Holloman's testimony was that after the incident, he walked to his mother's residence. There was sufficient time during the walk to his mother's home for Holloman to reflect on the incident and fabricate what happened.

In State v. Burroughs, 328 S.C. 489, 496, 492 S.E.2d 408, 411 (Ct. App. 1997), "the trial court allowed the police officer who first took the victim's statement and a nurse who examined the victim in the emergency room to testify about the victim's statements to them describing the assault." This Court held that "the testimony was hearsay and amounted to impermissible bolstering of the victim's trial testimony." Id. This Court also noted that the statements did not amount to an excited utterance because there was "a great deal of time for reflection" before the victim made the statements to the police officer and nurse. Id. at 500, 492 S.E.2d at 413.

In State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999), this Court held the admission of the victim's statements to her stepmother regarding details of the assault under the excited utterance exception to the hearsay rule was reversible error where a considerable time period had passed between the assault and the statement giving the victim time to reflect. This Court further held the stepmother's testimony was cumulative because it mirrored that of the victim and improperly bolstered the victim's story in the minds of the jury. Id. at 156, 515 S.E.2d at 772.

This Court should likewise find that an ample period of time had passed between when Holloman was allegedly assaulted and when he allegedly made the statement to his mother, which provided Holloman sufficient time to reflect on the incident, and that the mother's testimony was improper bolstering. The state was attempting to bolster

Holloman's trial testimony since he had previously told the police that he did not know who assaulted him.

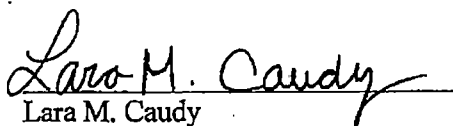
Additionally, under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence." As defense counsel argued at trial, "it's already been testified to by the declarant [Holloman]." Therefore, it was merely cumulative to Holloman's testimony and should have been excluded as improper corroboration. See Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994) ("Improper corroboration testimony that is *merely cumulative to the victim's testimony*, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.") (emphasis in original).

Not only was it cumulative, but it was also unduly prejudicial and "unfair." See R. 110, ll. 3-8; R. 111, ll. 17-21. The statement went to the very core of what the state was trying to prove. The jury was obviously on the fence between an acquittal and a conviction as evidenced by the fact that the judge had to issue an Allen charge before the jury reached its verdict. See R. 221, l. 6 – 226, l. 16. Wrongfully admitting Holloman's hearsay statement likely tipped the jury in favor of a conviction.

CONCLUSION

Based on the foregoing argument, Appellant's convictions should be vacated and this case remanded to the Florence County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in dark ink and is positioned above the printed name and title.

Lara M. Caudy
Appellate Defender

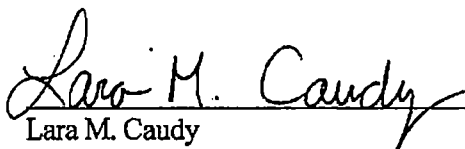
ATTORNEY FOR APPELLANT

This 5th day of May, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 5, 2014


Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

RECEIVED
MAY 05 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAY 05 2014

SC Court of Appeals

Appeal from Florence County
D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

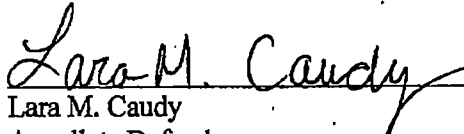
V.

TROY HUNTER,

APPELLANT

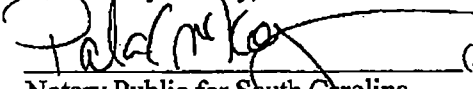
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of May, 2014.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of May, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

ORIGINAL**STATE OF SOUTH CAROLINA****IN THE COURT OF APPEALS**

Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-000227

THE STATE,

Respondent,

v.

TROY HUNTER,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

E.L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

Box Q
City-County Complex
Florence, SC 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-000227

THE STATE,

Respondent,

v.

TROY HUNTER,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

E.L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

Box Q
City-County Complex
Florence, SC 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT.....	9
The trial court properly admitted a statement made by the victim to his mother identifying Appellant as the person who assaulted him because it was not hearsay, but even if it was, the statement fell under the excited utterance exception to the hearsay rule.....	9
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases:

<u>Jolly v. State</u> , 314 S.C. 17, 443 S.E.2d 566 (1994).....	18
<u>State v. Barrett</u> , 299 S.C. 485, 386 S.E.2d 242 (1989)	18
<u>State v. Burroughs</u> , 328 S.C. 489, 492 S.E.2d 408 (Ct. App. 1997).....	16, 17
<u>State v. Commander</u> , 396 S.C. 254, 721 S.E.2d 413 (2011).....	9
<u>State v. Fulton</u> , 333 S.C. 359, 509 S.E.2d 819 (Ct. App. 1998)	11
<u>State v. Jennings</u> , 394 S.C. 473, 716 S.E.2d 91 (2011)	18
<u>State v. Kirton</u> , 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008)	9, 16
<u>State v. Kromah</u> , 401 S.C. 340, 737 S.E.2d 490 (2013)	14, 15
<u>State v. Ladner</u> , 373 S.C. 103, 644 S.E.2d 684 (2007)	13, 14, 15
<u>State v. Robinson</u> , 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004).	19
<u>State v. Sims</u> , 348 S.C. 16, 558 S.E.2d 518 (2002)	13, 14, 15, 16
<u>State v. Stahlnecker</u> , 386 S.C. 609, 690 S.E.2d 565 (2010)	9, 10, 11, 16, 19, 20
<u>State v. Whisonant</u> , 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999)	6, 7, 12, 15, 16, 17
<u>State v. Winkler</u> , 388 S.C. 574, 698 S.E.2d 596 (2010)	10, 11

Other Authorities:

Jay M. Ziller, Annotation, <i>When is hearsay statement "excited utterance" admissible under Rule 803(2) of Federal Rules of Evidence</i> , 155 A.L.R. Fed. 583 (2011).....	14
Rule 801(c), SCORE.....	9, 10
Rule 801(d)(1), SCORE.....	10
Rule 801(d)(1)(B), SCORE	10, 11, 12, 19
Rule 803(2), SCORE	10

STATEMENT OF ISSUE ON APPEAL

The trial court properly admitted a statement made by the victim to his mother identifying Appellant as the person who assaulted him because it was not hearsay, but even if it was, the statement fell under the excited utterance exception to the hearsay rule.

STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant for armed robbery, attempted murder, possession of a firearm, and second-degree assault and battery. (R.p.236-237) On January 14-16, 2013, Appellant proceeded to trial before a jury and the Honorable D. Craig Brown on the armed robbery and second-degree assault and battery charges. The State *nolle prossed* the other two charges. (R. p.229, lines 1-5.) Steven Deberry, Esquire, represented Appellant, and Matthew Ozment, Esquire, represented the State. The jury found Appellant guilty of both charges. (R. p.227.) Judge Brown sentenced him to three years' imprisonment for the second-degree assault and battery charge and thirty years' imprisonment for the armed robbery charge, to be served concurrently. (R. p.234-235.)

On January 25, 2013, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

At approximately 2:00 p.m. on November 30, 2011, Demetrius Holloman (Victim) and Roderick Titus returned to Titus's home after attending a funeral. (R. p.18, lines 4-17; R. p.76, lines 15-23.) When he arrived at the home, Victim walked to the side of the house, where he had his cell phone charger plugged in, and kneeled down to unplug it. (R. p.77, lines 5-25.) While Victim was kneeling down, Appellant came up behind him and hit him in the mouth with a .357 Magnum. (R. p.77, line 25-R. p.78, line 22; R. p.79, lines 23-25.) Victim fell to the ground, and Appellant hit him on the top of the head with the gun, stood over him, and asked where "it" was. (R. p.78, line 24-R. p.79, line 3.) Appellant shot the gun right by Victim's head and then reached into Victim's pants pocket, taking \$1,000. (R. p.79, lines 3-14; R. p.80, lines 9-12.) Appellant threatened to kill Victim if he said anything, and then Appellant left the scene. (R. p.79, lines 14-22.)

Immediately after he saw Appellant drive away, Victim got up and walked straight to his mother's house and told her what happened and who did it. (R. p.81, line 17-R. p.82, line 10; R. p.85, lines 13-15.) Initially, Victim told police he did not know who did it, but he eventually gave Appellant's name. (R. p.85, lines 16-23.) About two weeks later, a tip led to the arrest of Appellant for armed robbery, attempted murder, possession of a firearm, and second-degree assault and battery. (R. p.44, line 13-R. p.46, line 2; R. p.236-237.) Appellant proceeded to trial before a jury and the Honorable D. Craig Brown on the armed robbery and second-degree assault and battery charges after the State *nolle prossed* the other two charges. (R. p.2, lines 12-24; R. p.229, lines 1-5.)

At trial, Roderick Titus testified that he, Victim, and Appellant were all friends. (R. p.14, line 6-R. p.15, line 11.) He testified that on November 30, 2011, he and Victim

attended a funeral together and then returned to his residence. (R. p.18, lines 4-13.) Titus went inside the home to change clothes, while Victim walked to the side of the house. (R. p.19, lines 1-10.) Titus testified he heard a "loud bang noise" that could have been gunshots, at which time his sisters ran inside screaming and upset. (R. p.19, lines 10-24; R. p.20, lines 3-16; R. p.23, lines 19-25.)

Nate Orgbon testified he was also at Titus's house on November 30, 2011, and saw Appellant there later in the day, after lunch. (R. p.33, line 25-R. p.34, line 19.) He testified Appellant was looking for Victim and someone told Appellant where to find Victim. (R. p.35, lines 14-24.) Orgbon explained Appellant walked up to Victim and "clean clock"ed him with his fist. (R. p.36, lines 11-12.) Orgbon testified, "He just punched the man, you know what I mean, so they fighting." (R. p.36, lines 12-13.) He stated he left after he saw Victim "go back" after Appellant hit him. (R. p.36, lines 14-15.)

The State called Idena Titus Simmons (Roderick Titus's mother), who lived at the address where the incident happened on November 30, 2011. (R. p.54, line 12-R. p.55, line 13.) She testified that after she returned from a funeral, she heard a boom. (R. p.58, lines 6-15.) She recalled telling her husband it sounded like a truck hitting a transmitter and that her husband said it sounded like a gun. (R. p.58, lines 15-17.)

Deloris Titus Johnson, Simmons' sister, testified she was at Simmons' residence on November 30, 2011, and was parked in the yard talking on her cell phone when she saw Appellant arrive with a man she did not know and walk by her car. (R. p.64, line 15-R. p.67, line 3.) Next, she recalled hearing gunshots. (R. p.67, lines 7-17.) She testified she saw Appellant and the man walk back to their car and leave. (R. p.68, lines 2-19.)

Victim testified regarding the details of being assaulted and robbed by Appellant. (R. p.76-79.) Victim testified that as soon as he saw Appellant drive away, he got up and walked straight to his mother's house and told her what happened and who did it. (R. p.81, line 17-R. p.82, line 10; R. p.85, lines 13-15.) He went to the hospital and spoke to police there, but he did not tell them who did it because he was afraid. (R. p.82, line 13-R. p.84, line 13.) Victim testified that a couple of days later he told the police what really happened. (R. p.85, lines 16-23.) He testified he was so scared after telling police Appellant did it that he stayed inside for two weeks, fearing for his life. (R. p.85, line 24-R. p.86, line 7.)

On cross-examination, defense counsel questioned Victim regarding when he told police who assaulted and robbed him. (R. p.100, line 25-R. p.101, line 4.) Defense counsel asked several times whether Victim realized he could not get his mouth fixed unless he gave a statement. (R. p.100, line 25-R. p.101, line 4; R. p.101, lines 16-18; R. p.101, line 25-R. p.102, line 2.) Specifically, defense counsel asked, "Because of your recorded statement, you said to Sergeant Davis that it was only when you realize[d] that you couldn't get your mouth fix[ed] without giving a statement, that you decided to tell that it **might** have been Troy Hunter?" (R. p.100, line 25-R. p.101, line 4.) (emphasis added.)

Victim's mother, Debra Singleton, also testified. (R. p.106, line 17-R. p.107, line 4.) As soon as Singleton began to tell how Victim ran into her house, defense counsel objected and the trial court excused the jury. (R. p.108, lines 2-16.) At that time, Appellant objected to Singleton's testimony, arguing it was hearsay and an attempt to bolster Victim's credibility. (R. p.108, line 21-R. p.109, line 12.) The State argued defense counsel already put Victim's credibility at issue when defense counsel discussed

Victim's criminal record and pending charges; counsel further challenged Victim's credibility when he tried to point out disparities in Victim's story and the various times he talked to the police. (R. p.109, lines 14-20.) Additionally, the State argued Singleton's answers regarding what Victim said happened were not being submitted for truthfulness and would fall outside hearsay. (R. p.109, lines 20-25.) The State argued the testimony instead would be submitted to rebut defense counsel's attack on Victim's credibility by showing that Victim did indeed tell his mother about the crime and who committed it. (R. p.110, lines 10-17.)

The trial court then asked why the testimony would not fall under a hearsay exception, such as present sense impression or excited utterance. (R. p.110, lines 18-21.) Defense counsel argued the amount of time between the crime and the statement to his mother prevented it from falling under either exception. (R. p.110, line 22-R. p.111, line 5.) Defense counsel then argued:

Again, I don't think it's an excited utterance. I think, you know, he didn't want to tell anybody what happened. I mean, he[] certainly wasn't excited about it. You know, I don't think it was just a knee jerk reaction that he walked in and said that. I mean, there's certainly no evidence that it is. He's already testified to that fact he went there and he told his mother that. I don't understand how it's fair for them to be able now to put the mother up and say the same thing, that's clearly an out of court statement by another witness, that's hearsay. And I don't believe it falls within an exception.

(R. p.115, lines 10-21.) The trial court ruled the testimony was not hearsay because it was not "offered for the truth of the matter asserted, but simply pursuant to the victim's credibility being attacked here." (R. p.148, lines 16-21.) It further determined that even if the testimony were hearsay, the mere fact that it was made sometime after the incident occurred did not mean it could not qualify as an excited utterance provided the

circumstances surrounding the statement indicated its reliability pursuant to State v. Whisonant.¹ (R. p.114, line 22-R. p.115, line 3.) Thus, the trial court allowed Singleton to testify regarding Victim's statement to her about the crime and who committed it. (R. p.115, lines 3-8.)

Singleton then testified Victim came into her house, calling out to her. (R. p.116, lines 14-16.) She said she saw blood everywhere, "just pouring," and asked him what happened. (R. p.116, lines 16-21.) She testified, "He say momma that boy hit me. I say what boy. He say [Appellant] hit me in my mouth with a gun." (R. p.116, lines 18-19.) Singleton went with Victim to the emergency room and told Victim he needed to tell what happened. (R. p.118, lines 5-19.) She recalled he was kind of scared to say anything because he knew Appellant carried a gun and was afraid Appellant could kill him. (R. p.119, lines 6-14.) She testified she sensed he might still have been scared even after he told police because he stayed at her house for about two weeks. (R. p.119, lines 19-24.)

Investigator Lee Davis of the Florence Police Department testified he got involved in the case when Victim called Victim Services and was told he had to cooperate to receive services. (R. p.127, lines 14-25.) Davis testified Victim reported Appellant assaulted him. (R. p.127, line 25-R. p.128, line 2.) Davis took a recorded statement from Victim, and Victim Services took photographs of his injuries. (R. p.128, lines 14-20.) The photographs were admitted without objection. (R. p.129, lines 5-25.)

Next, the State called Dr. James M. Lawhan, an oral and maxillofacial surgeon, to testify regarding Victim's injuries. (R. p.164, lines 4-23.) The trial court qualified him as an expert in the field of dentistry and facial trauma without objection. (R. p.166, line

¹ 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999).

22-R. p.167, line 15.) Dr. Lawhan testified he saw Victim on December 1, 2011, for an evaluation of trauma to his face. (R. p.168, lines 1-2.) He found one bottom tooth that was fractured, two adjacent missing teeth to the right of that, and two fractured teeth on the top. (R. p.169, 14-24.) He also noted swelling of the upper and lower lips. (R. p.171, lines 13-16.) Dr. Lawhan testified that between the swelling, the fresh blood clots he observed where the teeth had been knocked out, and the clean edges of the fractured teeth, he could tell the injuries were recent. (R. p.171, lines 3-20.) When asked whether the injuries were consistent with a closed fist punch, Dr. Lawhan testified he believed it when Victim told him he was hit with a gun, due to the mechanism of the injury. (R. p.173, lines 15-19.) He testified the injuries would be consistent with a gun butt. (R. p.174, lines 8-10.)

Ultimately, the jury found Appellant guilty of both charges, and Judge Brown sentenced him to three years' imprisonment for the second-degree assault and battery charge and thirty years' imprisonment for the armed robbery charge, to be served concurrently. (R. p.227, 234-235.)

ARGUMENT

The trial court properly admitted a statement made by the victim to his mother identifying Appellant as the person who assaulted him because it was not hearsay, but even if it was, the statement fell under the excited utterance exception to the hearsay rule.

Appellant argues the trial court erred in admitting a statement made by Victim to his mother identifying Appellant as the person who assaulted him. Specifically, he argues the statement was hearsay, did not meet any of the hearsay exceptions, and was unduly prejudicial and cumulative. To the contrary, the State submits the statement was not hearsay because it was not admitted to prove the truth of the matter asserted but rather was admitted to counter the attack on Victim's credibility the defense had launched. However, even if it was hearsay, it clearly fit into the excited utterance exception. Furthermore, it was not unduly prejudicial and cumulative. Thus, the trial court did not err in admitting the statement and should not be reversed.

"The general rule in this State is that the conduct of a criminal trial is left largely to the sound discretion of the presiding judge and this Court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way." State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (citation and quotation marks omitted). "Therefore, in criminal cases, this Court will only review errors of law." Id. "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 569 (2010) (citation and quotation marks omitted).

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule

801(c), SCRE. One of the “Statements Which Are Not Hearsay” pursuant to Rule 801(d), SCRE, is a “Prior Statement by Witness.” Rule 801(d)(1), SCRE.

A statement is not hearsay if—The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper influence or motive arose

Rule 801(d)(1)(B), SCRE. For a prior consistent statement to be admissible pursuant to Rule 801(d)(1)(B), the following elements must be present:

(1) the declarant must testify and be subject to cross-examination, (2) the opposing party must have explicitly or implicitly accused the declarant of recently fabricating the statement or of acting under an improper influence or motive, (3) the statement must be consistent with the declarant’s testimony, and (4) the statement must have been made prior to the alleged fabrication, or prior to the existence of the alleged improper influence or motive.

State v. Winkler, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010) (citation omitted).

“A court must consider the totality of the circumstances in determining whether a statement falls within the excited utterance exception.” Stahlnecker, 386 S.C. at 623, 690 S.E.2d at 573. “The passage of time between the startling event and the statement is one factor to consider, but it is not the dispositive factor.” Id. “Other factors useful in determining whether a statement qualifies as an excited utterance include the declarant’s demeanor, the declarant’s age, and the severity of the startling event.” Id.

Three elements must be met for a statement to be an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition.

Id.

Hearsay

Appellant first argues Singleton's statement at trial was hearsay because it was being offered to prove the truth of the matter asserted. To the contrary, the statement was offered as a rebuttal to defense counsel's attack on Victim's credibility. Not only did defense counsel discuss Victim's pending charges and criminal record, he also pointed out disparities in Victim's story and the various times he talked to police. The State submitted the statement to corroborate Victim's own testimony that he said the statement.

Additionally, defense counsel implied a charge of fabrication when he questioned Victim about only telling police about Appellant after Victim realized he could not get his mouth fixed unless he gave a statement. (R. p.100, line 25-R. p.101, line 4; R. p.101, lines 16-18; R. p.101, line 25-R. p.102, line 2.) At that point, the State had the right to use Victim's statement to his mother to show he made the statement prior to any motive to fabricate. Rule 801(d)(1)(B), SCRE; State v. Winkler.

The rationale for this rule is if the attacker has charged bias, interest, corrupt influence, contrivance to falsify, or want of capacity to observe or remember, the applicable principle is that the prior consistent statement has no relevancy to refute the charge unless the consistent statement was made *before* the source of the bias, interest, influence or incapacity originated.

State v. Fulton, 333 S.C. 359, 374, 509 S.E.2d 819, 826-27 (Ct. App. 1998) (citation and internal quotation marks omitted).

Here, the prior statement (which in this case was Victim's statement to his mother naming Appellant as his attacker) is consistent with Victim's testimony at trial and was made prior to the alleged improper motive (which in this case was defense counsel's theory that Victim only reported his attacker to police so that he could receive monetary

assistance from Victim Services); thus, the prior statement was used to rebut the charge of fabrication. If the statement is made prior to any motive to fabricate, and is consistent with testimony at trial, then it can be admitted under these limitations. Thus, the statement Victim made to his mother prior to finding out he had to cooperate in order to receive assistance meets the requirements of Rule 801(d)(1)(B), SCRE, and falls outside the definition of hearsay. Therefore, it was properly admitted.

Excited Utterance

If this Court determines the statement was hearsay, it was nonetheless properly admitted under the excited utterance exception to the hearsay rule.

Rule 803(2), SCRE, provides for an "excited utterance" exception to the hearsay rule. The exception provides "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is not excluded by the hearsay rule even though the declarant is available as a witness. The rationale behind the excited utterance exception to the hearsay rule is that the startling event suspends the declarant's process of reflective thought and, consequently, reduces the likelihood of fabrication. The mere fact that a statement was made some time after the incident occurred does not mean the statement cannot qualify as an excited utterance, provided the circumstances surrounding the statement indicate its reliability.

State v. Whisonant, 335 S.C. 148, 155, 515 S.E.2d 768, 772 (Ct. App. 1999) (citations omitted).

Appellant's arguments as to why this statement does not fit the excited utterance exception are as follows: (1) there was no evidence Victim was excited when he made the statement; (2) the statement was not spontaneous; (3) the evidence showed Victim was extremely hesitant about revealing the attacker's identity; and (4) a considerable

amount of time had passed between the event and the statement. The State will address each argument in turn.

(1) Evidence Victim was Excited

As the Supreme Court pointed out in State v. Sims, being “excited” in the context of the excited utterance exception does not mean acting “animated.” 348 S.C. 16, 558 S.E.2d 518 (2002).

Regarding the son’s demeanor, when the neighbor found the son, he could not be consoled and continued to cry. Police arrived soon thereafter. When Officer Thomas interacted with the son, his behavior was withdrawn and automatic, and he answered her questions in a vague manner. Officer Thomas also testified the son held his head down while answering questions. **While the son was not crying or acting “excited” in the sense of being animated when he made the statement, we believe his demeanor can also be characteristic of someone who is under the “stress of excitement.”**

Id. at 22, 558 S.E.2d at 521-22 (emphasis added). Evidence existed in the form of Singleton’s testimony, prior to defense counsel’s objection to what she was going to say, that Victim came running into her house calling out for her. Running into his mother’s house, calling out for her, can reasonably be seen to indicate excitement. But even if there were no evidence of “excitement” on the part of Victim, the requirement is that when the statement was made, the declarant was “under the stress of excitement caused by the event or condition.” Victim testified as soon as he saw Appellant leave the scene, he went straight to his mother’s house from the location where he was beaten and robbed. Clearly he was still under the stress caused by the event.

(2) Spontaneity of Statement

In State v. Ladner, the victim’s caretaker noticed blood on some toilet paper and asked her what happened, at which time the victim named the person who sexually

assaulted her. 373 S.C. 103, 109, 644 S.E.2d 684, 687 (2007). In State v. Kromah, 401 S.C. 340, 356, 737 S.E.2d 490, 498 (2013), the statement was made in response to an investigative interview. And in Sims, 348 S.C. at 22-23, 558 S.E.2d at 522, the Supreme Court made clear that “even statements in response to an officer’s questioning can be an excited utterance because the statements still have spontaneity”

The statement, to be admissible, must be spontaneous and not the product of thought and consideration. Nevertheless, it can be argued that a statement made in response to a question does not necessarily lack spontaneity, especially where the declarant is a child, or where the questioner merely asked open-ended questions, such as “what happened?”

Jay M. Ziller, Annotation, *When is hearsay statement “excited utterance” admissible under Rule 803(2) of Federal Rules of Evidence*, 155 A.L.R. Fed. 583 (2011). According to Victim’s testimony, he walked into his mother’s house and told her what happened. According to Singleton, she saw blood “just pouring” and asked Victim what happened and he told her. Whether Victim spontaneously made the statement or made it after being asked what happened, it still fits the requirements of an excited utterance.

(3) Hesitancy to Reveal Attacker’s Identity

Victim’s testimony that he was hesitant to reveal the attacker’s identity to police has no bearing on his statement to his mother, where he did immediately reveal Appellant as the attacker. Additionally, both Victim and Singleton explained the reason Victim was hesitant to name Appellant as the attacker was because he was afraid of retaliation. Appellant argues in his brief, “he didn’t want to tell anybody what happened . . . he certainly wasn’t excited about it.” (App. Br. 13.) However, Victim’s level of excitement when talking to the police is not relevant to his state at the time he told his mother who attacked him, and that time is the only one of concern in the trial court’s evaluation of

whether the statement fits into the excited utterance exception. At the time he ran into his mother's home, calling for her, and told his mother what happened and who had done it, he had no time to reflect and decide what he would say. By the time he talked to the police, however, he had had time for reflective thought and consideration and decided not to tell what really happened because he was afraid of retaliation by Appellant. See Whisonant, 335 S.C. at 155, 515 S.E.2d at 772 ("The rationale behind the excited utterance exception to the hearsay rule is that the startling event suspends the declarant's process of reflective thought and, consequently, reduces the likelihood of fabrication.").

(4) Time Between Event and Statement

In Kromah, our Supreme Court found testimony was admissible as an excited utterance despite the fact that the investigator did not speak to the child victim until after he was out of surgery. 401 S.C. at 356, 737 S.E.2d at 498. The Court found he was still under the influence of the traumatic events. In Sims, the Supreme Court found testimony admissible as an excited utterance despite the passage of twelve hours since the attack, pointing out that time is just one factor to consider, along with the declarant's demeanor and the severity of the startling event. 348 S.C. at 21-22, 558 S.E.2d at 521. In Ladner, the victim returned to her caretaker's house and sang some karaoke songs before her caretaker noticed blood on the victim's toilet paper and asked her what happened, at which time the victim named the person who sexually assaulted her. 373 S.C. at 109, 644 S.E.2d at 687.

Here, Victim testified he walked directly from the scene of the crime to his mother's house and told her what happened and who had done it. Victim testified the crime occurred shortly after 2:00 p.m., and Singleton testified Victim arrived at her home between 2:00 and 3:00 p.m. (R. p.76, lines 19-23; R. p.120, line 17-R. p.121, line 3.)

“The rationale behind the excited utterance exception is that the startling event suspends the declarant’s process of reflective thought, reducing the likelihood of fabrication.” Sims, 348 S.C. at 20-21, 558 S.E.2d at 521. Nothing occurred between the time of the assault and the time of the statement that would have indicated Victim took time for reflective thought. This was a very different situation from the one in State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999), in which this Court found the statement inadmissible because there was a period of nine hours between the event and the statement; the victim had the opportunity to speak to a friend and the friend’s mother but did not; and instead of going to her nearby father’s house, she went to sleep and did not tell anyone until the next morning.

In State v. Burroughs, 328 S.C. 489, 492 S.E.2d 408 (Ct. App. 1997), this Court determined the statements made by the victim did not qualify under the excited utterance exception.

The rationale for the [excited utterance] exception lies in the special reliability accorded to a statement uttered in spontaneous excitement which suspends the declarant’s powers of reflection and fabrication. Thus, the mere fact that a statement was made some time after the incident occurred does not mean the statement cannot qualify as an excited utterance, provided that the circumstances surrounding the statement indicate its reliability.

Id. at 499, 492 S.E.2d at 413. In Burroughs, this Court based its decision on the fact that the statements were made ten hours after the incident, the victim talked to no one about the attack immediately after it occurred, and the victim’s own testimony indicated she composed herself after the attack and determined exactly what she would tell her husband about what happened. Id. at 500-01, 492 S.E.2d at 413-14.

Here, not only was the statement made immediately after the crime occurred, but nothing in the record indicates Victim had an opportunity to tell anyone else, as he went directly to his mother's house. Also, nothing in Victim's testimony indicated he took any time to compose himself and decide what he would tell his mother when he arrived at her house. Thus, the factors that led this Court in Burroughs to determine that the victim's statements could not be considered spontaneous but rather were the product of reflective thought were not present in the instant case.

Appellant also points out that in Burroughs and Whisonant, this Court held the testimony of the statements by the victims improperly bolstered the victims' testimony. However, both cases are very different from the case at hand. Both were sexual assault cases, in which specific rules limit corroborative testimony to time and place of the assault. In Burroughs, the statement by one victim that the appellant had asked her for a hug corroborated two other victims' testimony that the assault began with a hug request. The circumstances of that case can be distinguished from the present case because here, there is only one victim instead of four victims whose stories are being compared to see if the manner of the assault was the same in each victim's case. Here, one victim testified to what he did following the assault, and his mother testified to his arrival at her house immediately following the incident to tell her who assaulted him. In Whisonant, the facts are more similar to the case at hand because the victim's stepmother testified to what the victim told her happened. However, this Court found error in Whisonant due to the fact that the stepmother's account of what victim told her went beyond time and place. Again, this limitation is specific to sexual assault and does not pertain to the present case where the crimes were armed robbery and assault and battery.

Finally, Appellant argues the statement Victim made to Singleton was unduly prejudicial and cumulative. Appellant cites Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994), for the proposition that improper corroboration testimony that is merely cumulative to the victim's testimony cannot be harmless.² Jolly was another case that involved criminal sexual conduct, in which the rules limit corroboration testimony to time and place. In Jolly, the statement did not fit under the excited utterance or any other hearsay exception, which is what made it improper corroboration testimony. Here, the testimony was not improper corroboration testimony; rather, the testimony from Singleton countered defense counsel's attack on Victim's credibility. The quoted portion of Jolly Appellant cites actually comes from State v. Barrett, 299 S.C. 485, 386 S.E.2d 242 (1989), another criminal sexual conduct case. Barrett makes clear that the devastating impact of the corroboration testimony was based on the witness's extensive details of the sexual abuse beyond time and place. Furthermore, the victim in Barrett had not even testified yet, so credibility was not an issue as it was here. Accordingly, Appellant's reliance on Jolly and Barrett is misplaced in a situation that does not involve criminal sexual conduct and where the testimony clearly fit into a hearsay exception.

Appellant argues the testimony was unduly prejudicial because it went to the very core of what the State was trying to prove. To the contrary, the testimony was made in response to defense counsel's attack on Victim's credibility and was not admitted for the truth of the matter asserted. Singleton's testimony was not used to prove Appellant was

² It is worth noting that the dissent and concurrences in State v. Jennings, 394 S.C. 473, 482, 716 S.E.2d 91, 95-96 (2011), called into question the "apparent categorical rule emanating from Jolly v. State and its progeny" The dissent pointed out Jolly's creation of "a rule of per se prejudice when testimony is cumulative to the victim's testimony . . . is contrary to the traditional analysis of improperly admitted hearsay testimony, which requires a finding of prejudice." Id. at 483, 716 S.E.2d at 96.

the attacker; rather, her testimony supported Victim's account of what he did immediately following the attack. The argument Appellant makes that Singleton's statement tipped the jury in favor of a conviction while it was "on the fence" between whether to acquit or convict is without merit. The trial judge has a duty to urge the jury to reach a verdict, so long as he does not coerce them. "The typical judicial mechanism for encouraging an indecisive jury is the Allen charge, in which jurors are instructed on, among other things, their duties to approach the evidence with an open mind and consider the opinions of their fellow jurors." State v. Robinson, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004). Giving an Allen charge is an acceptable way to encourage the jury to make its decision and in no way indicates unfair prejudice of the evidence.

In sum, Singleton's testimony regarding Victim's running into her house immediately following the incident and telling her what happened and who did it is not hearsay because it was not offered to prove the truth of the matter asserted. Rather, it was offered to rebut defense counsel's attack on Victim's credibility and to rebut defense counsel's implied charge of fabrication pursuant to Rule 801(d)(1)(B). However, if this Court finds it is hearsay, the evidence still is admissible because it fits firmly under the excited utterance exception as it meets all the elements: (1) the statement related to the startling event or condition of being assaulted and battered with a gun and being robbed at gunpoint; (2) the statement was made while Victim was under the stress of excitement because he went straight to his mother's house following the incident, ran into the house, and was still bleeding profusely and carrying his teeth (R. p.122, lines 10-11); and (3) the stress of excitement was caused by the startling event or condition, which was the act of being hit in the mouth with a gun hard enough to knock Victim's teeth out and having shots fired right past his head while being robbed. State v. Stahlnecker, 386 S.C. 609,

623, 690 S.E.2d 565, 573 (2010). The trial court properly admitted the testimony and this Court should affirm its ruling.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

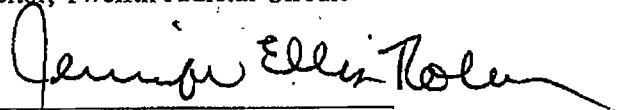
Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

E.L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

BY:



Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 1, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-000227

THE STATE,

Respondent,

v.

TROY HUNTER,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent complies with Rule 211 (b),
SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

E.L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

BY:

Jennifer Ellis Roberts

Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

RECEIVED

MAY 01 2014

SC Court of Appeals

May 1, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-000227

THE STATE,

Respondent,

v.

TROY HUNTER,

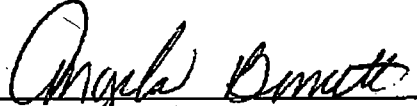
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lara M. Caudy, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 1st day of May, 2014.


ANGELA BENNETT
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RECEIVED

MAY 01 2014

SC Court of Appeals

**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.

Troy Hunter, Appellant.

Appellate Case No. 2013-000227

Appeal From Florence County
D: Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2014-UP-437
Submitted October 1, 2014 – Filed December 3, 2014

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia; and Solicitor Edgar Lewis Clements, of
Florence, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: Rule 220(c), SCACR ("The appellate court may affirm any ruling,

FILED
DEC 22 AM 9:20
JANIE REEL-SHEPHERD
CLERK
FLORENCE COUNTY, SC

order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *State v. Foster*, 354 S.C. 614, 620-21, 582 S.E.2d 426, 429 (2003) ("The admission or exclusion of evidence is within the discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion."); *id.* at 621, 582 S.E.2d at 429 ("An abuse of discretion occurs when the trial court's ruling is based on an error of law."); *State v. Burdette*, 335 S.C. 34, 43-44, 515 S.E.2d 525, 530 (1999) ("Whether a statement is admissible under the excited utterance exception to the hearsay rule depends on the circumstances of each case and the determination is generally left to the sound discretion of the trial court."); *State v. Sims*, 348 S.C. 16, 21, 558 S.E.2d 518, 521 (2002) ("Three elements must be met to find the statement to be an excited utterance. First, the statement must relate to a startling event or condition. Second, the statement must have been made while the declarant was under the stress of excitement. Third, the stress of excitement must be caused by the startling event or condition."); *id.* at 21-22, 558 S.E.2d at 521 ("While the passage of time between the startling event and the statement is one factor to consider, it is not the dispositive factor. Even statements after extended periods of time can be considered an excited utterance as long as they were made under continuing stress."); *id.* at 22, 558 S.E.2d at 521 ("Other factors useful in determining whether a statement qualifies as an excited utterance include the declarant's demeanor, the declarant's age, and the severity of the startling event."); *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001) ("Even if evidence is relevant, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." (internal quotation marks omitted)); *id.* ("Unfair prejudice means an undue tendency to suggest decision on an improper basis, such as an emotional one."); *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) ("We review a trial court's decision regarding Rule 403[, SCRCF,] pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment."); *id.* ("A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.").

AFFIRMED.¹

HUFF, SHORT, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Florence

2015 JAN -8 IN THE COURT OF COMMON PLEAS

2015 CP 21 56

Troy Darnell Hunter # 226094
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR
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 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 C. J. / 990 Wiscachy Highway, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Florence County General Session Court, Florence, S.C.
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-05-21-692 / Armed Robbery with a Deadly Weapon
 - (b) 9560114 and battery second degree
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 14, 2013 / 30 years for Armed Robbery, 3 years
 - (b) for Assault and Battery second degree, Concurrent

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "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. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted October 1, 2014 - Filed December 3, 2014 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2014-UG-437 _____
- 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) Ineffective Assistance Trial Counsel
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Trial Counsel rendered a deficient performance when he failed
 (b) to object to the trial court's erroneous jury instruction
 (c) that shifted the burden of proof / free play trial instruction

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. _____

PAGE 3(a)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

The Applicant alleges his Sixth(6th) Amendment United States Constitution right to effective assistance of counsel was violated when his trial attorney failed to object to the trial court's erroneous jury instruction that shifted the burden of proof and allowed the jury to find Applicant's fist was used as a deadly weapon to meet the statutory requirements for armed robbery.

ARMED ROBBERY

Under the statutory law of the State of South Carolina, S.C. Code Ann §16-11-330 (1976), armed robbery is defined as "robbery while with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon... " A hand, or fist, of a person is not normally considered a dangerous, or deadly object, but the possibility that a hand or fist could constitute a deadly weapon is not precluded. See: State v. Harriott, 210 S.C. 290, 42 S.E.2d 385 (1947) ("While we are not prepared to say that the fist may not under some circumstances constitute an instrument which may inflict seriously bodily injury, it is not generally regarded as a dangerous weapon.") Under some circumstances, a hand, or fist, of a person may be used in such a fashion; depending upon the manner and the means of use, the wounds inflicted, and other relevant factors, as to constitute a dangerous, or deadly object. One factor given consideration when determining if fist could be considered a deadly weapon is the disparity in size between the victim and suspect. State v. Bennett, 328 S.C. 251,263, 493 S.E.2d 845,851 (1997)

ARGUMENT

Applicant alleges the facts and circumstances in this case was not sufficient to submit to the jury that his fist could be considered a deadly weapon to support a finding of guilt for armed robbery.

From the beginning of Applicant's trial until closing arguments, the prosecutor based his case upon a showing that Applicant [armed with a gun] approached the victim, assaulted him, and forcefully removed money from his person. Tr. pg. 51 ll. 22-25; pg. 52 ll. 1-8. At no time during the course of trial did the prosecutor attempt to prove Applicant's fist were being considered a deadly weapon to submit the question of armed robbery to the jury. The record reveals Applicant's trial counsel based his entire defense upon the absence of any evidence that a gun was involved; and that would have negated the offense of armed robbery in its entirety since the State's case was that a gun was involved. Colloquy from the trial court shows the trial judge concluded the basis of the case presented to the jury was that it was armed robbery with a weapon. Tr. pg. 44 ll. 2-5; pg. 53 ll. 2-3; pg. 65 line 25- pg. 66 line 16; pg. 132 line 1- pg. 133 line 10.

INEFFECTIVE ASSISTANCE OF COUNSEL

Trial counsel rendered a deficient performance when he did not object to the trial court's jury charge that allowed the jury to find Applicant guilty upon a finding that his fist could be considered a deadly weapon to support armed robbery. Tr. pg. 284 line 21- pg. 285 line 7. The erroneous charge of law shifted the burden of proof and allowed the jury to base guilt upon evidence the prosecutor did not submit to the jury to prove this armed

robbery offense; and served to completely undercut the defense raised.

The record reveals there was no physical evidence or eye witness account of a gun being involved. Witnesses present at the crime scene testified they did not see Applicant with a gun; nor did anyone testify they 'certainly' heard a gun shot fired. Tr. pg. 66 ll. 12-16. Nathan Orgbon (Nate), the sole person that observed the altercation between Applicant and the victim testified it was a fight that occurred and at no time did Applicant have a gun or rob the victim. Tr. pg. 90 ll. 8-20. The conflicting testimony given by the victim; and the fact that defense counsel effectively elicited testimony showing the victim claimed he was robbed only after he learned how much he had to pay for dental procedures to have his mouth repaired, casted a great amount of doubt on the prosecutor's assertions that a gun was involved. Tr. pg. 7 ll. 12-17; pg. 44 ll. 4-6; pg. 51 ll. 22-25. The record reveals the prosecutor did not prove a gun was involved and its highly probable some of the jurors had doubts concerning this facet.^{#1.}

A finding that Applicant did not possess a gun would have warranted acquittal for the armed robbery charge. However, the charge of law giving to the jury allowed them to find Applicant guilty of armed robbery if some believed he used his fist to perpetrate this crime and the others believed a gun was involved. A split finding of the such would have required a finding of guilt for the lesser

#1.

It is shown from the record that the jurors at some point wanted to see Nate's transcript but declined to hear his testimony when the court suggested they come back out and listen to it. Nate testified Applicant didn't have a gun... Tr. pg. 90 ll. 8-20. The jury was split on one of the charges, but what charge was not published on the record. It can be concluded that the split was regarding this discrepancy in the prosecutor's case.

offense of common law robbery or a finding of not guilty for armed robbery. Thus, defense counsel should have ensured such a charge of law was presented to the jury which would have been significant to the amount of time Applicant faced upon a finding of guilt for common law robbery and the time he received for armed robbery.

Moreover, defense counsel should have objected to the charge of law given and pointed out that a finding of fist for a deadly weapon was improper under the facts of this case because 1) there was no disparity in size between the Applicant and victim; 2). there was no other present factors to substantiate this armed robbery offense if the jury did not believe Applicant was armed with a gun; (Cf. Bennett supra. "the victim was stabbed some 70 to 75 times with a phillips head screwdriver...") 3). the court did not give the jury the option of finding Applicant guilty of the lesser included offense of common law robbery if they believed he only hit the the victim with his fist and did not have a gun.

Trial counsel erred when he failed to object to the trial court's jury charge that completely undermined the defense raised and gave the jury two scenerios under which they could find Applicant guilty of armed robbery. [One of which the prosecutor did not base his case against Applicant] Applicant's State and Federal right to effective assistance of counsel was violated due to counsel's error that prejudiced his defense and would have changed the outcome. He requests the Court to vacate his conviction and remand for a new trial.

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) Ineffective Assistance of Counsel Claims is cognizable

(b) only on Post Conviction Relief

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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. Steven Deberry / 129 S. Court Street, Florence, SC 29501
- ii. Lara M. Caudy / P.O. Box 11589, Colo. SC 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Mr. Deberry / Trial, Sentencing
- ii. Lara M. Caudy / Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Conviction; Remand for a New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

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.

Troy Hunter

SWORN to and subscribed before me this 31
day of Dec., 2014.

Debra Surles (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
2015 JAN -8 PM 4:35
CORRECTOR'S OFFICE
FLORIDA

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Troy Hunter
Applicant

SWORN or affirmed to and subscribed before me this

31 day of Dec., 2014.

Debra Surges
Notary Public

My Commission Expires: 11-4-2015

FILED
2015 JAN -8 PM 4:35
CLERK OF DISTRICT COURT
FLORIDA 1ST DISTRICT

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Troy Darnell Hunter, #226094,

2015-CP-21-0056

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on January 8, 2015, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from Florence County Clerk of Court. Applicant was indicted by the June 2012 term of the Florence County Grand Jury for Armed Robbery; Attempted Murder; Assault and Battery, 2nd degree; and Possession of a Firearm (2012-GS-21-692). Steven Deberry, Esquire, represented Applicant. On January 14-16, 2013, Applicant proceeded to a jury trial before the Honorable D. Craig Brown on the counts of Armed Robbery and Assault and Battery, 2nd degree. The remaining charges were dismissed. The jury convicted Applicant as indicted, and Judge Brown sentenced him to confinement for thirty years for Armed Robbery concurrent with three years for Assault and Battery, 2nd degree.

A notice of appeal was filed on Applicant's behalf, and an appeal was perfected pursuant to Anders v California, 378 U.S. 738, 87 S. Ct. 1396 (1967), by Lara Mary Caudy, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's convictions

and sentences. State v. Hunter, Op. No. 2014-UP-437 (December 3, 2014). The Remittitur was issued on December 22, 2014.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject conviction, Applicant's records from the Department of Corrections, Applicant's appellate records, the application, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure "to object to the trial court's erroneous jury instruction that shifted the burden of proof"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit and that Applicant's attorney rendered effective assistance well within the range of competence for a criminal defense attorney.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that Applicant cannot satisfy either 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, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified, or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

11/21, 2016

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

TROY D. HUNTER, 226094,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-21-0056

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Jonathan D. Waller, Esquire
 Giese Law Firm
 1315 Blanding Street
 Columbia, SC 29201

DATED this 21st day of November, 2016.



Mallory Morris, Legal Assistant
 For Respondent

FORM 5

STATE OF SOUTH CAROLINA

County of FlorenceTroy Darnell Hunter# 226094
Full name and prison number (if any) of Applicant

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-21-0056**AMENDED**

APPLICATION FOR

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 Correctional Institution
Bishopville, SC 29010
2. Name and location of Court which imposed sentence Florence County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-21-692 (Armed Robbery and
 - (b) Assault & Battery 2nd Degree)

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 16, 2013
- (b) 30 yrs. Armed Robbery
- (c) 3 yrs Assault + Battery
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (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. S. Ca Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 3, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2014-VP-437
- 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) Ineffective Assistance of Counsel
- (b) Ineffective Assistance of Appellate Counsel
- (c) Violation of Due Process of Law
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached Sheets marked page 3-7
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (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. PCR # 2015-cp-21-0056
- ii. Pending.
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Florence County Common Pleas
- ii. Pending. This is Amendment to PCR
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Case pending - This is an Amended PCR
- 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) status pending
 (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? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

no

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. Steven Deberry
Lora M. Cady

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. trial & sentence
Direct Appeal

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Convictions + sentence.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Troy Darnell Hunter # 226094, 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.

Troy Hunter
Troy Darnell Hunter
Applicant, Pro Se

SWORN to and subscribed before me this 27
day of APRIL, 2017.
Debra Eastwood (L.S.)
Notary Public

My Commission Expires: 3/3/2026

" CERTIFICATE OF MAILING "

I, Troy Darnell Hunter, hereby certify that I have this day mailed this PCR Amendment in the prison legal mailbox addressed: S.C. Attorney General's Office, P.O. Box 1549, Columbia, SC, 29211.

Revised 3/2003

Done this 11 day of MAY⁶, 2017 /s/ Troy Hunter
Troy Darnell Hunter

5-11-17

(DATE)

Clerk of Court
 Florence County
 180 North Tryon St.
 Florence, SC 29501

Troy Darnell Hunter
 # 226094
 Lee Corr. Inst. F-5
 990 Wisacky Hwy.
 Bishopville, SC 29010

Re: Hunter v. State, PCR #2015-CP-21-0056

Dear Honorable Clerk:

Please find for filing my "Motion to Amend PCR",
 "Motion Cover Sheet" and "Amended PCR Application"
 in the above-styled case. Please return a "clock-
 filed" copy for my records. I have served the
 Attorney General's office with copy of same.

Thank you for your time & concern in this
 matter.

Respectfully,

/s/ Troy Hunter

Troy Darnell Hunter
 Applicant, Pro Se

Enclosures

cc: Attorney General
 Returned

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COMMON PLEAS COURT

Troy Darnell Hunter,)
SCOC # 226094,) Case No.
Applicant,) 2015-CP-21-0056
Vs.)

STATE OF SOUTH CAROLINA,)
Respondent.)

APPLICANT'S MOTION TO AMEND POST-CONVICTION APPLICATION

COMES NOW, the Applicant in the above-styled PCR case, and respectfully moves pursuant to Rule 15(c), SCRCNP, requesting leave to amend his previously filed Post-Conviction Application.

For GOOD CAUSE in this Court granting such relief the Applicant would show as follows:

1. That Rule 15(c), SCRCNP, allow for amendments;
2. That the Applicant has amended his PCR to correct deficiencies and properly articulate all grounds for relief;
3. That the Applicant amends his PCR in good faith and Respondent will not be prejudiced.

Respectfully prayed for this 11 day of May 2017.

/s/ Troy Hunter
Troy Darnell Hunter

Hunter v. State PCR #2015-CP-21-0056
 Attached Page 3-1

II. Facts Supporting Grounds for PCR Relief

(a) Trial Counsel was deficient for failing to object and move for mistrial when Prosecution quoted Bible and alluded to Biblical verse in opening statements. (See TR pg. 52)

(b) Trial Counsel was deficient for failing to make Batson v. Kentucky objection to Prosecution's use of preemptive strikes to remove (3) African-Americans from Applicant's petit jury panel. (See TR pg. 23, 27-28)

(c) Trial Counsel was deficient for not objecting and moving for mistrial when State witness, Lee Davis, Florence County Police Dept, allowed to testify about another case, not associated with Applicant's charges. Specifically, Lt. Davis testified that a victim of multiple shooting refuses to cooperate (Tr pg. 212). Counsel made a general objection to testimony which did not

Hunter v. State, PCR #2015-CP-21-0058
Attached Page 3-2 (Facts Cont'd)

specifically articulate basis for objection (id. p. 212). Consequently, counsel's objection was insufficient to preserve issue for review.

(d) Trial counsel deficient for not properly objecting to the prosecution's use of oral surgeon, Dr Mark Lawhan (Tr pgs. 220-241) as expert witness.

Counsel made a general objection to Dr Lawhan's testimony (id p. 225) as discovery violation. Counsel should have objected to Dr Lawhan's testimony and expert witness status based on reasonable notice of expert witness testimony/evidence.

Additionally, counsel failed to object to Dr Lawhan's opinion that victim's injury consistent with being hit with a "gun butt" (Tr pgs. 236, lns. 8-10). This "gun butt" testimony is outside the expertise of an oral surgeon and was clearly not founded on scientific analysis as accepted by professional community.

(e) Trial counsel deficient for not requesting, and arguing against, lesser included charge

HUNTER v. State, PCR # 2015-CP-21-0058
 Attached Page 3-3 (Facts Cont'd)

of "Strong Armed Robbery" (Tr. p. 247-249)

The evidence showed that the robbery could have been effected by a firearm as testified to by witness/prosecutor, Demetrius C. Holloman (Tr. pgs. 127-144), or by the defendant's hands/fists as testified to by eyewitness, Nat Orghon (Tr. pgs. 77-90).

The Applicant vehemently argued with trial counsel about this issue, but counsel over-ruled Applicant's wishes and resisted a lesser offense of strong-armed robbery.

According to binding S.C. state case law, the Applicant was entitled to a lesser offense charge of Strong-Armed Robbery. See State v. Simmons, 599 SE2d 448 (2004) (Defendant entitled to lesser charge of strong armed robbery when evidence of "fists" and "strikes" used).

Counsel failure to allow the jury to consider the lesser charge of strong armed robbery caused substantial prejudice to Applicant's criminal proceedings inasmuch as the jury was not going to acquit the Applicant in light of evidence presented in case. This resulted in Applicant being found

Hunter v. State, PCR # 2015-CP-21-0056
 Attached Page 3-4 (Facts Cont'd)

guilty of armed robbery and given (30) thirty years imprisonment compared to the (10) ten years applicable for strong armed robbery conviction. To be sure, the Applicant would have readily accepted a (10) ten year plea offer.

(F) Trial counsel was grossly deficient for not objecting and preserving for appellate review, the trial court's constructive amendment to indictment which allowed for a fatal variance to occur prejudicing Applicant's criminal proceedings.

The Applicant was indicted by a Grand Jury for:

" On November 30, 2011, while armed with a deadly weapon, to wit .357 handgun, did take and carry -- "

(Tr pg 7; Indictment)

No where does the indictment allege that Applicant uses his "fists" as "deadly weapon"

Hunter v State, PCR # 2015-CP-21-0056
Attached Page 3-5 (Facts Cont'd)

to effectuate the armed robbery. In fact, the indictment specifically alleges that armed robbery was committed with a ".357 handgun" (id.).

According to the charging instrument (indictment) the Applicant considered his options and chose to exercise his right to a jury trial and demand that the prosecution prove - beyond reasonable doubt - that he robbed the victim with a 357 handgun as the essential "deadly weapon" element of armed robbery under S.C. Code Ann. § 16-11-330(a).

Following through with his decision the jury trial was convened, the prosecution presented its case, HOWEVER fell short on evidence that a 357 handgun was used as deadly weapon, so the Court stepped in and tinkered with the language of indictment and gave an instruction to the jury that it could find Applicant guilty of armed robbery even without a finding that Applicant uses 357. handgun. This constructive amendment to indictment was effected when the court gave the following instructions/charge to the

Hunter vs State, PCR #2015-CP-21-0056
 Attached Page 3-b (Facts Cont'd)

jury:

Finally, the state must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon during the robbery.

* * *

Let me also tell you this, that a fist can be considered to be a deadly weapon.

(Tr. pg. 284, lns. 4-6; 24-25)

Conspicuously absent from the court's charge for Armed Robbery is any mention of the 357 handgun specifically alleged in the indictment as an essential element of armed robbery charges. Moreover, after removing the essential element of 357 handgun charges in the indictment, the Court expanded the sweep and evidentiary basis of indictment to include "hands or fists" as "deadly weapons". This altering of indictment is a textbook constructive

Hunter v. State, PCR #2015-CP-21-0056
Attached Page 3-6 (Facts Cont'd)

amendment to indictment resulting in a fatal variance which substantially prejudices Applicant's criminal proceedings and deprived him of numerous Constitutional Rights and a fair trial.

Trial counsel did not object to the trial court's jury charge/instructions (Tr. p. 290). A first year law school student would have some familiarity with indictment language, essential elements, constructive amendments to an indictment and fatal variances. It is incredulous that trial counsel let the court remove an element of charge and allow jury to find the Applicant guilty based on a dramatically different legal theory than one alleged in charging indictment/indictment.

In any event, the pro se Applicant will not belabor this PCR Court with the well settled and familiar case law related to fatal variances, but for the record Applicant would respectfully draw the Court's attention to the following cases: *Stirone v. U.S.*, 361 U.S. 212, 217 (1960); *U.S. v. Randall*, 171 F.3d 195, 210 (4th Cir 1999); *State v. Jones*, 536 S.E.2d 396 (SC 2001) (A defendant

Hunter v. State, PCR #2015-CP-21-0056
 Attached Page 3-7

must be convicted, if convicted at all, of the particular offense charged in the bill of indictment.)

This error is fundamental to Applicant's case. The jury was deadlocked and required an ALLEN charge to dislodge before returning a final guilty verdict (Tr. 298-300). And, the Prosecution requested that Court give the jury option to find Applicant guilty of strong-armed robbery in light of the lack of evidence related to 357 firearm or other deadly weapon. (Tr. pg. 249; 271-72).

To be sure, had the Grand Jury returned an indictment alleging "armed robbery" by use of "fists or hands" instead of 357 handgun, there is a reasonable probability that Applicant would have been more amenable to plea negotiation process.

Finally, the trial court erred denying the Applicant's Rule 29 motion for directed verdict based on State v. EVANS, 470 S.E.2d 97 (SC 1996) (proof at trial is at variance with the indictment, and failure to grant a directed verdict was error.)*

* If this Court finds that Rule 29 motion for directed verdict preserves variance issue that Appellant counsel ineffective.

1 STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COURT OF COMMON PLEAS
2) 2015-CP-21-00056
3)
4)
Troy Darnell Hunter) TRANSCRIPT OF RECORD
5 vs.)
State of South Carolina)
6)
DEFENDANT) August 31, 2017
7 Florence, South Carolina
8

9 B E F O R E:

10 THE HONORABLE THOMAS A. RUSSO.
11
12

13 A P P E A R A N C E S:
14

15 JONATHAN D. WALLER, ESQ.
Attorney for the Applicant
16
17

18 LINDSEY A. MCCALLISTER, ASSISTANT ATTORNEY GENERAL
Attorney for the Defendant
19
20
21
22

23 KESHIA REED
Official Court Reporter
24
25

I N D E XWITNESSDIRECTCROSSREDIRECTRECROSS

Steven Deberry

Mr. Waller

6

32

Mr. McCallister

22

Charles Hunter

Mr. Waller

34

Ms. McCallister

39

Troy Hunter

Mr. Waller

46

Ms. McCallister

51

Certificate of Reporter 68

1 THE COURT: Yes, ma'am.

2 MS. MCCALLISTER: Good morning, Your Honor.

3 This is Troy Darnell Hunter vs. The State of South
4 Carolina 2015-CP-21-0056. Mr. Hunter was indicted in June
5 2012 by the Florence County grand jury for armed robbery,
6 attempted murder, assault and battery in the second degree
7 and possession of a firearm. He was represented on those
8 charges by Steven Deberry. On January 14th through the
9 16th 2013, he proceed to a jury trial before Judge Craig
10 Brown solely on the counts of armed robbery and assault
11 and battery in the second degree. The remaining charges
12 were dismissed, but he was convicted as indicted on the
13 two charges of armed robbery and assault and battery. And
14 Judge Brown sentenced him to confinement for 30 years for
15 the armed robbery concurrent with three years of the
16 assault and battery.

17 A timely notice of appeal was filed on his
18 behalf and perfected by the South Carolina Indigent
19 Defense Appellate Division. The South Carolina Court of
20 Appeals affirmed his convictions and sentences and the
21 remittitur was issued on December 22nd 2014. He filed
22 this application for post-conviction relief on January 8th
23 2015. He is present in the courtroom today and he is
24 represented by Mr. Waller.

25 THE COURT: All right.

1 MS. MCCALLISTER: Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. MCCALLISTER: In his application, he only
4 has one allegation. However, Mr. Waller and I did talk a
5 week or so ago and he gave me some amendments. So I maybe
6 ask Mr. Waller to read those amendments or state those for
7 the record.

8 THE COURT: All right. Any objection to those
9 amendments?

10 MS. MCCALLISTER: No, Your Honor.

11 MR. WALLER: Your Honor, Ms. McCallister is
12 correct I did not file a formal filed amendment, but we
13 did discuss them. I did provide them to her. And I will
14 tell the Court I'm going to actually withdraw one of them.
15 I'll put it on the record and then tell you which one it
16 is.

17 THE COURT: All right.

18 MR. WALLER: Your Honor, we have additional
19 witness by the name of Charles Hunter. He was on the -- I
20 believe the defense witness list and never called. So
21 there is an allegation related to not calling a witness.
22 Your Honor, there's a -- the one we're withdrawing is a
23 claim of ineffective assistance for failing to object to
24 impermissible comments during an opening statement by the
25 State. We're withdrawing now and we're not going forward

1 on that allegation. There's a claim of ineffective
2 assistance for failing to object to portions of Dr. Mark
3 Lawhorn's testimony is outside the scope of his expertise.
4 It's a claim of ineffective assistance of counsel for
5 failing to object to a portion of the jury charge or the
6 jury charge as a whole charging fists as deadly weapons.
7 And we'll flush that out later obviously. Your Honor,
8 there's a claim of ineffective assistance of counsel for
9 failing to object to impermissible comments made during
10 the State's closing argument and a claim of ineffective
11 assistance of counsel for failing to make any posttrial
12 motions.

13 THE COURT: All right. Are you ready to
14 proceed?

15 MR. WALLER: I am ready, Your Honor.

16 THE COURT: All right. You may call your first
17 witness.

18 MR. WALLER: Your Honor, I call Steven Deberry.

19 THE COURT: Mr. Deberry, if you come around to
20 be sworn, sir.

21 THE CLERK: Do you swear or affirm that the
22 testimony you give will be the truth, the whole truth, and
23 nothing but the truth so help you God?

24 THE WITNESS: I do.

25 MR. WALLER: Thank you, Your Honor. May it

1 please the Court.

2 THE COURT: Yes, sir.

3 WHEREUPON,

4 Steven Deberry,

5 after first having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. WALLER:

8 Q Good morning, Mr. Deberry, how are you today?

9 A Fine. Thank you.

10 Q Thank you for coming back with us. Mr. Deberry, how
11 did you come to represent Troy Hunter?

12 A I was contacted either by him or his family. And he
13 already been -- I think, he was on the trial list. He
14 wasn't -- I think he had a public defender that was
15 representing him that he wasn't satisfied with and he was
16 looking for a new lawyer.

17 Q Okay. So you were retained?

18 A I was.

19 Q Okay. Do you recall who is -- which public defender
20 represented him?

21 A I do not.

22 Q Did you have any conversations with that public
23 defender when you were first retained?

24 A It's very possible. I don't recall.

25 Q How about anybody else from the public defender's

1 office to get any information or anything like, do you
2 recall?

3 A I don't specifically recall, but it's very common
4 that, you know, when I get hired by clients who have been
5 represented by the public defender's office that I get
6 information from them.

7 Q What if you can -- what were the allegations against
8 Mr. Hunter as you understood them?

9 A Well, I know we went to trial for the armed robbery
10 and assault and battery. I'm not sure which degree.

11 Q Factually, what was the State alleging that he did?

12 A Well, they were alleging that there was a -- that the
13 victim in the case had been robbed by Mr. Hunter and that
14 there was a gun that was used in the robbery, that he was
15 injured. That several teeth were knocked out during the
16 altercation and that some money was taken which was, you
17 know, alleged later on in the process.

18 Q Okay. And when you were first retained and first met
19 with Mr. Hunter, about how long after you were first
20 retained did you meet with him?

21 A I say immediately. I mean, I probably met with him
22 before he retained me.

23 Q Okay. How long was that before trial?

24 A It was a very short period. He was on the trial
25 list. I mean, we had, I think, a condition of my -- if I

1 remember correctly, a condition of my representation was
2 that if Judge Brown would continue his case for a short
3 period of time, I think, one term of court just so I could
4 get ready for trial because if I remember right, he was up
5 for trial.

6 Q Okay. What if you have any notes or if you recall
7 what did y'all talk about during your first meeting?

8 A Well, I mean, all I can tell you not from any
9 specific recollection is that he knew and I knew that this
10 was a trial. And that basically from our very beginning
11 we were preparing for trial.

12 Q Okay. What did you do specifically to prepare for
13 trial?

14 A Well, there was an individual by that was a good
15 friend of Mr. Hunter's. I don't recall his name, but I
16 actually went out to the scene with him. I went around
17 the neighborhood with him, looked at the crime scene where
18 they said that this took place. And Mr. Hunter was
19 incarcerated, so I check in with him and got ready for
20 trial that way.

21 Q Okay. You said it was a good friend of his -- you
22 don't recall his name. Do you recall if he was a witness,
23 was he -- how did you get to him and what was he able to
24 do for you?

25 A Well, he was able to -- he was helping Mr. Hunter.

1 He was the contact, I guess, you would say, you know, on
2 the outside of the county detention center. I think he
3 brought me some payments on Mr. Hunter's behalf and he was
4 the one that, I think, got his clothes ready for trial,
5 that sort of thing. I don't have his name.

6 Q Okay. So he may not have had any specific knowledge,
7 but he was able to provide you assistance; is that right?

8 A That's right.

9 Q Okay. Did you speak to anyone else on Mr. Hunter's
10 behalf?

11 A There's a Robert Hunter that was on our witness list.
12 I spoke to him. I mean, I don't have any exact
13 recollection of any conversations that we had, but I know
14 that he was, you know, somehow related to Troy Hunter and
15 that basically his testimony if we called him at trial
16 would have been that he -- Troy Hunter went to this place
17 with him and that he knew there was an altercation and --
18 but that Troy Hunter didn't have a gun.

19 Q Okay. You said he was on your witness list?

20 A He was.

21 Q Is he under subpoena?

22 A I have subpoena in my file for him. It's a copy and
23 it doesn't show that it was served, but I know that he was
24 here and available and it could have been served. This is
25 just what I have in my file, that's signed by the clerk.

1 He was here and available and Mr. Troy Hunter and I had a
2 conversation at the end of the State's case for a couple
3 reasons decided not to call him as a witness.

4 Q Okay. If you could why -- what were those reasons?

5 A Okay. Well, the State theory's of the case is that
6 this armed robbery took place in -- with some people
7 around and they had a couple witnesses, you know, and it
8 was just kind of piece together what everybody saw. But
9 nobody saw him with a gun. And there was only one or two
10 out of a crowd of people that would even say that they saw
11 Troy Hunter there, but the allegations were that his
12 teeth -- eight or nine teeth were knocked out during an
13 armed robbery by being basically pistol-whip with a .357
14 pistol and there was just no crime scene evidence of that
15 taking place. And it was just -- and then the victim said
16 that he heard a shot. There were some people that
17 testified that they heard -- some of them call a car crash
18 or a transformer exploding and just a loud noise. And
19 then there was one witness that says he didn't hear
20 anything that was there, but he had headphones on if I
21 remember correctly. So at the end of the State's case,
22 there was two -- there was two problems that I thought
23 that could help us that the State had. And one was that I
24 wasn't sure at all that the jury could determine that
25 beyond a reasonable doubt that this armed robbery or any

1 kind of altercation at all even took place at this time
2 and place because there was no blood. There was no
3 physical evidence of an altercation or anything like that.
4 And it was kind of sketchy as to whether or not -- I
5 thought there was still a question as to whether or not
6 this incident even took place. And by calling Charles
7 Hunter, we would have acknowledge that it did take place,
8 but we would just be saying that it didn't take place with
9 a gun.

10 Q Okay.

11 A So that was one reason and another reason was because
12 if -- I think Troy had already decided that he was not
13 going to testify. We didn't have any other witnesses and
14 we would have lost the last argument.

15 Q Okay. Is it -- law enforcement responded to the
16 scene, is that correct, shortly after the incident was
17 reported; is that right?

18 A Well, that's my recollection. There were some --
19 there was an issue with the victim coming forward and
20 telling what happened. And he changed his story a few
21 times. And basically I think that the Florence City
22 Police Department their victim's advocate basically told
23 him that there was some assistance for him if he would
24 tell them what happened. And so parts of the story came
25 out later as to his allegations.

1 Q And the victim actually ended up getting a bunch of
2 gold teeth; is that right?

3 A He may have. He got some new teeth I can tell you
4 that.

5 Q Okay. I ask if -- not a great question earlier.
6 There was no teeth or blood or anything found at the
7 scene?

8 A That's correct.

9 Q It was no projectile or no evidence that a shot had
10 been fired physical evidence; is that right?

11 A That's right.

12 Q Okay. So there was nothing ever presented - the
13 State's theory the entire time was that there was a weapon
14 presented?

15 A Correct.

16 Q Okay. And that was only testified to by the victim
17 in the case, Mr. Hollomon; is that right?

18 A That's correct. I mean, at a later time -- the
19 entire time that we prepared for this case and that we
20 were getting ready for this case, the State was going to
21 call a nurse from McLeod to prove the injuries for the
22 assault and battery case and the nurse become unable. And
23 at the last minute Dr. Lawhorn, who was the oral surgeon,
24 showed up. And he ultimately testified that the injuries
25 were consistent with being -- with the teeth being knocked

1 out by the barrel of a pistol which I thought was -- I
2 mean, I objected to all that extraneously as I could.

3 Q Well, that's where I was headed next. Let me ask you
4 Dr. Lawhorn ---

5 MR. WALLER: And, Your Honor, may I approach?

6 THE COURT: Yes, sir.

7 BY MR. WALLER:

8 Q Dr. Lawhorn was qualified as an expert in dentistry
9 and facial trauma; is that correct?

10 A Sure.

11 Q And I can point you to a page if you bear with me.
12 His testimony actually begins on page 220. He's qualified
13 as an expert on -- he's asked to be qualified on 222 and
14 is ultimately qualified on 223. Based on his expertise
15 that he's qualified in, did you think that he was
16 qualified to give an expert opinion about someone being
17 struck with the butt or barrel of a pistol?

18 A Well, the only way I can answer that is that he was
19 qualified as an oral surgeon or however he was qualified
20 as and that field certainly deals with multiple injuries
21 to the teeth and jaw and whatnot. And so, I mean, I don't
22 know. I would assume that he could say that it's
23 consistent with a certain type of injury.

24 Q Just a second ago, you just testified that you
25 objected to him testifying to that?

1 A I objected to him testifying -- first of all, I had
2 no idea he was coming to testify. I had no records from
3 him. I had no idea what he was going to say. I thought
4 it was unfair and I objected to that and I was overruled.
5 I was given maybe a few minutes to go see what records he
6 had and review those and then we went right on with trial.
7 So I personally didn't think that was fair, but that was
8 the way it went.

9 Q Okay. Well, Judge Brown asked if you -- allowed you
10 to make copies of his records; is that correct?

11 A Uh-huh.

12 Q Took a break for you to review those records?

13 A Uh-huh.

14 Q Came back and asked you if you needed any more time
15 and you told him you did not need any more time?

16 A If I remember correctly, I mean, there were very --
17 there was a page or two of the information that he
18 provided.

19 Q Okay. So you had enough time after looking at them?

20 A Yeah, I mean, as far as what was on the records.

21 Q Okay. Well, getting back to what you testified to
22 earlier that you objected to his testifying, that it was
23 consistent with getting hit with a gun barrel. If you
24 could turn to page 236, what was the trial strategy behind
25 not objecting to that?

1 A I'll just tell you I haven't read this. So if you're
2 telling me that I didn't object when he said that, I would
3 just say answer in telling you that, you know, I thought
4 it was settled that these things were coming in and that I
5 already objected.

6 Q Okay. If I could back you up moving off of Dr.
7 Lawhorn a minute. Do you recall your questioning of
8 Investigator Davis or Investigator Davis' testimony?

9 A I don't recall.

10 Q If I could get you to turn to page 179, down at the
11 bottom starting on line 18. You know what, I'm going to
12 move on from that actually. I want to get to -- you
13 testified that there -- the State's theory of the case was
14 that there was always a weapon involved. And part of the
15 reason you did not call the other Mr. Hunter was that you
16 didn't want -- you didn't think the State could prove that
17 and that you didn't want to give up last closing; is that
18 correct?

19 A No, that's not correct. I didn't think the State had
20 proven beyond a reasonable doubt that this incident even
21 took place when and where and how they said it did. And
22 so by calling Mr. Charles Hunter, then we would have been
23 admitting that this actually took place.

24 Q Okay. Let me ask it in a different way then. Was
25 there any evidence presented that the incident took place

1 not involving a weapon?

2 A Can you say that again?

3 Q Was there any evidence that the robbery took place,
4 but then there wasn't a weapon involved, that it was just
5 a strong armed robbery?

6 A Yeah, I think there was a witness name Nate Orbond
7 (sic) or something and he testified that he didn't see a
8 weapon.

9 Q Okay. Well, during the charge conference, you
10 objected to Judge Brown charging the jury with strong
11 armed robbery?

12 A I did.

13 Q Okay. And he refused to charge it. He said there is
14 no evidence presented that there was a strong armed
15 robbery. It was either straight up or down on armed
16 robbery; is that correct? That's your recollection?

17 A My reason for not wanting strong armed robbery is
18 because I didn't think they had prove -- there was two
19 situations that I thought were likely. Number one was
20 that they didn't -- it's possible that they didn't prove a
21 robbery at all because of the inconsistencies and the lack
22 of evidence and the inconsistencies in the victim's
23 statements. And two was that if they did believe an
24 altercation took place, then I thought it was likely that
25 they may not have believed there was a gun involved. And

1 so, you know, I thought that was a pretty strong point on
2 our behalf. And so if there was a strong armed robbery
3 charge included and then I thought that a jury could
4 easily find that in lieu of finding him guilty for armed
5 robbery.

6 Q Okay. So you objected to the judge charging that?

7 A I did.

8 Q Did he charge strong armed robbery?

9 A He did not, but, I mean, I just would tell you that
10 during the charge he -- Judge Brown stopped and called us
11 to the bench and said that it was in his charge book and
12 that he hadn't talk to us about it, but that he was going
13 to charge that a fist could be considered by the jury as a
14 deadly weapon in an armed robbery trial and that kind of
15 -- I felt like that really pulled the rug out from under
16 our defense because it just -- the way we had tried the
17 case either I thought they either believe that this may
18 not have happened or that it may have happened without a
19 gun.

20 Q Okay. Was there any evidence that you were aware of
21 that it happened, but a gun wasn't involved had been
22 presented to the jury?

23 A Well, nobody says they saw a gun other than the
24 victim. Some people say they heard a loud shot or loud
25 noise. And they actually described it as inconsistent

1 with a gunshot basically is my recollection.

2 Q Judge Brown refused to charge strong armed robbery;
3 is that right? He said there was no evidence that there
4 was a robbery took place without a gun?

5 A Okay.

6 Q Okay. He's giving his jury charge and calls y'all up
7 to the bench. Then he charge that a fist can be
8 considered as a deadly weapon?

9 A Right.

10 Q When he's done with his jury charge, what was the
11 strategy behind not objecting to that jury charge?

12 A Well, all I can tell you is that it was a long trial.
13 There was a lot of objections. The jury seem to be
14 aggravated or agitated to some extent. It was the end of
15 the trial. I wasn't sure what affect that it had if any.
16 The other thing is is that at the charging -- well, when
17 he stopped his charge and called us to the bench, I mean,
18 he said it was in his charge book and that it was the law.
19 And I didn't have any knowledge otherwise. I didn't think
20 that was right or fair because if a fist can be considered
21 as a deadly weapon in an armed robbery trial, then I don't
22 understand what the difference in armed robbery and strong
23 armed robbery is. But to answer your question, I did not
24 object and, you know, I thought about that for a long
25 time. You know, I know there was some old law that said

1 that, you know, a fist could be considered as a deadly
2 weapon in a murder trial or case, but, you know, so I
3 didn't know.

4 Q Well, let me ask you this, the jury wasn't present
5 when he asked you if you had any objection to the charge?

6 A That's right.

7 Q Okay. So it wouldn't have been something to anger
8 the jury or put them through a longer delay or anything
9 like that?

10 A It certainly could have delayed things.

11 Q But they wouldn't be aware that it was an objection.
12 They just be back in the jury room?

13 A I understand.

14 Q Okay. And you testified that there is law on that,
15 but you've also testified that there wasn't any evidence;
16 is that correct? There be no reason for him to charge the
17 jury with murder because there was no evidence of that in
18 this case?

19 MS. MCCALLISTER: Your Honor, I'm objecting to
20 the leading question.

21 THE COURT: I mean -- I'm not sure I understand
22 your question.

23 MR. WALLER: I can ask it a different way.

24 BY MR. WALLER:

25 Q Is it proper for a judge to charge the jury with

1 proper law if it's not applicable to that case?

2 A My assumption at the time was that he was -- that he
3 knew that that was part of an armed robbery charge. I
4 mean, I'm not -- what I took about a murder is that it
5 seems that I remember that, you know, that there was a
6 charge that allowed somebody to infer the use of a deadly
7 weapon by fist or whatever in a murder charge at some
8 point in time. This case wasn't a murder charge.

9 Q Okay. But in general is it proper to charge the jury
10 with a piece of valid and correct law that has nothing to
11 do with the evidence that's been presented?

12 A No.

13 Q Okay. And please bear with me I'm almost finished.
14 If you could turn to page 259 line 18. It's during the
15 Solicitor's closing argument, 18 and continuing to 19.
16 What was the strategy behind not objecting to the
17 Solicitor saying that he -- that Mr. Holloman told the
18 truth, I think he did, in fact I know he did?

19 A Why did I not object to that is that what you're
20 saying?

21 Q Yes, sir.

22 A Well, I mean, I will just say that, I think, in
23 closing arguments, I think the attorney has a right to
24 tell the jury what he believes the evidence says.

25 Q So it's your testimony that the attorney in closing

1 argument can tell the jury that he knows for a fact that a
2 witness in this case, the victim, is telling the truth?

3 A You know, if he belabor it on that point, but, I
4 mean, he says five words and it's a closing argument and
5 it's a long trial and it's measure risk any time you
6 object during opening or closing. And my experience as
7 far as offending the jury, I mean, I just -- that didn't
8 rise to the level of me jumping up and objecting after a
9 three day trial when the jury was clearly ready for this
10 thing to be over with. I mean, I paid a lot attention to
11 a jury. And I just think that's very important and I've
12 seen objections in openings and closings that go very
13 badly for people.

14 Q Okay. But just to be clear, Mr. Holloman's testimony
15 was the only testimony that saw a weapon; is that correct?

16 A That's correct.

17 MR. WALLER: Beg the Court's indulgence please.

18 THE COURT: Yes, sir.

19 (WHEREUPON, a pause in the proceedings.)

20 MR. WALLER: Nothing further. Please answer any
21 questions Ms. McCallister has.

22 CROSS-EXAMINATION

23 BY MS. MCCALLISTER:

24 Q Mr. Deberry, let's back up a little bit. How long
25 have you been practicing criminal law?

1 A Since probably about 2007. I pass the bar in 2006
2 and I clerked for a year.

3 Q Okay. So at the time of this case you had six years
4 or so of experience doing criminal work; is that correct?

5 A That's correct.

6 Q Had you done a trial before of felony cases like this
7 or major cases like this?

8 A Yeah, as a prosecutor, I tried murder cases and armed
9 robberies and all sorts of violent crimes.

10 Q Okay. And you said you became involved with this
11 case, the case was already on the trial docket?

12 A It was.

13 Q Do you recall when -- like how far between when you
14 became involved and when this case went to trial how long
15 that was?

16 A I say less than two months.

17 Q Okay. And I think you testified that you did some
18 investigation by going out to the scene; is that correct?

19 A I did.

20 Q And you met with Mr. Hunter how many times would you
21 estimate?

22 A I would guess five or six times.

23 Q And he was incarcerated?

24 A He was.

25 Q Okay. And did you discuss with him -- did you

1 discuss review these indictments and these charges with
2 him?

3 A Sure.

4 Q Okay. At the time that you took the case, did you
5 know that it was just going to be the armed robbery and
6 the assault and battery that was going to trial?

7 A Probably.

8 Q Okay.

9 A I knew it at some point. I mean, with my discussions
10 with the Solicitor's office with the Solicitor.

11 Q Okay. So they didn't -- you didn't show up at trial
12 thinking you were trying all five charges, you showed up
13 knowing that it was going to be only the two?

14 A That's correct.

15 Q Okay. Did you discuss possible defenses with
16 Mr. Hunter?

17 A I mean, we were preparing for trial. Yeah, we talked
18 about everything.

19 Q Okay. You ended up not calling any witnesses,
20 correct?

21 A That's correct.

22 Q But did you have a defense prepared that you thought
23 you might present?

24 A Well, I mean we had Charles Hunter that was there and
25 available to testify and what he was going to say is that

1 he -- he was going to say I think that he took Troy Hunter
2 there. That he knows what happened, but he was going to
3 acknowledge the altercation, but that he was going to say
4 that Troy did not have a gun.

5 Q Okay. So did you have any defense that involved
6 denying that Mr. Hunter was at the scene?

7 A Well, I didn't think that the State had proven, you
8 know -- I mean, there was a witness that said that he saw
9 him at the scene that he just -- I think they pass by him
10 walking on. The way the scene was, I mean, happen around
11 on one side of the house. And I think where everybody was
12 hanging out was kind of in the back of the house. You
13 know, so there was a lot people there that the State could
14 have brought forward to say that Troy was there, that they
15 didn't bring forward to say that Troy was there. That
16 they didn't bring forward to say he was there. They only
17 brought one person, I think, other than the victim that
18 even said he was there and that person said that he didn't
19 have a gun. So I didn't think it was -- I thought it was
20 risky to -- you know, and nobody else testified that they
21 saw the altercation or the robbery. So, I mean, I thought
22 there was a good chance that the jury could have
23 reasonable doubt that there was even an altercation.

24 Q Okay. But I'm asking this badly I think. From your
25 investigation, the witnesses that Mr. Hunter gave you or

1 the people that he gave you to talk to, they would have
2 put him at the scene, correct?

3 A That's right.

4 Q So in preparing your defense, Mr. Hunter never said I
5 wasn't even there at all. His witnesses were saying he
6 was there; is that correct?

7 A Well, I mean, again, it's not our job to ---

8 Q No, I know, but is that correct is that a fair
9 statement of what you learned when you talk to Mr. Hunter
10 and when you talked to his witnesses, that they were
11 saying that he was there?

12 A Charles Hunter was going to put him there.

13 Q Okay. And so then you got to trial and you felt like
14 the State's own evidence created a question of whether he
15 was there or not?

16 A That's correct. I mean, I think that when Nate
17 Orbond testified he said he saw Troy Hunter in passing.
18 And just the way the situation was and there was a path
19 that goes through the back of that yard that -- like a
20 road. I mean, it just wasn't enough evidence. I thought
21 that a jury could actually find him not guilty based on
22 the fact that they didn't believe this took place there.

23 Q Okay. And so that was -- was that -- that was a
24 little bit of a change from the defense strategy that you
25 went into the case with; is that correct?

1 A Well, I mean, I think every case you have to see how
2 the facts come out from the State because, I mean, we
3 don't have to prove anything.

4 Q Right. Did you discuss -- did you talk about that
5 with Mr. Hunter?

6 A I did.

7 Q Okay. And did you tell him you thought that maybe
8 y'all needed to make some changes based on your defense,
9 based on what the State had presented?

10 A We spoke about it at the time, you know, that the
11 State rested. We talked about what would happen if we
12 called a witness. And I remember talking to Troy about,
13 you know, the fact that I wasn't sure that the State had
14 proven what they needed to prove and that that would
15 actually risk putting a feather in their cap so to speak.

16 Q Okay. So the fact that you ended up not calling any
17 witnesses from your recollection should not be a surprise
18 to Mr. Hunter?

19 A No, we spoke about it.

20 Q Okay. I think you testified to Mr. Waller that you
21 thought that there two specific problems with the case.
22 The issue about did they even prove it took place at the
23 specific time and location. And you said that he --
24 Mr. Hunter had already decided not to testify; is that
25 correct? And you talked about last argument, losing last

1 argument?

2 A That's correct.

3 Q Okay. Did you explain those two issues to Mr. Hunter
4 and how that was entering into your defense strategy?

5 A Yes.

6 Q Okay. The doctor's testimony I believe you said that
7 you were not aware that he was coming to testify?

8 A That's correct.

9 Q Okay. And you objected to that when the State
10 initially started to call him?

11 A I did.

12 Q Okay. And the basis of your objection was the fact
13 this was essentially a surprise to you, is that fair to
14 say?

15 A That's correct and I didn't have any records. And I
16 just didn't know what he was going to say. You know, I
17 guess we don't ever know exactly what anybody is going to
18 testify to, but I just felt like I should have more
19 warning in those records and that sort of thing.

20 Q Okay. And what did the Court do to fix that
21 situation?

22 A Well, they allowed me some time to look at what he
23 had which wasn't much?

24 Q What did he have?

25 A I remember just being a couple -- maybe two or three

1 sheets of paper.

2 Q Okay. Was it like his notes or was it x-rays?

3 A No, it wasn't x-rays. There were just notes. I
4 couldn't tell you exactly what they said, but they weren't
5 very detailed as to what you would expect to see after an
6 oral surgeon or surgery.

7 Q Okay. And so you did take some time and you took a
8 break and you were able to review those notes?

9 A Uh-huh.

10 Q Okay. And then after you reviewed those notes, did
11 you have any other objections to him testifying at that
12 point?

13 A I mean, I could check the transcript, but if I
14 didn't, then I didn't.

15 Q Okay. Did you have any reason to question his
16 qualifications at that point?

17 A No.

18 Q Okay. And he was qualified, I think, you said as an
19 oral surgeon or what was he qualified as do you recall?

20 A Can I ask what page that was?

21 THE COURT: Guys, you can make these things go a
22 lot smoother and quicker. You know the answers to these
23 questions just direct him to the page where it's in the
24 transcript.

25 MS. MCCALLISTER: Yes, Your Honor.

1 THE COURT: You're asking to recall something
2 that occurred several years ago and we don't need to do
3 that since we have the transcript.

4 MS. MCCALLISTER: Yes, sir. Page 222.

5 THE COURT: And I know you are use to these
6 witnesses being kind of your witnesses on direct. You're
7 on cross-examination lead him all you want.

8 MS. MCCALLISTER: Thank you, Your Honor.

9 A It says he qualified the doctor as an area of
10 dentistry in facial trauma.

11 Q Okay. So dentistry and facial trauma. And he
12 testified as to kind of what he thought caused the
13 injuries; is that correct?

14 A That's correct.

15 Q Okay. Since he had been qualified as an expert in
16 facial trauma, did you feel like that was within the scope
17 of what he -- of his knowledge?

18 A Yes.

19 Q Okay. Since you -- okay, thank you. You testified
20 that Judge Brown called y'all up to the bench while he was
21 giving his jury charge?

22 A Yeah.

23 Q And that's the first time that you heard of the issue
24 about giving his instructions of a fist as a deadly
25 weapon?

1 A That's right.

2 Q Okay. Have y'all talked about the jury charge
3 previously?

4 A Yeah, we did.

5 Q Okay. And that didn't come out during that charge
6 conference?

7 A It did not.

8 Q Okay. So he's actually in the middle of reading his
9 instructions to the jury at this point; is that correct?

10 A That's what -- I reread that part of the transcript
11 and that's what it seems like happen. I remember that --
12 I mean, it was a little unclear as far as my recollection,
13 but I remember now that he actually stopped his jury
14 charge and called us to the bench.

15 Q Okay. And called you to the bench and said my
16 judge's book up here says I have to give this charge; is
17 that correct?

18 A I can't remember exactly what he said, but he
19 indicated that that's what he was going to do.

20 Q Okay. So if I'm saying this correctly, then he
21 indicated he was going to do that and then he goes -- then
22 y'all come back to your tables and he continues reading
23 his jury instruction, which is that a fist can sometimes
24 be considered as a deadly weapon?

25 A In an armed robbery.

1 Q In an armed robbery?

2 A And that's what he charged.

3 Q Okay. But he still did not charge -- he didn't do a
4 lesser-included still, he put the fist in, but didn't do a
5 lesser-included?

6 A That's correct.

7 Q Okay. And you did not want a lesser-included because
8 that was part of your trial strategy to have him go up or
9 down on whether it was armed robbery?

10 A That's correct.

11 Q Okay. I think you said to Mr. Waller that you
12 felt -- you didn't -- there was a couple issues or a
13 couple reasons for why you didn't object at the end of the
14 charge. You felt that the jury was aggravated?

15 A That's correct.

16 Q With just delays in a trial or what? Why did you
17 feel they were aggravated?

18 A Well, I just remember that from throughout the trial.
19 I mean, I think there was -- there had been an Allen
20 charge in this case. You know, I don't know if they were
21 aggravated with each other, what the situation was, but I
22 know that they showed like physical signs of just being
23 extremely agitated for whatever reason is I don't know.

24 Q Okay. And so that played into your decision not to
25 object any further delay?

1 A Well, that and the fact that, you know, Judge Brown
2 said here's the law and this is what it is. I mean, I
3 disagreed with it at the bench, but, I mean, it was what
4 it was.

5 Q Okay. So at the bench you told him you disagreed
6 with that charge?

7 A Yeah, I mean, I think I did. I mean, like I said
8 before, it pulled the rug out from under our defense.

9 Q Okay.

10 A Based on the issue of whether or not there was a gun.

11 Q And so ---

12 MS. MCCALLISTER: I think I'm going to stop
13 there.

14 MR. WALLER: Just very briefly, Your Honor.

15 THE COURT: All right.

16 REDIRECT EXAMINATION

17 BY MR. WALLER:

18 Q Mr. Deberry, if you don't object to something, is it
19 preserve for appeal?

20 A No, I understand that.

21 Q Okay. Do you have any notes or anything from your
22 meeting or phone call or however you communicated with
23 Charles Hunter?

24 A I got a -- I've got a note here with his address and
25 the subpoena and telling him to be on telephone standby.

1 Q I'm sorry can you repeat that?

2 A I've got a note with his information on it and asking
3 him to be on telephone standby and that was attached to
4 his subpoena.

5 Q Okay. So did you actually speak with him or is that
6 just contact information?

7 A I would assume I did. I mean, I can't recall
8 honestly, but I know what he was going to say. I know he
9 was available and he was at trial.

10 Q Okay. And he was on your witness list?

11 A He was.

12 MR. WALLER: Nothing further, Your Honor.

13 THE COURT: Anything further?

14 MS. MCCALLISTER: No, Your Honor.

15 THE COURT: Thank you very much, Mr. Deberry.

16 You may step down.

17 (WHEREUPON, the witness leaves the witness
18 stand.)

19 MR. WALLER: Your Honor, the applicant will call
20 Charles Hunter.

21 THE COURT: Mr. Charles Hunter, if you come
22 around to be sworn, sir.

23 THE CLERK: Mr. Hunter, if you'll step right
24 here to the corner, put your left hand on the Bible and
25 raise your right hand. Do you swear or affirm that the

1 testimony you give in this case will be the truth, the
2 whole truth, and nothing but the truth so help you God?

3 THE WITNESS: Yes.

4 THE CLERK: Thank you. You can have a seat.

5 MR. WALLER: Thank you, Your Honor. May it
6 please the Court.

7 THE COURT: Yes, sir.

8 WHEREUPON,

9 Charles Hunter,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WALLER:

13 Q Good morning, Mr. Hunter. How are you today?

14 A Good. How are you?

15 Q Thank you for being here with us. Mr. Hunter, first
16 of all, are you related at all by blood to Troy Hunter?

17 A No, sir.

18 Q It's just a coincidence?

19 A Coincidence.

20 Q Okay. How do you know Troy Hunter?

21 A From 1996 or seven I believe.

22 Q Okay.

23 A We just met.

24 Q Do you remember when he got arrested?

25 A I do.

1 Q Okay. Do you remember the incident that led to his
2 arrest?

3 A I do.

4 Q Okay. Were you there?

5 A I was.

6 Q Okay. You actually drove him there?

7 A Yes, sir.

8 Q Did you drive him away?

9 A Yes, sir.

10 Q Okay. What if you recall took place that day and
11 just everybody's aware of it, but just briefly what you
12 recall from that day?

13 A Well, the reason why I was over there I was in the
14 neighborhood and I happen to see another person that I
15 knew, so I pulled over and Troy was there. We talked and
16 he got in the car. We rode around to Dixie Street and we
17 got out, went in the backyard. A lot of people was in the
18 backyard. Everybody was talking. He and -- the guy I
19 don't know his real name.

20 Q That's kind of a hang out spot?

21 A Yeah, it is the hang out spot. And we call him Tad,
22 but Tadpole but ---

23 Q That's the victim in this case?

24 A Yes, sir.

25 Q Okay.

1 A They was arguing. At first we didn't think it was an
2 argument. It was just talking loud because everybody talk
3 loud. Next thing you know curse words been thrown out and
4 that's when -- everybody focusing what's going on. And
5 they started arguing and Tadpole swung at him and missed.
6 And he hit him in his mouth with his hand.

7 Q Troy did?

8 A Yeah. Troy hit him in his mouth with his hand and
9 they were fighting. I say 30 or 40 seconds into the
10 fight, it was actually a gunshot, but it wasn't in the
11 yard. It was behind me. When the shot went off instinct,
12 you know, I turn.

13 Q You were in the backyard?

14 A Yes, sir. And when I turn back around, everyone was
15 gone except for me, Troy and the victim only.

16 Q Okay. So just if I can just stop you there. So if
17 you are -- if you're you and I'm where Mr. Troy Hunter was
18 standing in the altercation with Mr. Hollomon, the gunshot
19 took place behind you?

20 A Behind me.

21 Q Okay. I didn't mean to interrupt you.

22 A And am I positive it was a gun shot, no, I'm not, but
23 everybody hear a gunshot. You know what a gunshot sounds
24 like, but it was behind us. So I turned, I reflexed. And
25 when I turned back around and you seen everybody just

1 running. Everybody left. Troy and the other guy was
2 fighting still and that's when I went over there I was
3 like, hey, I grabbed him like that's enough. I mean,
4 y'all cut it, it's over. There was no gunshot. I walk
5 Troy to the car, my car. Right before he got in the car,
6 Tadpole run back up, you know, like he wanted to fight
7 some more and I stopped him, like, Dude, it's over, you
8 know. That's it, man, you know, leave. So I put him in
9 the car and we left.

10 Q You put Troy in the car?

11 A Troy.

12 Q Okay. Did you ever see Mr. Troy Hunter with a gun
13 that day?

14 A No.

15 Q Okay. After the incident was over, did you -- did
16 anybody from law enforcement ever contact you?

17 A Not immediately, no. It was one guy that I spoke to
18 during this whole incident. He was a black guy. I can't
19 remember his name, but he was an officer. He came to my
20 house. Last name think it's McKenzie or -- it's Mic
21 something. I know him when I see him.

22 Q Thomas McKenzie?

23 A A short guy. Is he short? I'm sorry.

24 THE COURT: He's short.

25 A Okay, well, that's him with salt and pepper hair.

1 Q Yeah.

2 A That's him. That was the only guy that came to my
3 house.

4 Q Okay. So you talk to somebody and did you tell him
5 basically what you told us here today?

6 A Right.

7 Q Okay. Did you ever talk to the lawyer from Troy's
8 trial Mr. Deberry?

9 A No.

10 Q Did you ever talk to anyone?

11 A I tried. I tried to -- later on -- when I found out,
12 he was in jail. I didn't even know he was jail. I found
13 out he was in jail, I was like what happened. They said
14 he shot a guy something like that. I was like what, when.
15 That's when they was telling me. I was like, no, I was
16 with him that day. I'm the one -- when the police officer
17 came to my house, he didn't realize that I was actually
18 who I was and then he saw the car. Oh, so you the guy
19 with a burgundy car. I'm like, yeah, what happened. And
20 then he told me -- he was like give me your side of the
21 story. I told him -- I was like, Dude, that's a lie.
22 From my understanding is someone was saying a female was
23 out there. No female was out there, so it's just bogus.
24 Q Okay. So were you aware that Mr. Troy Hunter had
25 multiple attorneys?

1 A No, I wasn't.

2 Q Did you ever talk to any of these attorneys?

3 A I spoke with you.

4 Q Okay. I'm talking about before his criminal trial?

5 A No.

6 Q Okay. Nobody ever contacted you?

7 A No one.

8 Q Were you ever served with a subpoena to testify at
9 this trial?

10 A No, never had a subpoena. And I been at that address
11 15, 20 years.

12 Q Were you aware that you were on a witness list for
13 one of the parties at the trial?

14 A No.

15 Q Okay.

16 MR. WALLER: Nothing further. Thank you.
17 Please answer any questions Ms. McCallister has.

18 CROSS-EXAMINATION

19 BY MS. MCCALLISTER:

20 Q Mr. Hunter, you just testified that you were just
21 kind of in the general neighborhood that day, correct?

22 A Yes, ma'am.

23 Q And you saw Troy with some other people?

24 A I saw another guy first.

25 Q Okay.

1 A And then I saw Troy.

2 Q Okay. So you just kind of -- you just kind of ran
3 into him?

4 A Yes, ma'am, pretty much.

5 Q You didn't plan on meeting up or anything like that?

6 A No.

7 Q And so what time of day was that do you recall?

8 A It was daytime I can tell you that.

9 Q Like afternoon, after lunch?

10 A Evening time maybe, late evening, I guess. It was
11 the day. I don't know exactly what time it was.

12 Q Okay. It was light outside?

13 A Yeah.

14 Q Okay. And it was sometime -- not first thing in the
15 morning?

16 A No.

17 Q So did you see Troy get dress that day?

18 A No.

19 Q Did you see him at all that day until he ran into him
20 on the streets some time late in the evening?

21 A That day I saw him, that's the first time I saw him
22 and the last time I saw him was actually when he got back
23 in the car.

24 Q Okay. So you weren't with him all day, so if he had
25 a gun on him ---

1 A I would have known it..

2 Q How would you have known?

3 A He got in my car.

4 Q Could you see through his clothes?

5 A He got in my car.

6 Q Could you see through his clothes?

7 A Everyone knows that I don't play that.

8 Q I'm just asking you a question could see through his
9 clothes?

10 A No, I could not see through his clothes.

11 Q Could you see in his pockets?

12 A No, I could not.

13 Q Could you see in his waistband?

14 A No, I could not.

15 Q Okay. And you didn't see him get dress that day, so
16 you don't know what he had underneath his clothes or in
17 his pockets?

18 A No.

19 Q Okay. And you testified that you saw -- you did see
20 a fight. You saw an altercation between Mr. Hunter and
21 ---

22 A It was about from where I'm standing to where you are
23 at right now.

24 Q Okay. And then you heard a noise?

25 A A gunshot.

1 Q Well, I thought you said just a little bit ago that
2 it was -- that you weren't 100 percent positive?

3 A I didn't see the gunshot, but everybody knows what a
4 gunshot is, that's what I said.

5 Q So you didn't see anybody fire a gun, you just heard
6 the noise?

7 A I heard it, yes, ma'am.

8 Q Okay. In your vicinity?

9 A Behind me.

10 Q Behind you?

11 A Yes, ma'am.

12 Q Which would have been back towards the street?

13 A Actually would have been in the neighbor's yard.
14 Either in the neighbor's yard or somewhere beyond that
15 because his house was behind me.

16 Q Okay. And you kind of like ducked around?

17 A I flenched like woo, you know.

18 Q But just for a second, you flench for a second?

19 A Yes, ma'am.

20 Q But when you turned around, everybody else was gone?

21 A I seen everybody running away.

22 Q And y'all -- and you broke up the fight and then
23 y'all went too?

24 A Yes, ma'am. Well, it wasn't that simple. When I
25 broke it up, he and I walk back to the car. I was like,

1 what the hell is going on man, you know. He, hey, man,
2 you know, Tadpole with that bull.

3 Q But you broke up the fight?

4 A Right.

5 Q Eventually?

6 A Right.

7 Q You have taken you a few minutes to break it up, but
8 you broke it up?

9 A Yeah, hey, that's it. You know, it's over.

10 Q And you testified that you were never served with a
11 subpoena and you were not aware that you were on a witness
12 list?

13 A Right.

14 Q Were you at trial?

15 A No.

16 Q Okay. Did you ever give your telephone number to an
17 attorney?

18 A No, I don't even remember -- again, the only person
19 that I spoke to from beginning until now was the short
20 guy.

21 Q Okay.

22 A And if I'm not mistaken, he presented himself as an
23 investigator.

24 Q Okay. As an investigator?

25 A I think that's who he was, yes.

1 Q Did you give him your telephone number?

2 A Saw that again?

3 Q Did you give him your telephone number?

4 A Yes, I think I gave him my number.

5 Q Okay.

6 A I think I did. I don't even know how he got to my
7 house. Again, I didn't speak to anybody, so I didn't know
8 who he was.

9 Q He just showed up at your house?

10 A He just showed up at my door.

11 Q And started asking you some questions?

12 A Yes, ma'am.

13 Q Okay. And Troy has your phone number, correct?

14 A Then, yeah.

15 Q Okay. Mr. Hunter, do you have a criminal record?

16 A I do.

17 Q What is your record?

18 A Is it relevant for this?

19 THE COURT: It would go toward -- I assume I
20 know where she's going. It would go toward whether or not
21 he would be called as a witness and why you might or might
22 not call him as a witness?

23 A It was over 20 years ago, so it was robbery.

24 Q An armed robbery?

25 A Uh-huh.

1 Q Okay.

2 MS. MCCALLISTER: Thank you.

3 THE COURT: All right. Anything further?

4 MR. WALLER: Nothing further, Your Honor.

5 THE COURT: Mr. Hunter, thank you very much.

6 Any objection to Mr. Hunter being excused?

7 MR. WALLER: No objection.

8 MS. MCCALLISTER: No, Your Honor.

9 THE COURT: You are free to stay, but you also
10 free to go. It's up to you.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 MR. WALLER: Your Honor, the applicant will call
14 Troy Hunter.

15 THE COURT: All right, Mr. Troy Hunter, if
16 you'll come around to be sworn.

17 THE CLERK: Stop right there, sir. Put your
18 left hand on the Bible and raise your right hand as much
19 as you can. Do you swear or affirm that the testimony you
20 give will be the truth, the whole truth, and nothing but
21 the truth so help you God?

22 MR. HUNTER: Yes, ma'am.

23 THE CLERK: Thank you. You can have a seat.

24 MR. WALLER: Thank you, Your Honor. May it
25 please the Court.

1 WHEREUPON,

2 Troy D. Hunter,
3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WALLER:

6 Q Good morning, Mr. Hunter. How are you today?

7 A I'm all right.

8 Q Mr. Hunter, do you recall when you got arrested?

9 A Yes, sir.

10 Q Okay. After you got arrested, were you assigned an
11 attorney, best way to put it appointed an attorney?

12 A From the public defender's office and then when -- I
13 had file a motion to relieve him to get me a paid attorney
14 because me and Mr. Meetze -- Vick Meetze, the public
15 defender, we wasn't getting along. He wasn't doing
16 nothing for me. So I felt like I had to pay somebody to
17 come and represent me and I hired Mr. Deberry.

18 Q Okay. Did you have another attorney for -- in
19 between those two?

20 A Oh, yeah, I had -- for my bond hearing and I was
21 retaining Mr. Hicks Harwell God bless his soul.

22 Q Okay. So you had Vick Meetze first. And then
23 briefly for just your bond hearing, you had Mr. Harwell,
24 Judge Harwell. And then ultimately you ended up with
25 Mr. Deberry who's the one that tried your case?

1 A Yes, sir.

2 Q Okay. How many times you think you met with
3 Mr. Deberry?

4 A When he came to the county, probably about three
5 times to visit with other people, that's how I first
6 started talking to him.

7 Q That's how you heard of him?

8 A Yeah.

9 Q Okay.

10 A He was coming on A Pod and he was seeing his other
11 clients. And they was telling me that he was a good dude.
12 And then they was coming back and then they was going
13 home. So I was like that's who I need right there.

14 Q Okay. When you actually retained him, how many times
15 you think you met with him and discussed your particular
16 case?

17 A About two more times.

18 Q Okay. What did y'all talk about?

19 A He was just -- well, I was letting him know that, you
20 feel me, it wasn't what it was. You feel me, ain't nobody
21 even come and talk to me about nothing, try to find out
22 what was going on or nothing and that I ain't had no gun.
23 You feel me, I ain't rob nobody. The man was lying, you
24 feel me. And I was telling him to go check the scene, but
25 he was like he don't know where it was because the man

1 said I shot by his head two times. If I shot by your head
2 then, there should have been some evidence or something,
3 you feel me? So I got my cousin who use to go over there
4 with me to get in touch with him to take him over there,
5 you feel me. And he said he went over there, but he ain't
6 see nothing either. And that's what I was showing him
7 that it never happen.

8 Q Okay. And this is some time -- when you retained Mr.
9 Deberry, that's some time after the incident took place;
10 is that right?

11 A Yeah.

12 Q Okay. When you and Mr. Deberry met, did you provide
13 him with any information about any witnesses or
14 information about what actually took place that day?

15 A Yes, sir, I told him that I had a witness to
16 everything that happen. I told him about Charles.

17 Q Okay. And that was the gentleman that just left
18 here?

19 A Yes, sir.

20 Q Okay. And he was your ride that day; is that right?

21 A Yes, sir.

22 Q Okay. To your knowledge, did y'all ever discuss him
23 meeting with Charles?

24 A No, I had told him about Charles because I had told
25 him I wanted Charles here, you feel me. Because if they

1 trying to say I did something, then I got a witness saying
2 something else, you feel me, that knew the truth.

3 Q Do you know if you ever followed up and actually met
4 with Mr. Charles?

5 A He told me he did. I ask him at trial say where
6 Charles at, he said that he subpoenaed Charles. He just a
7 telephone call away. He'll call him if he need him.

8 Q Okay. And obviously he was not called; is that
9 right?

10 A No, he wasn't subpoenaed neither.

11 Q Okay. When you and Mr. Deberry were getting ready to
12 go to trial, what was y'all strategy, what did you come up
13 with?

14 A Well, really he just tell me that he wasn't going to
15 call no witnesses because they ain't had nothing. And if
16 they ain't had nothing, it wasn't -- he didn't want to
17 give them nothing.

18 Q Okay. You were originally charged with four
19 offenses; is that right?

20 A Yes, sir.

21 Q Okay. And you only went to trial on two of them.
22 Did you and Mr. Deberry discuss all four charges and
23 ultimately two that you went forward on?

24 A Yes, he told me that they was dropping the gun charge
25 and the attempted murder. And I was still going to trial

1 for armed robbery and assault.

2 Q Did y'all discuss those charges and what they
3 carried, the elements and the potential penalties and
4 things like that?

5 A I don't quite remember, but I do remember asking if
6 they dropping the gun why am I still charge with armed
7 robbery.

8 Q Okay. Let me ask you this, what did y'all talk about
9 during your meeting? You said you met with him at least
10 two times after you retained him. What did y'all talk
11 about?

12 A Well, basically it was about my cousin taking him
13 back to the scene, so he can do his little deal to see
14 what's going on, so he could get my side of the story, you
15 feel me, he had some facts. And I told him about Charles,
16 that was basically about it because he said they didn't
17 have nothing else in dealing with my case, you feel me,
18 because it was no evidence.

19 Q Did y'all discuss any of the statements, any of the
20 other witnesses might have given?

21 A No, I ain't even know the witnesses was coming until
22 the day of trial.

23 Q Okay. All right. Mr. Hunter, I've asked you all of
24 the questions that I have for. Is there anything you
25 think that I've left out or that the Court needs to be

1 aware of by Mr. Deberry's representation of you?

2 A Yeah, I feel like he was ineffective because he
3 didn't object to the judge improper jury instruction, you
4 feel me, that allowed him to base my guilt on two
5 scenarios a gun and my hand a fist. I couldn't get no
6 fair trial like that. I wasn't even put on notice about
7 my hand a fist even being a weapon.

8 MR. WALLER: Thank you, Mr. Hunter. Please
9 answer any questions Ms. McCallister has.

10 CROSS-EXAMINATION

11 BY MS. MCCALLISTER:

12 Q Okay. Mr. Hunter, you testified that you told your
13 attorney Mr. Deberry that you wanted him to talk to
14 Charles, correct?

15 A Yes.

16 Q And he told you that he had talk to Charles?

17 A Yes, he told me he subpoena him and that he had him
18 on standby. He could have called him and he would have
19 came right on up if he needed him.

20 Q Okay. And then he talked to you about this strategy
21 of not calling witnesses, correct?

22 A At our table -- we was at the table he was like he
23 wasn't going to call nobody because he didn't want to give
24 the State no ammunition because they ain't had none.

25 Q So he did explain to you why he decided not call to

1 Mr. Hunter?

2 A No, not Mr. Hunter I'm talking about because, I
3 think, we had more witnesses such as Ms. Princes Benjamin
4 and some other police officers that he didn't call, but I
5 had wanted him to call Charles because Charles was there,
6 you feel me. That's a whole other story for the jury to
7 hear.

8 Q Okay. But your testimony is that you were sitting at
9 the trial table together, correct?

10 A Yeah.

11 Q In the courtroom and Mr. Deberry told you he was not
12 going to call any witnesses, correct?

13 A Yeah.

14 Q Which I'm not calling any witnesses would include I'm
15 not calling Charles Hunter, correct?

16 A That's what he say.

17 Q Okay. And he explain to you why he didn't want to do
18 that; is that correct?

19 A No, he ain't explain to me why he wasn't going to
20 call Charles.

21 Q Well, you said that he didn't want -- he said he
22 wasn't going to call any witnesses because the State
23 didn't have anything ---

24 A He didn't want to give them ammunition, but why
25 wouldn't you call the man that was there.

1 Q Okay. I'm just asking you did he explain that to
2 you?

3 A Well, if you don't ask me -- you gone let me explain
4 it how I can explain it?

5 Q Well, I think I'm asking you just a yes or no
6 question?

7 THE COURT: You can answer her question and then
8 you can explain your answer.

9 MR. HUNTER: Thank you, sir.

10 BY MS. MCCALLISTER:

11 Q Did he explain to you that he wasn't going to call
12 any witnesses and why he wasn't going to call any
13 witnesses?

14 A Mr. Deberry told me that he wasn't calling no
15 witnesses because he didn't want to give up no ammunition.

16 Q Okay.

17 A But he ain't never explain to me why he wasn't going
18 to call Charles Hunter who was actually at the scene going
19 to get no ammunition.

20 Q So you don't -- in your mind, I don't want to give
21 them any ammunition is not an explanation?

22 A No.

23 Q Okay.

24 A Not if you got an eye witness to a crime that you can
25 put on the stand, you feel me, especially if they gone

1 help your client. Why wouldn't you want the jury to hear
2 that.

3 Q Okay. So did you tell him no, no, no, call Charles
4 Hunter?

5 A See first of all ---

6 Q Yes or no did you tell him?

7 A --- I ain't familiar with the law, that's why I paid
8 Mr. Deberry, so I can get some help, you feel me.

9 Q Okay. But did you tell him, no, I don't want to do
10 that, I want you to call Charles Hunter?

11 A I already had told him that I had wanted Charles
12 here, you feel me. It was his decision not to call
13 Charles. It wasn't mine.

14 Q When he informed you of that decision, did you insist
15 that he call Charles Hunter?

16 A No, I ain't kept going on with it.

17 Q Okay.

18 MS. MCCALLISTER: I think that's all the
19 questions I have, Your Honor.

20 THE COURT: Anything further of this witness?

21 MR. WALLER: Nothing further, Your Honor.

22 THE COURT: Thank you, Mr. Hunter. You may step
23 down, sir.

24 (WHEREUPON, the witness leaves the witness
25 stand.)

1 MR. WALLER: Nothing further from the applicant,
2 Your Honor.

3 THE COURT: The State have any witnesses?

4 MS. MCCALLISTER: No, Your Honor, we would just
5 ask for some argument.

6 THE COURT: All right. Mr. Waller, be happy to
7 hear from you, sir.

8 MR. WALLER: Your Honor, the testimony has been
9 that there was another eyewitness who would place Mr. Troy
10 Hunter at the scene without a weapon, that witness was not
11 called and I think that is a valid trial strategy to not
12 call him. I'm certainly not saying that if Mr. Deberry
13 was aware of his testimony and had done his proper
14 investigation, I certainly think that was a valid trial
15 strategy whether it would have worked or not, I don't know
16 that, that's for a jury to decide, but I do think that's a
17 valid trial strategy. However, he has to take it all the
18 way to the end. And when he asked Judge Brown to not
19 charge strong armed robbery, he is -- he's continuing to
20 do it. And Judge Brown, Your Honor, on page 249 beginning
21 on line 13 and going through line 21, Judge Brown agrees
22 with him and says that there had been no evidence to the
23 contrary that it was a -- the State had presented armed
24 robbery all the way. It was no evidence that it was a
25 strong armed robbery.

1 THE COURT: All right. So what's your argument
2 there?

3 MR. WALLER: When Judge Brown charges the jury
4 and inserts -- basically gives the jury an out by saying
5 that a fist can be considered as a deadly weapon when
6 there was no evidence presented that a fist was a deadly
7 weapon. And Mr. Deberry by failing to object to that
8 charge, that's improper. It's not preserved for appeal at
9 that point.

10 Your Honor, I got some cases here to cite. The
11 first one State vs. Brown. It's 326 SC 258. It says
12 generally the evidence presented at trial determines the
13 law to be charged by the jury. The case I'm citing from
14 is State vs. Hernandez. It was a voluntary -- it was a
15 murder trial discussing -- it's not directly on point.
16 It's discussing a -- charging a lesser-included offense.
17 However, it gives, I believe, very instructive description
18 of what a jury charge is to include. And the premise,
19 Your Honor, is that if there's not evidence presented even
20 if it is valid and accurate law, it's not to be included
21 in a jury charge. It would have made no sense and would
22 have been improper for Judge Brown to have charged the
23 jury with murder or financial transaction card theft.
24 Even if they are valid and accurate pieces of law, that
25 they weren't to be included in that trial. That it was no

1 basis for them to be in that trial.

2 Your Honor, State vs. Moultry. It's 273 South
3 Carolina or SC 532. It's a 1979 case. It says an
4 instruction should not be given unless justified by the
5 evidence. State vs. Blurton 352 SC 203 says if a jury
6 instruction is provided to the jury that does not fit the
7 facts of the case, it may confuse the jury. Your Honor,
8 that's what we have here. Your Honor, there's one more
9 State vs. Hill 315 SC 260. It's a 1993 case says the
10 charge must be given if there's any evidence to support
11 it. Trial court commensurate reversible error if it fails
12 to give a requested charge on the issue raised by the
13 evidence ---

14 THE COURT: Is there any evidence here that --
15 in other words, Mr. Deberry objected to the Court charging
16 first and then the Court -- heard, disagreed -- in other
17 words, the Court said, well, that's the law and I'm going
18 to charge the law.

19 MR. WALLER: Your Honor, the testimony may have
20 been that, that was at a bench conference that was not
21 recorded on the record. After the complete charge is
22 given, the jury is sent out. Judge Brown ask both the
23 Solicitor and Mr. Deberry if there's any objection to the
24 charge.

25 THE COURT: But is there any evidence that there

1 was no evidence in the record to support the charge of a
2 fist because if the evidence in an armed robbery case
3 supports it, it is valid law that a fist can be considered
4 a deadly weapon.

5 MR. WALLER: Judge Brown's own comments during
6 the charge conference, Your Honor. And again it's on page
7 249 ---

8 THE COURT: Was that there was no evidence of
9 strong armed robbery?

10 MR. WALLER: No, sir, it says all of the
11 evidence in this case, the undisputed evidence is that
12 there was a firearm and that there was a robbery. So I
13 think it's either straight up or down on the armed robbery
14 period. No evidence of contrary, that's a quote from
15 Judge Brown.

16 THE COURT: Okay.

17 MR. WALLER: So he says that there was a firearm
18 and only a firearm and that's obviously not in front of
19 the jury, but that's Judge Brown making comments on the
20 facts that had been presented and refusing to charge the
21 lesser-included. If there had been evidence of a robbery
22 that did not involve a weapon, then I certainly think that
23 Mr. Deberry was required to request a charge on strong
24 armed robbery which he didn't do. And again I believe
25 that's a valid trial strategy, but when the charge is read

1 to the jury, that differs from the evidence presented at
2 trial ---

3 THE COURT: That's my question.

4 MR. WALLER: Yes, sir.

5 THE COURT: If the evidence presented at trial
6 -- I mean, I guess I need to read the transcript.
7 Apparently, Judge Brown apparently decided from the
8 evidence presented at trial that it was appropriate to
9 charge that a fist can be considered a deadly weapon
10 depending on how it's used.

11 MR. WALLER: Yes, sir, apparently he did. Very
12 shortly before that during the charge conference, he had
13 said that there was no evidence of that whatsoever, that
14 the only evidence that had been presented was there was a
15 gun presented and only a gun. So shortly after that, he
16 seems to reverse course. He's the trial judge that's
17 perfectly fine, but then it's on Mr. Deberry to object to
18 that charge as a whole to A preserve for appeal and to B
19 to ask Judge Brown to make a ruling on that.

20 THE COURT: Okay.

21 MR. WALLER: Your Honor, the other main point I
22 would like to make, the Solicitor's closing arguments he
23 blatantly vouches for the credibility and the
24 believability of Mr. Hollomon, the victim, in this case
25 who in tying back to the other evidence is the only person

1 who said there was a gun involved. He's the only -- there
2 was no eyewitnesses to this taking place. There was a
3 witness who said I passed by Mr. Troy Hunter right before
4 this took place. He didn't have anything in his hands. I
5 don't know if he could have gotten something in his hands
6 afterwards, but he didn't see a gun. But he didn't see
7 the altercation. The only person that puts Mr. Hunter as
8 having a weapon was the victim, Mr. Hollomon, in this
9 case. When Solicitor Ozment stands up there and says he
10 was telling the truth, I know for a fact he was telling
11 the truth, that's impermissible and it should have been
12 objected to by Mr. Deberry. Your Honor, I don't have any
13 case law on that. The case law I'm vouching is well as
14 established. I would ask you to consider that the
15 transcript as a whole, would ask you to read the parts
16 that we've alluded to here today and the cases that I've
17 referenced and grant Mr. Hunter the relief that he seeks.
18 Thank you, sir.

19 THE COURT: Thank you, sir.

20 Yes, ma'am.

21 MS. MCCALLISTER: Thank you, Your Honor. Your
22 Honor, on the issue of the jury charge, I'm not sure that
23 Judge Brown's assessment that there was no -- you know, he
24 says undisputed evidence of a gun. Your Honor, that
25 occurs before everybody does their closing arguments. And

1 Mr. Deberry in his closing argument, I think, did a really
2 good job of highlighting why there was no gun involved.
3 He talks about, you know, the fact that there were no
4 bullets found. The police came, you know, fairly soon
5 afterwards. There's no bullets. There's no evidence of a
6 struggle. The bystanders described the noise as all
7 different kinds of ways. The only person -- the State's
8 only witness who claim to see anything saw a fight, saw
9 fist be thrown and not a gun. So I don't know that Judge
10 Brown's comments before kind of hearing summary of the
11 evidence -- you know, his mind could have change. He's
12 the judge and he has the right to change his mind.

13 Your Honor, the State submits that the jury
14 charge that he gave as to the fist was a legal proper
15 charge. And actually, Your Honor, I don't think it's
16 even -- I mean, it's -- in my argument, it would be it's
17 helpful to Mr. Hunter. It says a hand or a fist does not
18 normally -- or is not normally considered a deadly weapon
19 and that the jury has to decide that in this case beyond a
20 reasonable doubt whether a hand or a fist is a deadly
21 weapon. And as I said, Mr. Deberry did a good job of
22 summarizing, you know, why it wasn't a gun. The State's
23 theory is that's why the judge, you know, ended up
24 charging that.

25 Additionally, Your Honor, I mean, we have no

1 evidence or no way to know what theory the jury convicted
2 Mr. Hunter on. For all we know, they decided that there
3 was a gun. And so the jury instruction about a fist
4 doesn't matter because they didn't convict him under that
5 theory.

6 There is evidence -- there is some evidence of a
7 gun. You know, there was one person who said she heard
8 gunshots whether the jury could decide to believe her over
9 everybody else if they wanted to. And there was also the
10 testimony of the doctor that he had been hit with kind of
11 a hard object, Your Honor. I do think that the doctor's
12 testimony kind of raises a question of whether it could
13 have been a hand or a fist. There was some testimony and
14 some questions asked about whether a fist could cause
15 these injuries or cause this damage. So, Your Honor, we
16 would -- the State argues that there was no error in
17 giving jury instruction and there was no error in not
18 objecting to it. And I'm not even sure what the objection
19 would be since it's a proper charge under the law of the
20 State of South Carolina.

21 THE COURT: Well, I think the argument that
22 Mr. Waller is making is that it's only proper argument if
23 some appellate review determines that the evidence
24 supported the charge, but if you failed to make the
25 objection, then the reviewing court doesn't address that

1 issue.

2 MS. MCCALLISTER: Well, yes, the reviewing
3 court -- I mean, I agree obviously if it's not preserved,
4 the reviewing court can't address the issue, but if it's a
5 proper charge under the circumstances and he doesn't have
6 a basis -- then he doesn't have a basis to make an
7 objection in the first place. If the charge is legal and
8 there was evidence presented at trial, then ---

9 THE COURT: And I know what you're saying, I
10 think that's the -- you correct if I'm misquoting your or
11 misstating your position, but, I think, that's their
12 position is that by not -- in other words, I'm assuming
13 your position is is that there wasn't evidence to support
14 the charge that a fist should be charged as a deadly
15 weapon because this case doesn't support -- the evidence
16 in this case didn't support that.

17 MR. WALLER: That's correct. And he already
18 previously objected to strong armed robbery being charged
19 the jury because the evidence presented -- and Mr. Deberry
20 testified to it today that that was their strategies. The
21 State had evidence -- all the evidence they presented was
22 that there was a weapon involved, so he thought that there
23 was a possibility the jury could -- the event didn't even
24 take place.

25 THE COURT: But didn't Dr. Lawhorn testify that

1 the injuries ---

2 MR. WALLER: He testified they were consistent.

3 THE COURT: Would have also been consistent with
4 a fist?

5 MR. WALLER: He actually testified that he
6 didn't believe they would be consistent. Mr. Deberry
7 asked him if it was -- if a knuckle had a direct shot
8 could that have possibly have caused and he said maybe.
9 He said if there was a glancing blow, it wouldn't be
10 enough to break enamel, which is the hardest substance in
11 the human body. So he didn't give a definitive answer as
12 to whether a fist would have been able to do that. He did
13 give a definitive answer that it was consistent with a gun
14 butt.

15 THE COURT: And your position is is that
16 Mr. Deberry would not be in a position to object if there
17 was any evidence to support a valid charge?

18 MS. MCCALLISTER: Right. And so he can't be
19 ineffective for not objecting to something that he doesn't
20 have a basis to object to. And, Your Honor, I mean,
21 despite the fact that Judge Brown ended up giving this
22 charge, I think the strategy on going up or down on armed
23 robbery is still a valid strategy. This charge gives them
24 a high burden. You have to find beyond a reasonable doubt
25 whether a fist is used as a deadly weapon in this case.

1 You know, if they believe that a fist is not a deadly
2 weapon and they believe the State's witness, own witness,
3 who says I saw him throw a punch, then he is not convicted
4 on the armed robbery charge. So I don't think that it's
5 in conflict with this strategy of going up or down on
6 armed robbery either. I do think that the transcript is
7 helpful in terms of how we got to the point of giving that
8 charge, Your Honor. We would just ask for, Your Honor, to
9 review the transcript.

10 MR. WALLER: Your Honor, just briefly, I think
11 that the charge actually lowers the burden because the
12 previous charge and standard charge which is always giving
13 for a deadly weapon doesn't say anything obviously about
14 fist or hands. And it list, you know, very deadly things
15 a pistol, a shotgun, a riffle, a dirk, which I don't know
16 is still used a whole lot, but a dagger, a knife, a sling
17 shot, metal knuckles, a razor, gasoline, and fire bomb,
18 Molotov cocktail or lighter fluid. A gun may be a deadly
19 weapon even if it's not operating. All those things are
20 commonly known as deadly weapons. I think it lowers the
21 standard the jury -- it gives the jury a lesser standard
22 by saying that a fist can be ---

23 THE COURT: It doesn't matter if it's the
24 appropriate law. Doesn't matter if it lowers the
25 standard.

1 MR. WALLER: Correct, correct. And, Your Honor,
2 I'm not questioning that it is -- that that is good law.
3 I'm saying that the law of jury charges if it wasn't
4 appropriately charged in this case because there wasn't
5 evidence presented, then it shouldn't have been charged
6 and should have been objected to if it was charged by
7 Mr. Deberry.

8 THE COURT: You're giving me a lot of ifs. You
9 have the burden of proof. You can't give me a bunch of
10 ifs.

11 MR. WALLER: It should have been objected to,
12 Your Honor. Judge Brown, as the trial judge, can charge
13 the jury with what he thinks is appropriate.
14 Mr. Deberry's trial strategy the entire time was a risky
15 one because it's exposing his client -- it's not giving
16 the jury an out, but once he makes that trial strategy,
17 it's to follow through until the very end. And it was a
18 very simple objection not in the presence of the jury.

19 THE COURT: Nobody in this case put Mr. Hunter
20 into a conflict with the victim other than the victim,
21 nobody.

22 MR. WALLER: Correct.

23 THE COURT: If Mr. Deberry would have called
24 Mr. Charles Hunter, Mr. Charles Hunter could have
25 supported the State's argument and would have put this

1 Mr. Hunter, Troy Hunter into a fight with the victim.

2 MR. WALLER: I agree with that.

3 THE COURT: So he would have supported the
4 State's case. So it's not a risky strategy. It appeared
5 to be the only strategy to try to help Mr. Troy Hunter
6 avoid this conviction.

7 MR. WALLER: Your Honor, risky may have been a
8 poor choice of words. I think, it was a valid trial
9 strategy. If he had presented Mr. Charles Hunter, I think
10 he exposes Mr. Troy Hunter to being convicted of the
11 lesser-included offense. He made his decision. And again
12 I'm not second guessing the decision whatsoever. I think
13 it was valid, but he has to follow through to the very end
14 of the trial. And it got to the very end and he just
15 didn't do it. I think that's improper.

16 THE COURT: I understand. I got a little
17 reading I need to do. I'll read the transcript. And
18 then, of course, in view of your arguments, I'll have a
19 decision for you as soon as I can.

20 MR. WALLER: Thank you, Your Honor.

21 MS. MCCALLISTER: Thank you, Your Honor.

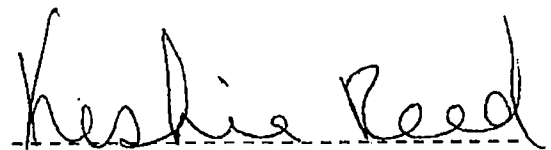
22 END OF REQUESTED TRANSCRIPT
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 68, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 31st day of August, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 31st day of March 2019.

A handwritten signature in cursive script that reads "Keshia Reed". The signature is written in dark ink and is positioned above a dashed horizontal line.

Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Troy Darnell Hunter, #226094,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-21-0056

ORDER OF DISMISSAL

DOMINIC POULOS, CLERK
C.C.P. & G.S.
FLORENCE COUNTY, SC

2018 OCT 29 AM 10:03

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 8, 2015, by Troy D. Hunter (Applicant). Respondent made its Return on November 21, 2016. An evidentiary hearing into the matter was convened on August 31, 2017, at the Florence County Courthouse. Jonathan Waller, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Charles Hunter also testified for Applicant. H. Steven DeBerry, IV, Esquire, testified for the State. After hearing testimony and the arguments of counsel, the Court now denies and dismisses the application.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the June 2012 term of the Florence County Grand Jury for armed robbery, attempted murder, assault and battery – second degree, and possession of a firearm (2012-GS-21-692). H. Steven DeBerry, IV, Esquire (Counsel), represented Applicant. On January 14-16, 2013, Applicant proceeded to a jury trial before the Honorable D. Craig Brown on the counts of armed robbery and assault and battery – second degree. The remaining charges were dismissed. The jury convicted Applicant

CERTIFIED: A TRUE COPY
Doris Parks Offord
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

as indicted, and Judge Brown sentenced him to confinement for thirty years for armed robbery concurrent with three years for assault and battery – second degree.

A notice of appeal was filed on Applicant's behalf, and an appeal was perfected by Lara M. Caudy, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Hunter, Op. No. 2014-UP-437 (December 3, 2014). The Remittitur was issued on December 22, 2014.

SUMMARY OF FACTS ADDUCED AT TRIAL

At approximately 2:00 p.m. on November 30, 2011, Demetrius Holloman (Victim) and Roderick Titus returned to Titus's home after attending a funeral. Tr. pp. 63-64, 130. At trial, Roderick Titus testified that he, Victim, and Applicant were all friends. Tr. pp. 60-61. He testified that on November 30, 2011, he and Victim attended a funeral together and then returned to his residence. Tr. pp. 63-64. Titus went inside the home to change clothes, while Victim walked to the side of the house. Tr. p. 65. Titus testified he heard a "loud bang noise" that could have been gunshots, at which time his sisters ran inside screaming and upset. Tr. pp. 66, 69-70.

Nate Orgbon testified he was also at Titus's house on November 30, 2011, and saw Applicant there later in the day, after lunch. Tr. pp. 84-85. He testified Applicant was looking for Victim, and someone told Applicant where to find Victim. Tr. p. 86. Orgbon explained Applicant walked up to Victim and "clean clocked" him with his fist. Tr. p. 87. Orgbon testified, "He just punched the man, you know what I mean, so they (sic) fighting." Tr. p. 87. Orgbon stated he left after he saw Victim "go back" after Applicant hit him. Tr. p. 87.

The State also called Idena Titus Simmons, Roderick Titus's mother, who lived at the address where the incident occurred. Tr. p. 109. She testified when she returned from the

funeral after lunch, she heard a loud boom. Tr. p. 112. She recalled telling her husband it sounded like a truck hitting a transmitter, and her husband said it sounded like a gun. Tr. p. 112.

Deloris Titus Johnson, Simmons' sister, testified she was also at the Simmons' residence on November 30, 2011. Tr. p. 119. Johnson testified she was parked in the front yard talking on her cell phone when she saw Applicant arrive with a man she did not know. Tr. pp. 119-21. Next, she recalled hearing gunshots and saw the people in the backyard begin to scatter. Tr. p. 121. She testified she saw Applicant and the man walk back to their car and leave. Tr. p. 122.

Victim testified regarding the details of the assault and robbery. When he arrived at the home, Victim walked to the side of the house, where he had his cell phone charger plugged in, and kneeled down to unplug it. Tr. 131. While Victim was kneeling down, Applicant came up behind him and hit him in the mouth with a .357 Magnum. Tr. pp. 131-32. Victim fell to the ground, and Applicant hit him on the top of the head with the gun, stood over him, and asked where "it" was. Tr. pp. 132-33. Applicant shot the gun right by Victim's head and then reached into Victim's pants pocket, taking \$1,000. Tr. p. 133-34. Applicant threatened to kill Victim if he said anything, and then left the scene. Tr. p. 133.

Immediately after he saw Applicant drive away, Victim got up and walked straight to his mother's house and told her what happened and who did it. Tr. pp. 135-36. Initially, Victim told police he did not know who did it, but he eventually gave Applicant's name. Tr. pp. 137-39. Victim testified he went to the hospital and spoke to police there, but he did not give Applicant's name at first because he was afraid. Tr. p. 139. Victim testified he told the police what really happened a couple days later once he realized the full extent of his injuries and the money it would cost to repair them. Tr. pp. 138-39. He testified he was so scared after telling police Applicant did it that he stayed inside for two weeks, fearing for his life. Tr. p. 140.

On cross-examination, Counsel thoroughly questioned Victim regarding the timing of when he named Applicant to police as the person who assaulted and robbed him. Tr. pp. 147-48. Counsel asked several times whether Victim realized he could not get his teeth fixed unless he gave a statement and cooperated with the investigation. Tr. p. 147, 154-56. Specifically, Counsel asked, "Because of your recorded statement, you said to Sergeant Davis that it was only when you realize[d] that you couldn't get your mouth fix[ed] without giving a statement, that you decided to tell that it might have been Troy Hunter?" Tr. pp. 154-55.

Victim's mother, Debra Singleton, also testified. Singleton testified Victim came into her house, calling out to her. Tr. p. 170. She said she saw blood everywhere, "just pouring," and asked him what happened. Tr. p. 170. She testified, "He say [Applicant] hit me in my mouth with a gun." Tr. p. 170. Singleton accompanied Victim to the emergency room and told Victim he needed to tell the police what happened. Tr. p. 172. She recalled Victim was kind of scared to say anything because he knew Applicant carried a gun and was afraid Applicant could kill him. Tr. p. 173. She testified she sensed he might still have been scared even after he told police because he stayed at her house for several weeks and did not return to his own place until after Applicant was arrested. Tr. pp. 173-74.

Investigator Lee Davis of the Florence Police Department testified he got involved in the case when Victim contacted the police department's Victim's Services division and was told he had to cooperate with the investigation in order to receive services. Tr. pp. 181-82. Davis testified Victim then reported Applicant assaulted him. Tr. p. 182. Davis took a recorded statement from Victim, and Victim's Services took photographs of his injuries, which were admitted without objection. Tr. p. 182-83. Davis also testified he went out to the incident

location but could find no evidence at the scene to indicate a gun was used in the commission of the crime. Tr. p. 205.

Next, the State called Dr. James M. Lawhan, an oral and maxillofacial surgeon, to testify regarding Victim's injuries. Tr. p. 220, 223-24. The trial court qualified him as an expert in the field of dentistry and facial trauma without objection. Tr. p. 222-23. Dr. Lawhan testified he saw Victim on December 1, 2011, for an evaluation of trauma to his face. Tr. p. 224. He found one bottom tooth that was fractured, two adjacent missing teeth to the right of that, and two fractured teeth on the top. Tr. p. 231. Dr. Lawhan testified that between the swelling, the fresh blood clots he observed where the teeth had been knocked out, and the clean edges of the fractured teeth, he could tell the injuries were recent. Tr. p. 233. Further, Dr. Lawhan testified Victim's injuries were "consistent" with being hit with a gun butt, and he felt the mechanism of injury was something more condensed than a fist. Tr. pp. 235-36. However, on cross-examination, Lawhan conceded Victim's injuries could also be consistent with being hit by a knuckle. Tr. p. 240.

After the State rested, the parties had a charge conference, and Counsel objected to the inclusion of a charge on strong-arm robbery as a lesser-included offense of armed robbery. Tr. p. 249. The Court agreed the evidence presented was that there was a robbery and a firearm was used, and, therefore, decided not to include the strong-arm robbery charge. Tr. p. 249. During the Court's reading of the charge, the trial judge called the attorneys to the bench and informed them he intended to charge that fists could be a deadly weapon, depending on the circumstances. Tr. p. 284-85. Ultimately the Court charged as follows:

[A] fist can be considered a deadly weapon. A hand or a fist . . . is not normally considered a deadly weapon. However, under some circumstances depending on the manner and means of its use, the wounds inflicted, and other relevant facts, a hand or fist may be considered a

deadly weapon. It is for you to decide in this case beyond a reasonable doubt whether or not a hand or fist is a deadly weapon.

Tr. pp. 284-85.

Ultimately, the jury found Applicant guilty of both charges, and Judge Brown sentenced him to three years' imprisonment for second-degree assault and battery and thirty years' imprisonment for armed robbery, to be served concurrently. Tr. pp. 303, 311-12.

ALLEGATIONS

In his application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure "to object to the trial court's erroneous jury instruction that shifted the burden of proof."

On August 16, 2017, counsel for Applicant provided Respondent with an updated and amended list of allegations via email. The amendment to the application includes the following allegations:

1. Failure to call witness Charles Hunter;
2. Failure to object to impermissible comments in the State's opening statement;
3. Failure to object to portions of Dr. Mark Lawhorn's testimony as outside the scope of his expertise;
4. Failure to object to portion of jury charge charging "fists as deadly weapons";
5. Failure to object to impermissible comments during State's closing argument;
6. Failure to make any post-trial motions.

At the start of the evidentiary hearing, Counsel for Applicant withdrew amendment #2 regarding impermissible comments in the State's opening. Therefore, this Court find Applicant has abandoned that allegation. Additionally, because Applicant failed to present any evidence

regarding the allegation that Counsel failed to make any post-trial motions, this Court finds Applicant also abandoned that allegation. This Court finds both allegations were waived, and they are dismissed with prejudice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, an applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. An applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, an applicant must prove counsel's

performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

A. Ineffective Assistance of Trial Counsel

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that trial counsel's decisions are based on tactical strategy rather than neglect, and "[t]hat presumption has particular force where a petitioner bases his ineffective-assistance claim solely on the trial record, creating a situation in which a court 'may have no way of knowing whether a seemingly unusual or misguided action by counsel had a sound strategic motive.'" Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy).

Counsel's strategy is reviewed under "an objective standard of reasonableness." Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

1. Failure to call Charles Hunter as defense witness

Applicant testified he and Counsel discussed Applicant's version of events, and Applicant told Counsel he did not have a gun, and "there was a witness to everything," Charles Hunter. Applicant testified Counsel told him he met with Charles Hunter and had subpoenaed him for trial, and Charles was only a phone call away. Applicant further testified Counsel ended up not calling any witnesses on behalf of the defense, and Counsel told him it was because the State "did not have anything, and he did not want to give them anything."

Charles Hunter testified at the evidentiary hearing. Mr. Hunter testified he was in the neighborhood where the incident took place when he happened to see Applicant on the street. Mr. Hunter testified Applicant got in his car, and they went over to the house on Dixie Street, where the incident took place. Mr. Hunter testified there were lots of people at the house, including Victim, who he knows as "Tad" or "Tadpole." Mr. Hunter stated Applicant and Victim got into an argument, and he saw Victim swing at Applicant, then saw Applicant hit Victim with his fist. Mr. Hunter testified he then heard what he thought was a gunshot behind him, and when he turned back around, everyone was gone except Victim and Applicant, who were still fighting. Mr. Hunter stated he broke up the fight, and he and Applicant got back in his car and left. Mr. Hunter testified he did not see Applicant with a gun, but he acknowledged on cross-examination he had not been with Applicant all day, so he did not know what Applicant had in his pockets or under his clothes. Mr. Hunter stated neither law enforcement nor Counsel contacted him about what he had seen, but he did speak with Mr. McKenzie, from the public defender's office, and he told McKenzie what he knew.

Counsel testified he was aware of Charles Hunter as a potential witness, and Counsel spoke to him and included him on the witness list for trial. Counsel testified he was not certain whether he issued a subpoena for Mr. Hunter as the only copy in the defense file was unsigned. However, Counsel testified his notes indicated he communicated with Mr. Hunter, obtained the information to which Mr. Hunter would testify, and asked Mr. Hunter to be available by telephone in case Counsel called him to testify. Counsel also testified he went out to the scene of the incident himself, and met with Applicant five to six times prior to trial to discuss the case.

Counsel further testified he spoke with Applicant about the decision as to whether to call witnesses after the State rested, and they ultimately decided not to put up any testimony. Counsel testified he explained to Applicant the two main issues he saw with the State's case. First, Counsel explained he felt the State had not proved beyond a reasonable doubt the incident had occurred at this specific time and place, as the witnesses who claimed to have seen Applicant only testified to a fight, not a robbery, and there was no evidence recovered from the scene suggesting a gun was fired or someone had been injured there. Counsel testified calling Mr. Hunter would require Applicant to admit he was there and fought with Victim, just not with a gun. Second, Counsel testified Applicant had already decided not to testify, so he also explained to Applicant he would lose the last argument to the jury if they introduced any evidence.

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged

action might be considered sound trial strategy.” Strickland, 466 U.S. at 689. This Court finds Counsel provided effective assistance in this case. Specifically, this Court finds Counsel visited the scene, met with Applicant, and investigated Applicant’s witness, Mr. Charles Hunter, as Applicant requested. This Court finds Counsel’s investigation into the facts and circumstances of the case was reasonable. Further, this Court finds credible Counsel’s testimony he discussed with Applicant the issues Counsel saw with the State’s case after the evidence had been presented, and Counsel and Applicant made a strategic decision not to call Mr. Hunter as a witness.

Additionally, the Court finds Applicant has not met his burden of proving he was prejudiced by Counsel’s conduct. “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691, 104. To establish prejudice, Applicant is required to show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. In this instance, the testimony offered by Mr. Hunter at the evidentiary hearing is not exculpatory, and in fact places Applicant at the scene, engaging in a physical altercation with Victim. Although Mr. Hunter testified he did not see Applicant with a gun, neither did any of the State’s witnesses at trial, a fact which Counsel highlighted in his closing argument. Tr. pp. 266-68. This Court therefore finds Applicant has not proven Mr. Hunter’s testimony would have changed the result at trial, and the allegation is therefore denied and dismissed.

2. Failure to object to portions of Dr. Mark Lawhan testimony as outside the scope of his expertise

Counsel testified while preparing this case, he expected the State to call a nurse who had treated Victim at the hospital, but the nurse became unavailable, so the State called Dr. Lawhan instead. Counsel testified he understood Lawhan, as an oral surgeon, to deal with injuries to the teeth and jaw. Counsel further testified he objected to Lawhan testifying because he was not aware he would be a witness, and Lawhan showed up with some notes Counsel had not seen. Counsel testified he reviewed the notes, which were only approximately two pages, and at that point he felt he had made his objection, and it was settled that Lawhan's testimony was going to come in.

This Court finds the record reflects Lawhan's testimony about the mechanism of injury was appropriately within the fields of expertise for which he was qualified – "dentistry and facial trauma." Tr. pp. 222-23. Lawhan testified he is a board-certified oral and maxillofacial surgeon, and he deals with treatment of trauma to the head and face due to a variety of issues such as "facial fractures, gunshot wounds, cancer, car wrecks, wisdom teeth, [and]. . . skin grafts." Tr. pp. 221-22. Dr. Lawhan also testified he had treated thousands of trauma cases over the course of his career, including "many impacts of the mouth." Tr. p. 222, 235. Lawhan testified he reviewed x-rays of Victim's mouth, conducted a physical examination, and spoke to Victim about the cause of the damage. Tr. p. 231.

Therefore, this Court finds there was a sufficient factual basis for Lawhan's opinion, and, since whether or not a gun was used was a contested issue, Lawhan's opinion could logically assist the jury in determining a fact in dispute. See, e.g., Creed v. City of Columbia, 310 S.C. 342, 426 S.E.2d 785 (1993) (finding trial court correctly overruled City's objection to testimony of general practitioner regarding plaintiff's mental and emotional injuries as outside the scope of

his expertise); Gazes v. Dillard's Dept. Store, 341 S.C. 507, 534 S.E.2d 306 (Ct. App. 2000) (“[I]t is exactly this type of situation, where direct evidence of an accident’s cause is scant and in dispute, that testimony from an accident reconstructionist can assist the trier of fact in ‘determining a fact in issue.’”). Because Lawhan’s opinion testimony as to the mechanism of injury was appropriate to assist the jury with determining a fact in issue and was within the scope of his expertise, this Court finds Counsel’s lack of objection was not deficient performance. This allegation is hereby denied and dismissed.

3. Failure to object to “fists as deadly weapon” jury charge

Counsel testified he objected to the State’s proposed jury instruction on strong-arm robbery because he felt it was possible the jury would conclude no robbery had taken place at all, and, likely that if they did conclude it had taken place, it did not involve a gun. Therefore, Counsel testified, he didn’t want to give them the option of finding Applicant guilty of the lesser-included offense in lieu of armed robbery. Further, Counsel testified when the trial judge called them to the bench during the recitation of the jury charge, the judge explained the “fists as deadly weapon” charge was in the bench book, so the judge was going to add it. Counsel testified he knew that was an appropriate charge in a murder case, and since the judge said it was in the bench book, he assumed it was a proper charge in this situation as well. Counsel also testified he did not want to object anymore because it had been a long trial, the jury was visibly aggravated, and he wasn’t sure what effect an objection would have.

This Court finds Counsel was not deficient for failing to object to “fists as deadly weapon” jury charge because the charge was appropriate under South Carolina law. “The question of whether an instrument used in the commission of a robbery qualifies as a deadly weapon, thereby qualifying the incident as armed robbery, is a factual determination for

the jury. Although we have not specifically addressed whether a hand or fist may be considered a deadly weapon for purposes of armed robbery, we have held, in the context of murder, that a hand or fist may be considered a deadly weapon depending on the factual circumstances.” State v. Bennett, 328 S.C. 251, 262, 493 S.E.2d 845, 850–51 (1997) (citing State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992)). “Although Davis was a murder case, nothing in [that] opinion limits its application to murder.” Bennett, 328 S.C. at 262, 493 S.E.2d at 851.

The full text of the charge stated that a fist would not normally be considered a deadly weapon, and it was up to the jury to determine beyond a reasonable doubt whether or not it was. Tr. pp. 284-85. Nate Orgbon testified at trial that Applicant punched Victim, and they began fighting, so the charge was appropriate based on that testimony. Counsel cannot be deficient for failing to object to a charge that is supported by evidence in the record. Further, Counsel’s defense strategy, as evidenced by his closing argument, was to deny a robbery occurred at all, so Counsel’s failure to object to the charge was not inconsistent with Applicant’s defense. Tr. pp. 266-69. Finally, Applicant has presented no evidence the jury convicted him under the theory that a fist is a deadly weapon, and therefore, he has failed to show he was prejudiced by the inclusion of the instruction. There is myriad evidence in the record to support a finding that a gun was indeed used during the commission of the robbery, which is clearly a sufficient factual basis to support a conviction on the armed robbery charge.

4. Failure to object to impermissible comments in State’s closing argument

Applicant alleges Counsel failed to object to impermissible comments in the solicitor’s closing argument, specifically the solicitor’s statement that Victim was telling the truth. See Tr. p. 259. Counsel testified regarding his strategy for objections during closing arguments. Counsel explained he feels it is risky to object during opening and closing arguments, and he has

seen it go badly in the past. Counsel testified he believed it is appropriate for an attorney to comment on the evidence in closing, and in any event, he did not feel that single statement was sufficiently objectionable. Counsel explained he watches the jury very closely, and he felt this jury was clearly ready for the case to conclude. Counsel testified he might have objected if the solicitor had continued to belabor the point.

This Court finds Counsel was not deficient in his handling of objections during the solicitor's closing arguments. Counsel is not required to object at every opportunity if Counsel has a valid explanation for not doing so. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy).

Further, "[i]mproper comments do not automatically require reversal if they are not prejudicial. . .," and Applicant "has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. This Court finds the challenged statement does not rise to that level, and Applicant has presented no evidence that the

jury was influenced by the statement. This Court finds “it [is] not reasonably likely” that the solicitor’s comment in his closing argument caused the jury to act in a “manner inconsistent with the notion that the State has the burden of proof beyond a reasonable doubt.” State v. Daniels, 401 S.C. 251, 260, 737 S.E.2d 473, 477 (2012). Therefore, Applicant has not met his burden of showing he was prejudiced by the allegedly improper comment, and this allegation is denied and dismissed.

CONCLUSION

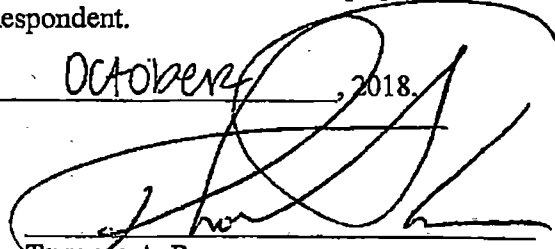
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 10th day of October, 2018.



THOMAS A. RUSSO
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina.

FILED

2018 OCT 29 AM 10:03

HON. PAUL G. CHASE
C.C.P. & G.S.
FLORENCE COUNTY, SC

RECEIVED

NOV 29 2018

S.C. SUPREME COURT

CERTIFIED: A TRUE COPY
Paula Chason
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES

Lee Davis

Florence Police Department

Matthew R Ozment

ARREST WARRANT NUMBER

M379110

M379112

2413 3434
2012GS2100692A 2012GS2100692B

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 5/31/2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-21-00692

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE

TERM

2012

THE STATE

vs.

TROY DARNELL HUNTER

Indictment for

ARMED ROBBERY,
ATTEMPTED MURDER,
ASSAULT AND BATTERY
SECOND DEGREE,
POSSESSION OF A FIREARM BY A
PERSON CONVICTED
OF A VIOLENT CRIME

FILED

2012 MAY 31 PM 12:56

CONNIE REEL-SHEARIN
CCJP & CS
FLORENCE COUNTY, SC

11/16/13
Nolle Prose
Count 2 & 4
MJP

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ARMED ROBBERY,
 ATTEMPTED MURDER,
 ASSAULT AND BATTERY SECOND DEGREE,
 POSSESSION OF A FIREARM BY A PERSON
 CONVICTED OF A VIOLENT CRIME

At a Court of General Sessions, convened on MAY 31, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY WITH A DEADLY WEAPON

That TROY DARNELL HUNTER did in Florence County on or about November 30, 2011, while armed with a deadly weapon, to wit: a .357 Handgun, take and carry away personal property of DEMETRIUS C. HOLLOMAN from or in the immediate presence of DEMETRIUS C. HOLLOMAN with intent to deprive DEMETRIUS C. HOLLOMAN 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.

COUNT TWO- ATTEMPTED MURDER

That TROY DARNELL HUNTER did in Florence County on or about November 30, 2011, unlawfully assault with intent to kill the victim, DEMETRIUS C. HOLLOMAN, with malice aforethought, to wit: by shooting twice at the victim, DEMETRIUS C. HOLLOMAN, while he laid on the ground, this being in violation of Section 16-03-029, S.C. Code of Laws, 2010, as amended.

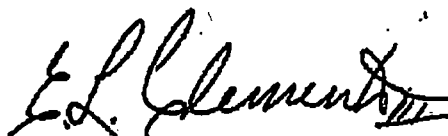
COUNT THREE - ASSAULT AND BATTERY SECOND DEGREE

That TROY DARNELL HUNTER did in Florence County on or about November 30, 2011, unlawfully attempt or offer to commit a violent injury to the victim, DEMETRIUS C. HOLLOMAN, while having the present ability to complete the act, by hitting him in the mouth with the butt of a .357 pistol, causing moderate bodily injury, the blow resulted in several teeth being knocked out as well as a broken jaw requiring surgery, this being in violation of Section 16-03-600, S.C. Code of Laws, 2010, as amended.

**COUNT FOUR- POSSESSION OF A FIREARM BY A PERSON CONVICTED
 OF A VIOLENT CRIME**

That TROY DARNELL HUNTER did in Florence County on or about November 30, 2011 knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S.C. Code of Laws, 2003, as amended, in violation of Section 16-23-0500(A), S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR