

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Edgar W. Dickson, Circuit Court Judge

RUSSELL MONTGOMERY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001099

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG

FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CASE NO. 02-GS-38-1573

) 02-GS-38-1574

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versus

TRANSCRIPT OF RECORD

DATE:

RUSSELL MONTGOMERY,

JULY 16, 2003

DEFENDANT

BEFORE:

HONORABLE EDWARD B. COTTINGHAM, PRESIDING JUDGE

AND A JURY.

APPEARANCES:

ANGELA GARRICK AVINGER, ESQUIRE

ASSISTANT SOLICITOR

FOR THE STATE

MARGARET PEGGY HINDS, ESQUIRE

PUBLIC DEFENDER

FOR THE DEFENDANT

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1 DATE:

2 JULY 16, 2003

3 THE COURT: CALL YOUR CASE.

4 SOLICITOR AVINGER: YOUR HONOR, THE
5 STATE CALLS INDICTMENT 2002-GS-38-1573, THE STATE VERSUS
6 RUSSELL MONTGOMERY, CHARGED AND INDICTED FOR KIDNAPPING,
7 INDICTMENT 2002-GS-38-1574, CHARGED AND INDICTED FOR
8 ARMED ROBBERY. YOUR HONOR, HE'S REPRESENTED BY MS.
9 PEGGY HINDS. THE STATE AND DEFENSE ARE READY FOR TRIAL.

10 THE COURT: MS. HINDS, IS THE
11 DEFENDANT READY TO PROCEED?

12 MS. HINDS: YES, SIR, SUBJECT TO
13 MOTIONS DISCUSSED IN CHAMBERS.

14 THE COURT: MA'AM?

15 MS. HINDS: YES, SIR, SUBJECT TO
16 MOTIONS DISCUSSED IN CHAMBERS.

17 THE COURT: ALRIGHT, THAT WILL BE
18 FINE, AND I'LL BE GLAD TO HEAR ANY MOTIONS AS MAY BE
19 APPLICABLE AT THE APPROPRIATE TIME.

20 LET THE RECORD REFLECT THAT THE
21 DEFENDANT IS IN COURT, ACCOMPANIED BY HIS ATTORNEY, MS.
22 HINDS.

23 LADIES AND GENTLEMEN OF THE JURY
24 PANEL, THE STATE OF SOUTH CAROLINA HAS CALLED THE CASE
25 OF THE STATE VERSUS RUSSELL MONTGOMERY, WHO UPON THESE

1 DOCUMENTS I HOLD IN MY HAND, KNOWN AS INDICTMENTS, IS
2 CHARGED FIRST WITH THE OFFENSE OF ARMED ROBBERY, TO
3 WHICH HE SPECIFICALLY PLEADS NOT GUILTY.

4 THE SECOND INDICTMENT THAT I HOLD
5 IN MY HAND, THE STATE CHARGES THIS RUSSELL MONTGOMERY
6 WITH THE OFFENSE OF KIDNAPPING, TO WHICH HE SPECIFICALLY
7 PLEADS NOT GUILTY, THUS PLACING THE BURDEN OF PROOF UPON
8 THE STATE OF SOUTH CAROLINA OF PROVING HIM GUILTY, IF
9 THEY CAN, TO YOUR SATISFACTION BY EVIDENCE PRODUCED IN
10 THIS COURTROOM BEYOND A REASONABLE DOUBT.

11 I NOW AM GOING TO GO INTO A
12 PROCEDURE KNOWN AS VOIR DIRE. THIS RELATES TO CERTAIN
13 QUESTIONS BY ME TO YOU AS A PANEL TO INSURE THAT IF YOU
14 ARE ONE OF THE TWELVE SELECTED JURORS YOU WILL BASE YOUR
15 VERDICT ON THE LAW AND EVIDENCE IN THIS COURTROOM AND
16 FROM NO OTHER SOURCE.

17 THE ATTORNEYS FOR THE STATE AND THE
18 ATTORNEYS FOR THE DEFENDANT DESIRE FROM YOUR NUMBER
19 TWELVE FOLKS WHO SAY, JUDGE, I HAVE NO FRIENDS TO
20 REWARD, I HAVE NO ENEMIES TO PUNISH; TWELVE FOLKS WHO
21 SAY THAT I DO NOT KNOW THE PARTICIPANTS IN THE CASE, I
22 HAVE NO INTEREST IN THE CASE, I HAVE NOT MADE ANY PRIOR
23 DETERMINATION AS TO THE INNOCENCE OR GUILT OF ANYONE.
24 ALL ATTORNEYS DESIRE TWELVE GOOD FOLKS WITH AN OPEN MIND
25 WHO CAN SAY, UPON MY OATH THAT I WILL BASE MY VERDICT

1 ON THE LAW AND THE EVIDENCE IN THIS CASE, THAT I HAVE
2 NO PRECONCEIVED NOTIONS, BIASES OR PREJUDICES. I WOULD,
3 THEREFORE, ASK THAT UPON YOUR OATH YOU RESPOND TO THE
4 FOLLOWING INQUIRY:

5 FIRST, WITH REFERENCE TO ARMED
6 ROBBERY, LET ME READ THE BARE BONES ALLEGATIONS OF THESE
7 INDICTMENTS SO THAT YOU CAN RESPOND TO CERTAIN
8 QUESTIONS. AND AS A THRESHOLD MATTER, LET ME SAY TO YOU
9 THAT THESE INDICTMENTS AND THE ALLEGATIONS THEY CONTAIN
10 ARE IN NO SENSE ANY EVIDENCE, THEY'RE SIMPLY THE
11 ALLEGATIONS THAT THE STATE MUST PROVE BEYOND A
12 REASONABLE DOUBT. THE ALLEGATIONS WITH REFERENCE TO
13 ARMED ROBBERY ARE THAT RUSSELL MONTGOMERY DID IN
14 ORANGEBURG COUNTY ON OR ABOUT JULY THE SECOND OF TWO
15 THOUSAND AND TWO FELONIOUSLY TAKE FROM THE PERSON OR
16 PRESENCE OF THE VICTIM, TRAVIS GUESS, BY MEANS OF FORCE
17 OR INTIMIDATION WHILE ARMED WITH A DEADLY WEAPON, BEING
18 A NINE MILLIMETER SEMI-AUTOMATIC HAND GUN, GOODS OR
19 MONIES OF THE SAID VICTIM, BEING DESCRIBED AS FOLLOWS:
20 MONIES AND VEHICLE ACCUSED, THE OFFENSE BEING IN
21 VIOLATION OF THE APPLICABLE SECTION OF LAW
22 SIXTEEN/ELEVEN/THREE THREE OF THE CODE OF LAWS OF SOUTH
23 CAROLINA.

24 THE ALLEGATIONS WITH REGARDS TO
25 KIDNAPPING, TO WHICH HE SPECIFICALLY PLEADS NOT GUILTY,

1 ARE AS FOLLOWS: THAT RUSSELL MONTGOMERY DID IN
2 ORANGEBURG COUNTY ON OR ABOUT JULY THE SECOND OF TWO
3 THOUSAND AND TWO, WILLFULLY AND UNLAWFULLY SEIZE,
4 CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT OR CARRY AWAY
5 ONE TRAVIS GUESS, WITHOUT AUTHORITY OF LAW, THE OFFENSE
6 BEING IN VIOLATION OF SECTION SIXTEEN THREE, DASH, NINE
7 TEN OF THE SOUTH CAROLINA CODE OF LAWS, SEVENTY-SIX, AS
8 AMENDED.

9 MY FIRST INQUIRY IS AS FOLLOWS: ARE
10 ANY OF YOU RELATED BY BLOOD OR MARRIAGE WITH RUSSELL
11 MONTGOMERY?

12 MR. MONTGOMERY, PLEASE STAND AND
13 FACE THE JURY.

14 (Whereupon, defendant stands.)

15 THE COURT: ANYBODY RELATED TO MR.
16 MONTGOMERY IN ANY WAY WHATSOEVER?

17 (Negative response from jury panel.)

18 THE COURT: DO ANY OF YOU HAVE ANY
19 CLOSE PERSONAL RELATIONSHIPS WITH MR. MONTGOMERY SUCH
20 AS NEIGHBORS, CO-EMPLOYEES, CHURCH MEMBERS, WHATEVER?
21 IF SO, PLEASE STAND.

22 (Affirmative response from jury panel.)

23 THE COURT: ALRIGHT, COME FORWARD,
24 PLEASE. AND IF ANY OF YOU KNOW THIS DEFENDANT, RUSSELL
25 MONTGOMERY, IN ANY CAPACITY WHATSOEVER, I ASK THAT YOU

1 STAND. IF ANY OF YOU KNOW HIM IN ANY WAY, ANY OF YOU
2 KNOW HIS FAMILY IN ANY WAY, I WOULD ASK THAT THE JURORS
3 COME FORWARD ONE AT A TIME.

4 CLERK: JUROR NUMBER ONE FORTY-
5 FIVE.

6 THE COURT: GOOD MORNING, TO YOU,
7 MA'AM. STAND RIGHT THERE SO WE CAN -- YOUR NAME,
8 PLEASE?

9 JUROR RAVENEL: CAROLYN RAVENEL.

10 THE COURT: AND WHAT IS YOUR
11 RESPONSE?

12 JUROR RAVENEL: I USED TO STAY,
13 LIKE, NOT EVEN A MILE AWAY FROM HIM.

14 THE COURT: YOU JUST KNOWN HIM?

15 JUROR RAVENEL: YES.

16 THE COURT: DO YOU HAVE ANY CLOSE
17 RELATIONSHIP WITH HIM?

18 JUROR RAVENEL: HE USED TO DATE MY
19 SISTER.

20 THE COURT: HOW LONG AGO WAS THAT?

21 JUROR RAVENEL: IT WAS ABOUT A YEAR
22 AGO.

23 THE COURT: ALRIGHT, LET ME ASK YOU
24 THIS, DO YOU FEEL THAT IF YOU WERE A POTENTIAL JUROR IN
25 THIS CASE, THAT YOU COULD GIVE HIM A FAIR AND IMPARTIAL

1 TRIAL, BASED ON THE LAW AND THE EVIDENCE?

2 JUROR RAVENEL: YES.

3 THE COURT: DO YOU FEEL ALSO THAT
4 YOU COULD GIVE THE STATE OF SOUTH CAROLINA A FAIR TRIAL?

5 JUROR RAVENEL: YES, SIR.

6 THE COURT: IS THERE ANYTHING, AND
7 I DON'T WANT TO KNOW, IN THE BACKGROUND OF YOUR
8 KNOWLEDGE OF HIM THAT WOULD PERHAPS KEEP YOU FROM BEING
9 EITHER FAIR TO THE STATE OR TO THE DEFENDANT?

10 JUROR RAVENEL: NO, SIR.

11 THE COURT: IF SELECTED AS A JUROR,
12 ARE YOU TELLING ME UPON YOUR OATH THAT YOUR VERDICT WILL
13 BE BASED ON THE LAW AND THE EVIDENCE HEARD IN THIS
14 COURTROOM, AND FROM NO OTHER PLACE?

15 JUROR RAVENEL: YES, SIR.

16 THE COURT: NOW, YOU'RE SAYING THAT
17 YOU KNEW -- YOU LIVED SEVERAL MILES FROM HIM SOME YEARS
18 AGO?

19 JUROR RAVENEL: YES, SIR.

20 THE COURT: DID Y'ALL INTERACT IN
21 ANY WAY, OR YOU JUST KNEW HE LIVED DOWN THE ROAD?

22 JUROR RAVENEL: MY SISTER WAS DATING
23 HIM, SO, I MEAN, IT WAS ---

24 THE COURT: HOW LONG AGO WAS THAT?

25 JUROR RAVENEL: I DON'T ---

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THE COURT: DO YOU REGARD HIM AS A
FRIEND OF YOURS?

JUROR RAVENEL: IT'S BEEN A WHILE
SINCE I EVEN SEEN HIM, IT'S BEEN LIKE TEN, LIKE NINE
YEARS.

THE COURT: OKAY, THAT'S FINE.
ALRIGHT, THANK YOU SO MUCH, AND I APPRECIATE YOUR
RESPONSE. THANK YOU SO MUCH.

CLERK: NUMBER SIXTY-THREE.

THE COURT: NEXT, PLEASE.

CLERK: ELAINE GOODWIN.

THE COURT: GOOD MORNING.

JUROR GOODWIN: GOOD MORNING.

THE COURT: WHAT IS YOUR RESPONSE,
PLEASE, MA'AM?

JUROR GOODWIN: I KNEW, I KNEW HIM
YEARS AGO, WE WORKED IN THE SAME TOWN. IT'S BEEN ABOUT
TWENTY YEARS SINCE I MOVED AWAY FROM THAT TOWN, BECAUSE
I LIVE IN ---

THE COURT: ALRIGHT, WOULD THAT
PROHIBIT YOU FROM BEING FAIR TO THE STATE OF SOUTH
CAROLINA AND THIS DEFENDANT?

JUROR GOODWIN: NO , SIR.

THE COURT: DO YOU UNDERSTAND, HE
IS CHARGED WITH THE OFFENSE OF ARMED ROBBERY AND

1 KIDNAPPING, TO WHICH HE HAS PLED NOT GUILTY?

2 JUROR GOODWIN: YES, SIR.

3 THE COURT: THE STATE IS ATTEMPTING
4 TO PROVE HIM GUILTY OF THESE CHARGES BEYOND A REASONABLE
5 DOUBT. DO YOU FEEL THAT YOU COULD BE A FAIR JUROR, NOT
6 ONLY FOR THE DEFENDANT BUT FOR THE STATE, TOO?

7 JUROR GOODWIN: YES, SIR.

8 THE COURT: AND YOU CAN BASE YOUR
9 VERDICT NOT ON YOUR PRIOR KNOWLEDGE OF HIM, BUT BASED
10 ON THE LAW AND THE EVIDENCE IN THIS COURTROOM?

11 JUROR GOODWIN: YES, SIR.

12 THE COURT: I THINK THAT YOU CAN.
13 THANK YOU SO MUCH.

14 CAN YOU TELL ME WHAT AREA OF THE
15 COUNTY THIS ALLEGEDLY OCCURRED IN?

16 SOLICITOR AVINGER: YOUR HONOR, IT
17 OCCURRED DOWN IN VANCE, PINE HILL ROAD, AND LODGE --
18 PINELAND ROAD AND LODGE HALL ROAD.

19 THE COURT: OKAY. I ASK THAT
20 QUESTION SO THAT YOU CAN RESPOND TO THE FOLLOWING
21 INQUIRY: WOULD ANY OF YOU HAVE HEARD ANYTHING ABOUT
22 THIS ALLEGED INCIDENT, WOULD ANY OF YOU HAVE DISCUSSED
23 IT, WOULD ANY OF YOU HAVE SEEN IT ON TELEVISION OR READ
24 IT IN THE NEWSPAPERS, DO ANY OF YOU KNOW ANYTHING ABOUT
25 IT AT ALL. IF SO, COME FORWARD?

1 (Negative response from jury panel.)

2 THE COURT: HAS ANYTHING ABOUT THIS
3 CASE EVER BEEN DISCUSSED IN YOUR PRESENCE? IF SO,
4 PLEASE STAND.

5 (Affirmative response from jury panel.)

6 THE COURT: YES, SIR, COME FORWARD,
7 PLEASE. I'LL ASK COUNSEL TO COME FORWARD, TOO, I DON'T
8 WANT TO -- GOOD MORNING, YOUR NAME, SIR?

9 JUROR ASBURY: FREDDIE ASBURY,
10 JUNIOR.

11 THE COURT: YES, SIR, COME FORWARD.
12 (Whereupon, the following takes
13 place out of the hearing of the
14 remaining jury venire.)

15 JUROR ASBURY: I WAS BORN AND RAISED
16 IN VANCE, AND ---

17 THE COURT: HOW ABOUT TALK A LITTLE
18 LOWER, I DON'T WANT ANYBODY -- AND WHAT DO YOU KNOW
19 ABOUT THE CASE?

20 JUROR ASBURY: I WAS BORN AND RAISED
21 IN VANCE AND DOWN IN THAT AREA WHEN IT HAPPENED THERE
22 WAS A LOT OF PEOPLE DISCUSSING IT, TALKING ABOUT IT,
23 JUST RUMORS ON THE STREET.

24 THE COURT: OKAY. HAVE YOU EVER
25 MADE A DECISION AS TO WHO MIGHT BE GUILTY OF THIS

1 CHARGE?

2 JUROR ASBURY: NO, SIR.

3 THE COURT: HAVE YOU, YOURSELF, EVER
4 DISCUSSED THIS CASE WITH ANYONE?

5 JUROR ASBURY: WITH SOME PEOPLE
6 THAT'S ON THE STREET DOWN IN VANCE, THAT'S ALL.

7 THE COURT: DID YOU KNOW THE ALLEGED
8 VICTIM?

9 JUROR ASBURY: NO.

10 THE COURT: YOU JUST HAD SOME
11 GENERAL CONVERSATION ABOUT IT?

12 JUROR ASBURY: YES, SIR.

13 THE COURT: HAVE YOU EVER EXPRESSED
14 AN OPINION AS TO WHO MIGHT BE GUILTY IN THIS THING?

15 JUROR ASBURY: YOU KNOW, ON THE
16 STREETS, THEY JUST SAYING HE DID IT.

17 THE COURT: PARDON ME?

18 JUROR ASBURY: ON THE STREETS THEY
19 WAS SAYING THEY DID IT.

20 THE COURT: ON THE STREETS. I'M
21 GOING TO EXCUSE THIS JUROR.

22 SOLICITOR AVINGER: SIR?

23 THE COURT: I'M GOING TO EXCUSE THIS
24 JUROR FROM THIS CASE.

25 I'M GOING TO EXCUSE YOU FROM THIS

1 CASE ONLY.

2 JUROR ASBURY: YEAH, OKAY.

3 THE COURT: OKAY?

4 JUROR ASBURY: THAT'S GOOD.

5 THE COURT: YOU CAN LEAVE -- BUT
6 DON'T LEAVE UNTIL I GET THE JURY, BUT YOU FOLLOW THE
7 CALL IN TONIGHT FOR FURTHER INSTRUCTIONS.

8 JUROR ASBURY: OKAY.

9 THE COURT: OKAY. BECAUSE I CAN USE
10 YOU ON ANOTHER CASE.

11 JUROR ASBURY: OKAY.

12 (Whereupon, the following
13 takes place in the
14 presence of the jury venire.)

15 THE COURT: LADIES AND GENTLEMEN,
16 SOMETIMES IN OUR EXPERIENCES IN LIFE WE DEVELOP CERTAIN
17 BIASES, PREJUDICES. I USE THE FOLLOWING EXAMPLE THAT
18 HAS ABSOLUTELY NOTHING TO DO WITH THIS CASE. SOME YEARS
19 AGO I WAS PREPARING TO TRY A YOUNG MAN FOR DRIVING UNDER
20 THE INFLUENCE, FELONY, IT HAVING BEEN ALLEGED BY THE
21 STATE THAT WHILE DRUNK DRIVING HE KILLED A YOUNG GIRL.
22 I ASKED THE QUESTION, DOES ANYBODY HAVE ANY PARTICULAR
23 BIASES OR PREJUDICES THAT THEY COULD NOT GIVE THIS
24 DEFENDANT A FAIR TRIAL? A LADY GOT UP AND SAID, JUDGE,
25 I CAN'T BE FAIR TO HIM OR ANYBODY LIKE THAT, MY DAUGHTER

1 WAS KILLED BY A DRUNK DRIVER. IN THAT SAME PANEL A
2 GENTLEMAN GOT UP AND SAID, JUDGE, I CAN'T BE FAIR TO THE
3 STATE OF SOUTH CAROLINA, THEY TRIED MY SON THREE TIMES
4 BEFORE HE WAS FOUND NOT GUILTY, I CAN'T BE FAIR TO THE
5 STATE. I USE THIS AS AN EXAMPLE OF HOW SOMETIMES WE
6 DEVELOP BIASES AND PREJUDICES. THIS DEFENDANT IS
7 CHARGED WITH ARMED ROBBERY AND KIDNAPPING, TO WHICH HE
8 SPECIFICALLY PLEADS NOT GUILTY. SOME OF YOU MAY HAVE
9 BEEN VICTIMS OF VIOLENT CRIMES, SOME OF YOU MAY HAVE
10 DEVELOPED CERTAIN BIASES OR PREJUDICES WHERE YOU FEEL
11 THAT YOU IN A PARTICULAR CASE LIKE THIS SHOULD NOT BE
12 A JUROR. MY QUESTION, THEN, TO YOU IS, GIVEN THE NATURE
13 OF THESE ALLEGATIONS, WHICH ARE SPECIFICALLY DENIED, DO
14 ANY OF YOU HAVE SUCH BIASES OR PREJUDICES THAT YOU FEEL
15 THAT YOU COULD NOT GIVE EITHER THE STATE OR THE
16 DEFENDANT A FAIR AND IMPARTIAL TRIAL IF CALLED UPON TO
17 DO SO? IF SO, PLEASE STAND.

18 (Affirmative response from jury panel.)

19 THE COURT: ALRIGHT, COME FORWARD,
20 PLEASE, SIR. COME FORWARD, AND JOIN ME, COUNSEL.

21 (Whereupon the following
22 takes place out of the hearing
23 of the remaining jury panel.)

24 THE COURT: GOOD MORNING, SIR. WHAT
25 IS YOUR NAME, PLEASE?

17

1 JUROR GAUBY: WILLIAM, GAUBY, G-A-
2 U-B-Y.

3 THE COURT: AND WHAT IS YOUR -- TELL
4 ME LOW, I DON'T WANT THE JURY TO HEAR -- WHAT IS YOUR -
5 --

6 JUROR GAUBY: I'M A DISABLED RETIRED
7 POLICE OFFICER.

8 THE COURT: YOU ARE A RETIRED POLICE
9 OFFICER?

10 JUROR GAUBY: YES, SIR, FROM
11 READING, PENNSYLVANIA.

12 THE COURT: OKAY, LET ME ASK YOU
13 THIS, THAT, IN AND OF ITSELF, WOULD NOT BE A BASIS FOR
14 RECUSAL. IF YOU CAN TELL ME THAT BECAUSE OF YOUR POLICE
15 EXPERIENCE YOU CAN'T BE A FAIR AND IMPARTIAL JUROR, I'LL
16 CONSIDER IT.

17 JUROR GAUBY: IN THE COURSE OF MY
18 DUTY AS A POLICE OFFICER YOU OFTEN RECEIVE INFORMATION
19 FROM OTHER POLICE OFFICERS THAT WE HAVE TO BELIEVE IS
20 TRUE AND CORRECT TO MAKE ARRESTS. AND I KIND OF BELIEVE
21 ANYTHING A POLICE OFFICER SAYS.

22 THE COURT: I'M GOING TO EXCUSE HIM
23 FROM THIS CASE.

24 THANK YOU, SIR.

25 (Whereupon, the following

1 takes place in the
2 hearing of the jury panel.)

3 THE COURT: I'LL TELL YOU WHAT,
4 OFFICER, WHAT I WILL DO, I'M GOING TO TRANSFER YOU TO
5 A CIVIL TERM OF COURT.

6 JUROR GAUBY: THANK YOU, SIR.

7 THE COURT: ALRIGHT, SIR, THANK YOU.
8 WAIT UNTIL I EXCUSE THE REST OF THE JURY.

9 ALRIGHT, WAS THERE ANY SPECIFIC VOIR
10 DIRE REQUESTED BY THE STATE OR THE DEFENDANT?

11 SOLICITOR AVINGER: YOUR HONOR, I
12 HAD, ON THE BOTTOM OF OUR WITNESS LIST THAT'S UP THERE,
13 THERE WAS ONE QUESTION ABOUT REPRESENTATION BY THE
14 PUBLIC DEFENDER'S OFFICE.

15 THE COURT: YES. DO YOU HAVE A
16 WITNESS LIST?

17 MS. HINDS: I DON'T HAVE A WITNESS
18 LIST, SIR, BUT I DID HAND UP VOIR DIRE QUESTIONS.

19 THE COURT: OKAY. FIRST, ARE ANY
20 OF YOU RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH
21 ANYBODY IN THE SOLICITOR'S OFFICE OR ANYBODY HAVE HAD
22 ANY EXPERIENCES WITH THE SOLICITOR'S OFFICE AS A VICTIM
23 OR A WITNESS IN THE LAST YEAR? IF SO, PLEASE STAND.

24 (Negative response from jury panel.)

25 THE COURT: THE DEFENDANT IS

1 REPRESENTED BY THE PUBLIC DEFENDER'S OFFICE, THE SAME
2 INQUIRY, DO ANY OF YOU HAVE ANY RELATIVES, CLOSE FRIENDS
3 EMPLOYED BY THE PUBLIC DEFENDER'S OFFICE OF ORANGEBURG
4 COUNTY?

5 (Negative response from jury panel.)

6 THE COURT: ANY OF YOU BEEN A CLIENT
7 OR WITNESS OF THE PUBLIC DEFENDER'S OFFICE IN THE LAST
8 YEAR?

9 (Negative response from jury panel.)

10 THE COURT: ALRIGHT, SIR. IS ANY
11 MEMBER OF THE JURY PANEL RELATED BY BLOOD OR MARRIAGE
12 TO A FRIEND OR ACQUAINTANCE OF A MEMBER OF LAW
13 ENFORCEMENT AGENCY? IF SO, PLEASE STAND.

14 (Affirmative response from jury panel.)

15 THE COURT: COME FORWARD, PLEASE.
16 YOU CAN STAND THERE. YOUR NAME, SIR?

17 JUROR BOCHETTE: MIKE BOCHETTE.

18 THE COURT: AND WHAT IS YOUR
19 RESPONSE?

20 JUROR BOCHETTE: JUDGE HUDSON, IN
21 SUMTER.

22 THE COURT: SIR?

23 JUROR BOCHETTE: JUDGE HUDSON IN
24 SUMTER.

25 THE COURT: WHAT'S THE RELATIONSHIP?

1 JUROR BOCHETTE: UNCLE.

2 THE COURT: WOULD THAT AFFECT YOUR
3 ABILITY TO BE A FAIR JUROR?

4 JUROR BOCHETTE: NO, SIR.

5 THE COURT: THANK YOU. I APPRECIATE
6 YOUR COMING FORWARD TO TELL ME THAT.

7 ANY MEMBER OF THE JURY PANEL EVER
8 BEEN EMPLOYED BY A CIVILIAN OR MILITARY LAW ENFORCEMENT
9 AGENCY? I KNOW ONE GENTLEMAN STOOD UP A MOMENT AGO AND
10 SAID HE HAD BEEN EMPLOYED IN AN AGENCY. WHAT WAS YOUR
11 AGENCY OF EMPLOYMENT?

12 JUROR GAUBY: READING POLICE
13 DEPARTMENT, READING, PENNSYLVANIA.

14 THE COURT: ALRIGHT, SIR, THANK YOU.
15 ANYONE ELSE?

16 (Negative response from jury panel.)

17 THE COURT: I WILL DEAL WITH THE
18 WITNESS LIST IN JUST A MOMENT. I'VE ALREADY DEALT WITH
19 FIVE, SIX, SEVEN. I THINK WE'VE DEALT WITH EIGHT
20 APPROPRIATELY.

21 IS ANY MEMBER OF THE JURY PANEL OR
22 A MEMBER OF YOUR IMMEDIATE FAMILY A MEMBER OF MADD,
23 SADD, OR CAVE? IF SO, PLEASE STAND. THAT'S JUST FOR
24 INFORMATION ONLY.

25 (Negative response from jury panel.)

21

1 THE COURT: I DECLINE TEN. ELEVEN,
2 I THINK WE HAVE DISCUSSED. WE'VE DEALT WITH TWELVE.
3 I'LL DEAL WITH -- THE ALLEGED VICTIM IN THE ALLEGATIONS
4 WITH REFERENCE TO KIDNAPPING IS ONE TRAVIS GUESS. ANY
5 OF YOU RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH
6 TRAVIS GUESS?

7 (Negative response from jury panel.)

8 THE COURT: ANY OF YOU HAVE ANY
9 CLOSE PERSONAL RELATIONSHIPS WITH MR. GUESS?

10 (Negative response from jury panel.)

11 THE COURT: HOW MANY OF YOU KNOW
12 TRAVIS GUESS IN ANY CAPACITY WHATSOEVER? PLEASE STAND.

13 (Affirmative response from jury panel.)

14 THE COURT: THANK YOU, MR. GUESS.

15 JUROR ASBURY: COULD I ASK HIM
16 SOMETHING?

17 THE COURT: YOU MAY.

18 CLERK: YOUR NUMBER?

19 JUROR ASBURY: YOU'RE RELATED TO
20 MATT JASON, OF JASON AUTO DRIVE, RIGHT?

21 MR. GUESS: YES, SIR.

22 JUROR ASBURY: YEAH. I KNOW YOU.

23 THE COURT: WE'VE ALREADY EXCUSE
24 HIM, HAVEN'T WE? HAVEN'T I ALREADY EXCUSED YOU?

25 JUROR ASBURY: RIGHT.

1 THE COURT: THAT'S ALRIGHT, SIT
2 DOWN. THAT'S FINE.

3 THE COURT: YES, MA'AM?

4 JUROR SUMMERS: I'M NOT SURE, BUT
5 I THINK HE'S A FORMER STUDENT OF MINE. YOU SAID HE WAS
6 FROM ---

7 THE COURT: FORMER WHAT?

8 JUROR SUMMERS: STUDENT. YOU SAID
9 HE WAS FROM THE VANCE AREA?

10 THE COURT: I ACCEPT THAT AS
11 INFORMATION. THANK YOU SO MUCH.

12 COURT REPORTER: WHAT WAS THE
13 JUROR'S NAME WHO STOOD BEFORE THE LAST ---

14 THE COURT: WHAT WAS YOUR NAME,
15 PLEASE?

16 COURT REPORTER: NO, THAT ---

17 JUROR SUMMERS: WANDA SUMMERS.

18 CLERK: NUMBER FOUR, MR. GRADY
19 ASBURY.

20 COURT REPORTER: OH, OKAY. THANK
21 YOU.

22 THE COURT: YES, MA'AM?

23 JUROR RAVENEL: I WANT TO SAY I WENT
24 TO SCHOOL WITH HIM, JUNIOR HIGH.

25 THE COURT: YOU HAVE NO CLOSE

1 PERSONAL RELATIONSHIP WITH HIM?

2 JUROR RAVENEL: NO, SIR.

3 THE COURT: ALRIGHT, THAT'S FINE.

4 THE COURT: AND YOUR NAME?

5 JUROR RAVENEL: CAROLYN RAVENEL.

6 THE COURT: OKAY. I DON'T KNOW THAT
7 FOURTEEN IS APPLICABLE IN THIS CASE, IS IT, MS. HINDS?

8 MS. HINDS: I BELIEVE SO.

9 THE COURT: I DON'T. THE STATUTORY
10 LAWS OF THIS STATE AND OF THIS COUNTRY, UNDER CERTAIN
11 CIRCUMSTANCES, PERMIT A PRIVATE CITIZEN TO OWN FIREARMS
12 OR HAND GUNS. IS THERE ANYONE AMONG YOU WHO CANNOT
13 ACCEPT THE FACT THAT A PRIVATE CITIZEN, UNDER LIMITED
14 CIRCUMSTANCES, AND IN ACCORDANCE WITH THE LAW, MAY OWN
15 A FIREARM? ANYBODY OPPOSED TO THAT, WHO CAN'T ACCEPT
16 THAT?

17 (Negative response from jury panel.)

18 THE COURT: THIS CASE MAY OR MAY NOT
19 INVOLVE SOME TESTIMONY REGARDING THE USE OF ALCOHOL AND
20 DRUGS. AGAIN, THE SAME INCIDENT I TOLD YOU BEFORE,
21 GIVEN THE FACT THAT THIS CASE MAY INVOLVE SOME TESTIMONY
22 REGARDING THOSE ISSUES, DOES ANYBODY FEEL THAT THEY
23 CANNOT GIVE THAT DUE CONSIDERATION WITHOUT ANY PRIOR
24 CONCEPTIONS ABOUT IT?

25 (Negative response from jury panel.)

1 THE COURT: I DECLINE TO DO
2 SEVENTEEN. I DECLINE TO DO EIGHTEEN. I DECLINE TO DO
3 NINETEEN.

4 THE STATUTORY LAWS OF SOUTH CAROLINA
5 PROVIDE, AS THEY DO IN THE OTHER JURISDICTION OF THIS
6 MAGNIFICENT COUNTRY, THAT EVERYONE CHARGED WITH A CRIME,
7 NO MATTER HOW SERIOUS IT MAY BE, IS ALWAYS PRESUMED
8 INNOCENT. AND THAT PRESUMPTION OF INNOCENCE REMAINS
9 WITH THAT DEFENDANT, AND THIS DEFENDANT THROUGHOUT THE
10 TRIAL, UNTIL A JURY HAS CONVICTED HIM, IF AT ALL, BEYOND
11 -- BY TESTIMONY BEYOND A REASONABLE DOUBT. SOME FOLKS
12 HAVE SAID, YOU KNOW, WELL, HE MUST BE GUILTY, HE'S BEEN
13 ARRESTED. THAT'S JUST SIMPLY NOT THE LAW. HE IS
14 PRESUMED INNOCENT. CAN EVERYONE ACCEPT THAT PROPOSITION
15 OF LAW AND GIVE THIS DEFENDANT HIS PRESUMPTION OF
16 INNOCENCE UNTIL THE STATE HAS OVERCOME THAT PRESUMPTION
17 BY EVIDENCE BEYOND A REASONABLE DOUBT? IF THERE IS
18 ANYONE WHO CANNOT ACCEPT THAT PRESUMPTION OF INNOCENCE,
19 I NEED YOU TO PLEASE STAND AND I WILL EXCUSE YOU.

20 (Negative response from jury panel.)

21 THE COURT: THERE ARE POTENTIAL
22 WITNESSES -- WHERE IS THAT WITNESS LIST? DID YOU HAND
23 UP SOME WITNESSES?

24 MS. HINDS: NO, SIR.

25 THE COURT: MA'AM?

1 MS. HINDS: NO, SIR.

2 THE COURT: ALRIGHT, THAT'S FINE.

3 WE HAVE ALREADY DEALT WITH TRAVIS GUESS. THESE ARE SOME
4 WITNESSES WHO MAY OR MAY NOT BE CALLED, AND I ASK THIS
5 INFORMATION FOR MY PURPOSES ONLY. AS I CALL THESE
6 NAMES, IF ANYBODY IS RELATED BY BLOOD OR CONNECTED BY
7 MARRIAGE WITH THESE POTENTIAL WITNESSES OR HAVE SOME
8 SPECIAL RELATIONSHIP WITH THEM, PLEASE STAND. NOW, THE
9 FACT THAT YOU MAY KNOW THEM IS NOT MY CONCERN. I WANT
10 TO KNOW IF YOU'RE CLOSE PERSONAL FRIENDS OR IF THEY'RE
11 RELATED TO YOU. LIEUTENANT OTHELIA KETCHERSIDE, OF THE
12 ORANGEBURG COUNTY SHERIFF'S DEPARTMENT. LIEUTENANT
13 RANDY CULLER, OF THAT DEPARTMENT. CAPTAIN LEROY
14 RAVENELL OF THAT DEPARTMENT. BRIAN GUESS. MARCUS
15 GUESS. KEVIN MACK. VERNA MCFARLAND. DENNIS YOUNG.
16 GEBRERA MCFARLAND. DEHALIA MCFARLAND. TROOPER J. D.
17 HAYES OF THE HIGHWAY DEPARTMENT. SERGEANT KENNY KINSEY
18 OF THE ORANGEBURG COUNTY SHERIFF'S DEPARTMENT. FIRST
19 SERGEANT OF THAT SHERIFF'S DEPARTMENT.

20 (Negative response from jury panel.)

21 THE COURT: ALRIGHT, ANY FURTHER
22 INQUIRY ON BEHALF OF THE STATE?

23 SOLICITOR AVINGER: NO, YOUR HONOR.

24 THE COURT: ANY ON BEHALF OF THE
25 DEFENSE?

1 MS. HINDS: NO, YOUR HONOR.

2 THE COURT: GIVE US TWELVE JURORS
3 AND TWO ALTERNATES. THE STRIKES HERE ARE, OF COURSE,
4 TEN AND TEN -- FIVE AND TEN, I'M SORRY. AND IT WILL BE
5 ONE AND TWO AS TO THE ALTERNATES. PROCEED.

6 CLERK: WHEN I CALL YOUR NAME I NEED
7 YOU TO COME FORWARD, STAND AT THIS PODIUM, FACE BACK OUT
8 TO THE JURY PANEL, AND YOU'LL EITHER BE INSTRUCTED TO
9 HAVE A SEAT IN THE JURY BOX OR TAKE YOUR SEAT BACK WITH
10 THE PANEL.

11 DOES THE STATE WAIVE THE PRESENCE
12 OF THE JURY BOY AND ALLOW THE CLERK TO DRAW?

13 SOLICITOR AVINGER: THE STATE
14 WAIVES.

15 CLERK: DEFENSE?

16 MS. HINDS: DEFENSE WAIVES.

17 THE COURT: IS THERE A WAVIER AS TO
18 CAPSULE?

19 SOLICITOR AVINGER: YES, SIR.

20 MS. HINDS: YES.

21 THE COURT: OKAY. PROCEED.

22 CLERK: JUROR NUMBER TWO SIXTEEN,
23 JAMES HUGGINS. WE HAVE JUROR NUMBER TWO SIXTEEN, MR.
24 HUGGINS, WHAT SAYS THE STATE?

25 SOLICITOR AVINGER: PLEASE EXCUSE

1 THE JUROR.

2 CLERK: YOU'RE EXCUSED BY THE STATE.

3 JUROR NUMBER TWO TWENTY, CARL SMITH.

4 WE HAVE JUROR NUMBER TWO TWENTY, MR. SMITH, WHAT SAYS
5 THE STATE?

6 SOLICITOR AVINGER: PLEASE PRESENT
7 THE JUROR.

8 CLERK: WHAT SAYS DEFENSE?

9 MS. HINDS: PLEASE SEAT MR. SMITH.

10 CLERK: YOU MAY HAVE A SEAT IN THE
11 JURY BOX, MR. SMITH.

12 JUROR NUMBER SEVENTY-SEVEN, SHIRL
13 HAYNES. WE HAVE JUROR NUMBER SEVENTY-SEVEN, MS. HAYNES,
14 WHAT SAYS THE STATE?

15 SOLICITOR AVINGER: PLEASE PRESENT
16 THE JUROR.

17 CLERK: WHAT SAYS THE DEFENSE?

18 MS. HINDS: PLEASE SEAT MS. HAYNES.

19 CLERK: YOU MAY HAVE A SEAT IN THE
20 JURY BOX.

21 JUROR NUMBER ONE SEVENTY-ONE, BETTY
22 STEADMAN. WE HAVE JUROR NUMBER ONE SEVENTY-ONE, MS.
23 STEADMAN, WHAT SAYS THE STATE?

24 SOLICITOR AVINGER: PLEASE PRESENT
25 THE JUROR.

1 CLERK: WHAT SAYS DEFENSE?

2 MS. HINDS: PLEASE SEAT MS.

3 STEADMAN.

4 CLERK: YOU MAY HAVE A SEAT IN THE

5 JURY BOX.

6 JUROR NUMBER ONE SIXTY-THREE,

7 KATHLEEN SMITH.

8 THE COURT: WHAT JUROR NUMBER IS

9 THIS, PLEASE?

10 CLERK: ONE SIXTY-THREE. WE HAVE

11 JUROR NUMBER ONE SIXTY-THREE, MS. SMITH, WHAT SAYS THE

12 STATE?

13 SOLICITOR AVINGER: PLEASE PRESENT

14 THE JUROR.

15 CLERK: WHAT SAYS THE DEFENSE?

16 MS. HINDS: PLEASE EXCUSE MS. SMITH.

17 CLERK: YOU'RE EXCUSED BY DEFENSE.

18 JUROR NUMBER FORTY-SEVEN, LINDA

19 EVANS.

20 THE COURT: WHO STRUCK THAT LAST

21 ONE, ONE SIXTY-THREE?

22 CLERK: DEFENSE.

23 THE COURT: OKAY. WHAT'S THIS JUROR

24 NUMBER?

25 CLERK: FORTY-SEVEN. WE HAVE JUROR

1 NUMBER FORTY-SEVEN, MS. EVANS, WHAT SAYS THE STATE?

2 SOLICITOR AVINGER: PLEASE PRESENT
3 THE JUROR.

4 CLERK: WHAT SAYS THE DEFENSE?

5 MS. HINDS: PLEASE SEAT MS. EVANS.

6 CLERK: YOU MAY HAVE A SEAT IN THE
7 JURY BOX.

8 JUROR NUMBER ONE THIRTY-FOUR, HARRY
9 OTT. WE HAVE JUROR NUMBER ONE THIRTY-FOUR, MR. OTT,
10 WHAT SAYS THE STATE?

11 SOLICITOR AVINGER: PLEASE PRESENT
12 THE JUROR.

13 CLERK: WHAT SAYS DEFENSE?

14 MS. HINDS: PLEASE EXCUSE MR. OTT.

15 CLERK: YOU'RE EXCUSED BY THE
16 DEFENSE.

17 JUROR NUMBER ONE SIXTY-NINE, JOHN
18 SPENCER. WE HAVE JUROR NUMBER ONE SIXTY-NINE, MR.
19 SPENCER, WHAT SAYS THE STATE?

20 SOLICITOR AVINGER: PLEASE PRESENT
21 THE JUROR.

22 CLERK: WHAT SAYS THE DEFENSE?

23 MS. HINDS: PLEASE SEAT MR. SPENCER.

24 CLERK: YOU MAY HAVE A SEAT IN THE
25 JURY BOX.

1 JUROR NUMBER SEVENTEEN, CHRISTINE
2 BRADLEY.

3 SOLICITOR AVINGER: WHAT NUMBER WAS
4 THAT, MADAM CLERK?

5 CLERK: SEVENTEEN. WE HAVE JUROR
6 NUMBER SEVENTEEN, MS. BRADLEY, WHAT SAYS THE STATE?

7 SOLICITOR AVINGER: PLEASE EXCUSE
8 THE JUROR FROM THIS CASE.

9 CLERK: YOU'RE EXCUSED BY THE STATE.
10 JUROR NUMBER ONE SEVENTY-FIVE,
11 CAROLYN STROMAN. WE HAVE JUROR NUMBER ONE SEVENTY-
12 FIVE, MS. STROMAN, WHAT SAYS THE STATE?

13 SOLICITOR AVINGER: PLEASE PRESENT
14 THE JUROR.

15 CLERK: WHAT SAYS THE DEFENSE?

16 MS. HINDS: I BEG THE COURT'S
17 INDULGENCE ONE MOMENT.

18 THE COURT: ALRIGHT.

19 MS. HINDS: PLEASE EXCUSE MS.
20 STROMAN.

21 CLERK: YOU'RE EXCUSED BY THE
22 DEFENSE.

23 JUROR NUMBER ONE SIXTY-EIGHT, GEORGE
24 SNELGROVE. WE HAVE JUROR NUMBER ONE SIXTY-EIGHT, MR.
25 SNELGROVE, WHAT SAYS THE STATE?

1 SOLICITOR AVINGER: PLEASE PRESENT
2 THE JUROR.

3 CLERK: WHAT SAYS THE DEFENSE?

4 MS. HINDS: PLEASE SEAT MR.
5 SNELGROVE.

6 CLERK: YOU MAY HAVE A SEAT IN THE
7 JURY BOX.

8 JUROR NUMBER EIGHTY-NINE, SAMMY
9 HUTTO. WE HAVE JUROR NUMBER EIGHTY-NINE, MR. HUTTO,
10 WHAT SAYS THE STATE?

11 SOLICITOR AVINGER: PLEASE PRESENT
12 THE JUROR.

13 CLERK: WHAT SAYS THE DEFENSE?

14 MS. HINDS: PLEASE SEAT MR. HUTTO.

15 CLERK: YOU MAY HAVE A SEAT IN THE
16 JURY BOX.

17 JUROR NUMBER NINETY-SIX, LEVI
18 JAMISON. WE HAVE JUROR NUMBER NINETY-SIX, MR. JAMISON,
19 WHAT SAYS THE STATE?

20 SOLICITOR AVINGER: PLEASE PRESENT
21 THE JUROR.

22 CLERK: WHAT SAYS THE DEFENSE?

23 MS. HINDS: PLEASE SEAT MR. JAMISON.

24 CLERK: YOU MAY HAVE A SEAT IN THE
25 JURY BOX.

1 JUROR NUMBER FORTY-THREE, SHIRLEY
2 DIBBLE. WE HAVE JUROR NUMBER FORTY-THREE, MS. DIBBLE,
3 WHAT SAYS THE STATE?

4 SOLICITOR AVINGER: PLEASE PRESENT
5 THE JUROR.

6 CLERK: WHAT SAYS THE DEFENSE?

7 MS. HINDS: PLEASE EXCUSE MS.
8 DIBBLE.

9 CLERK: YOU'RE EXCUSED BY THE
10 DEFENSE.

11 JUROR NUMBER ONE TWENTY-TWO, FREDDY
12 LIVINGSTON. WE HAVE JUROR NUMBER ONE TWENTY-TWO, MR.
13 LIVINGSTON, WHAT SAYS THE STATE?

14 SOLICITOR AVINGER: PLEASE PRESENT
15 THE JUROR.

16 CLERK: WHAT SAYS THE DEFENSE?

17 MS. HINDS: PLEASE SEAT MR.
18 LIVINGSTON.

19 CLERK: YOU MAY HAVE A SEAT IN THE
20 JURY BOX.

21 JUROR NUMBER FORTY-SIX, GEORGE
22 ELENBARK. WE HAVE JUROR NUMBER FORTY-SIX, MR. ELENBARK,
23 WHAT SAYS THE STATE?

24 SOLICITOR AVINGER: PLEASE PRESENT
25 THE JUROR.

1 CLERK: WHAT SAYS THE DEFENSE?

2 MS. HINDS: PLEASE EXCUSE MR.

3 ELENBARK.

4 CLERK: YOU'RE EXCUSED BY THE

5 DEFENSE.

6 JUROR NUMBER ONE FIFTY-ONE, JARNELL

7 RYANT. WE HAVE JUROR NUMBER ONE FIFTY-ONE, MR. RYANT,

8 WHAT SAYS THE STATE?

9 SOLICITOR AVINGER: PLEASE PRESENT

10 THE JUROR.

11 CLERK: WHAT SAYS THE DEFENSE?

12 MS. HINDS: I BEG THE COURT'S

13 INDULGENCE ONE MOMENT. PLEASE EXCUSE MR. RYANT.

14 CLERK: YOU'RE EXCUSED BY THE

15 DEFENSE.

16 JUROR NUMBER FIFTEEN, MICHAEL

17 BOCHETTE. WE HAVE JUROR NUMBER FIFTEEN, MR. BOCHETTE,

18 WHAT SAYS THE STATE?

19 SOLICITOR AVINGER: PLEASE EXCUSE

20 THE JUROR.

21 CLERK: YOU'RE EXCUSED BY THE STATE.

22 JUROR NUMBER FIFTY-NINE, KARA GIBBS.

23 WE HAVE JUROR NUMBER FIFTY-NINE, MS. GIBBS, WHAT SAYS

24 THE STATE?

25 SOLICITOR AVINGER: PLEASE EXCUSE

1 THIS JUROR.

2 CLERK: YOU'RE EXCUSED BY THE STATE.

3 JUROR NUMBER TWO EIGHTEEN, REBECCA
4 ZEIGLER. WE HAVE JUROR NUMBER TWO EIGHTEEN, MS.
5 ZEIGLER, WHAT SAYS THE STATE?

6 SOLICITOR AVINGER: PLEASE PRESENT
7 THE JUROR.

8 CLERK: WHAT SAYS THE DEFENSE?

9 MS. HINDS: PLEASE EXCUSE MS.
10 ZEIGLER.

11 CLERK: YOU'RE EXCUSED BY THE
12 DEFENSE.

13 JUROR NUMBER ONE THIRTY, KELLEY
14 MITCHELL. WE HAVE JUROR NUMBER ONE THIRTY, MR.
15 MITCHELL, WHAT SAYS THE STATE?

16 SOLICITOR AVINGER: PLEASE PRESENT
17 THE JUROR.

18 CLERK: WHAT SAYS THE DEFENSE?

19 MS. HINDS: PLEASE SEAT MR.
20 MITCHELL.

21 CLERK: YOU MAY HAVE A SEAT IN THE
22 JURY BOX.

23 JUROR NUMBER THIRTY-TWO, WENDELL
24 COLLINS. WE HAVE JUROR NUMBER THIRTY-TWO, MR. COLLINS,
25 WHAT SAYS THE STATE?

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1 SOLICITOR AVINGER: PLEASE PRESENT
2 THE JUROR.

3 CLERK: WHAT SAYS THE DEFENSE?

4 MS. HINDS: PLEASE SEAT MR. COLLINS.

5 CLERK: YOU MAY HAVE A SEAT IN THE
6 JURY BOX.

7 JUROR NUMBER ONE FORTY-TWO, JACKIE
8 PROVEAUX. WE HAVE JUROR NUMBER ONE FORTY-TWO, MS.
9 PROVEAUX, WHAT SAYS THE STATE?

10 SOLICITOR AVINGER: PLEASE PRESENT
11 THE JUROR.

12 CLERK: WHAT SAYS THE DEFENSE?

13 MS. HINDS: PLEASE EXCUSE MS.
14 PROVEAUX.

15 CLERK: YOU'RE EXCUSED BY THE
16 DEFENSE.

17 JUROR NUMBER ONE EIGHTEEN, NATALIE
18 WEEKS.

19 SOLICITOR AVINGER: ONE EIGHTEEN WAS
20 DISQUALIFIED, I BELIEVE. YEAH.

21 CLERK: YES.

22 SOLICITOR AVINGER: YEAH,
23 DISQUALIFIED.

24 CLERK: JUROR NUMBER ONE O FIVE,
25 CRYSTAL JOHNSON. WE HAVE JUROR NUMBER ONE O FIVE, MS.

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1 MS. HINDS: PLEASE SEAT MS. FOGLE.

2 CLERK: YOU MAY HAVE A SEAT IN THE
3 JURY BOX.

4 THE COURT: DURING THE COURSE OF
5 THESE PROCEEDINGS I WILL SELECT A FOREMAN, WHO AT ALL
6 TIMES WILL OCCUPY THE FIRST CHAIR. YOU ALTERNATES AT
7 ALL TIMES, PLEASE OCCUPY THOSE TWO CHAIRS. THE REST OF
8 YOU MAY SIT AS YOU CHOOSE.

9 MADAM BAILIFF, HAVE THE JURY
10 ESCORTED TO THE JURY ROOM, WE'LL BE CALLING THEM BACK
11 SHORTLY. THANK YOU. MADAM JUROR, I'M GLAD IT'S STILL
12 THERE.

13 (Whereupon, the following
14 takes place out of the
15 presence of the jury.)

16 THE COURT: FOR THE STATE, ANY
17 MOTIONS REGARDING THE COMPOSITION OF THE JURY?

18 SOLICITOR AVINGER: NO, YOUR HONOR.

19 THE COURT: FOR THE DEFENSE?

20 MS. HINDS: NO, YOUR HONOR.

21 THE COURT: THE JURY WILL STAND AS
22 SELECTED.

23 (State's Exhibits One through Six
24 premarked.)

25 THE COURT: ANYTHING ELSE FOR THE

1 STATE?

2 SOLICITOR AVINGER: ACTUALLY, YES,
3 YOUR HONOR.

4 THE COURT: ALRIGHT.

5 SOLICITOR AVINGER: YOUR HONOR, IF
6 I CAN TELL YOU A LITTLE BIT ABOUT THE CASE SO YOU'LL
7 UNDERSTAND WHERE WE'RE GOING.

8 THE COURT: OKAY.

9 SOLICITOR AVINGER: THE STATE IS
10 ALLEGING THAT THE VICTIM, TRAVIS GUESS, WAS AT HIS HOME
11 WITH SOME FRIENDS. SOMEBODY ELSE CAME UP WITH A GUN.
12 OTHER PEOPLE RAN. THIS DEFENDANT MADE THE VICTIM GIVE
13 HIM HIS WALLET, THEN GET IN A CAR AND LEAVE ONE AREA AND
14 GO TO ANOTHER AREA. THE VICTIM ENDED UP BAILING OUT OF
15 THE CAR WHILE IT WAS STILL ROLLING, AND HE RAN AWAY.
16 THE CAR WRECKED. AT THE CAR, WHERE THE CAR WAS WRECKED,
17 IN THE CAR AT THE TIME WHEN LAW ENFORCEMENT GOT THERE
18 AND A LOT OF STUFF HAPPENED, TO MAKE A LONG STORY SHORT,
19 IN THE CAR WAS FOUND A CIGAR BOX THAT HAD SOME CIGARS.
20 THERE WERE, SOMEWHERE IN THE CAR THERE WAS THREE BAGS
21 OF MARIJUANA AND THERE WAS A WHITE ROUND SUBSTANCE THAT
22 APPEARED TO BE CRACK COCAINE. NOBODY HAS BEEN CHARGED
23 WITH DRUGS IN THIS CASE, YOUR HONOR. I'M MAKING A
24 MOTION IN LIMINE THAT ANYTHING ABOUT DRUGS NOT COME UP
25 AT ALL. IT IS NOT RELEVANT. DEFENDANT IS NOT CHARGED,

1 THE VICTIM IS NOT CHARGED, NOBODY IS CHARGED WITH DRUGS,
2 WE DON'T EVEN KNOW IF THEY ARE DRUGS, BECAUSE THEY
3 WEREN'T ANALYZED. BUT I WOULD MAKE A MOTION, AND I'VE
4 BEEN CAREFUL IN THE PHOTOGRAPHS THAT I'VE PROPOSED TO
5 INTRODUCE, THAT NONE OF THAT COMES IN.

6 THE COURT: MS. HINDS.

7 MS. HINDS: YOUR HONOR, I'D BE
8 ADAMANTLY OPPOSED TO THAT. THE INTENTION OF THE DEFENSE
9 IS, AND MR. MONTGOMERY WILL TESTIFY THAT BASICALLY THIS
10 CASE IS ABOUT A DRUG DEAL GONE BAD, AND THAT IT
11 CERTAINLY IS RELEVANT IF THERE WAS A REASON FOR THE
12 VICTIM TO MAKE UP A STORY THAT WOULD BE DIFFERENT FROM
13 MR. MONTGOMERY'S. I THINK THAT IT IS INTERESTING THAT
14 CLEARLY DRUGS WERE FOUND IN THE CAR, AND YET, NOBODY IS
15 CHARGED. I THINK ALL OF THAT GOES TO HIS DEFENSE, AND
16 I THINK THAT THE JURY SHOULD BE ALLOWED TO HEAR ABOUT
17 THAT.

18 SOLICITOR AVINGER: YOUR HONOR, I
19 THINK WHAT THEY'RE TRYING -- I MEAN, I THINK THEY'RE
20 TRYING TO GO IN A BACK DOORWAY, TRYING TO IMPEACH THE
21 VICTIM'S CREDIBILITY.

22 THE COURT: WELL, HE'S DENYING AND
23 SAYING EVERYTHING THAT HAPPENED -- WELL, APPARENTLY,
24 YOU'RE SAYING HAPPENED BETWEEN OTHER FOLKS BECAUSE OF
25 SOME TYPE OF DRUG DEAL. IS THAT WHAT YOU'RE SAYING?

1 MS. HINDS: I'M SAYING THAT THIS WAS
2 AN ALLEGED DRUG DEAL BETWEEN MY CLIENT AND THE VICTIM
3 IN THIS CASE, AND THAT'S WHAT THIS WAS ABOUT. AND THAT,
4 THEREFORE, THAT IS CERTAINLY RELEVANT TO MY CLIENT'S
5 DEFENSE, SINCE HIS POSITION IS ---

6 THE COURT: WELL, HE'S NOT ADMITTING
7 THAT HE KIDNAPPED OR COMMITTED ROBBERY, AS A RESULT OF
8 THIS DRUG DEAL GONE BAD, IS HE?

9 MS. HINDS: NO, SIR.

10 THE COURT: WELL, WHY IS IT
11 RELEVANT, THEN?

12 MS. HINDS: BECAUSE WHAT HE'S SAYING
13 IS, IS THAT THE REASON THAT THEY WERE TOGETHER WAS NOT
14 BECAUSE HE WAS KIDNAPPING HIM, BECAUSE HE WENT
15 VOLUNTARILY, AND THIS WAS OVER A DRUG DEAL.

16 THE COURT: I THINK I'LL LET IT IN.
17 THAT WELL MAY GO TO HIS DEFENSE. I CAN'T SAY, BUT
18 ORDINARILY -- I WOULD THINK PROBABLY THAT IT'S
19 ADMISSIBLE. I DON'T SEE WHERE THE STATE'S PREJUDICED.

20 SOLICITOR AVINGER: YOUR HONOR, I -
21 - JUST FOR THE RECORD, I WOULD ARGUE THAT EVEN IF IT
22 WERE RELEVANT, UNDER RULE FOUR O THREE, THAT IT CAUSES
23 PREJUDICE, IT CAUSES CONFUSION OF THE ISSUES, AND THINGS
24 OF THAT NATURE. YOUR HONOR, I WOULD ASK THAT IF THAT'S
25 THEIR CASE, THEN SHE PUT IT UP IN HER CASE, THAT THIS

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1 NOT COME OUT UNTIL, WHEN AND IF HER CLIENT TELLS HIS
2 STORY, AND THEN SHE CAN RECALL WHOEVER FOUND WHAT IN THE
3 CAR. I MEAN, HOW CAN IT COME -- I MEAN, THAT HAS
4 NOTHING TO DO WITH THE STATE'S CASE.

5 THE COURT: WELL, IT MAY BE, WHEN
6 YOU START TALKING ABOUT SOMEBODY FOUND THE CAR, SHE MAY
7 START ASKING THEM WHAT WAS IN THE CAR. NO, MA'AM, I'M
8 GOING TO LET THAT IN. I UNDERSTAND YOUR POSITION, BUT
9 I THINK IT'S APPROPRIATE.

10 SOLICITOR AVINGER: OKAY.

11 THE COURT: THE JURY MAY -- SHE'S
12 SAYING TO ME THAT THAT'S THE REASON THEY WERE TOGETHER
13 INITIALLY, AND I THINK THE JURY'S ENTITLED TO KNOW THAT.
14 YES, MA'AM, I GRANT -- YOU MAY DO THAT.

15 MS. HINDS: THANK YOU, YOUR HONOR.

16 SOLICITOR AVINGER: YOUR HONOR,
17 THERE'S GOING TO HAVE TO BE, I MEAN, THERE'S NO
18 STIPULATION, WE DON'T KNOW THAT IT'S DRUGS. EVERYBODY'S
19 GOING TO HAVE TO TALK ABOUT WHAT IT APPEARS TO BE,
20 BECAUSE THEY'RE NOT ANALYZED.

21 THE COURT: THAT'S FINE.

22 MS. HINDS: THAT'S FINE, YOUR HONOR.

23 THE COURT: OKAY. IS THAT THE
24 EXTENT OF THE STATE'S MOTION?

25 SOLICITOR AVINGER: YES, SIR.

1 THE COURT: THAT'S FINE. YOUR
2 MOTION?

3 MS. HINDS: YOUR HONOR, FIRST WE
4 WOULD RESPECTFULLY ASK FOR A CONTINUANCE ON THIS CASE,
5 THIS IS FOR THE RECORD. WE WOULD POINT TO, NUMBER ONE,
6 THE NOTICE, ALTHOUGH THIS CASE WAS ON THE TRIAL LIST,
7 I WAS ONLY NOTIFIED WITH, ON FRIDAY AFTERNOON THAT THIS
8 CASE WAS GOING FIRST THING THIS WEEK. IN ADDITION TO
9 THAT, NEW DISCOVERY WAS PRESENTED TO ME YESTERDAY AND
10 TODAY THAT HAD NOT BEEN PREVIOUSLY DISCLOSED TO ME. I
11 HAVE OBVIOUSLY TODAY NOT HAD A CHANCE UNTIL VERY, RIGHT
12 BEFORE WE STARTED PICKING A JURY, TO EVEN DISCUSS THAT
13 EVIDENCE WITH MY CLIENT. SPECIFICALLY, YOUR HONOR,
14 WE'RE TALKING ABOUT A FINGER PRINT REPORT THAT WAS DONE
15 WELL OVER A YEAR AGO, A STATEMENT THAT WAS TAKEN WELL
16 OVER A YEAR AGO ---

17 THE COURT: THERE'S NOTHING IN THE
18 PRE -- THERE'S NOTHING IN THE FINGER PRINT REPORT THAT
19 INCRIMINATES YOUR CLIENT, IS IT?

20 MS. HINDS: NO, SIR.

21 THE COURT: WHAT IS IT ABOUT THE
22 PRINT THAT DISTURBS YOU?

23 MS. HINDS: YOUR HONOR, IT IS THE
24 FACT THAT, IT IS NOT THE FINGER PRINT REPORT ITSELF,
25 IT'S THE FACT THAT DISCOVERY IS BEING GIVEN TO ME AS HIS

1 DEFENSE ATTORNEY AT THE VERY LAST MINUTE.

2 THE COURT: WELL, I'LL DEAL WITH
3 THAT ISSUE, BUT YOU SPECIFICALLY MENTIONED SOMETHING
4 ABOUT PRINTS.

5 MS. HINDS: I WAS JUST POINTING OUT
6 THE THINGS THAT WERE DISCLOSED TO ME AT THE LAST MINUTE.

7 THE COURT: OKAY. I'LL ASK HER
8 RESPONSE. WHAT ELSE, PLEASE?

9 MR. HINDS: YOUR HONOR, I WOULD JUST
10 STATE FOR THE RECORD THAT UNDER THE DOCUMENT MANAGEMENT
11 SYSTEM, AND UNDER THE CASE LOAD THAT THE PUBLIC
12 DEFENDER'S OFFICE IS UNDER, IT IS DIFFICULT ENOUGH TO
13 GET READY FOR COURT WITH THE CASE LOAD, AND TO MANAGE
14 THE CASES, BUT WHEN THIS DISCOVERY IS NOT TURNED OVER
15 IN A TIMELY MANNER IT MAKES IT THAT MUCH MORE DIFFICULT
16 BOTH TO EFFECTIVELY ADVISE MY CLIENT AND TO ADEQUATELY
17 PREPARE FOR TRIAL.

18 THE COURT: OKAY, WELL, LET ME DEAL
19 WITH IT FIRST. TALK ABOUT NOTICES. I UNDERSTAND THAT
20 THIS CASE WAS ON A LIST PUT DOWN SEVERAL WEEKS AGO AS
21 ONE OF THE CASES TO BE TRIED, IS THAT RIGHT, MS.
22 AVINGER?

23 SOLICITOR AVINGER: YES, YOUR HONOR.
24 ACTUALLY, IT WAS ON -- WE'RE IN JULY NOW, IT WAS ON THE
25 JUNE TRIAL LIST. AND MS. HINDS AND I STARTED TALKING

1 ABOUT THIS FOR POTENTIAL TRIAL BACK DURING THE JUNE TERM
2 OF COURT. AND IT WAS ALSO OBVIOUSLY ON THE JULY TRIAL
3 LIST.

4 THE COURT: AND THAT JULY TRIAL LIST
5 WAS PUBLISHED WHEN?

6 SOLICITOR AVINGER: YOUR HONOR, I
7 DON'T HAVE THE DATE IN FRONT OF ME, BUT IT WOULD HAVE
8 BEEN AT LEAST A WEEK BEFORE TODAY, AND IT WAS ---

9 THE COURT: OKAY, WHEN DID YOU
10 SPECIFICALLY TELL MS. HINDS THAT THIS WOULD BE A CASE
11 TRIED THIS WEEK?

12 SOLICITOR AVINGER: YOUR HONOR, SHE
13 AND I HAVE DISCUSSED THAT. WE WENT BEFORE YOU THE LAST
14 DAY OF THE JUNE TERM OF COURT TO HAVE MR. RUSSELL
15 FORMERLY REJECT ANY AND ALL PLEA OFFERS, ---

16 THE COURT: RIGHT.

17 SOLICITOR AVINGER: --- AND SHE WAS
18 TOLD AT THAT TIME THAT IT WOULD BE TRIED.

19 THE COURT: THAT'S MY RECOLLECTION,
20 YOU AGREE WITH THAT, MS. HINDS?

21 MS. HINDS: YES, SIR.

22 THE COURT: ALRIGHT.

23 SOLICITOR AVINGER: AND I, I MEAN,
24 I TOLD HER FRIDAY THAT IT WOULD BE MONDAY.

25 THE COURT: OKAY, TELL ME ABOUT THE

1 DISCOVERY THAT SHE SAYS SHE'S GETTING ---

2 SOLICITOR AVINGER: YES, SIR.

3 THE COURT: --- IN PIECE MEAL?

4 SOLICITOR AVINGER: YOUR HONOR,
5 SHE'S RIGHT. WHEN I TALKED TO CAPTAIN RAVENELL, HE WAS
6 OUT OF TOWN ON FRIDAY, HE WAS AT A CONFERENCE, HE LET
7 ME KNOW THAT THERE WERE PHOTOGRAPHS OF THE VICTIM'S
8 INJURIES AND PHOTOGRAPHS OF THE AREA THAT NIGHT. I LET
9 MS. HINDS KNOW THAT THERE WOULD BE PHOTOGRAPHS AND THEY
10 WOULD BE ---

11 THE COURT: THAT'S THE FIRST TIME
12 THEY TOLD YOU THAT THERE WERE PHOTOGRAPHS?

13 SOLICITOR AVINGER: YOUR HONOR, I
14 DON'T PREPARE EVERY CASE, THERE'S NO WAY THAT I CAN GO
15 TO THE SHERIFF'S DEPARTMENT AND LOOK AT EVERYTHING UNTIL
16 I GET READY FOR TRIAL.

17 THE COURT: OKAY, YOU GAVE HER THESE
18 PHOTOGRAPHS FRIDAY?

19 SOLICITOR AVINGER: NO, SIR, I TOLD
20 HER ABOUT THEM ON FRIDAY. I DIDN'T HAVE THEM IN HAND
21 UNTIL YESTERDAY.

22 THE COURT: OKAY.

23 SOLICITOR AVINGER: SO, SHE SAW THEM
24 YESTERDAY MORNING.

25 THE COURT: TODAY IS TUESDAY. BUT

1 YOU PROVIDED THEM TO HER?

2 SOLICITOR AVINGER: YES, SIR, SHE -
3 - EXCUSE ME, SHE REVIEWED ALL OF THEM WITH HER CLIENT
4 YESTERDAY.

5 THE COURT: OKAY, WHAT ELSE DID YOU
6 NOT HAVE?

7 SOLICITOR AVINGER: YOUR HONOR,
8 THERE WAS A WITNESS WHOSE NAME IS MARCUS GUESS, WHO HAD
9 GIVEN A WRITTEN STATEMENT TO SOME POLICE OFFICER, SOME
10 SHERIFF'S DEPUTY THAT BASICALLY SAID HE WAS THERE WHEN
11 IT HAPPENED, SOMEONE CAME AROUND THE SIDE, WE RAN, AND
12 POSSIBLY THE DEFENDANT'S BROTHER MAY HAVE SET UP THE
13 WHOLE THING. THAT'S BASICALLY WHAT THE STATEMENT SAYS,
14 ABOUT THREE SENTENCES.

15 THE COURT: A WRITTEN OR ORAL
16 STATEMENT?

17 SOLICITOR AVINGER: IT'S A WRITTEN
18 STATEMENT. YOUR HONOR, THIS GUY, MARCUS GUESS HAS BEEN
19 LISTED IN THE INCIDENT REPORT FROM THE DAY IT HAPPENED.
20 THE INCIDENT REPORT WAS PROVIDED TO MS. HINDS BACK IN
21 JANUARY.

22 THE COURT: WHEN WAS THE WITNESS
23 LIST PROVIDED TO HER? I NOTE THAT IT'S ON HERE NOW.

24 SOLICITOR AVINGER: YOUR HONOR, THE
25 WITNESS LIST WAS GIVEN THIS MORNING, BUT HE'S LISTED IN

1 THE INCIDENT REPORT AS A WITNESS.

2 THE COURT: WHAT DOES THIS ALLEGED
3 WRITTEN STATEMENT SPECIFICALLY SAY? YOU INDICATED AT
4 PRETRIAL IT WAS JUST TWO OR THREE WORDS, TWO SENTENCES?

5 SOLICITOR AVINGER: YES, SIR. "ON
6 THE DAY OF THE" -- DO YOU WANT ME TO READ IT TO YOU?

7 THE COURT: YES, MA'AM.

8 SOLICITOR AVINGER: "ON THE DAY OF
9 THE INCIDENT OCCURRED I SAW SOMEONE COME FROM THE BACK
10 SIDE OF HIS TRAILER," IN PARENTHESIS, THE WORD, RUSSELL
11 MONTGOMERY IS WRITTEN. "BEFORE THIS TOOK PLACE WE" -
12 --

13 THE COURT: WAIT, WHAT DOES THAT
14 MEAN?

15 SOLICITOR AVINGER: THAT'S THE
16 DEFENDANT'S NAME. "BEFORE THIS TOOK PLACE, WE, BRIAN,
17 TRAVIS, KEVIN, DWAYNE AND I WAS IN THE YARD. AT THE
18 TIME THAT THIS WAYNE, HIS BROTHER WAS BACK AND FORTH
19 FROM HIS GIRL FRIEND'S HOUSE TO TRAVIS'S. THE WAY I SEE
20 IT, I THINK DWAYNE SET TRAVIS UP." YOUR HONOR, MR.
21 MARCUS GUESS IS HERE ---

22 THE COURT: NOW, WAIT A MINUTE, I'M
23 NOT GOING TO LET THAT PART -- WAIT A MINUTE -- "THE WAY
24 I SEE IT, DWAYNE"

25 SOLICITOR AVINGER: "DWAYNE SET

1 TRAVIS UP."

2 THE COURT: THAT'S HELPFUL TO THE
3 DEFENSE, ISN'T IT?

4 MS. HINDS: YOUR HONOR, JUST ALSO
5 FOR THE RECORD, I WOULD POINT OUT THE INCIDENT REPORT
6 SAYS ---

7 THE COURT: DO YOU WANT ME TO
8 EXCLUDE THAT STATEMENT?

9 MS. HINDS: NO, SIR. HOWEVER, I -
10 - MY POINT WAS, IS THAT THE INCIDENT REPORT BASICALLY
11 SAYS THAT MARCUS GUESS WAS TOO NERVOUS TO GIVE A WRITTEN
12 STATEMENT. AND THEN AT THE LAST MINUTE WE'RE RECEIVING
13 MORE INFORMATION. I JUST WANT TO MAKE SURE THERE'S
14 NOTHING ELSE OUT THERE THAT I'M NOT AWARE OF.

15 THE COURT: WELL, IF IT COMES UP
16 I'M NOT GOING TO LET IT IN. NOW, WE'VE ALSO HAD A
17 PRETRIAL ON THIS ISSUE TODAY, AND I TOLD YOU AT THAT
18 TIME THAT THAT PARTICULAR WITNESS WOULD BE MADE
19 AVAILABLE TO YOU, AND HE HAS.

20 MS. HINDS: HE HAS, SIR.

21 THE COURT: AND HE STILL IS, AND IF
22 YOU NEED AT SOME POINT IN TIME BEFORE HE GETS ON THE
23 STAND, IF YOU NEED SOME ADDITIONAL TIME I WILL GRANT
24 THAT.

25 MS. HINDS: YES, SIR.

1 THE COURT: DO YOU NEED ---

2 MS. HINDS: BUT FOR THE RECORD, I
3 HAVE SPOKEN WITH HIM.

4 THE COURT: DO YOU NEED ANY
5 ADDITIONAL TIME?

6 MS. HINDS: I DON'T BELIEVE SO.

7 THE COURT: WELL, AND YOU LEARNED
8 OF THIS ON YESTERDAY?

9 MS. HINDS: YES, SIR.

10 THE COURT: WELL, IF IT WAS A
11 DETAILED STATEMENT, REALLY HARMFUL TO YOUR CLIENT, I
12 MIGHT CONSIDER OTHERWISE, BUT GIVEN THE BASIS OF WHAT
13 HE SAYS, I DON'T THINK IT WOULD BE A BASIS FOR
14 CONTINUANCE. SO I RESPECTFULLY DECLINE THAT.

15 SOLICITOR AVINGER: ALSO, YOUR
16 HONOR, JUST FOR THE RECORD, MARCUS GUESS CANNOT SAY WHO
17 THIS ARMED MAN WAS. I MEAN, HE IS NOT GOING TO IDENTIFY
18 RUSSELL MONTGOMERY AS THE ONE WHO DID IT.

19 THE COURT: WELL, AS I'VE INDICATED,
20 IF IT SERIOUSLY AFFECTED THE DEFENDANT'S CASE, I MIGHT
21 CONSIDER DIFFERENTLY, BUT I JUST DON'T SEE ANY REAL
22 PREJUDICE, PARTICULARLY WHEN HE'S BEEN MADE AVAILABLE
23 TO YOU, AND WILL BE MADE AVAILABLE TO YOU. NOW, ---

24 MS. HINDS: YES, SIR.

25 THE COURT: --- DO YOU HAVE ANY REAL

1 CONCERNS ABOUT THE PICTURES, OTHER THAN THEY WERE PIECE
2 MEAL DISCOVERY?

3 MS. HINDS: NO, SIR.

4 THE COURT: WHAT OTHER DISCOVERY -
5 - HOW ABOUT THE PRINTS, NOW, WHAT'S YOUR POSITION, MS.
6 AVINGER, WITH REGARD TO THE FINGER PRINTS, IF ANY?

7 SOLICITOR AVINGER: YOUR HONOR, WE,
8 WE HAD NEVER KNOWN -- I HAD ALWAYS ASSUMED, SINCE I
9 DIDN'T HAVE AN ANALYSIS FROM SLED, THAT THERE WERE NO
10 FINGER PRINTS DEVELOPED AND NOTHING THAT WAS MATCHED TO
11 THE DEFENDANT, BECAUSE I DIDN'T HAVE A REPORT. I HAD
12 NOTHING SHOWING THAT IT WENT TO SLED, AND NOTHING
13 SHOWING A MATCH OR A NO MATCH. SO, I ASSUMED THAT THERE
14 WERE NO PRINTS. YESTERDAY WHEN THEY WERE COLLECTING THE
15 EVIDENCE THEY OPENED -- GATHERING THE EVIDENCE TO BRING
16 TO COURT, THE OPENED THE BROWN PAPER BAG THAT EVERYTHING
17 WAS SEALED IN. WITHIN THAT BROWN BAG WAS A REPORT BY
18 KENNY KINSEY, WHO IS THE EVIDENCE CUSTODIAN, AND WHO IS
19 ALSO THE FINGER PRINT EXPERT, THAT SAID THAT HE TRIED
20 TO GET PRINTS OFF THE GUN AND WAS UNABLE TO DO SO. AND
21 HE CAN TESTIFY TO THAT.

22 THE COURT: HOW DOES THAT PREJUDICE
23 YOUR DEFENDANT?

24 MS. HINDS: YOUR HONOR, AGAIN, MY
25 CONCERN IS FOR THE ELEVENTH HOUR DISCOVERY DISCLOSURE.

51

1 IF WE'RE TO ADEQUATELY PREPARE FOR THESE TRIALS WE NEED
2 TO KNOW EVERYTHING UP FRONT.

3 THE COURT: WELL, THERE WERE NO
4 PRINTS, THERE'S NOT PRINTS NOW. I ASSUME YOU'VE
5 PREPARED YOUR DEFENSE ON THE BASIS OF NO PRINTS.

6 MS. HINDS: YES, SIR.

7 THE COURT: AND THERE'S STILL NO
8 PRINTS. I JUST ABSOLUTELY DON'T SEE ANY, ANY PROBLEM
9 ON THAT ISSUE AT ALL WITH YOU, MS. HINDS.

10 MS. HINDS: YES, SIR.

11 THE COURT: ANYTHING FURTHER?

12 MS. HINDS: YOUR HONOR, WE WOULD ASK
13 THE STANDARD SEQUESTRATION OF WITNESSES FOR THIS CASE,
14 WE WOULD MOVE FOR THAT.

15 THE COURT: I WILL GRANT THAT ON
16 BOTH SIDES.

17 SOLICITOR AVINGER: YOUR HONOR, THE
18 CASE AGENT WILL SIT WITH ME, AS WELL AS THE VICTIM HAS
19 THE RIGHT TO BE IN HERE.

20 THE COURT: WELL, SURE, THE VICTIM
21 IS ENTITLED TO STAY IN, CERTAINLY, WITH THE CASE AGENT.

22 MS. HINDS: YOUR HONOR, FOR THE
23 RECORD, WE WOULD ALSO MOVE TO SUPPRESS THE GUN. WE
24 BELIEVE THAT THERE IS NOTHING TYING MY CLIENT TO THAT
25 GUN. THEY DID NOT FIND IT ON HIM, THEY DID NOT FIND -

1 --

2 THE COURT: I'LL HAVE TO HEAR THE
3 EVIDENCE ON THAT FIRST.

4 MS. HINDS: YES, SIR.

5 THE COURT: I'LL LISTEN TO THE
6 EVIDENCE AND THEN I'LL DETERMINE WHETHER OR NOT IT'S
7 ADMISSIBLE OR WHETHER OR NOT IT MAY BE IT'S A QUESTION
8 FOR THE JURY, I'LL JUST HAVE TO RULE ON THAT AFTER I
9 HEAR SOMETHING ABOUT IT.

10 MS. HINDS: YES, SIR. THAT'S ALL
11 I HAVE, SIR.

12 THE COURT: ANYTHING FURTHER?

13 MS. HINDS: NO, SIR.

14 THE COURT: ALRIGHT, AS I UNDERSTAND
15 IT, Y'ALL WANT A FEW MOMENTS BREAK BEFORE WE GO AHEAD
16 AND CALL THEM?

17 SOLICITOR AVINGER: YES, SIR.

18 THE COURT: ALRIGHT, HAVE WE
19 CONCLUDED MARKING ALL THE EXHIBITS?

20 SOLICITOR AVINGER: YES, SIR.

21 THE COURT: ALRIGHT, PLEASE, WE'LL
22 TAKE A SHORT RECESS, AND LET ME KNOW WHEN YOU'RE READY.

23 (Recess)

24 THE COURT: IS THE STATE READY?

25 SOLICITOR AVINGER: YES, SIR, YOUR

1 HONOR. YOUR HONOR, ---

2 THE COURT: ALRIGHT. ARE ALL THE
3 WITNESSES ON BOTH SIDES SEQUESTERED?

4 SOLICITOR AVINGER: YES, SIR. YOUR
5 HONOR, MAY I APPROACH?

6 THE COURT: YES, MA'AM.

7 SOLICITOR AVINGER: YOUR HONOR, I
8 TOLD MS. HINDS THAT THE FIRST WITNESS, KEVIN MACK, THE
9 ONLY THING ON HIS RAP SHEET INVOLVES BURNING TRASH, OR
10 SOMETHING OF THAT NATURE, AND WE'VE AGREED, I MEAN, THAT
11 WOULD NOT BE USED FOR IMPEACHMENT PURPOSES. THE SECOND
12 WITNESS IS MARCUS GUESS. HE HAS POSSESSION OF TWENTY-
13 EIGHT GRAMS OR LESS OF MARIJUANA, AND DISTRIBUTION OF
14 CRACK ON HIS RAP SHEET, AND I WOULD ARGUE THAT DRUG
15 CONVICTIONS HAVE NOTHING TO DO ---

16 MS. HINDS: YOUR HONOR, I WOULD
17 RESPECTFULLY SAY THAT THAT CERTAINLY SHOULD BE ABLE TO
18 BE USED FOR IMPEACHMENT PURPOSES.

19 THE COURT: GIVEN THE NATURE OF YOUR
20 DEFENSE, I'LL LET IT IN. I WOULD THINK THAT THE
21 PROBATIVE VALUE THERE OUTWEIGHS THE PREJUDICIAL EFFECT,
22 GIVEN THE NATURE OF THE DEFENSE.

23 ALRIGHT, BRING THE JURY BACK IN.

24 (Whereupon, the following
25 takes place in the

1 presence of the jury.)

2 THE COURT: ALRIGHT, A FOREMAN HAS
3 BEEN APPOINTED, AND I WOULD ASK THAT YOU OCCUPY THAT
4 CHAIR AT ALL TIMES, PLEASE.

5 PLEASE SWEAR THE JURY.

6 CLERK: IF YOU WILL, PLEASE STAND
7 AND RAISE YOUR RIGHT HAND.

8 (Whereupon, the jury is duly
9 sworn and impaneled.)

10 THE COURT: MADAM FOREMAN, AND
11 LADIES AND GENTLEMEN, RECOGNIZING THAT FOR MOST OF YOU
12 THIS IS PROBABLY THE FIRST TIME THAT YOU HAVE
13 PARTICIPATED AS JURORS PARTICULARLY IN A CRIMINAL CASE,
14 LET ME BRIEFLY TELL YOU HOW WE PROCEED. THE STATE OF
15 SOUTH CAROLINA REPRESENTED BY THE SOLICITOR'S OFFICE,
16 MS. AVINGER, REPRESENTING THE STATE, HAS THE BURDEN OF
17 PROVING THESE ALLEGATIONS OF KIDNAPPING AND ARMED
18 ROBBERY TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT.

19 TO THESE CHARGES THIS DEFENDANT HAS
20 PLED NOT GUILTY.

21 THE STATE OF SOUTH CAROLINA, THROUGH
22 MS. AVINGER, WILL BEGIN BY MAKING TO YOU A SHORT
23 STATEMENT AS AN OVERVIEW OF WHAT SHE SAYS SHE CAN PROVE
24 BEYOND A REASONABLE DOUBT. THIS IS GUIDELINE TO HELP
25 YOU FOLLOW THE INTRODUCTION OF THE TESTIMONY, THE

1 WITNESSES AND SUCH OTHER MATTERS AS MAY COME INTO THE
2 TRIAL OF THIS CASE.

3 MS. HINDS, OF THE PUBLIC DEFENDER'S
4 OFFICE, REPRESENTS THE DEFENDANT. AND SHE WILL MAKE TO
5 YOU SUCH A STATEMENT AS SHE DEEMS APPROPRIATE REGARDING
6 THIS DEFENDANT'S DEFENSE, AS TO THESE ISSUES, AGAIN, AS
7 A GUIDELINE TO HELP YOU FOLLOW THEIR POSITION.

8 FOLLOWING THESE OPENING STATEMENTS
9 THERE WILL BE TESTIMONY PRESENTED FOR YOUR
10 CONSIDERATION, UNDER OATH, FROM VARIOUS WITNESSES.

11 NOW, YOUR JOB IS TO BE THE FINDERS
12 OF THE FACTS IN THIS CASE. I WILL TELL YOU AT THE
13 CONCLUSION OF THE CASE WHAT THE LAW IS WITH REGARDS TO
14 THE ISSUES. YOU WILL TAKE THE FACTS AS YOU FIND THEM
15 AND APPLY THOSE FACTS TO THE LAW, AND THEREAFTER REACH
16 A VERDICT, MEANING VEREDICTO, A VERDICT THAT SPEAKS THE
17 TRUTH.

18 JURORS HAVE SAID TO ME, WELL, HOW
19 ARE WE TO DETERMINE THE FACTS? THERE WILL BE VARIOUS
20 WITNESSES ON DIFFERENT SIDES OF THIS ISSUE WHO ARE
21 TESTIFYING UNDER OATH. YOU AS JURORS ARE THE SOLE
22 JUDGES OF THEIR CREDIBILITY, OF THEIR BELIEVABILITY.
23 YOU MAY BELIEVE ALL OF WHAT A WITNESS SAYS, OR NONE.
24 YOU MAY BELIEVE A SMALL PORTION AND DISREGARD THE
25 LARGER. YOU MAY, IF YOU CHOOSE, BELIEVE ONE WITNESS

1 AGAINST THAT OF MANY, OR THE OTHER WAY AROUND. YOU
2 DIDN'T LEAVE YOUR COMMON SENSE ON THE STREETS OF
3 ORANGEBURG, SOUTH CAROLINA, WHEN YOU CAME INTO THIS
4 COURTROOM. AND WE ALL KNOW THAT IN OUR EVERY DAY LIFE,
5 IN RAISING OUR CHILDREN, AT WORK, OR WHATEVER, WHEN
6 FOLKS TELL US THINGS WE SIZE THEM UP, WE ASK OURSELVES,
7 DO THEY KNOW WHAT THEY'RE TALKING ABOUT? HOW DID THEY
8 COME TO KNOW WHAT THEY'RE TELLING ME? WE ALWAYS ASK
9 OURSELVES, HEY, DOES THIS PERSON HAVE SOME CAUSE OR
10 REASON TO WANT ME TO BELIEVE ONE WAY OR THE OTHER?
11 THESE ARE SOME OF THE TOOLS THAT WE USE IN JUDGING THE
12 BELIEVABILITY, AND YOU MAY, OF COURSE, THINK OF OTHER
13 TOOLS THAT YOU'VE USED. THERE IS NOBODY IN THIS WIDE
14 WORLD, INCLUDING THIS JUDGE NOW, WHO CAN TELL YOU AT THE
15 END OF THESE PROCEEDINGS WHAT THE FACTS ARE. YOU ARE
16 THE SOLE JUDGES OF THE FACTS, YOU TAKE THE FACTS AS YOU
17 FIND THEM TO BE, AND APPLY THOSE FACTS TO THE LAW OF
18 THIS CASE, AND THEREAFTER REACH YOUR UNANIMOUS VERDICT,
19 EITHER NOT GUILTY OR GUILTY.

20 OPENING STATEMENTS.

21 SOLICITOR AVINGER: THANK YOU, YOUR
22 HONOR, MAY IT PLEASE THE COURT.

23 MS. HINDS.

24 OPENING STATEMENT BY SOLICITOR AVINGER

25 WELL, GOOD AFTERNOON NOW. IT WAS

1 GOOD MORNING, BUT WE'RE CREEPING ON TO LUNCH TIME NOW.
2 MY NAME IS ANGELA AVINGER, AND I'M THE PROSECUTOR, I'M
3 THE STATE'S ATTORNEY IN THIS CASE.

4 AND AS JUDGE COTTINGHAM HAS TOLD
5 YOU, THE DEFENDANT, RUSSELL MONTGOMERY, IS CHARGED WITH
6 TWO DIFFERENT OFFENSES, ARMED ROBBERY AND KIDNAPPING.
7 AND IN JUST A FEW MINUTES Y'ALL ARE GOING TO MEET TRAVIS
8 GUESS. MR. GUESS IS THE FIRST MAN ON THE FRONT ROW HERE
9 WITH THE GLASSES. MR. GUESS IS GOING TO TAKE THE
10 WITNESS STAND AND HE'S GOING TO TELL YOU IN HIS OWN WAY
11 AND IN HIS OWN WORDS THE NIGHTMARE HE LIVED THROUGH JULY
12 SECOND OF LAST YEAR. AND TRAVIS IS GOING TO TELL Y'ALL
13 IT WAS AROUND TEN O'CLOCK AT NIGHT -- HE LIVES IN VANCE,
14 HE LIVES IN A TRAILER PARK THERE ON PINELAND ROAD, AND
15 HE'S GOING TO SAY THAT HE WAS HOME, HE WAS SITTING
16 OUTSIDE, HAD SOME FRIENDS OVER, SOME NEIGHBORS WHO HAD
17 STOPPED BY AND EVERYBODY IS SITTING OUTSIDE, JUST
18 TALKING, LAUGHING, HAVING A COUPLE OF DRINKS, LISTENING
19 TO SOME MUSIC, WHEN LO AND BEHOLD, AROUND THE BACK OF
20 THE TRAILER A GUNMAN CAME AROUND. THIS MAN WAS DRESSED
21 IN BLACK, BLACK PANTS, BLACK SHIRT, AND HE HAD SOMETHING
22 WHITE OVER HIS FACE, BLOCKING HIS FACE, A WHITE T-SHIRT
23 OR A WHITE TOWEL. THE TESTIMONY WILL BEAR OUT THAT IT
24 ENDED UP BEING A T-SHIRT. BUT THE FACE WAS BLOCKED AND
25 THIS MAN HAD A GUN, AND HE STARTED HOLLERING. HE SAID,

1 DON'T MOVE, DON'T ANYBODY MOVE.

2 YOU'RE GOING TO HEAR FROM TWO OF
3 THE PEOPLE, TWO PEOPLE OTHER THAN TRAVIS WHO WERE THERE,
4 AND THEY'RE GOING TO TELL YOU WHAT THEY SAW AND WHAT
5 THEY HEARD AND WHAT THEY DID. AND THE TESTIMONY IS
6 GOING TO BE THAT WHEN THIS MAN CAME AROUND AND WAS
7 SCREAMING, DON'T MOVE, I'M GOING TO SHOOT YOU, KEVIN
8 MACK, KEVIN MACK LOOKED AROUND AND HE SAID, THINKING TO
9 HIS MIND, I DON'T KNOW WHAT I'M GOING TO DO, I THINK I
10 BETTER GET OUT OF HERE. THIS GUNMAN SHOT ONE TIME IN
11 THE GROUND, RIGHT BESIDE MR. MACK, AND THAT MADE UP MR.
12 MACK'S MIND, I'VE GOT TO GET OUT OF HERE. SO, AFTER
13 THAT ONE SHOT WAS FIRED, HE LOOKED AROUND AND HE TOOK
14 OFF RUNNING, AND HE RAN AND RAN AND RAN. AND KEVIN MACK
15 WILL TELL YOU THAT HE'S THE ONE THAT MADE IT TO SOMEBODY
16 ELSE'S HOUSE, GOT A PHONE, AND CALLED NINE ONE ONE.

17 YOU'RE GOING TO HEAR FROM MARCUS
18 GUESS, WHO WAS THERE, TOO. AND HE'LL TELL YOU THE SAME
19 THING, THAT WHEN KEVIN MACK TOOK OFF RUNNING, HE STARTED
20 RUNNING, TOO.

21 AND TRAVIS IS GOING TO TELL YOU, AT
22 THAT POINT, WHEN THEY TOOK OFF RUNNING, HE COULDN'T
23 MOVE, HE WAS SCARED, HE DIDN'T KNOW WHAT TO DO. THE
24 GUNMAN TURNED TOWARDS HIM AND TELLS HIM, GIVE IT UP,
25 GIVE ME WHAT YOU'VE GOT, GIVE ME YOUR MONEY. AND TRAVIS

1 WILL TELL YOU THAT HE GAVE THE MAN HIS WALLET, THAT HAD
2 ABOUT THREE HUNDRED DOLLARS IN IT, AND THE GUY SAID,
3 GIVE IT TO ME, GIVE ME YOUR MONEY. SO, TRAVIS STARTS
4 PULLING OUT MONEY FROM HIS POCKETS, AND HE'S SO NERVOUS
5 HE DROPS SOME ON THE GROUND. AND THE GUNMAN SHOOTS IN
6 THE GROUND, RIGHT THERE AT HIS FEET, AND SAYS, GIVE ME
7 THAT. TRAVIS IS ON THE GROUND, PICKING UP THE MONEY,
8 PICKING UP THE CHANGE. THE GUNMAN SAYS, WHERE ARE YOUR
9 CAR KEYS? TRAVIS PULLS OUT HIS CAR KEYS, AND THE GUNMAN
10 SAYS, NO, YOU TAKE ME. AND THEY GET IN TRAVIS'S CAR,
11 WHICH IS A WHITE FOUR DOOR, I BELIEVE IT'S A TAURUS OR
12 A FORD, AND THE GUNMAN SAYS, YOU DRIVE. TRAVIS IS IN
13 THE FRONT SEAT, THE GUNMAN IS BEHIND HIM. AS THEY'RE
14 PULLING OUT OF THE DRIVEWAY, THE GUNMAN HITS TRAVIS ON
15 THE BACK OF THE HEAD, BECAUSE HE DIDN'T LIKE THE WAY HE
16 WAS DRIVING. THEY DRIVE A LITTLE BIT DOWN THE ROAD, AND
17 TRAVIS WILL TELL YOU THAT THIS MAN TELLS HIM, WHEN YOU
18 GET TO THIS INTERSECTION, PINELAND AND LODGE HALL ROAD,
19 I WANT YOU TO STOP. AND TRAVIS IS THINKING, NO WAY, I'M
20 NOT STOPPING. IF I STOP HE'S GOING TO KILL ME. SO,
21 WHILE THE CAR IS STILL GOING IN MOTION, TRAVIS JUMPS
22 OUT, HE BAILS OUT. HE LOSES HIS SHOES, HE BREAKS HIS
23 GLASSES, HE'S ALL SKINNED UP, BUT HE'S AWAY FROM THIS
24 MAN WITH THE GUN WHO'S THREATENING HIM. AND HE RUNS.
25 HE RUNS RIGHT INTO DAVIS TRAILER PARK. SOME OF Y'ALL

1 MIGHT BE FAMILIAR WHERE THAT IS. AND HE BURSTS IN
2 SOMEBODY'S TRAILER, HE WASN'T EVEN SURE WHOSE TRAILER
3 IT WAS, AND HE'S JUST HOLLERING, GET ME SOME HELP,
4 SOMEBODY'S TRYING TO KILL ME, THEY'RE CHASING ME WITH
5 A GUN.

6 YOU'RE GOING TO HEAR FROM SEVERAL
7 DIFFERENT LAW ENFORCEMENT OFFICERS WHO WERE WORKING
8 THAT NIGHT. AND YOU'RE GOING TO HEAR FROM CAPTAIN
9 RAVENELL, OF THE ORANGEBURG COUNTY SHERIFF'S DEPARTMENT,
10 AND HE'S GOING TO TELL YOU THAT HE JUST HAPPENED TO BE
11 AT THAT INTERSECTION, JUST HAPPENED TO BE RIGHT THERE,
12 AND WHEN HE MADE A TURN HE SAW A CAR THAT HAD ROLLED AND
13 JUST CRASHED INTO A UTILITY POLE, AND THAT WHEN HE SAW
14 THIS HE TURNS THAT WAY AND GOES TOWARDS THAT AREA, THERE
15 IS A BLACK MAN, WITH BLACK PANTS AND A T-SHIRT WITH
16 SOMETHING WHITE AROUND HIS NECK, THAT'S RIGHT THERE.
17 CAPTAIN RAVENEL PULLS UP, HE'S IN AN UNMARKED CAR, AND
18 THE PERSON STARTS WALKING AWAY. CAPTAIN RAVENEL BEGINS
19 A CONVERSATION WITH THIS PERSON, HEY, MAN, ARE YOU HURT?
20 ARE YOU INVOLVED IN THIS WRECK, DO YOU NEED ANYTHING?
21 THIS PERSON WALKS AROUND, JUST SEVERAL FEET AWAY, AND
22 THROWS THE WHITE ITEM, WHITE T-SHIRT. CAPTAIN RAVENEL
23 CALLS THIS PERSON TO COME BACK, HEY, WHAT DO YOU KNOW
24 ABOUT THIS, WHAT DO YOU KNOW ABOUT THIS WRECK? AND THE
25 PERSON SAYS TO HIM, WELL, THE DRIVER, HE WENT OVER THERE

1 IN THAT TRAILER PARK. AND THEN THAT PERSON REACHED IN
2 HIS POCKET, PULLED OUT A WALLET, AND HANDED IT TO
3 CAPTAIN RAVENELL, AND THE WALLET BELONGED TO TRAVIS
4 GUESS, HAD TRAVIS GUESS'S IDENTIFICATION, HAD MONEY IN
5 IT, AND ALL THAT. SO, YOU'LL HEAR HOW FROM THERE
6 CAPTAIN RAVENELL, OF COURSE, TOOK THIS PERSON INTO
7 CUSTODY. THIS PERSON WAS RUSSELL MONTGOMERY.

8 YOU'RE GOING TO HEAR FROM OTHER LAW
9 ENFORCEMENT OFFICERS WHO WORKED THAT AREA THAT NIGHT,
10 OTHELIA KETCHERSIDE, SHE CAME TO BACK UP CAPTAIN
11 RAVENELL. YOU'RE GOING TO HEAR ABOUT THE MONEY THAT WAS
12 FOUND IN RUSSELL MONTGOMERY'S PANTS POCKETS, THE LOOSE
13 MONEY THAT TRAVIS GUESS HAD GIVEN RUSSELL MONTGOMERY.
14 THE EVIDENCE THAT WAS COLLECTED THERE IN THAT AREA THAT
15 NIGHT, THE SHOES THAT BELONGED TO THE VICTIM, BROKEN
16 GLASSES, THE T-SHIRT, AND THEN THERE WAS A GUN FOUND
17 SEVERAL FEET BEHIND THE T-SHIRT, A NINE MILLIMETER GUN
18 THAT MATCHED THE DESCRIPTION OF THE GUN TRAVIS GUESS HAD
19 GIVEN LAW ENFORCEMENT.

20 LADIES AND GENTLEMEN, IT IS
21 OBVIOUSLY AN IMPORTANT DAY TO RUSSELL MONTGOMERY. HE'S
22 ON TRIAL, HE SAID HE'S NOT GUILTY OF THESE TWO VERY
23 SERIOUS OFFENSES. BUT PLEASE REMEMBER THAT WHAT HAPPENS
24 HERE IN THIS COURTROOM TODAY AND TOMORROW, IT'S
25 IMPORTANT TO TRAVIS GUESS AND HIS FAMILY, AS HE SITS

1 THERE WITH HIS MOTHER AND HIS GRAND MOTHER. IT'S
2 IMPORTANT TO LAW ENFORCEMENT, WHO WERE THERE DOING THEIR
3 JOBS THAT DAY. AND IT'S IMPORTANT TO ALL OF US CITIZENS
4 OF ORANGEBURG COUNTY WHAT HAPPENS IN THIS COURTROOM.

5 SO, I LOOK FORWARD TO WORKING WITH
6 YOU, AND I THANK YOU FOR YOUR ATTENTION.

7 ONE OTHER THING BEFORE I SIT DOWN,
8 JUDGE COTTINGHAM HAS TOLD YOU THAT THE STATE HAS THE
9 BURDEN OF PROOF, AND THAT'S TRUE. WE HAVE TO CONVINCE
10 EACH OF YOU BEYOND ANY REASONABLE DOUBT THAT RUSSELL
11 MONTGOMERY IS GUILTY OF BOTH OF THESE CHARGES. BUT
12 PLEASE NOTICE, IT'S NOT PROOF BEYOND EACH DOUBT, OR
13 PROOF BEYOND EVERY DOUBT. THAT WOULD BE IMPOSSIBLE, AND
14 THERE'S NO WAY THAT THE STATE COULD EVER PROVE A CASE
15 SUCH AS THAT. IT'S PROOF BEYOND ANY REASONABLE DOUBT.
16 AND I'LL SUBMIT THAT AT THE CLOSE OF THE CASE, WHEN
17 YOU'VE HEARD THE TESTIMONY, YOU'VE LOOKED AT THE
18 PHOTOGRAPHS, YOU'VE SEEN THE EXHIBITS, YOU WILL BE
19 CONVINCED BEYOND ANY REASONABLE DOUBT THAT MR.
20 MONTGOMERY IS GUILTY OF BOTH ARMED ROBBERY AND
21 KIDNAPPING.

22 THANK YOU.

23 THE COURT: THANK YOU.

24 MS. HINDS.

25 MS. HINDS: THANK YOU, YOUR HONOR.

1 MS. AVINGER.

2 OPENING STATEMENT BY MS. HINDS

3 MY NAME IS PEGGY HINDS, AND I
4 REPRESENT RUSSELL MONTGOMERY, WHO SITS AT THAT TABLE
5 THIS MORNING, AND WILL CONTINUE TO SIT AT THAT TABLE
6 PRESUMED INNOCENT. HE WALKED IN HERE AS AN INNOCENT
7 MAN, AND UNTIL AND ONLY IF THE STATE PROVES TO EACH AND
8 EVERY ONE OF YOU BEYOND THAT REASONABLE DOUBT, HE IS
9 STILL AN INNOCENT MAN. HE SITS THERE BEFORE YOU TODAY
10 TELLING YOU, I AM NOT GUILTY.

11 NOW, THE JUDGE HAS ALREADY, WHEN HE
12 WAS QUALIFYING YOU AS JURORS, READ TO YOU THE
13 INDICTMENTS. THOSE ARE BASICALLY ALLEGATIONS, THEY'RE
14 ACCUSATIONS, THEY'RE WHAT SOMEBODY IS SAYING THAT MR.
15 MONTGOMERY IS SUPPOSED TO HAVE DONE. AS THE JUDGE HAS
16 TOLD YOU, IT IS NOT EVIDENCE, IT IS MERELY A CHARGING
17 PAPER. PLEASE REMEMBER AS YOU SIT AND LISTEN TO THE
18 WITNESS TESTIMONY THAT YOU'RE GOING TO HEAR TODAY THAT
19 AN ACCUSATION IS NO MORE THAN THAT UNTIL THE PROOF IS
20 SUPPLIED.

21 LADIES AND GENTLEMEN, THE JUDGE HAS
22 SPOKEN TO YOU BRIEFLY ABOUT CREDIBILITY. WE WOULD ASK
23 THAT YOU WITHHOLD YOUR JUDGEMENT, AS THE JUDGE WILL
24 INSTRUCT YOU TO DO, UNTIL YOU HEAR BOTH SIDES OF THE
25 STORY. YOU WALK IN HERE WITH YOUR COMMON SENSE, AND YOU

1 WALK IN HERE WITH YOUR LIFE EXPERIENCES, AND THERE ARE
2 ALWAYS TWO SIDES TO EVERY STORY. WE BELIEVE THAT WHEN
3 YOU HEAR BOTH SIDES OF THE STORY, THAT THERE WILL BE NOT
4 ONLY REASONABLE DOUBT BUT A SUBSTANTIAL DOUBT, THAT THE
5 STATE IS NOT ABLE TO PROVE THEIR CASE. WE WOULD AGAIN
6 REMIND YOU TO PLEASE LISTEN CAREFULLY TO BOTH SIDES, AND
7 THEN, IF YOU HAVE ANY REASONABLE DOUBT, IF YOU HAVE A
8 REASONABLE DOUBT AS TO WHETHER THE STATE HAS PROVEN
9 THEIR CASE YOU MUST FIND MR. MONTGOMERY NOT GUILTY.

10 I WILL KEEP THESE REMARKS BRIEF,
11 BECAUSE BASICALLY WE WANT TO GET TO THE TESTIMONY TO BE
12 ABLE TO SHOW YOU. BUT AGAIN, MR. MONTGOMERY STANDS HERE
13 INNOCENT AS OF RIGHT NOW, AND OUR CONTENTION IS, HE WILL
14 BE INNOCENT, EVEN AT THE CONCLUSION OF THE CASE. WE
15 WOULD ASK, ONCE YOU HEAR ALL THE TESTIMONY, THAT YOU
16 FIND HIM NOT GUILTY.

17 THE COURT: CALL YOUR FIRST WITNESS.

18 SOLICITOR AVINGER: KEVIN MACK, YOUR
19 HONOR.

20 (Whereupon, the witness
21 enters the courtroom.)

22 CLERK: MR. MACK, IF YOU WOULD,
23 SLIDE THAT BIBLE AROUND TO THE OTHER SIDE. PLACE YOUR
24 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

25 KEVIN MACK, BEING FIRST DULY SWORN,

1 TESTIFIES AS FOLLOWS:

2 CLERK: HAVE A SEAT, AND STATE YOUR
3 FULL NAME, PLEASE.

4 WITNESS: MY NAME IS KEVIN MACK.

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

DIRECT - KEVIN MACK BY SOL. AVINGER

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DIRECT EXAMINATION OF KEVIN MACK

BY SOLICITOR AVINGER:

Q. MR. MACK, WHERE ARE YOU LIVING?

A. [REDACTED] PINELAND.

Q. OKAY. AND WHERE WERE YOU LIVING LAST YEAR, THE SAME ADDRESS?

A. WELL, GIVE OR TAKE, THE SAME ADDRESS LAST YEAR, YEAH.

Q. DO YOU KNOW TRAVIS GUESS?

A. I DON'T KNOW HIM PERSONALLY, I JUST MOVED DOWN HERE WHEN I WAS, WHEN THIS INCIDENT HAPPENED. I KNOW HIM NOW AS I SPEAK TO HIM, THE OLD BOY, BUT AT THE TIME I DIDN'T BECAUSE I HAD JUST MOVED DOWN HERE.

Q. OKAY. WHEN DID YOU MOVE DOWN HERE?

A. I MOVED DOWN HERE LAST YEAR, ABOUT A YEAR AND A HALF, ABOUT A YEAR AND A HALF I LIVED DOWN HERE.

Q. OKAY. AND DID YOU KNOW WHERE TRAVIS GUESS LIVED LAST YEAR?

A. A YEAR AND A HALF?

Q. JULY OF LAST YEAR?

A. A YEAR AND A HALF? LAST YEAR? AT THE PARTICULAR TIME I DIDN'T KNOW UNTIL WE BECAME, YOU KNOW, LIKE, WELL, ACTUALLY, WE AIN'T NO FRIEND, I WAS GOING TO THE STORE, YOU KNOW, AND WE WAS FRIENDS, YOU KNOW, I DON'T KNOW HIM PERSONALLY AT THAT TIME. AT THAT

DIRECT - KEVIN MACK BY SOL. AVINGER

67

1 TIME I DIDN'T KNOW HIM PERSONALLY.

2 Q. OKAY.

3 A. BECAUSE I HAD JUST MOVED DOWN HERE.

4 Q. OKAY. AND DID YOU HAPPEN TO BE WITH TRAVIS GUESS
5 JULY SECOND OF LAST YEAR?

6 A. YEAH, THAT'S WHEN THE INCIDENT HAPPENED?

7 Q. YES.

8 A. YEAH.

9 Q. OKAY. YOU DIDN'T KNOW THE DATE, IS THAT WHAT THE
10 PROBLEM IS?

11 A. YEAH, YEAH.

12 Q. OKAY. DID THERE COME A TIME WHEN YOU WERE AT TRAVIS
13 GUESS'S HOUSE BACK JULY SECOND OF LAST YEAR, IN THE
14 EVENING?

15 A. YEAH.

16 Q. OKAY. WHO ALL WAS AT THE TRAILER THERE THAT NIGHT?

17 A. ME, MARCUS, BRIAN AND JOHN JOHN, YEAH.

18 Q. OKAY.

19 COURT REPORTER: WHO WAS THE LAST
20 ONE, THE LAST ONE YOU -- THE LAST PERSON YOU MENTIONED?

21 A. OH, BRIAN.

22 COURT REPORTER: BRIAN AND SOMEBODY
23 ELSE.

24 Q. WHO WAS THE OTHER PERSON? YOU HAD THE NICK NAMES?

25 A. NO, BRIAN, MARCUS AND JOHN JOHN AND ME.

DIRECT - KEVIN MACK BY SOL. AVINGER

68

COURT REPORTER: JOHN JOHN?

1

2

A. JOHN -- TRAVIS.

3

4

Q. DID ANYTHING UNUSUAL HAPPEN THERE AT TRAVIS GUESS'S
HOUSE LAST YEAR, JULY SECOND?

5

6

A. YEAH, BUT LET ME TELL YOU WHAT HAPPENED EXACTLY, -
--

7

8

Q. OKAY.

A. --- FROM THE BEGINNING WHAT HAPPENED.

9

10

Q. THAT'S WHAT I NEED TO KNOW.

A. OKAY. ALRIGHT, I WAS -- I LEFT THE HOUSE TO GO GET
A ROLL OF TOILET TISSUE, RIGHT?

11

12

Q. OKAY.

13

14

A. THE STORE WAS CLOSED, RIGHT. SO, I SAW, I ASKED
JOHN -- TRAVIS, RIGHT.

15

16

Q. TRAVIS'S NICK NAME, OR OTHER NAME IS JOHN?

A. RIGHT, YEAH.

17

18

Q. OKAY. YOU KNOW HIM BY JOHN?

A. I ASKED HIM FOR A ROLL OF TOILET TISSUE, RIGHT.

19

20

Q. OKAY. AND DID HE GIVE YOU ---

A. BECAUSE THE STORE WAS CLOSED. HE SAID, OKAY, LET
ME GO IN THE HOUSE AND LOOK AND SEE IF I HAVE ONE.
RIGHT. HE WENT IN THE HOUSE, HE LOOKED, SEE IF HE
HAD ONE, AND HE DIDN'T HAVE ONE. SO, THEN, I WAS
SITTING OUTSIDE, WE ALL THREE WAS SITTING OUTSIDE
WHILE HE WAS TALKING TO ME. ALL OF A SUDDEN A GUY

24

25

DIRECT - KEVIN MACK BY SOL. AVINGER

69

1 WALKS FROM THE BACK OF THE HOUSE WITH A T-SHIRT
2 AROUND HIS NECK, AROUND HIS FACE.

3 Q. OKAY.

4 A. AND HE SAYS, DON'T MOVE.

5 Q. OKAY.

6 A. SO, I GOT UP, AND THEN THE PERSON SHOT IN THE
7 GROUND.

8 Q. OKAY. WHEN THE PERSON CAME FROM AROUND THE SIDE
9 OF THE HOUSE AND HAD A T-SHIRT, DID YOU NOTICE
10 ANYTHING ABOUT HIS CLOTHES?

11 A. IT WAS DARK PANTS AND WELL, I THINK IT WAS A WHITE
12 T-SHIRT, OR LIKE THAT, YEAH, IT WAS A WHITE, I
13 BELIEVE IT WAS A WHITE T-SHIRT.

14 Q. OKAY. AND THIS MAN'S FACE WAS COVERED?

15 A. THIS MAN'S -- YES, IT WAS.

16 Q. OKAY. AND WHAT TYPE OF GUN DID YOU SEE?

17 A. IT WAS ---

18 Q. IF YOU REMEMBER?

19 A. IT WAS, IT WAS SOMETHING LIKE, IT WAS SHINY, LIKE
20 A SHINY TOP TO IT, SOMETHING SHINY.

21 Q. OKAY. AND YOU SAID HE SHOT. WHERE DID HE SHOOT?

22 A. HE SHOT ON THE GROUND.

23 Q. OKAY. AND WHAT DID YOU DO WHEN THIS MAN SHOT IN
24 THE GROUND?

25 A. I RAN, I RAN.

DIRECT - KEVIN MACK BY SOL. AVINGER

70

1 Q. OKAY. AND WHERE DID YOU RUN?

2 A. I RAN TO THE BACK OF THE WOODS, THE BACK OF THE
3 HOUSE TO THE WOODS IN THE BACK, I RAN.

4 Q. OKAY. DID YOU CALL LAW ENFORCEMENT?

5 A. YEAH.

6 Q. OKAY. YOU CALLED NINE ONE ONE?

7 A. YES.

8 Q. AND WHEN YOU RAN DID YOU HEAR ANY OTHER
9 CONVERSATION THAT WAS GOING ON THERE AT TRAVIS'S
10 TRAILER?

11 A. NO, BECAUSE I WAS, I HAD ALREADY, I HAD LEFT, I HAD
12 RAN.

13 Q. OKAY. DO YOU REMEMBER HOW MANY TIMES HE SHOT
14 BEFORE YOU RAN?

15 A. WELL, HE SHOT, ALL I REMEMBER WAS THE ONE SHOT THAT
16 MADE ME RUN.

17 Q. THAT MADE YOU RUN?

18 A. YEAH.

19 SOLICITOR AVINGER: I BEG THE
20 COURT'S INDULGENCE ONE MOMENT.

21 Q. DO YOU, DID YOU RECOGNIZE THE PERSON THAT HAD THE
22 WHITE T-SHIRT ON HIS FACE?

23 A. NO, I DIDN'T. I HAD JUST CAME, I HAD JUST MOVED
24 DOWN HERE AT THAT TIME, SO I COULDN'T RECOGNIZE HIM
25 OR NOBODY ELSE.

DIRECT - KEVIN MACK BY SOL. AVINGER

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1 SOLICITOR AVINGER: PLEASE ANSWER

2 MS. HINDS'S QUESTIONS.

3 (NOTE: Blank lines on this page do not indicate any
4 part of record has been omitted. Headers on testimony
5 pages and hard page breaks between testimony are now
6 required by the Court. See next ensuing page for
7 sequential continuation of record.)

CROSS - KEVIN MACK BY MS. HINDS

72

CROSS-EXAMINATION OF KEVIN MACKBY MS. HINDS:

Q. MR. MACK, YOU BASICALLY HAD JUST MOVED INTO THE AREA, IS THAT CORRECT?

A. RIGHT, RIGHT.

Q. ABOUT HOW LONG HAD YOU BEEN THERE?

A. BEFORE THAT INCIDENT?

Q. YES.

A. OH, ABOUT, ALMOST ABOUT A MONTH, THAT'S IT, ABOUT A MONTH.

Q. OKAY. THE OTHER PEOPLE THAT YOU MENTIONED I BELIEVE WAS MARCUS, BRIAN AND THEN TRAVIS?

A. RIGHT.

Q. HAD YOU KNOWN THEM ALL ABOUT THE SAME AMOUNT OF TIME?

A. YEAH, ABOUT THE SAME LENGTH OF TIME, YOU KNOW. THEY WERE MY NEXT DOOR NEIGHBORS, YOU KNOW, LIKE THAT, I JUST KNEW THEM FOR THE SAME LENGTH OF TIME.

Q. OKAY. THEY WERE ALL YOUR NEXT DOOR NEIGHBORS?

A. NO, WHEN I WOULD GO DOWN TO THE STORE, THEY WERE FRIENDS OF TRAVIS.

Q. OKAY. SO, MARCUS AND BRIAN ARE FRIENDS OF TRAVIS?

A. YES.

Q. AND ABOUT HOW LONG HAD YOU BEEN THERE BEFORE THIS TOOK PLACE?

CROSS - KEVIN MACK BY MS. HINDS

73

1 A. OH, NOT EVEN A GOOD TEN MINUTES.

2 Q. DO YOU REMEMBER WHAT TIME OF DAY IT WAS?

3 A. IT WAS, IT HAPPENED AT ABOUT TEN O'CLOCK, BECAUSE
4 MR. WILSON'S STORE WAS CLOSED, AND THAT'S WHERE I
5 WAS HEADED, TO GO GET THE TOILET TISSUE FROM.
6 THAT'S WHY I STOPPED AND ASKED HIM FOR IT.

7 Q. OKAY. ARE THERE STREET LIGHTS IN THAT AREA?

8 A. I THINK IT'S ONE, ONE STREET LIGHT, LIKE, TOWARD
9 THE FRONT OF THE TRAILER.

10 Q. AND YOU WERE SITTING OUTSIDE OF THE TRAILER, IS
11 THAT CORRECT?

12 A. RIGHT, RIGHT.

13 Q. WHICH SIDE -- WERE YOU SITTING DIRECTLY IN FRONT?

14 A. OH, ACTUALLY, I WAS SITTING ON THIS SIDE, AND
15 SOMEBODY ELSE WAS SITTING ON THAT SIDE, BECAUSE I
16 WAS WAITING FOR HIM TO COME BACK OUT WITH THE
17 TOILET TISSUE.

18 Q. SO, YOU'RE SITTING IN FRONT OF THE TRAILER, THOUGH?

19 A. YEAH. THE TRAILER IS HERE, I'M SITTING RIGHT HERE
20 ON THIS SIDE, RIGHT HERE, THIS SIDE. THE OTHER GUY
21 WAS SITTING HERE AND THE OTHER GUY WAS SITTING
22 THERE.

23 Q. OKAY. I'M JUST TRYING TO MAKE SURE I UNDERSTAND,
24 ARE YOU SITTING -- THEY ARE SITTING TO THE SIDE OF
25 YOU, OR YOU'RE SITTING TO THE SIDE OF THE TRAILER?

CROSS - KEVIN MACK BY MS. HINDS

74

1 A. I'M SITTING ON THIS, I'M SITTING ON THIS SIDE OF
2 THE TRAILER, THIS SIDE.

3 Q. OKAY. AND YOU SAID THERE'S LIKE ONE STREET LIGHT,
4 CORRECT?

5 A. YES.

6 Q. AND ABOUT HOW FAR AWAY FROM THE TRAILER IS THE
7 STREET LIGHT?

8 A. I'D SAY IT WAS NOT THAT FAR AWAY, IT'S A DITCH
9 HERE, AND THE TRAILER, I MEAN, THE STREET LIGHT IS
10 RIGHT THERE BY THE DITCH.

11 Q. OKAY, THERE'S A DITCH, THEN A TRAILER, AND THEN THE
12 STREET LIGHT?

13 A. RIGHT.

14 Q. ANY LIGHTS ON IN THE FRONT OF THE HOUSE, DID IT
15 HAVE A PORCH LIGHT OR A FRONT LIGHT THAT YOU CAN
16 REMEMBER?

17 A. I REALLY DON'T KNOW, BUT I DON'T THINK SO.

18 Q. OKAY. YOU SAID A GUY WALKED FROM AROUND THE HOUSE,
19 IS THAT CORRECT?

20 A. YEAH, YES.

21 Q. ALRIGHT. ABOUT HOW FAST WAS HE WALKING?

22 A. HE WASN'T, HE CAME OUT, HE JUST CAME OUT OF
23 NOWHERE, HE JUST WALKED FROM THE BACK AND JUST, I
24 DON'T KNOW HOW FAST HE WAS WALKING.

25 Q. OKAY. BUT HE WAS WALKING?

CROSS - KEVIN MACK BY MS. HINDS

75

1 A. YES, HE WAS WALKING.

2 Q. AND YOU SAID HE HAD A T-SHIRT AROUND HIS FACE, IS
3 THAT CORRECT?

4 A. YEAH, YES.

5 Q. ALRIGHT. DID HE HAVE THE T-SHIRT OVER HIS HEAD OR

6 ---

7 A. HE HAD IT WRAPPED AROUND HIS FACE.

8 Q. HE HAD IT WRAPPED AROUND?

9 A. YES.

10 Q. HOW FAR UP DID IT GO? HOW FAR UP DID IT GO?

11 A. IT WENT RIGHT AROUND, DOWN AROUND HERE, UP TO HERE,
12 WHERE HIS EYES WAS SHOWING, BUT, YOU KNOW ---

13 Q. BUT THAT'S ALL?

14 A. YEAH.

15 Q. OKAY. AND YOU SAID THAT HE HAD A GUN IN HIS HAND,
16 IS THAT CORRECT?

17 A. YES.

18 Q. IS THE, THE T-SHIRT IS STAYING IN PLACE, HE'S NOT
19 HOLDING IT, IS THAT CORRECT?

20 A. NO, IT'S, WELL, HE'S KEEPING IT IN PLACE BY, LIKE,
21 OKAY, IF IT SLIP DOWN A LITTLE BIT HE'LL MAKE SURE
22 HE TIGHTEN IT UP, YOU KNOW.

23 Q. AND -- ALRIGHT, SO THIS MAN, THEN, COMES AROUND THE
24 HOUSE, COMES AROUND THE SIDE OF THE HOUSE?

25 A. YEAH.

CROSS - KEVIN MACK BY MS. HINDS

76

1 Q. AND HE'S GOT A GUN. DO YOU FIRST NOTICE HIM
2 BECAUSE HE'S SAYING SOMETHING, OR JUST BECAUSE YOU
3 SEE HIM COMING AROUND?

4 A. I JUST HEAR HIM COMING AROUND, I WAS SHOCKED AND
5 AMAZED THAT SOMEBODY JUST COME OUT OF THE WAY LIKE
6 THAT AND JUST WALKS UP FROM THE BACK. SO, LIKE I
7 SAY, I WAS JUST SHOCKED, I WAS SCARED.

8 Q. OKAY. DO YOU REMEMBER WHICH HAND HE HAD THE GUN
9 IN?

10 A. HUH?

11 Q. DO YOU REMEMBER WHICH HAND HE HAD THE GUN IN?

12 A. HE HAD TO HAVE IT IN HIS LEFT HAND BECAUSE HE WAS
13 TRYING TO KEEP HIS, KEEP THE, THE SHIRT UP, WITH
14 IS HAND, AROUND HIS FACE.

15 Q. HE WAS USING, IN OTHER WORDS, HE WAS USING HIS
16 RIGHT HAND TO KEEP THE T-SHIRT UP?

17 A. RIGHT, YEAH.

18 Q. OKAY. DID HE SAY ANYTHING TO YOU OR ANYONE ELSE
19 BEFORE HE MADE THE FIRST SHOT?

20 A. THE ONLY THING HE SAID WAS, DON'T MOVE.

21 Q. OKAY. AND THEN HE IMMEDIATELY SHOT INTO THE
22 GROUND?

23 A. NO, BECAUSE I HESITATE TO GET UP A LITTLE BIT WHEN
24 HE SAID, DON'T MOVE.

25 Q. AND THEN HE SHOT?

CROSS - KEVIN MACK BY MS. HINDS

77

1 A. THEN HE SHOT INTO THE GROUND.

2 Q. OKAY. AND I BELIEVE YOU SAID HE SHOT ONE TIME, IS
3 THAT CORRECT?

4 A. YES.

5 Q. AND AT THAT POINT YOU RAN, IS THAT CORRECT?

6 A. AT THAT POINT I RAN.

7 Q. OKAY. AND AT THAT POINT, FROM THAT POINT FORWARD,
8 YOU DIDN'T SEE ANYTHING ELSE BECAUSE YOU WERE
9 RUNNING?

10 A. I DIDN'T SEE ANYTHING ELSE, I DON'T KNOW ANYTHING
11 ELSE THAT HAPPENED FROM THAT POINT ON.

12 Q. OKAY. AND YOU DIDN'T HEAR ANY OTHER SHOT?

13 A. NO.

14 Q. OKAY. MR. MACK, YOU CAN'T IDENTIFY MR. MONTGOMERY
15 AS THE MAN WHO SHOT THAT GUN THAT NIGHT, CAN YOU?

16 A. I REALLY, I REALLY CAN'T. I CAN'T IDENTIFY TO SAY
17 THAT HE WAS THE ONE THAT SHOT THAT NIGHT, NO.

18 MS. HINDS: THANK YOU. NO FURTHER
19 QUESTIONS.

20 SOLICITOR AVINGER: NOTHING, YOUR
21 HONOR, WE'D ASK THAT HE BE RELEASED FROM HIS SUBPOENA.

22 THE COURT: OKAY, YOU MAY COME DOWN.
23 YOU MAY REMAIN IN THE COURTROOM IF YOU CARE TO. YOU ARE
24 RELEASED. THANK YOU.

25 SOLICITOR AVINGER: MARCUS GUESS.

1 (Whereupon, the witness
2 enters the courtroom.)

3 CLERK: MR. GUESS, PLEASE PLACE YOUR
4 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

5 MARCUS GUESS, BEING FIRST DULY
6 SWORN, TESTIFIES AS FOLLOWS:

7 CLERK: HAVE A SEAT AND STATE YOUR
8 FULL NAME.

9 (NOTE: Blank lines on this page do not indicate any
10 part of record has been omitted. Headers on testimony
11 pages and hard page breaks between testimony are now
12 required by the Court. See next ensuing page for
13 sequential continuation of record.)

DIRECT - MARCUS GUESS BY SOL. AVINGER

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DIRECT EXAMINATION OF MARCUS GUESSBY SOLICITOR AVINGER:

Q. MARCUS, CAN YOU SPELL YOUR LAST NAME FOR THE
RECORD?

A. MA'AM?

Q. SPELL YOUR LAST NAME FOR THE COURT REPORTER.

A. G-U-E-S-S.

Q. MARCUS, DO YOU KNOW TRAVIS GUESS?

A. YES, MA'AM.

Q. HOW DO YOU KNOW HIM?

A. HE'S RELATED TO ME, THAT'S MY COUSIN.

Q. THAT'S YOUR COUSIN? YOU NEED TO ANSWER YES OR NO.

A. YES, MA'AM.

Q. OKAY. AND WHERE DO YOU LIVE?

A. IN VANCE.

Q. OKAY. AND WERE YOU, DID YOU GO TO TRAVIS'S HOUSE
JULY SECOND OF LAST YEAR?

A. YES, MA'AM.

Q. WHERE DOES HE LIVE?

A. IN A TRAILER PARK.

Q. OKAY. DO YOU KNOW WHAT THE NAME OF THE TRAILER
PARK IS?

A. CHAPEL HILL TRAILER PARK.

COURT REPORTER: YOU NEED TO TALK -

--

DIRECT - MARCUS GUESS BY SOL. AVINGER

80

1 THE COURT: YOU'RE GOING TO HAVE TO
2 TALK INTO THAT MICROPHONE, I'M AFRAID THEY CAN'T HEAR
3 YOU, TRAVIS. TALK INTO THAT MICROPHONE RIGHT THERE.

4 A. CHAPEL HILL TRAILER PARK.

5 Q. AND IS THAT IN ORANGEBURG COUNTY?

6 A. YES, MA'AM.

7 Q. AND WHAT ROAD IS THAT ON, DO YOU KNOW?

8 A. NO, MA'AM.

9 Q. WHO ELSE WAS AT THE CHAPEL HILL TRAILER PARK JULY
10 SECOND OF LAST YEAR?

11 A. IT WAS ME, TRAVIS AND KEVIN.

12 Q. IS THAT KEVIN MACK THAT WAS JUST HERE?

13 A. YES, MA'AM.

14 Q. OKAY.

15 A. AND BRIAN.

16 Q. BRIAN, WHAT'S BRIAN'S LAST NAME?

17 A. GUESS.

18 Q. OKAY.

19 A. AND DWAYNE.

20 Q. DWAYNE WHO?

21 A. MONTGOMERY.

22 Q. OKAY.

23 COURT REPORTER: MONTGOMERY?

24 Q. MONTGOMERY. WHAT WERE Y'ALL DOING THERE AT
25 TRAVIS'S THAT NIGHT?

DIRECT - MARCUS GUESS BY SOL. AVINGER

81

1 A. WE WAS SITTING IN THE YARD AND DRINKING A FEW
2 BEERS.

3 Q. DO YOU REMEMBER WHAT TIME OF NIGHT IT WAS?

4 A. IT WAS BETWEEN EIGHT:THIRTY AND NINE.

5 Q. AND THAT'S WHAT TIME YOU GOT THERE?

6 A. YEAH, SOMETHING LIKE THAT.

7 Q. OKAY. AND DID ANYTHING UNUSUAL HAPPEN THAT
8 EVENING?

9 A. YES, MA'AM.

10 Q. WELL, TELL THE JURY WHAT HAPPENED.

11 A. WHILE WE WERE OUT THERE SITTING IN THE YARD, THERE
12 WAS SOMEONE CAME FROM THE BACK OF THE HOUSE IN DARK
13 CLOTHES AND THEN A WHITE, A WHITE SHIRT WRAPPED
14 AROUND HIS HEAD.

15 Q. OKAY, WHEN YOU SAY A WHITE SHIRT WRAPPED AROUND HIS
16 HEAD, WHAT DO YOU MEAN, WAS IT TIED AROUND?

17 A. YEAH, HE HAD IT LIKE TIED, BUT YOU COULDN'T SEE
18 HIM, I GUESS HE HAD EYE HOLES CUT IN OR WHATEVER,
19 BECAUSE YOU COULD SEE HIS EYES.

20 Q. OKAY. YOU COULD SEE HIS EYES?

21 A. UH HUH.

22 Q. OKAY. AND WHEN THE PERSON CAME FROM THE BACK OF
23 THE TRAILER WITH THE T-SHIRT ON HIS HEAD, DID HE
24 HAVE ANY TYPE OF WEAPON?

25 A. YES, HE HAD A GUN IN HIS LEFT HAND.

DIRECT - MARCUS GUESS BY SOL. AVINGER

82

- 1 Q. OKAY. HE HAD A GUN IN HIS LEFT HAND?
- 2 A. YES, MA'AM.
- 3 Q. OKAY. WELL, DO YOU KNOW WHAT KIND OF GUN IT WAS
- 4 OR WHAT COLOR IT WAS?
- 5 A. I DON'T KNOW, PROBABLY BLACK OR CHROME.
- 6 Q. OKAY.
- 7 A. I DID SEE A LITTLE CHROME FLASHING.
- 8 Q. YOU SAW SOME CHROME FLASHING?
- 9 A. UH HUH.
- 10 Q. WHEN HE CAME AROUND THE BACK OF THE TRAILER WITH
- 11 THE GUN, WHAT DID YOU DO?
- 12 A. THERE WASN'T NOTHING I COULD DO. I WAS SHOCKED,
- 13 ANYWAY.
- 14 Q. OKAY. WELL, DID HE SAY ANYTHING AS HE CAME AROUND
- 15 THE BACK OF THE TRAILER?
- 16 A. DON'T MOVE.
- 17 Q. OKAY. AND WHAT DID YOU DO?
- 18 A. RAN.
- 19 Q. OKAY. DID THIS MAN FIRE A GUN BEFORE YOU RAN?
- 20 A. YES, MA'AM.
- 21 Q. OKAY. WHERE DID HE SHOOT?
- 22 A. TOWARD THE GROUND.
- 23 Q. OKAY. AND WHAT DID KEVIN MACK DO?
- 24 A. RAN.
- 25 Q. AND WHAT DID BRIAN GUESS DO?

DIRECT - MARCUS GUESS BY SOL. AVINGER

83

1 A. RAN.

2 Q. AND WHAT DID DWAYNE MONTGOMERY DO?

3 A. HE RAN.

4 Q. OKAY. WHO, WHO WAS THE FIRST ONE THAT RAN, DO YOU
5 REMEMBER? OR WAS IT AT THE SAME TIME, OR HOW DID
6 IT PLAY OUT?

7 A. WELL, ABOUT THE TIME I GOT TO THE BACK OF THE HOUSE
8 I SAW KEVIN AND BRIAN.

9 Q. OKAY. DID YOU RECOGNIZE THE PERSON THAT HAD THE
10 SHIRT TIED AROUND HIS HEAD?

11 A. NO, MA'AM.

12 Q. OKAY.

13 SOLICITOR AVINGER: I BEG THE
14 COURT'S INDULGENCE.

15 Q. DID YOU HEAR ANY OTHER KIND OF CONVERSATION BETWEEN
16 THE MAN THAT HAD THE GUN AND TRAVIS GUESS?

17 A. NO, MA'AM.

18 Q. OKAY.

19 SOLICITOR AVINGER: PLEASE ANSWER
20 MS. HINDS'S QUESTIONS.

21 (NOTE: Blank lines on this page do not indicate any
22 part of record has been omitted. Headers on testimony
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24 required by the Court. See next ensuing page for
25 sequential continuation of record.)

CROSS - MARCUS GUESS BY MS. HINDS

84

1 CROSS-EXAMINATION OF MARCUS GUESS2 BY MS. HINDS:

3 Q. I BELIEVE YOU SAID THAT BRIAN GUESS WAS ALSO
4 PRESENT, IS THAT CORRECT?

5 A. YES, MA'AM.

6 Q. IS BRIAN ALSO A RELATIVE OF YOURS?

7 A. NO, MA'AM.

8 Q. OKAY. JUST THE SAME LAST NAME BUT HE'S NOT A
9 RELATION?

10 A. YES, MA'AM.

11 Q. AND YOU GUYS WERE ALL SITTING IN THE YARD DRINKING?

12 A. YES, MA'AM.

13 Q. WHAT WERE YOU DRINKING?

14 A. BUD LIGHT.

15 Q. ABOUT HOW MUCH HAD YOU HAD TO DRINK?

16 A. ME, I DIDN'T, I DON'T DRINK.

17 Q. YOU DON'T DRINK?

18 A. NO, MA'AM.

19 Q. OKAY. YOU DON'T DRINK AT ALL?

20 A. NO, MA'AM.

21 Q. OKAY. BUT THE OTHERS WERE DRINKING?

22 A. YES, MA'AM.

23 Q. WAS EVERYONE ELSE DRINKING?

24 A. YES, MA'AM.

25 Q. HOW LONG HAD Y'ALL BEEN OUT THERE?

CROSS - MARCUS GUESS BY MS. HINDS

85

1 A. IT WASN'T THAT LONG, PROBABLY ABOUT THIRTY MINUTES.

2 Q. HAD YOU JUST GOTTEN THERE THIRTY MINUTES AGO, OR
3 YOU HAD BEEN THERE FOR A LONGER PERIOD OF TIME?

4 A. I WAS OUT THERE FOR ABOUT AN HOUR, BUT YES, MA'AM.

5 Q. OKAY. AND YOU SAY YOU DON'T DRINK, CORRECT?

6 A. YES, MA'AM.

7 Q. BUT YOU HAVE DONE DRUGS, IS THAT CORRECT?

8 A. YES, MA'AM.

9 Q. OKAY. AS A MATTER OF FACT, YOU'VE GOT A CONVICTION
10 FOR DRUGS, IS THAT NOT CORRECT?

11 A. YES, MA'AM.

12 Q. OKAY. AND THAT WOULD BE FOR MARIJUANA, POSSESSION
13 OF MARIJUANA?

14 A. YES, MA'AM.

15 Q. AND THERE WAS ALSO A CONVICTION INVOLVING COCAINE,
16 IS THAT CORRECT?

17 A. YES, MA'AM.

18 Q. OKAY. TO GET BACK TO -- THE MAN WITH ---

19 THE COURT: LADIES AND GENTLEMEN,
20 THERE HAS BEEN CROSS-EXAMINATION AS TO SOME DRUG ISSUE,
21 I TELL YOU THAT DRUGS ARE NOT A PART OF THIS CASE. THAT
22 TYPE OF TESTIMONY IS ELICITED FOR YOUR CONSIDERATION
23 ONLY AS TO THE CREDIBILITY AND BELIEVABILITY IF, IN YOUR
24 JUDGEMENT, YOU DESIRE TO CONSIDER IT FOR THAT PURPOSE.
25 BUT DRUGS ARE NOT AN ISSUE IN THE CASE. THAT IS ONLY

CROSS - MARCUS GUESS BY MS. HINDS

86

1 INTRODUCED FOR YOU TO CONSIDER, IF YOU CHOOSE, HIS
2 CREDIBILITY AND BELIEVABILITY, AND FOR NO OTHER PURPOSE.

3 YOU MAY PROCEED.

4 MS. HINDS: THANK YOU, YOUR HONOR.

5 Q. AND I BELIEVE YOU SAID AT THAT POINT SOMEBODY CAME
6 FROM AROUND THE BACK OF THE HOUSE, IS THAT CORRECT?

7 A. YES, MA'AM.

8 Q. OKAY. AND HE HAD ON DARK CLOTHING AND A WHITE
9 SHIRT AROUND HIS HEAD?

10 A. YES, MA'AM.

11 Q. OKAY. DID YOU SAY IT HAD THE EYE HOLES CUT OUT,
12 OR HOW, HOW DID THE SHIRT LOOK, CAN YOU DESCRIBE
13 THAT IN MORE DETAIL?

14 A. WELL, HOWEVER HE HAD THE SHIRT AROUND HIS HEAD, HE
15 COULD SEE, WE ALL KNOW HOW HE HAD IT TIED, I GUESS
16 HE HAD IT TIED LIKE A BANDANNA OR SOMETHING, BUT
17 HE COULD SEE, HE COULD SEE REAL GOOD, TOO.

18 Q. HE COULD SEE REAL GOOD?

19 A. UH HUH.

20 Q. BUT YOU COULD ONLY SEE EYES, IS THAT CORRECT?

21 A. YES, MA'AM.

22 Q. AND WHEN HE CAME FROM BEHIND THE TRAILER, HOW, HOW
23 DID HE COME? IN OTHER WORDS, WAS HE WALKING OR
24 RUNNING, OR WHAT WAS HE DOING?

25 A. HE WAS WALKING IN A FAST WAY.

CROSS - MARCUS GUESS BY MS. HINDS

87

1 Q. OKAY. AND DID HE SAY ANYTHING AS HE CAME AROUND
2 TO WHERE Y'ALL WERE SITTING?

3 A. HE DIDN'T SAY NOTHING UNTIL HE GOT AROUND WHERE WE
4 WAS AT, AND THEN HE SAID, DON'T MOVE.

5 Q. OKAY. AND AT THAT POINT, AFTER HE SAYS, DON'T
6 MOVE, THEN WHAT HAPPENED?

7 A. HE FIRED A SHOT.

8 Q. AND I BELIEVE YOU SAID HE FIRED THE SHOT INTO THE
9 GROUND?

10 A. YES, MA'AM.

11 Q. HOW MANY SHOTS, WAS IT ONE OR MORE THAN ONE?

12 A. ONE.

13 Q. CAN YOU TELL ME WHICH HAND HE HAD HIS GUN IN?

14 A. HIS LEFT HAND.

15 Q. AND AT THAT POINT, AFTER HE FIRED THE FIRST SHOT,
16 THEN YOU RAN?

17 A. YES, MA'AM.

18 Q. DID YOU LOOK BACK AT ALL?

19 A. NO, MA'AM.

20 Q. DID YOU HEAR ANYTHING ELSE?

21 A. A CAR.

22 Q. ALRIGHT, SO THIS MAN THAT CAME AROUND FROM BEHIND
23 THE TRAILER WITH ONLY HIS EYES LOOKING OUT FROM
24 BEHIND A T-SHIRT, YOU COULDN'T IDENTIFY HIM TODAY,
25 COULD YOU?

CROSS - MARCUS GUESS BY MS. HINDS

88

1 A. NO, MA'AM.

2 Q. OKAY. AS A MATTER OF FACT, YOU DON'T KNOW WHO THAT
3 WAS, DO YOU?

4 A. NO, MA'AM.

5 Q. OKAY. AND YOU'RE NOT IDENTIFYING RUSSELL
6 MONTGOMERY AS THAT MAN, IS THAT CORRECT?

7 A. NO, MA'AM.

8 MS. HINDS: THANK YOU, NO FURTHER
9 QUESTIONS.

10 THE COURT: YOU MAY COME DOWN. YOU
11 MAY REMAIN IN THE COURTROOM IF YOU CARE TO, YOU MAY
12 LEAVE IF YOU CARE TO.

13 SOLICITOR AVINGER: YOUR HONOR, IF
14 I MAY APPROACH BRIEFLY?

15 THE COURT: YES, MA'AM.

16 (Whereupon, a bench conference
17 is held out of the hearing of
18 the jury and the court reporter.)

19 THE COURT: FOR SCHEDULING PURPOSES,
20 THE STATE HAS SAID THAT THE NEXT WITNESS WILL BE OUT OF
21 ORDER, WHICH IS CONSENTED TO BY THE DEFENSE.

22 CALL THAT WITNESS.

23 SOLICITOR AVINGER: YOUR HONOR, I'D
24 CALL MS. MCFARLAND. MS. MCFARLAND.

25 (Whereupon, the witness

1 enters the courtroom.)

2 CLERK: MS. MCFARLAND, PLEASE PLACE
3 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

4 VERNA MCFARLAND, BEING FIRST DULY
5 SWORN, TESTIFIES AS FOLLOWS:

6 CLERK: HAVE A SEAT AND STATE YOUR
7 FULL NAME AND SPELL YOUR LAST NAME FOR THE COURT
8 REPORTER, PLEASE.

9 WITNESS: STATE MY FULL NAME?

10 CLERK: YES, MA'AM.

11 WITNESS: VERNA MCFARLAND.

12 CLERK: SPELL IT.

13 WITNESS: SPELL MCFARLAND, M-C-F-
14 A-R-L-A-N-D.

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19 sequential continuation of record.)

DIRECT - Verna McFarland by Sol. Avinger

90

DIRECT EXAMINATION OF Verna McFarland

BY Solicitor Avinger:

Q. GOOD AFTERNOON, MS. MCFARLAND.

A. UH HUH.

Q. WHERE DO YOU LIVE?

A. I LIVE ON LODGE HALL ROAD, IT'S DAVIS'S TRAILER PARK.

Q. OKAY. AND WHO ALL LIVES THERE WITH YOU?

A. ME, MY HUSBAND AND MY TWO CHILDREN.

Q. AND WERE YOU LIVING THERE JULY SECOND OF LAST YEAR?

A. I WAS.

Q. AND ARE YOU STILL LIVING THERE NOW?

A. I'M STILL THERE.

Q. OKAY. WERE YOU HOME THE EVENING OF JULY SECOND, AROUND TEN O'CLOCK?

A. YES, I WAS.

Q. AND WHAT, IF ANYTHING, DO YOU RECALL THAT HAPPENED THERE AT YOUR HOME?

A. WELL, MY HOUSE WAS BROKEN INTO.

Q. OKAY. TELL US HOW THAT HAPPENED, WHERE WERE YOU, WERE YOU INSIDE THE HOME?

A. INSIDE, INSIDE, JUST, YOU KNOW, ACTUALLY WATCHING T.V., JUST A NORMAL NIGHT.

Q. OKAY. DO YOU REMEMBER ABOUT WHAT TIME IT WAS?

DIRECT - VERNA MCFARLAND BY SOL. AVINGER

91

1 A. I BELIEVE IT HAD TO BE BETWEEN TEN AND ELEVEN. I
2 KNOW IT WASN'T AFTER TWELVE. THE EXACT TIME, YOU
3 KNOW, IT'S BEEN A YEAR, I BELIEVE, ---

4 Q. YES, MA'AM.

5 A. YES, I CAN'T REALLY ---

6 Q. AND WHAT HAPPENED AS YOU WERE SITTING THERE
7 WATCHING T.V.?

8 A. THE DOOR WAS JERKED OPEN.

9 Q. OKAY. AND WAS THIS AN OUTER DOOR, A SCREEN DOOR,
10 A PORCH DOOR?

11 A. IT JERKED -- WELL, IT OPENED OUTWARD, SO HE, IT WAS
12 JERKED OPEN, LIKE THAT, ---

13 Q. OKAY.

14 A. --- TWO TIMES, AND HE WAS IN MY HOUSE, YOU KNOW.

15 Q. OKAY. AND THIS PERSON THAT CAME IN YOUR HOUSE, DID
16 YOU KNOW HIM?

17 A. WHEN HE CAME IN I DIDN'T KNOW HIM, ---

18 Q. OKAY.

19 A. --- BUT LATER ON I REALIZED THAT I HAD SEEN HIM
20 IN THE NEIGHBORHOOD AND I PERHAPS HAD SPOKEN TO
21 HIM, BECAUSE I'VE SEEN HIM IN THE NEIGHBORHOOD.

22 Q. OKAY. THIS PERSON THAT CAME IN YOUR HOUSE, WHAT WAS
23 HIS PHYSICAL APPEARANCE AND HIS DEMEANOR THAT
24 EVENING?

25 A. I'VE NEVER SEEN ANYONE SO SCARED, HE WAS TERRIFIED,

DIRECT - Verna McFarland by Sol. Avinger

92

1 OF COURSE, AND HE WAS BRUISED.

2 Q. WAS HE BLEEDING, DO YOU REMEMBER?

3 A. I REMEMBER BLEEDING, HIS LET SEEMED TO BE BRUISED
4 AND BLEEDING.

5 Q. OKAY.

6 A. AND YOU KNOW, HE JUST WAS RUFFLED, LIKE HE HAD
7 GOTTEN A VERY SEVERE BEATING SOMEWHERE, YOU KNOW,
8 YEAH.

9 Q. OKAY. AND WHAT, WHAT WAS THIS PERSON SAYING TO
10 Y'ALL?

11 A. WELL, HE SAID THAT SOMEONE, THIS MAN IS BEHIND ME,
12 HE SAID, HE HAS A GUN, HE'S GOING TO KILL ME.

13 Q. AND WHAT DID Y'ALL DO, YOU AND YOUR FAMILY?

14 A. WE TRIED TO THROW HIM OUT, YEAH, YEAH, MY SON,
15 SEVENTEEN AT THE TIME. SO, HE WAS TRYING TO THROW
16 HIM OUT.

17 Q. OKAY. AND, AND DID THIS PERSON WANT TO LEAVE?

18 A. NO, NO, BY NO MEANS.

19 Q. OKAY. AND DID Y'ALL CALL LAW ENFORCEMENT, OR WHAT
20 DID Y'ALL DO?

21 A. NO, BECAUSE RIGHT ACROSS THE STREET FROM ME THERE
22 WAS A POLICE OFFICER THAT WAS PARKED THERE.

23 Q. OKAY. AND YOU COULD SEE THAT FROM YOUR HOUSE?

24 A. UH HUH.

25 Q. OKAY. AND DID THE POLICE OFFICER, DID HE HAVE BLUE

DIRECT - VERNA MCFARLAND BY SOL. AVINGER

93

1 LIGHTS GOING, OR SOME KIND OF LIGHTS, DO YOU
2 REMEMBER?

3 A. I CAN'T REMEMBER THE LIGHTS. YOU MEAN, FLASHING
4 BLUE?

5 Q. YES, MA'AM.

6 A. NO. IT JUST WAS THERE, UH HUH.

7 Q. OKAY. AND WHAT DID YOU DO ABOUT THIS PERSON IN
8 YOUR HOUSE THAT WOULDN'T LEAVE?

9 A. WELL, I SENT MY NIECE OVER TO THE POLICEMAN.

10 Q. OKAY.

11 A. TO THE OFFICER, BUT HE DIDN'T COME, HE DIDN'T
12 RESPOND.

13 Q. OKAY.

14 A. UH HUH. BUT IT SEEMS THAT ONCE HE, THE GENTLEMAN
15 SAW THE POLICEMAN, THEN HE, HE LEFT.

16 Q. OKAY. THE PERSON ---

17 A. AND HE WENT -- YEAH, AND I BELIEVE HE WENT OVER TO
18 THE OFFICER WHERE HE WAS ACROSS THE STREET.

19 Q. OKAY. YOU SAID ---

20 A. AND THAT WAS THAT.

21 Q. OKAY, YOU SAID THE GENTLEMAN SAW THE POLICEMAN,
22 YOU'RE TALKING ABOUT THE PERSON THAT WAS HURT?

23 A. THAT WAS IN MY HOUSE, YEAH.

24 Q. OKAY. DID HE DAMAGE YOUR DOOR TRYING TO GET IN?

25 A. YES, YES, IT COULDN'T BE CLOSED. I MEAN, THE LOCK

DIRECT - Verna McFarland by Sol. Avinger

94

1 WAS BROKEN AND EVERYTHING.

2 Q. OKAY.

3 A. HE JUST JERKED IT COMPLETELY -- JUST TORE IT UP.

4 Q. AND DID YOU FILE A POLICE REPORT ON THAT THE NEXT
5 DAY?

6 A. I DON'T -- YES, YES, BECAUSE I WAS DOWN TO THE
7 POLICE STATION, YEAH.

8 Q. OKAY. AND DO YOU RECOGNIZE THE MAN THAT BUSTED
9 INTO YOUR HOUSE THAT EVENING, DO YOU RECOGNIZE HIM
10 HERE IN THE COURTROOM TODAY?

11 A. I DO.

12 Q. OKAY. COULD YOU POINT HIM OUT FOR THE JURY,
13 PLEASE?

14 A. THE ONE WITH THE GLASSES ON, SITTING NEXT TO THE
15 LADY ON THE END.

16 Q. OKAY. WITH THE BLACK T-SHIRT?

17 A. WITH THE BLACK T-SHIRT, YEAH.

18 SOLICITOR AVINGER: I BEG THE
19 COURT'S INDULGENCE ONE MOMENT. PLEASE ANSWER MS.
20 HINDS'S QUESTIONS.

21 THE COURT: SHE IDENTIFIED HIM, DID
22 SHE MAKE AN IN COURT IDENTIFICATION BY NAME?

23 SOLICITOR AVINGER: NO, SIR, I DON'T
24 THINK, I DON'T THINK SHE KNEW HIS NAME.

25 THE COURT: OKAY.

DIRECT - Verna McFarland by Sol. Avinger

95

Solicitor Avinger: PLEASE ANSWER

MS. HINDS'S QUESTIONS.

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CROSS - Verna MCFARLAND BY MS. HINDS

96

CROSS-EXAMINATION OF Verna MCFARLANDBY MS. HINDS:

Q. JUST BRIEFLY, MS. MCFARLAND. I BELIEVE YOU SAID YOU DIDN'T RECOGNIZE MR. GUESS THAT NIGHT, BUT THAT YOU THOUGHT AFTERWARDS THAT MAYBE YOU KNEW HIM FROM THE NEIGHBORHOOD, IS THAT CORRECT?

A. YEAH, HE JUST LOOKED SO DIFFERENT WHEN HE CAME IN, I DIDN'T REALLY KNOW WHO HE WAS, YOU KNOW. AND THEN, LATER ON, WHEN MY SON AND -- I THINK HIS NAME IS MR. GUESS, IS IT NOT -- WAS SCUFFLING, MY SON WAS TRYING TO GET HIM OUT, AND THEN A NICK NAME OF HIS CAME UP, JOHN JOHN, AND THAT'S WHAT MADE IT, MADE ME REMEMBER THAT I HAD SEEN HIM, AND BY THAT NAME, BUT I DID NOT RECOGNIZE HIM AT ALL THAT NIGHT. I DIDN'T KNOW WHO HE WAS. TO ME HE WAS A STRANGER. BUT THEN, AFTERWARDS, I REALIZED THAT I DID, YOU KNOW, KNOW WHO HE WAS, YEAH.

Q. AND I BELIEVE YOU SAID YOU LOOKED OUT, AND DIDN'T NEED TO CALL THE COPS BECAUSE THERE WAS ALREADY A COPY ON THE SCENE, IS THAT CORRECT?

A. YEAH. THAT'S THE REASON I DIDN'T CALL THEM, BECAUSE THERE WAS ONE RIGHT ACROSS THE STREET, HE WAS PARKED THERE.

Q. OKAY.

A. YEAH.

CROSS - VERA MCFARLAND BY MS. HINDS

97

1 Q. WAS THAT IN A MARKED CAR, A POLICE CAR?

2 A. YEAH, A POLICE CAR, WITH POLICE ON THE OUTSIDE,
3 YEAH.

4 Q. BUT NO LIGHTS OR ANYTHING ON THEN?

5 A. NO, I CAN'T REMEMBER THE LIGHTS BEING ON, NO.

6 Q. OKAY. AND YOU DON'T KNOW ANYTHING ABOUT WHAT
7 HAPPENED BEFORE MR. GUESS GOT TO YOUR DOOR, DO YOU?

8 A. NOTHING.

9 Q. YOU WERE NOT PRESENT FOR THAT INCIDENT, OR ANYTHING
10 LEADING UP TO THAT?

11 A. NOTHING.

12 Q. AND YOUR TESTIMONY IS JUST THAT HE CAME TO YOUR
13 DOOR?

14 A. JUST THAT HE CAME INTO MY HOUSE, YES.

15 MS. HINDS: THANK YOU, NO FURTHER
16 QUESTIONS.

17 THE COURT: YOU MAY COME DOWN.
18 THANK YOU.

19 WITNESS: OKAY.

20 THE COURT: YOU MAY REMAIN IN THE
21 COURTROOM IF YOU CARE TO, OR YOU MAY BE EXCUSED.

22 WITNESS: THANK YOU. OKAY.

23 SOLICITOR AVINGER: YOUR HONOR, THE
24 NEXT WITNESS WOULD BE TRAVIS GUESS, HE WOULD BE VERY
25 LENGTHY, WHATEVER THE COURT PLEASES.

1 THE COURT: CAN WE DO THE DIRECT
2 PRIOR TO LUNCH AND HAVE THE CROSS-EXAMINATION AFTER
3 LUNCH, IS THAT SUITABLE?

4 MS. HINDS: THAT WOULD BE FINE, YOUR
5 HONOR.

6 SOLICITOR AVINGER: THAT'S FINE,
7 YOUR HONOR.

8 THE COURT: ALRIGHT, LET'S PROCEED,
9 THEN.

10 SOLICITOR AVINGER: TRAVIS GUESS.

11 CLERK: PLACE YOUR LEFT HAND ON THE
12 BIBLE AND RAISE YOUR RIGHT HAND.

13 TRAVIS GUESS, BEING FIRST DULY
14 SWORN, TESTIFIES AS FOLLOWS:

15 CLERK: HAVE A SEAT AND STATE YOUR
16 FULL NAME.

17 WITNESS: TRAVIS GUESS.

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DIRECT - TRAVIS GUESS BY SOL. AVINGER

99

DIRECT EXAMINATION OF TRAVIS GUESSBY SOLICITOR AVINGER:

Q. MR. GUESS, HOW OLD ARE YOU?

A. TWENTY-SIX.

Q. OKAY. AND WHERE DO YOU LIVE?

A. CURRENTLY I NOW STAY WITH MY MOTHER.

Q. OKAY. AND IS THAT HER IN THE COURTROOM WITH YOU TODAY?

A. YES, MA'AM.

Q. AND WHO ELSE DID YOU BRING WITH YOU?

A. MY GRAND MOTHER.

Q. AND WHERE WERE YOU LIVING JULY SECOND OF LAST YEAR?

A. [REDACTED] PINELAND STREET.

Q. AND IS THAT IN A TRAILER PARK THERE?

A. YES, MA'AM.

Q. IS THAT IN VANCE?

A. YES, MA'AM.

Q. IS THAT IN ORANGEBURG COUNTY?

A. YES, MA'AM.

Q. ARE YOU WORKING NOW, TRAVIS?

A. NOT RIGHT NOW, NO, NOT RIGHT NOW, I'M CURRENTLY UNEMPLOYED.

Q. OKAY, WHERE -- HAVE YOU WORKED ANYWHERE?

A. I WAS WORKING AT AMBLER'S INDUSTRIES, DUE TO A JOB RELATED INJURY, SO I JUST STARTED WORKING WITH MY,

DIRECT - TRAVIS GUESS BY SOL. AVINGER

100

1 A FAMILY MEMBER, PAINTING.

2 Q. OKAY. WHEN DID YOU LEAVE AMBLER'S?

3 A. FEBRUARY OF THIS YEAR.

4 Q. AND YOU SAID IT WAS BECAUSE OF AN INJURY AT WORK?

5 A. YES, MA'AM.

6 Q. AND YOU'RE PAINTING, WHAT FAMILY MEMBER ARE YOU
7 PAINTING WITH?

8 A. HOWARD DAVIS.

9 Q. IS THAT DOWN IN VANCE, TOO?

10 A. YES, MA'AM.

11 Q. TRAVIS, IF I COULD DIRECT YOUR ATTENTION, LET'S GET
12 RIGHT TO IT, TO JULY SECOND OF LAST YEAR. DO YOU
13 REMEMBER THAT DAY?

14 A. YES, MA'AM.

15 Q. DO YOU REMEMBER THAT EVENING, WHO WAS AT YOUR
16 HOUSE?

17 A. YES, MA'AM.

18 Q. WHO WAS THERE?

19 A. JUST MYSELF, BRIAN GUESS, MARCUS GUESS, KEVIN MACK
20 AND DWAYNE MONTGOMERY.

21 Q. OKAY. AND DO YOU REMEMBER WHAT Y'ALL WERE DOING
22 THERE AT THE HOUSE?

23 A. WE WAS JUST HAVING A FEW DRINKS, SITTING AROUND,
24 LISTENING TO MUSIC, YOU KNOW. I HAD MY CAR RADIO
25 PLAYING, AND WHAT NOT.

DIRECT - TRAVIS GUESS BY SOL. AVINGER

101

1 Q. OKAY. AND WHAT, IF ANYTHING, UNUSUAL HAPPENED
2 THERE AT THE HOUSE?

3 A. YEAH, SOMEONE CAME AROUND DRESSED IN DARK CLOTHING
4 WITH A WHITE TIE AROUND HIS FACE, CAME AROUND
5 SAYING, DON'T MOVE, AND JUST SHOT IN THE GROUND.

6 Q. OKAY. ALRIGHT, YOU SAID HE HAD SOMETHING WHITE
7 COVERING HIS FACE, YOU COULDN'T SEE HIS FACE AT
8 ALL?

9 A. NO, JUST, JUST LIKE I SAY, LIKE, BOTH OF THE EYES
10 BEING -- THAT WAS THE ONLY THING OPEN.

11 Q. WERE THE EYES?

12 A. YEAH.

13 Q. OKAY. AND HE SAID, DON'T MOVE?

14 A. YES.

15 Q. DID HE HAVE A WEAPON?

16 A. YES.

17 Q. DO YOU RECALL WHAT IT LOOKED LIKE?

18 A. IT LOOKED, IT LOOKED LIKE A, IT WAS, LIKE, A NINE
19 MILLIMETER, BECAUSE I KNOW IT WAS PRETTY BIG, IT
20 WAS BLACK.

21 Q. OKAY. IT WAS BLACK. OKAY. DID IT HAVE ANY SILVER
22 ON IT?

23 A. I COULDN'T RECALL, BECAUSE I WASN'T, I WASN'T
24 REALLY LOOKING AT IT THAT HARD.

25 Q. OKAY. WHAT WERE YOU DOING?

DIRECT - TRAVIS GUESS BY SOL. AVINGER

102

1 A. REALLY, I -- REALLY, WHEN HE SHOT ONE OFF,
2 EVERYBODY STARTED RUNNING, AND BY ME BEING SCARED,
3 YOU KNOW WHAT I'M SAYING, I JUST STAYED THERE. AND
4 THE NEXT THING YOU KNOW HE WAS FOCUSING ON ME,
5 BECAUSE I WAS THE ONLY ONE ON THE SITE.

6 Q. YOU WERE THE ONLY ONE LEFT?

7 A. YES, MA'AM.

8 Q. OKAY. AND WHEN HE TURNED TOWARDS YOU DID HE SAY
9 ANYTHING TO YOU?

10 A. HE WAS, LIKE, GIVE IT UP, GIVE ME THE MONEY. AND
11 BASICALLY, THAT'S ALL HE WAS DOING.

12 Q. OKAY. DID YOU GIVE HIM ANY MONEY?

13 A. YES, MA'AM.

14 Q. WHAT DID YOU GIVE HIM?

15 A. I GAVE HIM ALL THE POCKET MONEY THAT I HAD AND MY
16 WALLET.

17 Q. OKAY. DID YOU HAVE OTHER MONEY IN YOUR WALLET?

18 A. YES, MA'AM.

19 Q. DO YOU REMEMBER ABOUT HOW MUCH?

20 A. I WAS THREE HUNDRED DOLLARS.

21 Q. OKAY. AND YOU SAID, LOOSE MONEY, DID YOU KNOW
22 ABOUT HOW MUCH THAT WAS?

23 A. I'D SAY IT WAS PROBABLY AT LEAST ABOUT TWO HUNDRED,
24 OR CLOSE TO IT.

25 Q. OKAY. AND HOW MUCH DID YOU TELL LAW ENFORCEMENT

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1 WAS MISSING?

2 A. I TOLD THEM CLOSE -- I TOLD THEM, ABOUT FIVE
3 HUNDRED.

4 Q. OKAY. WHEN YOU GAVE HIM THE LOOSE MONEY DID YOU,
5 WERE Y'ALL HAVE ANY OTHER KIND OF CONVERSATION?

6 A. YEAH, ABOUT ME BEING SO NERVOUS TAKING IT OUT OF
7 MY POCKETS, SOME OF IT HAD DROPPED, AND HE SHOT
8 ANOTHER ROUND IN THE GROUND BY MY FOOT. AND I JUST
9 -- HE TOLD ME TO PICK IT UP, AND I WAS PICKING IT
10 UP AND HANDING IT TO HIM.

11 Q. OKAY. DID HE ASK YOU FOR ANYTHING ELSE?

12 A. MY CAR KEYS.

13 Q. AND WHERE -- WERE YOUR CAR KEYS ON YOUR PERSON?

14 A. YEAH, THEY WAS IN MY POCKET ALSO.

15 Q. OKAY. AND DID YOU GIVE HIM THE CAR KEYS?

16 A. YES, MA'AM, BUT REALLY, HE DIDN'T TAKE THEM,
17 BECAUSE HE TOLD ME TO GET IN THE CAR, I WAS
18 DRIVING.

19 Q. OKAY. AND WAS YOUR CAR RIGHT THERE AT YOUR HOUSE?

20 A. YES, MA'AM.

21 Q. WHAT KIND OF CAR WAS IT?

22 A. IT WAS A NINETEEN EIGHTY-EIGHT FORD TAURUS, WHITE.

23 Q. OKAY, A TWO DOOR OR A FOUR DOOR?

24 A. FOUR.

25 Q. OKAY. WHEN Y'ALL WERE HAVING THIS CONVERSATION

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1 THERE AT THE HOUSE, HOW CLOSE TO HIM WERE YOU WHEN
2 HE SHOT IN THE GROUND AT YOUR FEET, WERE Y'ALL THIS
3 CLOSE, OR CLOSER OR FARTHER?

4 A. LIKE I SAY, BECAUSE IF I WAS STANDING UP STRAIGHT
5 RIGHT NOW, IT'S ABOUT, HE WAS PROBABLY LIKE, ON
6 THIS SIDE OF ME, ON THIS ---

7 Q. THIS CLOSE TO YOU?

8 A. WELL, A LITTLE BIT CLOSER BUT, LIKE A LITTLE
9 DIAGONAL ANGLE.

10 Q. OKAY. AND WHAT WERE YOU SAYING TO HIM?

11 A. DON'T SHOOT, DON'T KILL ME. BECAUSE I WAS SCARED.

12 Q. OKAY. AND SINCE YOU COULDN'T SEE HIS FACE, COULD
13 YOU IDENTIFY THE PERSON THAT WAS DOING THIS TO YOU?

14 A. I RECOGNIZED, I RECOGNIZED THE VOICE.

15 Q. WHEN YOU WERE STILL AT THE HOUSE DID YOU RECOGNIZE
16 THE VOICE?

17 A. YES, MA'AM.

18 Q. AND HOW DID YOU RECOGNIZE THE VOICE OF THE PERSON
19 THAT WAS DOING THIS TO YOU?

20 A. BECAUSE HIS, HIS BROTHER, DWAYNE MONTGOMERY, HE'S
21 VISITED ME, YOU KNOW WHAT I'M SAYING, SO OFTEN,
22 BECAUSE HE HAD A GIRL FRIEND THAT STAYED IN THE
23 TRAILER PARK, LIKE TWO TRAILERS OVER, AND ON
24 OCCASIONS MR. MONTGOMERY, WHICH IS RUSSELL, HE
25 WOULD COME OVER THERE AND VISIT, YOU KNOW, I'D JUST

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1 HEAR CONVERSATIONS BETWEEN THE TWO OF THEM, AND YOU
2 KNOW, VOICES ARE EASY TO CATCH ON TO.

3 Q. AND YOU BELIEVE THE VOICE WAS RUSSELL MONTGOMERY'S?

4 A. YES, MA'AM.

5 Q. IS THAT THE DEFENDANT THAT'S PRESENT IN THE
6 COURTROOM TODAY?

7 A. YES, MA'AM.

8 Q. DID YOU KNOW RUSSELL MONTGOMERY FROM SCHOOL?

9 A. I MEAN, BASICALLY, YEAH, BUT I DIDN'T, WE DIDN'T -
10 - WE DIDN'T WENT TO THE SAME SCHOOL, BUT I WOULD
11 SEE HIM LIKE, AS FAR AS LIKE AROUND SCHOOL.

12 Q. OKAY. HAVE YOU SEEN HIM IN VANCE AND DIFFERENT
13 SOCIAL SETTINGS, HAVE YOU SEEN HIM AROUND?

14 A. I MEAN, I PROBABLY, LIKE, GLANCED AT HIM AS FAR AS,
15 LIKE, CLUBS, BUT I WOULDN'T, WE NEVER DID HAVE ANY
16 WORDS BECAUSE I DIDN'T REALLY KNOW HIM LIKE THAT.

17 Q. OKAY. AND HIS BROTHER, DWAYNE, WAS AT YOUR HOUSE
18 THAT NIGHT?

19 A. YES, MA'AM.

20 Q. OKAY. AND YOU SAID THAT DWAYNE'S GIRL FRIEND LIVED
21 NEXT, OR NEAR YOU?

22 A. YEAH, LIKE TWO TRAILERS OVER.

23 Q. OKAY. AND YOU'D SEEN RUSSELL OVER THERE BEFORE,
24 IS THAT RIGHT?

25 A. YES, MA'AM.

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1 Q. OKAY. WHEN Y'ALL GOT IN THE CAR WHAT WAS BEING
2 SAID AS YOU DROVE DOWN THE ROAD? FIRST OF ALL,
3 WHICH WAY DID YOU GO -- YOU'RE ON PINELAND, WHICH
4 WAY DID YOU GO?

5 A. I WAS GOING TOWARDS LODGE HALL.

6 Q. OKAY. AND WHAT WAS HAPPENING IN THE CAR?

7 A. ON THE WAY GOING, BEFORE WE EVEN GOT TO THE STOP
8 SIGN AT LODGE HALL I GUESS I WAS DRIVING
9 ERRATICALLY, YOU KNOW, SAYING LIKE ---

10 Q. YOU NEED TO SLOW DOWN. BEFORE YOU GOT TO THE STOP
11 SIGN, WHAT?

12 A. WELL, AS WE LEFT OUT OF MY YARD, I WAS, LIKE, SORT
13 OF ACROSS THE YELLOW LINE ---

14 Q. OKAY.

15 A. --- AND HE KIND OF, LIKE, HIT ME IN THE BACK OF THE
16 HEAD, ON THE SIDE ---

17 Q. OKAY.

18 A. --- WITH THE HAND GUN AND TELL ME TO STRAIGHTEN UP.
19 AND THEN, ---

20 Q. HE'S SITTING DIRECTLY BEHIND YOU?

21 A. YES, MA'AM.

22 Q. OKAY. AND WHEN HE HIT YOU LIKE THAT AND TOLD YOU
23 TO STRAIGHTEN UP, WHAT DID YOU DO NEXT?

24 A. I STRAIGHTENED UP. I KEPT ON DRIVING.

25 Q. OKAY. AND DID HE TELL YOU WHERE TO GO?

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1 A. AS WE WAS APPROACHING THE STOP SIGN HE WAS TELLING
2 ME TO STOP. I GUESS I WAS, HE WAS TELLING ME I WAS
3 ABOUT TO GET OUT, BUT AT THE TIME I DIDN'T BELIEVE
4 THOSE WORDS, AND I DIDN'T KNOW IF HE WAS GOING TO
5 SHOOT OR ACTUALLY LET ME GET OUT, BUT BEFORE I EVEN
6 GOT TO THE STOP SIGN I TOOK IT UPON MYSELF TO JUMP
7 OUT OF THE CAR.

8 Q. OKAY. WAS THE CAR STILL GOING WHEN YOU JUMPED OUT?

9 A. YES, MA'AM.

10 Q. AND DID YOU HURT YOURSELF WHEN YOU DID THAT?

11 A. I KIND OF LIKE BRUISED UP THE RIGHT SIDE OF MY
12 BODY, MY LEG AND MY SHOULDER AND A LITTLE GASH ON
13 MY HEAD.

14 Q. OKAY. DID YOU LOSE ANY ITEMS WHEN YOU JUMPED OUT
15 OF THE CAR?

16 A. I HAD A PAIR OF SANDALS AND MY GLASSES, THEY WAS
17 BROKEN UP.

18 Q. OKAY. AND WHEN YOU JUMPED OUT OF THE CAR WHERE DID
19 YOU GO, WHAT DID YOU DO?

20 A. I RAN TO THE CLOSEST TRAILER WHERE I SAW LIGHTS AT.

21 Q. OKAY. AND WHOSE TRAILER WAS THAT? DID YOU KNOW
22 AT THE TIME WHOSE TRAILER IT WAS?

23 A. YEAH, IN A WAY, YEAH.

24 Q. YOU KNEW MS. MCFARLAND'S SON?

25 A. YEAH, BECAUSE HE WAS A FRIEND OF ONE OF MY YOUNGER

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1 COUSINS.

2 Q. OKAY. AND WHEN YOU GOT TO THIS TRAILER DID YOU GO
3 IN IT?

4 A. BASICALLY, YES, UNANNOUNCED.

5 Q. OKAY. ALRIGHT, AND WHAT DID YOU TELL THESE PEOPLE
6 THAT WERE IN THERE?

7 A. THAT SOMEONE WAS BEHIND ME WITH A GUN AND WAS
8 TRYING TO KILL ME.

9 Q. OKAY. AND DID THESE PEOPLE WANT YOU TO LEAVE THEIR
10 HOUSE?

11 A. WELL, YEAH, YES.

12 Q. OKAY. AND YOU WOULDN'T LEAVE?

13 A. NO.

14 Q. OKAY. DID THERE COME A TIME WHEN YOU THOUGHT IT
15 WAS OKAY TO LEAVE THE MCFARLAND'S TRAILER?

16 A. YES. I SAW BLUE LIGHTS FLASHING ACROSS THE STREET.

17 Q. OKAY. ABOUT HOW LONG WAS IT FROM WHEN YOU GOT IN
18 THAT TRAILER TO WHERE YOU SAW LAW ENFORCEMENT
19 LIGHTS?

20 A. I'D SAY PROBABLY ABOUT FIVE MINUTES.

21 Q. OKAY. AND WHEN YOU SAW LAW ENFORCEMENT WAS AROUND,
22 WHAT DID YOU DO?

23 A. I DECIDED TO WALK OVER THERE BECAUSE I FIGURED IT
24 WAS SAFE THEN.

25 Q. OKAY. AND WHEN YOU WALKED, WHERE DID YOU WALK WHEN

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- 1 YOU LEFT THE MCFARLANDS AT DAVIS TRAILER PARK,
2 WHERE DID YOU GO?
- 3 A. I WALK OVER TO THE, CAPTAIN RAVENELL'S CRUISER.
- 4 Q. OKAY. IS CAPTAIN RAVENELL HERE WITH US TODAY?
- 5 A. YES, MA'AM.
- 6 Q. OKAY. AND WAS THE DEFENDANT, RUSSELL MONTGOMERY,
7 THERE?
- 8 A. YES, MA'AM.
- 9 Q. OKAY. AND DID YOU SEE YOUR CAR AT THAT TIME?
- 10 A. YES, MA'AM.
- 11 Q. AND WHAT WAS YOUR CAR'S CONDITION?
- 12 A. IT WAS RAMMED HEAD ON INTO A UTILITY POLE.
- 13 Q. OKAY. AND DID OTHER LAW ENFORCEMENT COME OUT THERE
14 THAT NIGHT?
- 15 A. YES, MA'AM.
- 16 Q. OKAY. IS IT FAIR TO SAY THERE WERE SEVERAL
17 DIFFERENT OFFICERS THERE?
- 18 A. YEAH.
- 19 Q. OKAY. DID THE HIGHWAY PATROL COME?
- 20 A. YEAH, THEY CAME, LIKE, I THINK IT WAS A LITTLE
21 LATER, BUT REALLY, I DIDN'T SEE, REALLY, AND DIDN'T
22 WHAT TIME, HOW LONG IT TOOK FOR THE HIGHWAY PATROL
23 TO GET THERE, BECAUSE I WAS, LIKE, SITTING DOWN ON
24 THE GROUND.
- 25 Q. OKAY. DID EMS COME?

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1 A. YES, MA'AM.

2 Q. DID YOU RECEIVE TREATMENT ---

3 A. YEAH.

4 Q. --- THERE AT THE SCENE?

5 A. YEAH.

6 Q. OKAY. AS FAR AS THE TROOPER COMING, DID HE GIVE
7 YOU A TICKET FOR, FOR THAT WRECK?

8 A. NO, MA'AM.

9 Q. OKAY. DID YOU TELL CAPTAIN RAVENELL WHAT HAD
10 HAPPENED AT YOUR HOUSE?

11 A. YES, MA'AM.

12 Q. AND DID YOU -- WHAT DID YOU TELL HIM SPECIFICALLY
13 ABOUT RUSSELL MONTGOMERY, THE DEFENDANT, WHAT DID
14 YOU TELL HIM HE DID?

15 A. I TOLD HIM THAT HE CAME AROUND THE HOUSE SHOOTING,
16 SAYING, DON'T MOVE.

17 Q. DID YOU TELL HIM HE TOOK ANY PROPERTY OF YOURS?

18 A. YES.

19 Q. OKAY.

20 THE COURT: HAVE YOU HAD AN
21 OPPORTUNITY TO SEE THESE PHOTOGRAPHS?

22 MS. HINDS: YES, I HAVE, YOUR HONOR.

23 THE COURT: ALRIGHT.

24 Q. IF I CAN SHOW YOU WHAT'S BEEN MARKED STATE'S ONE,
25 CAN YOU IDENTIFY THE PHOTOS IN THIS ITEM?

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1 A. YES, MA'AM.

2 Q. DO YOU RECOGNIZE EACH AND EVERY PHOTOGRAPH?

3 A. YES, MA'AM.

4 Q. DID THE FIRST THREE PHOTOGRAPHS, ARE THEY
5 PHOTOGRAPHS OF HOW YOU LOOKED THAT NIGHT?

6 A. YES, AFTER I JUMPED OUT OF THE CAR, YEAH.

7 Q. DO THEY FAIRLY AND ACCURATELY REPRESENT YOUR
8 CONDITION?

9 A. YES, MA'AM.

10 Q. AND THE FOUR PHOTOGRAPHS ON THE RIGHT HAND SIDE OF
11 THE POSTER, DO YOU RECOGNIZE THE AREA IN THAT?

12 A. YES, MA'AM.

13 Q. AND WHAT AREA IS THAT?

14 A. THE SCENE, THE SCENE OF THE CRIME, OR WHATEVER YOU
15 WANT TO CALL IT.

16 Q. WHERE YOU LIVE?

17 A. YES, MA'AM.

18 Q. ALRIGHT. AND IS IT HOW IT LOOKED THAT EVENING?

19 A. YES, MA'AM.

20 SOLICITOR AVINGER: YOUR HONOR, I'D
21 MOVE ALL OF STATE'S ONE INTO EVIDENCE AT THIS TIME.

22 MS. HINDS: NO OBJECTION, YOUR
23 HONOR.

24 THE COURT: WITHOUT OBJECTION,
25 THEY'RE IN EVIDENCE.

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1 (State's Exhibit One
2 marked and filed.)

3 SOLICITOR AVINGER: IF I COULD GET -

4 --

5 THE COURT: NOW, MADAM FOREMAN,
6 THESE MATTERS THAT I'VE PUT INTO EVIDENCE WILL BE WITH
7 YOU IN THE JURY ROOM DURING YOUR DELIBERATIONS. AND YOU
8 MAY PUBLISH AT THIS TIME IF YOU CARE TO.

9 SOLICITOR AVINGER: THANK YOU, YOUR
10 HONOR.

11 Q. MR. GUESS, IF YOU COULD STEP DOWN HERE. COULD YOU,
12 IN PHOTOGRAPH A, COULD YOU SHOW WHAT, TELL THE JURY
13 WHAT THAT SHOWS?

14 A. THAT'S THE HEAD WOUNDS FROM WHEN I JUMPED OUT OF
15 THE CAR.

16 Q. OKAY. AND WHAT ABOUT PHOTOGRAPH B?

17 A. WHEN I JUMPED OUT THE CAR ---

18 THE COURT: TALK A LITTLE LOUDER SO
19 MY COURT REPORTER CAN HEAR YOU, PLEASE.

20 A. THAT'S WHEN I JUMPED OUT OF THE CAR, AND I HAD A,
21 KIND OF LIKE IN A ROLL POSITION, AND THAT'S WHY I
22 JUST BASICALLY GO ON ONE SIDE OF MY BODY.

23 Q. OKAY. AND PHOTOGRAPH C, IS THAT YOUR, YOUR LEG?

24 A. YES, MA'AM.

25 Q. OKAY. PHOTOGRAPH D, COULD YOU POINT OUT WHICH IS

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1 YOUR HOME?

2 A. THIS BROWN MOBILE HOME RIGHT HERE.

3 Q. OKAY. AND THAT NIGHT, WHICH WAY DID THE GUNMAN
4 COME?

5 A. FROM AROUND THIS SIDE RIGHT HERE, THIS SIDE RIGHT
6 HERE, THIS END.

7 Q. OKAY. AND PHOTOGRAPH E, WHAT DOES THAT SHOW?

8 A. THAT'S HOW THE SETTING WAS THAT NIGHT.

9 Q. OKAY. AND WAS THAT PORCH LIGHT ON THAT EVENING,
10 DO YOU REMEMBER?

11 A. NO, I DON'T THINK SO.

12 Q. OKAY. WHAT ABOUT PHOTOGRAPH E? PHOTOGRAPH E, WHAT
13 DOES THIS SHOW?

14 A. WELL, THAT'S JUST THE SIDE OF THE HOUSE.

15 Q. IS THAT WHERE Y'ALL WERE SITTING?

16 A. THAT'S WHERE KEVIN AND BRIAN WAS SITTING ON THAT
17 SIDE, AND I WAS, LIKE, OVER HERE, LIKE THIS SIDE
18 RIGHT HERE.

19 Q. OKAY. AND ARE YOU FAMILIAR WITH PHOTOGRAPH G, DO
20 YOU KNOW WHAT THAT IS?

21 A. YEAH, THAT WAS THE FIRST SHOT.

22 Q. THE BULLET HOLE IN THE GROUND?

23 A. YES, MA'AM.

24 SOLICITOR AVINGER: OKAY, YOU CAN
25 SIT BACK DOWN.

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1 YOUR HONOR, I'D HAVE THE STATE'S TWO
2 FOR ID, BUT I BELIEVE IT'S WITHOUT OBJECTION, IF I COULD
3 GO AHEAD AND MOVE THE WHOLE POSTER IN.

4 MS. HINDS: THAT'S CORRECT, YOUR
5 HONOR.

6 THE COURT: WITHOUT OBJECTION,
7 YOU'VE HAD AN OPPORTUNITY TO SEE THEM? THEY ARE
8 INTRODUCED WITHOUT OBJECTION, AND AGAIN, THEY WILL BE
9 WITH YOU DURING YOUR DELIBERATIONS.

10 (State's Exhibit Two
11 marked and filed.)

12 SOLICITOR AVINGER: MR. GUESS IF I
13 COULD HAVE YOU COME BACK DOWN, PLEASE. IF WE COULD SET
14 -- THAT WOULD BE FINE.

15 Q. ARE YOU -- PHOTOGRAPH A, CAN YOU RECOGNIZE THIS,
16 WHAT IS THAT?

17 A. THAT'S MY CAR.

18 Q. WHAT DOES PHOTOGRAPH B SHOW?

19 A. THAT'S THE IMPACT OF THE CAR AFTER I EJECTED
20 MYSELF.

21 Q. OKAY. PHOTOGRAPH C, DO YOU RECOGNIZE THAT ITEM
22 THERE?

23 A. THAT'S MY WALLET AND MY PERSONAL BELONGINGS.

24 Q. YOUR WALLET AND WHAT?

25 A. MY PERSONAL BELONGINGS.

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1 Q. OKAY. AND WHERE WAS THIS WALLET JULY SECOND OF
2 LAST YEAR?

3 A. ARE YOU TALKING ABOUT BEFORE?

4 Q. IS THIS THE SAME THAT RUSSELL MONTGOMERY TOOK FROM
5 YOU?

6 A. THAT'S THE ONE HE HAD IN HIS POCKET, YES, MA'AM.

7 Q. OKAY. AND DID YOU GET THIS BACK THAT NIGHT?

8 A. YES, MA'AM.

9 Q. WHO DID YOU GET IT BACK FROM?

10 A. CAPTAIN RAVENELL.

11 Q. OKAY. DO YOU RECOGNIZE ANYTHING IN PHOTOGRAPH E?

12 A. THIS IS, THAT WAS THE LOOSE MONEY THAT WAS IN MY
13 POCKET AND MY KEYS AND STUFF.

14 Q. OKAY. DO YOU RECOGNIZE YOUR KEYS?

15 A. YES, MA'AM.

16 Q. IS THAT YOUR KEY CHAIN?

17 A. YES, MA'AM.

18 Q. DID YOU GET THOSE KEYS BACK THAT NIGHT?

19 A. YES, MA'AM.

20 Q. WHO DID YOU GET THEM BACK FROM?

21 A. CAPTAIN RAVENELL.

22 Q. OKAY. PHOTOGRAPHS F AND G, DO YOU RECOGNIZE THE
23 SHOES IN THOSE PHOTOGRAPHS?

24 A. YEAH, THOSE SHOES THAT CAME OFF WHEN I JUMPED OUT
25 THE CAR.

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1 Q. OKAY, THOSE WERE YOUR SANDALS?

2 A. YES, MA'AM.

3 Q. WHAT PHOTOGRAPH H, ARE THOSE YOUR GLASSES?

4 A. YES, MA'AM.

5 Q. WERE THEY BROKEN?

6 A. YEAH.

7 Q. OKAY. PHOTOGRAPH FOURTEEN, DOES THAT PISTOL LOOK
8 SIMILAR OR NOT SIMILAR TO THE GUN THAT RUSSELL
9 MONTGOMERY HELD ON YOU?

10 A. SIMILAR.

11 Q. OKAY. DO YOU REMEMBER IF, IF YOU'RE LOOKING AT
12 PHOTOGRAPH N, DO YOU KNOW WHERE YOU RAN AFTER YOU
13 JUMPED OUT OF THE CAR?

14 A. YEAH, I RAN STRAIGHT TO THAT TRAILER RIGHT THERE.

15 SOLICITOR AVINGER: OKAY. YOU CAN
16 HAVE A SEAT.

17 Q. WHEN YOU GOT YOUR WALLET BACK WAS THREE HUNDRED
18 DOLLARS STILL IN YOUR WALLET?

19 A. YES, MA'AM.

20 Q. HOW LONG WAS IT FROM WHEN THE GUY WITH THE MASK
21 THAT YOU RECOGNIZED THE VOICE AS RUSSELL
22 MONTGOMERY, WHEN HE CAME AROUND AND HAD THE GUN AT
23 YOUR HOUSE ON PINELAND, TO WHEN YOU SAW CAPTAIN
24 RAVENELL THERE ON PINELAND AND LODGE HALL ROAD, HOW
25 LONG TOTAL DO YOU THINK THIS WHOLE THING WAS?

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1 A. I'D SAY IT WAS ABOUT, ABOUT MAYBE FIVE, TEN -- I
2 KNOW IT WASN'T FIFTEEN, IT WAS IN BETWEEN FIVE AND
3 TEN MINUTES.

4 Q. OKAY. WELL, IF -- YOU SAID YOU MIGHT HAVE BEEN AT
5 THE MCFARLANDS FIVE MINUTES, IS THAT RIGHT?

6 A. YEAH.

7 Q. INCLUDE THAT TIME, AS WELL.

8 A. OH, SO I WOULD SAY ABOUT, I'D SAY ABOUT TWENTY
9 MINUTES TO HALF AN HOUR.

10 Q. OKAY. FROM WHERE THE HOUSE -- THE CAR ENDED UP ON
11 THAT UTILITY POLE THERE, HOW FAR IS THAT FROM WHERE
12 YOU LIVED ON PINELAND?

13 A. PROBABLY ABOUT THREE QUARTERS OF A MILE.

14 Q. OKAY. WHEN YOU GOT, WHEN YOU BAILED OUT OF THE CAR
15 AND HIT THE, THE ROAD THERE, WERE THE KEYS STILL
16 IN THE IGNITION?

17 A. YES.

18 SOLICITOR AVINGER: OKAY. I BEG THE
19 COURT'S INDULGENCE.

20 Q. DID YOU GO WITH RUSSELL MONTGOMERY IN YOUR CAR
21 BECAUSE YOU WANTED TO?

22 A. NO, I WAS FORCED AGAINST MY OWN WILL.

23 Q. DID YOU GIVE A STATEMENT TO LAW ENFORCEMENT THAT
24 EVENING?

25 A. YES, MA'AM, BUT I WAS TOO SHOCKED TO WRITE IT, SO

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1 I HAD, IT WAS ANOTHER OFFICER WROTE IT FOR ME, IN
2 MY WORDS.

3 Q. OKAY. OTHELIA KETCHERSIDE, A FEMALE OFFICER?

4 A. YES, MA'AM.

5 Q. OKAY. AND DID YOU TELL HER BASICALLY WHAT YOU SAID
6 HERE TODAY?

7 A. YES, MA'AM.

8 Q. AND ONCE, ONE FINAL THING, CAN YOU IDENTIFY THE MAN
9 WHO ROBBED YOU AT GUN POINT AND TOOK YOU AWAY FROM
10 YOUR HOME ---

11 A. YES, MA'AM.

12 Q. --- IS HE HERE IN THE COURTROOM TODAY?

13 A. YES, MA'AM.

14 Q. AND COULD YOU POINT HIM OUT TO US, PLEASE?

15 A. RIGHT THERE.

16 Q. AND WHAT DOES HE HAVE ON?

17 A. A PLAID SHIRT OR SOMETHING.

18 SOLICITOR AVINGER: YOUR HONOR, I'D
19 HAVE THE RECORD REFLECT THAT HE'S IDENTIFIED RUSSELL
20 MONTGOMERY.

21 THE COURT: ALRIGHT, SIR, IT WILL.

22 Q. WHEN ALL THIS WAS GOING ON DID YOU TRY AND
23 COOPERATE WITH MR. MONTGOMERY?

24 A. YEAH, BECAUSE I KNOW MY LIFE WAS IN DANGER. IF I
25 DIDN'T, I DIDN'T KNOW WHAT THE SITUATION WOULD END

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1 UP BEING.

2 SOLICITOR AVINGER: PLEASE ANSWER
3 MS. HINDS'S QUESTIONS, OR EITHER, WE'LL BREAK FOR LUNCH.

4 THE COURT: ALRIGHT, THIS IS A GOOD
5 OPPORTUNITY TO BREAK FOR LUNCH. WE'LL HAVE CROSS-
6 EXAMINATION WHEN YOU RETURN.

7 MADAM FOREMAN, AND LADIES AND
8 GENTLEMEN, WHEN WE BREAK FOR LUNCH I WOULD RESPECTFULLY
9 REQUEST THAT YOU COME BACK TO THE JURY ROOM PROMPTLY AT
10 TWO:THIRTY, NOT THE COURT ROOM, THE JURY ROOM. DO NOT
11 DISCUSS THIS CASE WITH ANYONE, LET NO ONE DISCUSS IT
12 WITH YOU, MAKE NO INDEPENDENT INQUIRY, AND MADAM
13 FOREMAN, DURING THE TRIAL OF THIS CASE IT WOULD BE
14 INAPPROPRIATE TO HAVE ANY DISCUSSION IN THE JURY ROOM
15 AT ANY TIME ABOUT THIS CASE. YOU MUST ONLY DISCUSS IT
16 AMONG YOURSELVES AFTER I HAVE GIVEN YOU THE CASE FOR
17 YOUR DELIBERATIONS. THESE ARE CONTINUING ADMONITIONS.
18 IF DURING YOUR LUNCH BREAK SOMEBODY STARTS TO TALK ABOUT
19 SOME ISSUE, STOP THEM, TELL THEM YOU ARE A JUROR.
20 PLEASE WEAR YOUR JURY BADGES AT ALL TIMES WHILE IN THE
21 COURTROOM PREMISES.

22 HAVE YOU GIVEN THEM THE JURY BADGES?

23 BAILIFF: NO, I HAVE NOT.

24 THE COURT: GIVE THEM THE JURY
25 BADGES. I WANT EVERYBODY TO KNOW THAT THEY ARE JURORS

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1 AND MUST NOT DISCUSS ANY ISSUE IN THIS CASE WITH THEM.

2 HAVE A NICE LUNCH, AND BE BACK AT
3 TWO:THIRTY. THANK YOU.

4 (Whereupon, the jury leaves
5 the courtroom for lunch break.)

6 THE COURT: NOW, MR. DEFENDANT,
7 LISTEN TO ME, I MEAN, MR. WITNESS. YOU ARE STILL UNDER
8 OATH. WHEN WE RETURN AT TWO:THIRTY YOU WILL GET ON THE
9 WITNESS STAND AND MS. HINDS WILL BE ASKING OF YOU
10 SEVERAL QUESTIONS. DO YOU UNDERSTAND THAT?

11 WITNESS: YES, SIR.

12 THE COURT: DURING THE LUNCH BREAK
13 DO NOT DISCUSS YOUR TESTIMONY WITH ANYONE, LET NO ONE
14 DISCUSS IT WITH YOU. DO YOU UNDERSTAND THAT?

15 WITNESS: YES, SIR.

16 THE COURT: YOU ARE NOT TO SAY
17 ANYTHING ABOUT YOUR TESTIMONY OR ANYTHING ABOUT ANY PART
18 OF THIS CASE. WHEN YOU GET BACK ON THE WITNESS STAND
19 I'M GOING TO ASK YOU IF SOMEBODY TRIED TO DISCUSS THE
20 CASE WITH YOU OR HAVE YOU DISCUSSED IT WITH ANYBODY.
21 DO YOU UNDERSTAND THAT?

22 WITNESS: YES, SIR.

23 THE COURT: DO NOT DO THAT.

24 IS THERE ANY OTHER ADMONITIONS
25 REQUESTED OF THIS WITNESS, MS. HINDS?

1 MS. HINDS: NO, SIR.

2 THE COURT: HOW ABOUT IT, MS.

3 AVINGER?

4 SOLICITOR AVINGER: NO, YOUR HONOR.

5 THE COURT: ALRIGHT, WE ARE IN
6 RECESS UNTIL TWO:THIRTY. YOU MAY LEAVE AT THIS TIME AND
7 BE BACK AT TWO:THIRTY. THANK YOU.

8 (Recess)

9 THE COURT: MS. AVINGER AND MS.
10 HINDS, BEFORE WE START, ---

11 SOLICITOR AVINGER: YES, SIR.

12 THE COURT: --- AS I UNDERSTAND,
13 BOTH OF YOU WANT TO WORK SUFFICIENTLY TO CONCLUDE THE
14 TESTIMONY TODAY?

15 SOLICITOR AVINGER: YES, SIR.

16 MS. HINDS: YES, SIR.

17 THE COURT: WELL, WHENEVER IT ENDS,
18 EARLY OR LATE, I WILL ASSURE YOU THAT WE WILL NOT HAVE
19 ARGUMENTS AND CHARGE UNTIL IN THE MORNING.

20 SOLICITOR AVINGER: THANK YOU, YOUR
21 HONOR.

22 MS. HINDS: THANK YOU, YOUR HONOR.

23 THE COURT: OKAY. ALRIGHT. THE
24 JUDGE USED TO MAKE ME DO THAT, AND I DIDN'T LIKE IT.

25 ALRIGHT, BRING THE JURY IN.

1 (Whereupon, the following
2 takes place in the
3 presence of the jury.)

4 THE COURT: MADAM FOREMAN, I ASKED
5 THAT YOU COME BACK PROMPTLY AT TWO:THIRTY AND YOU DID
6 THAT. YOU'RE ENTITLED TO KNOW WHY I'M STARTING MY COURT
7 AT FIVE MINUTES TO THREE. PLEASE BE -- I LIKE TO KEEP
8 MY JURY ADVISED OF THE FACT THAT WE'RE NOT BACK HERE
9 TELLING JOKES AND SMOKING CIGARETTES. WE WERE DEALING
10 WITH SOME OTHER ISSUES NOT INVOLVING THIS CASE, AND
11 THAT'S WHY WE WERE DELAYED IN STARTING AGAIN. BUT I
12 WANT YOU TO KNOW THAT THIS COURT FULLY RECOGNIZES THAT
13 ALL OF YOU ARE GUESTS OF THIS COURT, AND ORANGEBURG
14 COUNTY. WE'RE ESPECIALLY COGNIZANT OF THE FACT THAT
15 YOUR TIME IS VALUABLE, AND WE ARE APPRECIATIVE OF THE
16 FACT AS CITIZENS OF THIS MAGNIFICENT COUNTRY YOU ARE
17 WILLING TO COME IN AND DO YOUR DUTY AS JURORS, AND WE
18 THANK YOU FOR THAT.

19 MR. WITNESS, I REMIND YOU, SIR, THAT
20 YOU ARE STILL UNDER OATH. WE'RE AT THE POINT OF CROSS-
21 EXAMINATION.

22 MS. HINDS: THANK YOU, YOUR HONOR.

23 (NOTE: Blank lines on this page do not indicate any
24 part of record has been omitted.)

CROSS - TRAVIS GUESS BY MS. HINDS

123

CROSS-EXAMINATION OF TRAVIS GUESSBY MS. HINDS:

Q. MR. GUESS, I JUST WANT TO RECAP SOME OF WHAT YOU SAID TO MAKE SURE THAT I UNDERSTAND. YOU SAID THAT YOU WERE AT YOUR TRAILER THAT EVENING WITH BRIAN GUESS, MARCUS GUESS AND DWAYNE, IS THAT CORRECT?

A. AND KEVIN ALSO.

Q. AND KEVIN, EXCUSE ME, THAT'S KEVIN MACK, CORRECT?

A. YES, MA'AM.

Q. AND I BELIEVE MARCUS HAS ALREADY TESTIFIED THAT HE'S YOUR COUSIN, IS THAT CORRECT?

A. YES, MA'AM.

Q. OKAY. IS BRIAN GUESS ANY RELATION TO YOU?

A. NO, MA'AM.

Q. JUST A FRIEND?

A. YEAH.

Q. OKAY. AND I BELIEVE YOU SAID THAT YOU KNEW MR. MONTGOMERY FROM AROUND SCHOOL, I BELIEVE?

A. YES, AND THROUGH HIS BROTHER.

Q. OKAY. AND HIS BROTHER HAD A GIRL FRIEND WHO LIVED IN THAT TRAILER PARK, IS THAT CORRECT?

A. YES, MA'AM.

Q. OKAY. AND I BELIEVE YOU SAID SHE LIVED ABOUT TWO TRAILERS OVER, IS THAT RIGHT?

A. YES.

CROSS - TRAVIS GUESS BY MS. HINDS

124

1 Q. OKAY. HAD MR. MONTGOMERY EVER BEEN TO YOUR TRAILER
2 BEFORE?

3 A. NO, MA'AM.

4 Q. OKAY. SO, YOU AND BRIAN AND MARCUS AND DWAYNE AND
5 KEVIN ARE SITTING IN THE YARD, AND YOU'RE SITTING
6 IN, I BELIEVE THE TESTIMONY WAS YOU HAD BEEN
7 SITTING AND DRINKING, IS THAT CORRECT?

8 A. YES, MA'AM.

9 Q. OKAY. ABOUT HOW LONG HAD Y'ALL BEEN OUT THERE?

10 A. PROBABLY ABOUT, ABOUT AN HOUR.

11 Q. AND ABOUT HOW MUCH HAD YOU HAD TO DRINK?

12 A. PROBABLY ABOUT, ABOUT TWO OR THREE TWELVE OUNCES
13 BECAUSE I'M NOT A HEAVY DRINKER.

14 Q. ARE YOU TALKING ABOUT BEER?

15 A. YES.

16 Q. ALRIGHT, SO YOU'RE SITTING OUT THERE AND YOU'RE
17 DRINKING AND JUST KIND OF VISITING, AND YOU SAID
18 THAT SOMEBODY CAME AROUND FROM BEHIND THE TRAILER,
19 IS THAT CORRECT?

20 A. YES, MA'AM.

21 Q. NOW, AT THE TIME THAT PERSON WAS NOT KNOWN TO YOU,
22 IS THAT CORRECT?

23 A. YES, MA'AM.

24 Q. AND I BELIEVE YOU SAID THAT ALL YOU COULD SEE WAS
25 THE PERSON'S EYES?

CROSS - TRAVIS GUESS BY MS. HINDS

125

1 A. YES, MA'AM.

2 Q. OKAY. WAS HIS FACE ENTIRELY COVERED?

3 A. BASICALLY, YEAH, JUST THE ONLY PART WAS VISUAL WAS
4 JUST LIKE, SAY, AROUND THE EYES AREA.

5 Q. AND YOU SAY HE HAD SOMETHING THAT LOOKED LIKE A
6 WHITE TOWEL AROUND HIS FACE, IS THAT CORRECT?

7 A. YES, MA'AM.

8 Q. AND WAS IT WRAPPED LIKE A TURBAN STYLE, OR HOW, HOW
9 WAS THE TOWEL, COULD YOU TELL HOW THE TOWEL WAS
10 STAYING IN PLACE, IN OTHER WORDS?

11 A. YEAH, SOMETHING LIKE A TURBAN, LIKE, YEAH, LIKE A
12 TURBAN.

13 Q. OKAY. AND HE WALKED UP TO YOU AND THE OTHER
14 MEMBERS OF THE GROUP, IS THAT CORRECT?

15 A. WELL, REALLY, HE WALKED BETWEEN, I THINK IT WAS -
16 - HE WALKED BETWEEN BRIAN AND KEVIN, BUT HE DIDN'T
17 APPROACH ME UNTIL EVERYBODY ELSE HAD RAN.

18 Q. ALRIGHT. AND I BELIEVE YOU SAID AT THAT TIME,
19 AFTER HE COMES AROUND FROM THE SIDE, HE SAYS, DON'T
20 MOVE, IS THAT CORRECT?

21 A. YES, MA'AM.

22 Q. OKAY. NOW, AND THAT'S WHEN YOU REALIZED HE HAD A
23 GUN, IS THAT CORRECT?

24 A. YES, MA'AM.

25 Q. AND DO YOU REMEMBER WHICH HAND THE GUN WAS IN?

CROSS - TRAVIS GUESS BY MS. HINDS

126

1 A. THE LEFT HAND.

2 Q. ALRIGHT. SO, HE'S GOT A GUN IN HIS LEFT HAND, AND
3 HE COMES AROUND AND SAYS, DON'T MOVE, AND AT THAT
4 POINT HE JUST STARTS FIRING, AFTER HE SAID, DON'T
5 MOVE?

6 A. HE FIRED ONE ROUND IN THE GROUND.

7 Q. ONE ROUND IN THE GROUND?

8 Q. THAT WAS WHAT MADE THE CROWD LEFT, AND I WAS STILL
9 THERE.

10 Q. OKAY. SO, THERE'S, THERE'S AT LEAST, THERE'S FOUR
11 OF YOU OUT THERE, CORRECT, WHEN HE FIRES INTO THE
12 GROUND?

13 A. WELL, FIVE INCLUDING MYSELF, YEAH.

14 Q. OKAY. WHEN HE FIRED INTO THE GROUND, IS IT AIMED
15 AT ANY ONE OF YOU?

16 A. NO, IT WAS, LIKE, IN THE, LIKE, IN THE GROUND AS
17 AN ANGLE, NOT STRAIGHT DOWN IN THE GROUND, IT WAS
18 LIKE IN AN ANGLE.

19 Q. OKAY. WAS IT IN FRONT OF ANYONE INDIVIDUAL, OR WAS
20 IT CLOSER TO HIM AND -- CAN YOU TELL ME WHERE HE
21 FIRED AT IN RELATION TO WHERE YOU WERE STANDING?

22 A. WELL, HE DIDN'T FIRE NOWHERE NEAR ME. IT WAS
23 CLOSER TO KEVIN.

24 Q. OKAY. AND IT'S AT THAT POINT THAT THE OTHERS RAN,
25 IS THAT CORRECT?

CROSS - TRAVIS GUESS BY MS. HINDS

127

- 1 A. YES.
- 2 Q. HOW FAR WAS HE AWAY FROM YOU AT THAT POINT?
- 3 A. WELL, BEFORE THEY RAN OR AFTER THEY RAN?
- 4 A. AT THE TIME THAT HE FIRED THE FIRST SHOT?
- 5 A. WELL, AT THE FIRST SHOT HE WAS PROBABLY LIKE,
- 6 PROBABLY AS FAR AS THAT MICROPHONE STAND.
- 7 Q. OKAY. DID YOU GET THE SENSE WHEN HE CAME UP AND
- 8 SHOT THAT SHOT THAT HE WAS PICKING YOU OUT OF THE
- 9 GROUP, OR WAS HE ADDRESSING THE GROUP AS A WHOLE?
- 10 A. WELL, I DIDN'T KNOW WHO HIS PICKS WAS, BUT AFTER
- 11 EVERYBODY LEFT, I ASSUMED I WAS THE TARGET.
- 12 Q. AND YOU DIDN'T RUN, CORRECT?
- 13 A. NO, MA'AM.
- 14 Q. BUT EVERYBODY ELSE RAN?
- 15 A. YES.
- 16 Q. AND AT THAT POINT HE SAYS WHAT TO YOU, AGAIN?
- 17 A. GIVE IT UP, GIVE ME THE MONEY.
- 18 Q. ALRIGHT, BUT NOW IT'S DIRECTED TO YOU SPECIFICALLY,
- 19 CORRECT?
- 20 A. YES.
- 21 Q. ALRIGHT. AND I BELIEVE YOUR TESTIMONY WAS THAT YOU
- 22 GAVE HIM YOUR POCKET MONEY, IS THAT CORRECT?
- 23 A. YES.
- 24 Q. AND THEN YOUR WALLET, AND DID YOU DO THAT ALL AT
- 25 THE SAME TIME?

CROSS - TRAVIS GUESS BY MS. HINDS

128

1 A. YES.

2 Q. NOW, APPARENTLY, YOU HAD SOME OTHER MONEY IN YOUR
3 WALLET?

4 A. YES.

5 Q. AND HOW MUCH WAS THAT, AGAIN?

6 A. THREE HUNDRED.

7 Q. AND I BELIEVE YOU TESTIFIED THAT LOOSE YOU HAD
8 SOMEWHERE AROUND TWO HUNDRED, IS THAT CORRECT?

9 A. YES.

10 Q. AND AT THAT POINT I BELIEVE YOUR TESTIMONY WAS THAT
11 HE FIRED ANOTHER ROUND?

12 A. YES.

13 Q. OKAY. AND WHERE DID THIS ROUND GO?

14 A. RIGHT BESIDE MY FOOT, MY LEFT LEG.

15 Q. OKAY. AND AT THAT POINT HE ASKED FOR YOUR CAR
16 KEYS, IS THAT WHAT YOU TESTIFIED TO?

17 A. YES.

18 Q. OKAY. BUT I BELIEVE YOU SAID THAT YOU NEVER
19 ACTUALLY GAVE UP POSSESSION OF THE CAR KEYS AT THAT
20 TIME, IS THAT CORRECT?

21 A. I GAVE IT TO HIM WHEN HE ASKED FOR THEM.

22 Q. OKAY. DID HE HAND THEM BACK TO YOU?

23 A. WELL, HE DIDN'T ACTUALLY GRAB THEM, HE JUST TOLD
24 ME TO GO AHEAD AND DRIVE.

25 Q. BUT, I MEAN, DID THE KEYS EVER CHANGE HANDS, IN

CROSS - TRAVIS GUESS BY MS. HINDS

129

- 1 OTHER WORDS, DID HE SAY, GIVE ME THE KEYS, AND THEN
2 DECIDED TO MAKE YOU DRIVE, OR ---
- 3 A. IT WAS A POINT WHEN I WAS HANDING IT TO HIM, BUT
4 I GUESS HE MUST HAVE CHANGED HIS MIND, AND KIND OF
5 LIKE JUST, NO, GET IN THE CAR AND YOU DRIVE.
- 6 Q. OKAY. SO, DID HE EVER TAKE THE KEYS IN HIS HAND?
- 7 A. NO.
- 8 Q. AND I BELIEVE YOUR CAR IS A FOUR DOOR WHITE TAURUS,
9 CORRECT?
- 10 A. YES.
- 11 Q. ALRIGHT. AND SO, AT THAT POINT HE'S FIRED
12 SUPPOSEDLY TWO SHOTS INTO THE GROUND, IS THAT
13 RIGHT?
- 14 A. YES.
- 15 Q. WERE THERE ANY OTHER SHOTS FIRED?
- 16 A. NO.
- 17 Q. SO, THE TWO WAS THE TOTAL?
- 18 A. YES.
- 19 Q. ALRIGHT, AT THAT POINT YOU BOTH GET INTO THE CAR,
20 IS THAT CORRECT?
- 21 A. YES.
- 22 Q. AND YOU WERE IN THE DRIVER'S SEAT?
- 23 A. YES.
- 24 Q. AND COULD YOU TELL ME AGAIN WHERE MR. MONTGOMERY
25 IS SUPPOSEDLY SITTING?

CROSS - TRAVIS GUESS BY MS. HINDS

130

1 A. DIRECTLY BEHIND ME.

2 Q. IN THE BACK SEAT?

3 A. BACK SEAT.

4 Q. BUT ON THE DRIVER'S SIDE?

5 A. YES.

6 Q. OKAY. AND HE SAYS WHAT TO YOU AT THAT POINT?

7 A. HE JUST TOLD ME TO DRIVE.

8 Q. OKAY. DID HE TELL YOU WHERE YOU WERE GOING?

9 A. NO.

10 Q. DID HE SAY ANYTHING ELSE?

11 A. WELL, I WAS KIND OF LIKE SWERVING ACROSS THE YELLOW
12 LINE, AND HE HIT ME IN THE SIDE OF THE HEAD AND
13 TOLD ME ---

14 COURT REPORTER: WAIT A MINUTE, WAIT
15 A MINUTE, I WAS KIND OF LIKE WHAT?

16 A. I WAS KIND OF LIKE SWERVING ACROSS THE YELLOW LINE,
17 AND HE TOLD ME, STRAIGHTEN UP, WELL, HE HIT ME IN
18 MY HEAD FIRST, AND TOLD ME TO STRAIGHTEN UP. A ND
19 FROM THERE ON I WAS DRIVING STRAIGHT, UNTIL WE WAS
20 APPROACHING A STOP SIGN.

21 Q. OKAY. WHEN YOU SAY YOU WERE SWERVING ON THE YELLOW
22 LINE, ARE YOU TALKING ABOUT ON THE ROAD, THIS IS
23 AFTER YOU GOT OUT OF THE DRIVEWAY?

24 A. YES.

25 Q. OKAY. ABOUT HOW FAR HAD YOU -- WAS -- DID YOU

CROSS - TRAVIS GUESS BY MS. HINDS

131

1 IMMEDIATELY START TO SWERVE AFTER YOU BACKED OUT
2 OF THE DRIVEWAY?

3 A. YEAH, AFTER WE PULLED OUT OF THE DRIVEWAY, WE
4 DIDN'T, I DIDN'T BACK UP, I JUST PULLED STRAIGHT
5 OUT.

6 Q. OKAY. THE CAR WAS FACING FORWARD, TO GO FORWARD?

7 A. YES.

8 Q. OKAY. AND IT DIDN'T HAVE TO DO WITH GOING TOO
9 SLOW?

10 A. NO.

11 Q. IT WAS BECAUSE YOU WERE SWERVING?

12 A. YES.

13 Q. OKAY. AND DO YOU REMEMBER GIVING A STATEMENT TO
14 THE POLICE?

15 A. YES.

16 Q. OKAY. DO YOU REMEMBER, I BELIEVE YOU SAID IN YOUR
17 TESTIMONY THAT YOU DIDN'T ACTUALLY HAND WRITE THE
18 STATEMENT, IS THAT CORRECT?

19 A. CORRECT.

20 Q. ONE OF THE OFFICERS TOOK THAT STATEMENT FROM YOU?

21 A. YES.

22 Q. AND THEY ACTUALLY WROTE THE WORDS?

23 A. YES.

24 Q. BUT YOU TOLD THEM WHAT TO SAY IN THAT STATEMENT,
25 CORRECT?

CROSS - TRAVIS GUESS BY MS. HINDS

132

1 A. YES.

2 Q. AND YOU WERE GIVEN A CHANCE TO REVIEW IT AFTER IT
3 WAS WRITTEN?

4 A. YES.

5 Q. AND YOU DID INITIAL THAT IT WAS YOUR STATEMENT WHEN
6 IT WAS OVER?

7 A. YES.

8 Q. OKAY. DO YOU REMEMBER SAYING IN THAT STATEMENT
9 THAT YOU WERE GOING FAST ENOUGH?

10 A. I DON'T RECALL.

11 Q. OKAY. BUT YOUR TESTIMONY TODAY IS THAT IT, HE GOT
12 ANNOYED BECAUSE SUPPOSEDLY YOU SWERVED OVER THE
13 YELLOW LINE?

14 A. YES.

15 Q. OKAY. AND HE DID WHAT AT THAT POINT?

16 A. AFTER I SWERVED?

17 Q. UH HUH.

18 A. HE HIT ME IN THE HEAD WITH HIS OWN GUN.

19 Q. OKAY. CAN YOU SHOW US WHERE ON THE HEAD THAT HE
20 HIT YOU?

21 A. IT WAS RIGHT TOWARD THE BACK, ON THE SIDE.

22 Q. ONE TIME, TWO TIMES?

23 A. ONCE.

24 Q. OKAY. OKAY, AT THAT POINT THEN YOU STRAIGHTENED
25 UP AND DROVE, CORRECT?

CROSS - TRAVIS GUESS BY MS. HINDS

133

- 1 A. YES.
- 2 Q. AND TELL US, REMIND ME AGAIN, WHERE EXACTLY DID YOU
- 3 DRIVE?
- 4 A. I WAS HEADING TOWARDS LODGE HALL STREET, TOWARD THE
- 5 STOP SIGN.
- 6 Q. OKAY. WHEN YOU PULLED OUT OF YOUR DRIVEWAY, YOU
- 7 CAN GO OUT OF THE TRAILER PARK YOU CAN GO RIGHT OR
- 8 LEFT, IS THAT CORRECT?
- 9 A. YES.
- 10 Q. OKAY. AND MY UNDERSTANDING IS THAT YOU WENT OUT,
- 11 YOU WENT TO THE RIGHT ON THIS PARTICULAR DAY,
- 12 RIGHT?
- 13 A. YES.
- 14 Q. OKAY. CAN YOU TELL ME WHERE THE ROAD GOES TO TO
- 15 THE LEFT?
- 16 A. IT GOES, IT GOES INTO ANOTHER STOP SIGN, BUT IT'S
- 17 ROCK HILL ROAD.
- 18 Q. OKAY. AND IS THAT A DIRT ROAD OR A PAVED ROAD?
- 19 A. WELL, ONCE YOU GET TO THE STOP SIGN IF YOU GO LEFT,
- 20 IT'S PAVED, BUT IF YOU MAKE A RIGHT IT'S DIRT.
- 21 Q. ONCE YOU GET DOWN TO THERE?
- 22 A. YES.
- 23 Q. ARE THERE A LOT OF HOUSES BACK IN THERE?
- 24 A. NO.
- 25 Q. NOT A LOT OF TRAILERS, EITHER, ARE THERE?

CROSS - TRAVIS GUESS BY MS. HINDS

134

1 A. NO.

2 Q. BUT THAT'S NOT THE WAY YOU WENT?

3 A. NO.

4 Q. WHEN YOU PULLED OUT YOU WENT TO THE RIGHT?

5 A. YES.

6 Q. OKAY. AND I BELIEVE YOUR TESTIMONY WAS THAT HE
7 TOLD YOU TO STOP AT THE STOP SIGN, IS THAT CORRECT?

8 A. YES.

9 Q. NOW, REMEMBERING THAT STATEMENT THAT YOU GAVE, THE
10 WRITTEN STATEMENT, I BELIEVE IN THAT STATEMENT YOU
11 SAID THAT HE TOLD YOU TO GET OUT OF THE CAR SEVERAL
12 TIMES?

13 A. YES.

14 Q. OKAY. AND THIS WAS WHILE THE CAR WAS MOVING,
15 CORRECT?

16 A. YES.

17 Q. BUT HE TOLD YOU TO GET OUT OF THE CAR?

18 A. YES.

19 Q. WHILE YOU'RE DRIVING?

20 A. WELL, AT FIRST, HE WAS SAYING, STOP, BUT I DIDN'T
21 KNOW THAT HE WANTED ME TO -- I DIDN'T KNOW WHERE
22 HE WANTED ME TO STOP, EVEN THOUGH I WAS COMING TO
23 A STOP SIGN, BUT I JUST TOOK IT UPON MYSELF TO BAIL
24 OUT, TO JUMP OUT OF THE CAR BEFORE I GOT TO THE
25 STOP SIGN.

CROSS - TRAVIS GUESS BY MS. HINDS

135

1 Q. OKAY. AND HE WAS, HE WAS TELLING YOU TO GET OUT
2 OF THE CAR?

3 A. YES.

4 Q. OKAY. ALRIGHT, AT THAT POINT YOU JUMPED OUT, AND
5 THE CAR CONTINUED TO MOVE, CORRECT?

6 A. YES.

7 Q. AND SUPPOSEDLY, MR. MONTGOMERY IS STILL IN THE CAR
8 AT THAT POINT, RIGHT?

9 A. YES.

10 Q. AND HE'S IN THE BACK SEAT STILL?

11 A. YES.

12 Q. OKAY. LET ME JUST BACK UP FOR JUST A MINUTE, WHEN
13 HE WAS GIVING YOU DIRECTIONS AS FAR AS RIGHT TO DO
14 IN THE CAR, DID HE JUST HIT YOU THE ONE TIME ON THE
15 BACK OF THE HEAD?

16 A. YES.

17 Q. ALRIGHT, NOW, AT THAT POINT YOU JUMPED OUT,
18 SUPPOSEDLY. I BELIEVE YOU ALSO SAID THAT AT THAT
19 POINT YOU RAN TO A TRAILER?

20 A. YES.

21 Q. AND ABOUT HOW FAR AWAY FROM THE ACCIDENT SCENE IS
22 THAT TRAILER?

23 A. PROBABLY ABOUT, PROBABLY ABOUT FORTY-FIVE OR FIFTY
24 YARDS.

25 Q. OKAY, SO IT'S FAIRLY CLOSE?

CROSS - TRAVIS GUESS BY MS. HINDS

136

1 A. YES.

2 Q. AND YOU WENT THERE BECAUSE THAT WAS THE FIRST ONE
3 YOU CAME TO WITH A LIGHT ON, CORRECT?

4 A. YES.

5 Q. AND I BELIEVE AS YOU TESTIFIED TO, AND I THINK MS.
6 MCFARLAND ALSO TESTIFIED TO, YOU TRIED TO GET INTO
7 THE TRAILER TO GET SOME HELP OR WHATEVER, TO GET
8 THEM TO, TO CALL SOMEBODY, AND YOU FINALLY LEAVE,
9 IS THAT CORRECT?

10 A. YES, I LEFT AFTER I SAW BLUE LIGHTS AT THE ACCIDENT
11 SCENE.

12 Q. OKAY. AND THAT WAS ABOUT HOW MUCH LATER?

13 A. PROBABLY ABOUT FIVE MINUTES LATER.

14 Q. FIVE MINUTES AFTER YOU GOT TO MS. MCFARLAND'S?

15 A. YEAH, PROBABLY.

16 Q. OKAY. AND YOU COULD SEE THE BLUE LIGHTS FROM WHERE
17 YOU WERE AT MS. MCFARLAND'S?

18 A. YES.

19 Q. AND WHEN YOU APPROACHED THE CAR, OR APPROACHED THE
20 POLICE CAR, WAS THERE AN OFFICER THERE?

21 A. YES.

22 Q. AND THAT WOULD BE OFFICER RAVENELL?

23 A. YES.

24 Q. AND YOU TALKED TO HIM?

25 A. YES.

CROSS - TRAVIS GUESS BY MS. HINDS

137

1 Q. WHAT DID YOU TELL HIM?

2 A. AT FIRST I DIDN'T, AT FIRST I WAS STILL SCARED,
3 INITIALLY I DIDN'T TOLD THEM WHAT IT WAS, EVEN
4 THOUGH RUSSELL WAS AT THE SCENE, WITHOUT THE TOWEL,
5 OR WHATEVER, ON HIS FACE, SO, IN OTHER WORDS, I WAS
6 STILL SCARED BECAUSE I DIDN'T KNOW IF HE WAS ARMED
7 OR NOT, STILL YET. AND SO, I JUST TOLD THEM THAT
8 A GUY DRESSED IN BLACK CAME AROUND MY HOUSE WITH
9 A WHITE TOWEL OVER HIS FACE.

10 Q. AND RUSSELL IS STANDING RIGHT THERE BUT YOU DIDN'T
11 TELL THE POLICE OFFICER?

12 A. NO, NOT UNTIL THE, THE FEMALE OFFICER WAS TALKING
13 TO ME, AND I JUST GOT TO THE POINT, I JUST TOLD
14 HER, YEAH, IT WAS RUSSELL BECAUSE I RECOGNIZED HIS
15 VOICE, BECAUSE I'M NOT GOING TO, YOU KNOW, I WASN'T
16 GOING TO LIE.

17 Q. AND YOU RECOGNIZED HIS VOICE FROM WHEN HE WOULD
18 VISIT HIS GIRL FRIEND?

19 A. HIS BROTHER'S.

20 Q. HIS BROTHER'S GIRL FRIEND, EXCUSE ME.

21 A. YES.

22 Q. AND THAT'S THE ONE THAT LIVES TWO TRAILERS AWAY?

23 A. YES.

24 Q. OKAY. HAD YOU EVER HAD ANY DEALINGS WITH OFFICER
25 RAVENELL BEFORE THIS EVENING?

CROSS - TRAVIS GUESS BY MS. HINDS

138

1 A. NO, MA'AM.

2 Q. YOU'RE NOT ACQUAINTED WITH OFFICER RAVENELL?

3 A. NO, MA'AM.

4 Q. YOU'VE NEVER MET HIM BEFORE?

5 A. NO, MA'AM.

6 Q. OKAY. AND AT THAT POINT EMS COMES AND THEY
7 ADMINISTER SOME AID TO YOU?

8 A. YES.

9 Q. AND THEY TREAT THE, BASICALLY, ROAD RASH FROM WHEN
10 YOU JUMPED OUT OF THE CAR, IS THAT CORRECT?

11 A. YES.

12 Q. OKAY. DID THEY MENTION ANYTHING, OR DID YOU TELL
13 THEM ABOUT A BUMP ON THE HEAD?

14 A. WELL, I TOLD THEM, I TOLD THEM THAT I GOT HIT IN
15 THE HEAD BUT IT REALLY WASN'T A BUMP, SO I DIDN'T
16 REALLY MENTIONED IT, IT WAS NOTHING BEING SERIOUS.

17 Q. OKAY. SO, THERE WASN'T ANY BUMP OR LUMP OR
18 ANYTHING BACK THERE?

19 A. NO.

20 Q. ALRIGHT. WHEN YOU JUMPED OUT OF THE CAR, THE KEYS
21 WERE STILL IN THE IGNITION AND THE CAR WAS STILL
22 MOVING, IS THAT CORRECT?

23 A. YES.

24 Q. OKAY. AND YOU HAD NEVER PHYSICALLY GIVEN
25 POSSESSION OF THE KEYS TO MR. MONTGOMERY AT

CROSS - TRAVIS GUESS BY MS. HINDS

139

1 ANYTIME, CORRECT?

2 A. NO.

3 Q. ALRIGHT, SO YOUR TESTIMONY AT THAT TIME -- HOW LONG
4 IS IT BEFORE YOU TELL ONE OF THE OFFICERS THAT IT
5 WAS SUPPOSEDLY MR. MONTGOMERY?

6 A. WELL I DON'T REMEMBER EXACTLY HOW LONG IT WAS, BUT
7 I KNOW I JUST GOT TO THE POINT WHERE I FIGURED I
8 WAS SAFE SO I JUST COULD GO AHEAD AND TALK AND TELL
9 WHO IT WAS.

10 Q. OKAY. BUT THE INITIAL OFFICER ON THE SCENE WAS
11 OFFICER RAVENELL, WAS HE ALONE OR WAS HE WITH
12 ANYBODY ELSE?

13 A. I CAN'T RECALL RIGHT NOW, BUT I KNOW THE LAST
14 OFFICER I TALKED TO WAS THE FEMALE OFFICER. SO,
15 I DIDN'T KNOW HOW LONG IT WAS, SHE ARRIVED WHILE
16 HE WAS THERE.

17 Q. OKAY. AND OFFICER RAVENELL WAS IN UNIFORM?

18 A. I DON'T BELIEVE HAD ON THE UNIFORM HE HAS ON TODAY.

19 Q. WAS HE IN ANY KIND OF A POLICE UNIFORM, HE WAS IN
20 A MARKED CAR, CORRECT?

21 A. I BELIEVE IT WAS UNMARKED, I'M NOT SURE.

22 Q. OKAY. SO, THE BLUE LIGHTS WEREN'T FLASHING FROM
23 THE TOP, IT WAS AN UNMARKED CAR?

24 A. I BELIEVE IT WAS, IF I'M NOT -- I'M NOT SURE, BUT
25 I KNOW IT WAS -- THE INSIDE ON THE DASH OR THE TOP,

CROSS - TRAVIS GUESS BY MS. HINDS

140

1 BUT I KNOW I SAW BLUE LIGHTS.

2 Q. BUT YOUR TESTIMONY IS THAT YOU THINK IT WAS AN
3 UNMARKED CAR?

4 A. YES.

5 Q. AND YOU CAN'T REMEMBER IF OFFICER RAVENELL HAD A
6 UNIFORM ON?

7 A. I THINK I REMEMBER SEEING HIM WITH A WHITE COLLARED
8 SHIRT BUT I DON'T KNOW IF IT WAS A UNIFORM SHIRT
9 OR NOT.

10 Q. BUT YOU KNEW HE WAS A COP?

11 A. YES, OF COURSE, HE WAS IN THE CAR.

12 SOLICITOR AVINGER: ONE MOMENT, YOUR
13 HONOR. NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: ALRIGHT. DO YOU HAVE
15 ANY REDIRECT QUESTIONS?

16 SOLICITOR AVINGER: BRIEFLY, YOUR
17 HONOR.

18 (NOTE: Blank lines on this page do not indicate any
19 part of record has been omitted. Headers on testimony
20 pages and hard page breaks between testimony are now
21 required by the Court. See next ensuing page for
22 sequential continuation of record.)

REDIRECT - TRAVIS GUESS BY SOL. AVINGER

141

REDIRECT EXAMINATION OF TRAVIS GUESSBY SOLICITOR AVINGER:

Q. TRAVIS, WHEN DID YOU FIRST REALIZE THAT THE ARMED GUNMAN WAS RUSSELL MONTGOMERY?

A. WHEN I HEARD HIS VOICE.

Q. OKAY. AND WHY IS IT AGAIN THAT YOU DIDN'T RUN?

A. BECAUSE I WAS HOME, AND I WAS, YOU KNOW, I WAS SCARED, I WAS -- EVERYTHING JUST HAPPENED SO FAST, I DIDN'T KNOW WHAT TO DO.

SOLICITOR AVINGER: IF I COULD HAVE THIS MARKED.

COURT REPORTER: STATE'S SEVEN.

Q. IF I COULD SHOW YOU WHAT'S BEEN MARKED AS STATE'S SEVEN, DO YOU WANT TO LOOK OVER THAT? IS THAT THE STATEMENT? IS THAT THE STATEMENT?

A. YES.

Q. IS THAT THE STATEMENT?

A. YES.

Q. IS THIS THE STATEMENT YOU GAVE INVESTIGATOR KETCHERSIDE, THE FEMALE OFFICER?

A. YES.

SOLICITOR AVINGER: YOUR HONOR, I'D MOVE IT INTO EVIDENCE.

THE COURT: NO, ---

MS. HINDS: YOUR HONOR, I'D -- HE'S

REDIRECT - TRAVIS GUESS BY SOL. AVINGER

142

1 ON THE WITNESS STAND, HE'S TESTIFIED.

2 SOLICITOR AVINGER: YOUR HONOR,
3 SHE'S QUESTIONED HIM ABOUT SEVERAL LINES HERE AND THERE.
4 I WOULD MOVE TO PUBLISH THE WHOLE STATEMENT.

5 THE COURT: I'M GOING TO LET YOU GO
6 TO YOUR JURY ROOM JUST A MINUTE. I'LL BE CALLING YOU
7 BACK VERY SHORTLY.

8 THE COURT: I DON'T RECALL WHERE SHE
9 TRIED TO CHALLENGE HIS TESTIMONY, SHE SAID, DO YOU
10 REMEMBER SO AND SO, AND HE SAID, I DON'T REMEMBER, AND
11 SHE WENT ON TO SOMETHING ELSE. OUR COURT DECISION JUST
12 CAME DOWN IN THE LAST FEW WEEKS ON THIS VERY ISSUE.
13 UNLESS SHE'S ATTACKING HIS CREDIBILITY AND ATTEMPTING
14 TO SHOW THAT HIS TESTIMONY TODAY IS DIFFERENT FROM WHAT
15 HE SAID, YOU'RE NOT ENTITLED BECAUSE ---

16 SOLICITOR AVINGER: YES, SIR, I
17 UNDERSTAND.

18 THE COURT: --- IT MERELY
19 CORROBORATES.

20 SOLICITOR AVINGER: YOUR HONOR, SHE
21 DID QUESTION HIM ON THAT, AND THAT'S WHAT BOTHERS ME.

22 THE COURT: WELL, WHAT DID SHE, HOW
23 DID SHE DO IT?

24 SOLICITOR AVINGER: SHE QUESTIONED
25 HIM ABOUT HIM LEAVING THE DRIVEWAY, DID HE SWERVE -- DID

REDIRECT - TRAVIS GUESS BY SOL. AVINGER

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1 HE HIT HIM ON THE HEAD BECAUSE HE WAS SWERVING, OR DID
2 HE HIT HIM ON THE HEAD BECAUSE HE WAS DRIVING TO FAST?

3 THE COURT: SHE DID, BUT HE ANSWERED
4 HER. SHE NEVER DID SAY, WELL, DIDN'T YOU TESTIFY
5 DIFFERENTLY AT ANOTHER TIME AND PLACE.

6 SOLICITOR AVINGER: YOUR HONOR, I
7 BELIEVE, I BELIEVE THAT THAT'S THERE. THERE'S A VERY
8 STRONG INFERENCE ABOUT IT, IF NOT THAT EXACTLY. I
9 REALLY WOULD LIKE TO HEAR IT AGAIN IF THERE'S ANY WAY
10 MS. HARRY DOT COULD GIVE THAT FOR US, BECAUSE I THINK
11 SHE DID SAY THAT. I THINK SHE DID SAY THAT, DIDN'T YOU
12 GIVE A STATEMENT? AND I THINK IT'S THERE.

13 THE COURT: SHE DID, BUT SHE, I
14 DON'T RECALL HIM TESTIFYING -- I DON'T RECALL HER
15 SAYING, WELL, YOU'RE SAYING SOMETHING TODAY THAT YOU
16 DIDN'T SAY THEN, I DON'T RECALL HER SAYING THAT.

17 SOLICITOR AVINGER: OKAY. AS LONG
18 AS SHE CAN'T ARGUE IT IN CLOSING, THAT'S FINE WITH ME.
19 I MEAN, I THINK THAT'S WHAT SHE ---

20 THE COURT: DID YOU, YOU DIDN'T
21 QUESTION THE STATEMENTS BEING DIFFERENT, DID YOU?

22 MS. HINDS: I WAS POINTING OUT THE,
23 AS SHE SAID, THE DIFFERENCE BETWEEN THE SERVING AND THE
24 ---

25 THE COURT: THEN, I WILL LET HIM

REDIRECT - TRAVIS GUESS BY SOL. AVINGER

144

1 READ THAT PORTION OF HIS STATEMENT ON THAT ISSUE ALONE.

2 SOLICITOR AVINGER: OKAY. AND I BEG
3 THE COURT'S INDULGENCE ONE MOMENT.

4 THE COURT: I'M NOT GOING TO GO
5 THROUGH THE WHOLE STATEMENT, BECAUSE OUR COURT HAS SAID
6 THAT THAT WOULD BE -- WHAT'S THE WORD THEY USED?
7 RESTRICTING HIS TESTIMONY.

8 SOLICITOR AVINGER: I UNDERSTAND AND,
9 I MEAN, I WOULD HAVE PUT IT IN MYSELF, YOU KNOW, IF -
10 - I WASN'T PLANNING TO PUT IT IN.

11 THE COURT: I DON'T WANT TO BE IN
12 A POSITION FOR THE COURT TO SAY, WELL, THAT PERMITS A
13 BOLSTERING OF HIS TESTIMONY. SINCE SHE SAID SHE
14 QUESTIONED THAT SWERVING ISSUE, I WILL LET HIM READ WHAT
15 HE SAID IN HIS STATEMENT, AS TO THAT ISSUE.

16 SOLICITOR AVINGER: I BEG THE
17 COURT'S INDULGENCE.

18 THE COURT: YOU UNDERSTAND, MS.
19 HINDS?

20 MS. HINDS: YES, SIR.

21 THE COURT: BUT I ACCEPT YOUR MOTION
22 TO EXCLUDE IT OTHERWISE. NOW, IF THERE'S ANY QUESTION
23 ABOUT IT I'D RATHER NOT DO IT, BECAUSE THE COURT JUST
24 LAST WEEK, IN THE LAST TWO WEEKS HAS RULED ON THAT VERY
25 ISSUE.

REDIRECT - TRAVIS GUESS BY SOL. AVINGER

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1 SOLICITOR AVINGER: YOUR HONOR, IT -
2 - I WON'T DO IT IF SHE'S NOT GOING TO TRY TO MAKE A BIG
3 DEAL OF IT IN CLOSING. IF SHE'S GOING TO SAY HE'S
4 CHANGED WHAT HE SAID THEN AND WHAT HE SAID NOW, I NEED
5 TO BE SURE THEY KNOW WHAT HE SAID THEN.

6 THE COURT: ARE YOU, IS IT ---

7 MS. HINDS: YOUR HONOR, I MEAN, I
8 DO THINK THEY'RE ENTITLED TO HEAR ME SAY THAT THERE WAS,
9 THAT ---

10 THE COURT: THEN, I'M GOING TO --
11 THEN, IF THAT'S YOUR POSITION AS TO HIS CHANGING HIS
12 STORY, I'M GOING TO LET HER RECITE THAT PORTION. SHE'S
13 ENTITLED TO THAT IF YOU'RE CHALLENGING THE DIFFERENCE
14 BETWEEN WHAT HE SAYS NOW AND THEN.

15 MS. HINDS: I UNDERSTAND, YOUR
16 HONOR.

17 THE COURT: BUT WE'RE NOT GOING
18 THROUGH THE REST OF IT. JUST GET TO THAT QUESTION AND
19 LET HIM READ IT, OR HOWEVER YOU WANT TO HANDLE IT.
20 LET'S DO IT WHILE THE JURY IS OUT SO THERE'S BE NO
21 QUESTION ABOUT HOW FAR WE'RE GOING.

22 SOLICITOR AVINGER: LET'S PROFFER.
23 I BEG THE COURT'S INDULGENCE ONE MOMENT.

24 THE COURT: I DON'T UNDERSTAND WHAT
25 DIFFERENCE THAT POINT MAKES ANYWAY, QUITE FRANKLY.

REDIRECT - TRAVIS GUESS BY SOL. AVINGER

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1 YES, MA'AM, WHAT HAVE YOU DECIDED?

2 SOLICITOR AVINGER: YOUR HONOR, I'M

3 SORRY, COULD I HAVE JUST ONE MOMENT.

4 YOUR HONOR, WE'LL WITHDRAW IT.

5 THE COURT: ALRIGHT. DOES THAT
6 CONCLUDE THE EXAMINATION?

7 SOLICITOR AVINGER: NO, SIR -- ONE
8 MORE QUESTION.

9 THE COURT: WELL, LET'S DO IT IN
10 FRONT OF THE JURY. BRING THE JURY BACK.

11 (Whereupon, the following
12 takes place in the
13 presence of the jury.)

14 THE COURT: ALRIGHT, MA'AM, YOU MAY
15 PROCEED WITH YOUR EXAMINATION.

16 Q. JUST ONE LAST QUESTION. TRAVIS, WHEN YOU WENT TO
17 THE WRECK SCENE WHERE CAPTAIN RAVENELL WAS, WHAT
18 WAS YOUR PHYSICAL AND EMOTIONAL CONDITION?

19 A. JUST, JUST SCARED AND NERVOUS.

20 Q. AND WERE YOU HURT FROM THE BUMP ON THE HEAD?

21 A. BASICALLY, YES, I WAS IN SOME TYPE OF PAIN, YES.

22 SOLICITOR AVINGER: OKAY. THAT'S
23 ALL I'D HAVE, YOUR HONOR.

24 MS. HINDS: NOTHING FURTHER, YOUR
25 HONOR.

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1 THE COURT: YOU MAY COME DOWN, AND -
2 - YOU MAY COME DOWN.

3 SOLICITOR AVINGER: YOUR HONOR, WE'D
4 CALL LIEUTENANT OPHELIA KETCHERSIDE.

5 (Whereupon, the witness
6 enters the courtroom.)

7 CLERK: PLEASE PLACE YOUR LEFT HAND
8 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

9 LIEUTENANT OPHELIA KETCHERSIDE,
10 BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

11 CLERK: HAVE A SEAT AND STATE YOUR
12 FULL NAME.

13 WITNESS: OPHELIA KETCHERSIDE.

14 COURT REPORTER: SPELL IT, PLEASE.

15 WITNESS: O-P-H-E-L-I-A K-E-T-C-
16 H-E-R-S-I-D-E.

17 (NOTE: Blank lines on this page do not indicate any
18 part of record has been omitted. Headers on testimony
19 pages and hard page breaks between testimony are now
20 required by the Court. See next ensuing page for
21 sequential continuation of record.)

DIRECT - OPHELIA KETCHERSIDE BY SOL. AVINGER

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DIRECT EXAMINATION OF OPHELIA KETCHERSIDE

BY SOLICITOR AVINGER:

Q. LIEUTENANT, WHERE ARE YOU EMPLOYED?

A. ORANGEBURG COUNTY SHERIFF'S OFFICE.

Q. AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

A. SEVEN YEARS.

Q. AND YOU'RE A LIEUTENANT?

A. THAT'S CORRECT.

Q. OKAY. AND WHAT WOULD BE OVER YOU?

A. CAPTAIN.

Q. ALRIGHT. CAPTAIN RAVENELL IS YOUR SUPERVISOR?

A. THAT'S CORRECT.

Q. AND WHAT AREA DO YOU USUALLY WORK?

A. I'M THE REGIONAL COMMANDER FOR THE EAST REGION OF
ORANGEBURG COUNTY.

Q. OKAY. IS THAT VANCE, HOLLY HILL, EUTAWVILLE?

A. THAT'S CORRECT.

Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO ASSIST
CAPTAIN RAVENELL JULY SECOND OF LAST YEAR ON A
GENERAL SESSIONS CASE?

A. THAT'S CORRECT.

Q. OKAY. CAN YOU TELL THE JURY WHERE YOU WENT AND WHY
YOU WENT THERE?

A. CAPTAIN RAVENELL REQUESTED ASSISTANCE AT THE
INTERSECTION OF PINELAND STREET AND LODGE HALL

DIRECT - OPHELIA KETCHERSIDE BY SOL. AVINGER

149

1 STREET, WHICH IS LOCATED IN VANCE.

2 Q. OKAY. AND HOW LONG DID IT TAKE YOU TO GET THERE?

3 A. ROUGHLY, TEN MINUTES.

4 Q. OKAY. AND WHEN YOU GOT THERE WHAT DID YOU SEE?

5 A. THE FIRST THING I OBSERVED WAS A WRECKED VEHICLE
6 AND A LIGHT POLE, AND CAPTAIN RAVENELL WITH WHO WAS
7 LATER IDENTIFIED AS MR. MONTGOMERY, WHICH WAS BEING
8 DETAINED AT THAT TIME.

9 Q. OKAY. AND WHEN YOU GOT THERE WHAT DID YOU DO AFTER
10 YOU OBSERVED THAT?

11 A. WHEN I EXITED THE VEHICLE THE VICTIM, IT WAS NOTED
12 TO ME THAT THERE WAS A PERSON THAT HAD JUST ARRIVED
13 ON THE SCENE BY CAPTAIN RAVENELL, WHICH WAS LATER
14 IDENTIFIED AS THE VICTIM.

15 Q. AND WHAT WAS THAT PERSON'S NAME?

16 A. TRAVIS GUESS.

17 Q. OKAY.

18 A. AND AT THAT TIME I BEGAN SPEAKING WITH MR. GUESS.

19 Q. OKAY. WHAT WAS MR. GUESS'S PHYSICAL APPEARANCE AND
20 DEMEANOR?

21 A. THE FIRST THING THAT I NOTICED ABOUT MR. GUESS WAS
22 A LACERATION TO HIS FOREHEAD. HE APPEARED TO BE
23 VERY UPSET AND COMPLAINED ABOUT HE WAS HURT, THAT
24 HE HAD HAD TO JUMP OUT OF A VEHICLE, AND APPEARED
25 TO BE NERVOUS.

DIRECT - OPHELIA KETCHERSIDE BY SOL. AVINGER

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1 Q. OKAY. DID ANY OTHER LAW ENFORCEMENT OFFICERS COME
2 THERE WITH Y'ALL?

3 A. THAT'S CORRECT. AT THAT TIME, HE'S NOW A
4 LIEUTENANT, BUT AT THAT TIME SERGEANT RANDY CULLER.

5 Q. OKAY. AND IS RANDY CULLER WITH US TODAY?

6 A. NO, HE'S NOT.

7 Q. OKAY. WHY IS THAT?

8 A. HE'S ON VACATION.

9 Q. OKAY. WHAT OTHER DUTIES DID YOU HAVE THERE AT THE
10 SCENE, OTHER THAN TALKING TO THE VICTIM?

11 A. THAT WAS MY PRIMARY DUTY AT THE TIME.

12 Q. OKAY. SOMETIME THAT NIGHT DID YOU DO A FORMAL
13 INTERVIEW WITH THE VICTIM?

14 A. YES, I DID.

15 Q. AND WAS HE ABLE TO WRITE THE STATEMENT HIMSELF?

16 A. NO, HE WASN'T.

17 Q. OKAY. AS FAR AS PROCESSING THE SCENE THERE, WERE
18 YOU INVOLVED IN THAT IN ANY MANNER?

19 A. I ASSISTED CAPTAIN RAVENELL, THAT'S CORRECT.

20 Q. OKAY. AND IF I COULD SHOW YOU WHAT'S BEEN MARKED
21 AS STATE'S TWO, TWO, A AND B, DO THOSE PHOTOGRAPHS
22 LOOK FAMILIAR TO YOU?

23 A. YES, THEY DO.

24 Q. OKAY. AND WHAT ARE THEY?

25 A. THOSE ARE THE PICTURES OF THE VEHICLE THAT WAS

DIRECT - OPHELIA KETCHERSIDE BY SOL. AVINGER

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1 WRECKED AT THE INTERSECTION OF PINELAND AND LODGE
2 HALL.

3 Q. OKAY. WERE YOU PRESENT WHEN THESE PHOTOGRAPHS WERE
4 TAKEN?

5 A. YES, I WAS.

6 Q. WHO TOOK THESE PHOTOGRAPHS?

7 A. CAPTAIN RAVENELL.

8 Q. OKAY. AND ARE YOU FAMILIAR WITH PHOTOGRAPH C?

9 A. YES, I AM.

10 Q. OKAY. DO YOU KNOW WHAT THIS ITEM IS?

11 A. THAT IS THE VICTIM'S WALLET.

12 Q. OKAY. AND ---

13 THE COURT: AGAIN, SHE'S SHOWING
14 PHOTOGRAPHS NOW THAT YOU HAVE EXAMINED, DEFENSE COUNSEL?

15 MS. HINDS: THAT'S CORRECT, YOUR
16 HONOR.

17 THE COURT: ALRIGHT.

18 Q. THE VICTIM'S WALLET, DO YOU KNOW WHERE THIS WALLET
19 WAS, WERE YOU PRESENT WHEN THE WALLET WAS GIVEN TO
20 CAPTAIN RAVENELL?

21 A. NO, I WASN'T.

22 Q. OKAY. WERE YOU PRESENT WHEN THE WALLET WAS GIVEN
23 BACK TO TRAVIS GUESS?

24 A. YES, I WAS.

25 Q. OKAY. ARE YOU FAMILIAR WITH PHOTOGRAPH D?

DIRECT - OPHELIA KETCHERSIDE BY SOL. AVINGER

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1 A. YES.

2 Q. WHAT DOES PHOTOGRAPH D SHOW?

3 A. THAT'S A PICTURE OF THE MONEY -- EXCUSE ME, THAT'S
4 A PICTURE OF THE MONEY THAT WAS INSIDE OF MR.
5 MONTGOMERY'S POCKET.

6 Q. OKAY. AND WHAT IS PHOTOGRAPH E?

7 A. THAT'S THE ITEMS THAT WERE TAKEN OUT OF MR.
8 MONTGOMERY'S POCKETS.

9 Q. OKAY. ARE YOU FAMILIAR WITH THOSE KEYS?

10 A. YES, MA'AM.

11 Q. WHAT WAS DONE WITH THOSE KEYS?

12 A. THEY WERE GIVEN BACK TO THE VICTIM.

13 Q. OKAY. THERE AT THE SCENE?

14 A. YES, MA'AM.

15 Q. DO YOU KNOW WHAT WAS DONE WITH THE MONEY?

16 A. THE MONEY WAS COLLECTED, THE HUNDRED AND THIRTY-
17 NINE DOLLARS WAS COLLECTED FOR EVIDENCE.

18 Q. AND DID CAPTAIN RAVENELL HAVE CUSTODY OF THAT?

19 A. YES, MA'AM.

20 Q. OKAY. WERE YOU PRESENT WHEN PHOTOGRAPHS F, G AND
21 H WERE TAKEN?

22 A. YES, I WAS.

23 Q. AND WHAT DO THEY SHOW?

24 A. THAT IS THE VICTIM'S SHOES AND THE VICTIM'S GLASSES
25 LYING ON PINELAND STREET, WHICH IS APPROXIMATELY

DIRECT - OPHELIA KETCHERSIDE BY SOL. AVINGER

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1 WHERE THE VICTIM ADVISED THAT HE JUMPED OUT OF THE
2 VEHICLE WHILE IT WAS IN MOTION.

3 Q. OKAY. PHOTOGRAPH I, WERE YOU PRESENT FOR THAT
4 PHOTOGRAPH?

5 A. YES, I WAS.

6 Q. WHAT DOES THAT SHOW?

7 A. THAT'S THE WHITE PIECE OF MATERIAL WHICH ENDED UP
8 BEING A SHIRT THAT CAPTAIN RAVENELL ADVISED THAT
9 HE SAW MR. MONTGOMERY THROW.

10 Q. OKAY. AND ARE YOU, WERE YOU PRESENT WHEN
11 PHOTOGRAPH J WAS TAKEN?

12 A. THAT'S CORRECT.

13 Q. AND WHAT DOES THAT ITEM SHOW?

14 A. THAT'S A, A NINE MILLIMETER, AND IT WAS LOCATED
15 NEXT TO THE WHITE SHIRT.

16 Q. OKAY. WERE YOU PRESENT WHEN THAT GUN WAS TAKEN
17 INTO EVIDENCE?

18 A. THAT'S CORRECT.

19 Q. AND WHO TOOK POSSESSION OF THAT GUN?

20 A. CAPTAIN RAVENELL.

21 Q. DID YOU INTERVIEW ANY OTHER WITNESSES THERE AT THE
22 WRECK SCENE?

23 A. MARCUS GUESS.

24 Q. OKAY. DID Y'ALL GO ANYWHERE ELSE THAT NIGHT?

25 A. CAPTAIN RAVENELL AND I ALSO RESPONDED BACK TO THE

DIRECT - OPHELIA KETCHERSIDE BY SOL. AVINGER

154

1 ORIGINAL INCIDENT LOCATION ON PINELAND STREET.

2 Q. OKAY. AND WERE YOU PRESENT WHEN STATE'S ONE,
3 PHOTOGRAPHS E, F AND G WERE TAKEN?

4 A. YES, I WAS.

5 Q. OKAY. WHAT DOES PHOTOGRAPH G SHOW?

6 A. IT'S A PICTURE OF, OF A BULLET HOLE THAT WE, WHAT
7 APPEARED TO BE A GUN SHOT TO THE GROUND.

8 Q. OKAY. IS THAT AT THE RESIDENCE OF TRAVIS GUESS?

9 A. THAT'S CORRECT.

10 SOLICITOR AVINGER: I BEG THE
11 COURT'S INDULGENCE ONE MOMENT.

12 Q. WERE YOU -- DID THE VICTIM, TRAVIS GUESS, IDENTIFY
13 RUSSELL MONTGOMERY AS THE ARMED GUNMAN WHO
14 KIDNAPPED HIM AND TOOK HIS PROPERTY?

15 A. YES, HE DID.

16 Q. OKAY. DO YOU KNOW IF THE GUN WAS LOADED?

17 A. I CANNOT REMEMBER THAT.

18 SOLICITOR AVINGER: OKAY. PLEASE
19 ANSWER MS. HINDS'S QUESTIONS.

20 (NOTE: Blank lines on this page do not indicate any
21 part of record has been omitted. Headers on testimony
22 pages and hard page breaks between testimony are now
23 required by the Court. See next ensuing page for
24 sequential continuation of record.)

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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CROSS-EXAMINATION OF OPHELIA KETCHERSIDE

BY MS. HINDS:

Q. ALRIGHT, YOU SAID THAT YOU WERE ORIGINALLY CALLED TO THE SCENE OF THE ACCIDENT, WAS THAT BY RAVENELL DIRECTLY, OR THROUGH DISPATCH, OR HOW?

A. BY CAPTAIN RAVENELL.

Q. OKAY. AND YOU, THIS WAS IN RESPONSE TO A CAR WRECK OR SOME OTHER KIND OF CALL?

A. AT THAT TIME HE REQUESTED ASSISTANCE, THAT HE WAS OUT WITH A, WHAT WE REFER TO AS A TEN-FIFTY, BUT IT'S A VEHICLE ACCIDENT.

Q. SO, AT THAT POINT THAT'S WHAT YOU THOUGHT THIS WAS ALL ABOUT, CORRECT?

A. AND WHILE IN ROUTE HE DID ADVISE THAT HE WAS OUT WITH A SUBJECT, AND THAT WAS ALL THE INFORMATION AT THAT TIME THAT I HAD.

Q. OKAY. AND HOW LONG WAS IT THAT YOU SAID IT TOOK YOU, ABOUT TEN MINUTES TO GET THERE IS THAT RIGHT?

A. APPROXIMATELY TEN MINUTES, ROUGHLY.

Q. OKAY. AND WERE YOU AWARE OF THE, OF MR. GUESS RUNNING TO THE TRAILER AFTER THE WRECK?

A. NOT UNTIL I GOT ON THE SCENE, I WASN'T AWARE OF ANY OF THAT UNTIL I ACTUALLY GOT ON THE SCENE AT THE INTERSECTION.

Q. OKAY. ABOUT HOW FAR AWAY FROM THE ACCIDENT SITE

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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- 1 WOULD YOU SAY THAT TRAILER WAS?
- 2 A. PROBABLY -- FROM WHERE THE VEHICLE WAS?
- 3 Q. UH HUH.
- 4 A. THE ACTUAL VEHICLE WAS?
- 5 Q. UH HUH.
- 6 A. PROBABLY A HUNDRED, A HUNDRED AND TWENTY-FIVE FEET.
- 7 Q. OKAY. AND WHEN YOU GOT THERE, OFFICER RAVENELL WAS
- 8 ALREADY ON THE SCENE, CORRECT?
- 9 A. THAT'S CORRECT.
- 10 Q. AND DO YOU KNOW HOW LONG HE'D BEEN THERE?
- 11 A. MY INFORMATION THAT I HAD WAS THAT HE CALLED ME
- 12 UPON ARRIVING, HE CALLED FOR ASSISTANCE UPON
- 13 ARRIVAL, ONCE HE MADE CONTACT WITH MR. MONTGOMERY.
- 14 Q. OKAY.
- 15 A. SO, I WOULD ESTIMATE PROBABLY WITHIN THE MINUTE OF
- 16 HIM GETTING THERE IS WHEN HE CALLED FOR ASSISTANCE.
- 17 Q. AND AT THAT TIME WHERE, WHERE WAS EVERYBODY, WERE
- 18 THEY NEXT TO THE CAR, WAS -- LET ME BACK UP FOR A
- 19 SECOND. WHERE WAS OFFICER RAVENELL?
- 20 A. HE WAS BY HIS PATROL VEHICLE.
- 21 Q. OKAY. AND THE PATROL VEHICLE WAS WHERE IN RELATION
- 22 TO THE WRECK?
- 23 A. IN THE REAR OF THE WRECKED VEHICLE, OFF THE
- 24 SHOULDER OF THE ROAD.
- 25 Q. OKAY. AND WAS MR. MONTGOMERY THERE AT THAT TIME?

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 A. YES, HE WAS.

2 Q. OKAY. AND WAS MR. GUESS THERE AT THAT TIME?

3 A. HE HAD JUST ARRIVED ON THE SCENE, YES, MA'AM.

4 Q. OKAY. AND I BELIEVE OFFICER RAVENELL FILLED YOU
5 IN ABOUT SOME OF THE THINGS THAT HAD HAPPENED IN
6 THAT TEN MINUTES THAT YOU WEREN'T THERE, CORRECT?

7 A. THAT'S CORRECT.

8 Q. OKAY. ALRIGHT, AT THAT POINT YOU START TALKING
9 WITH WITNESSES, CORRECT?

10 A. I SPOKE WITH THE VICTIM FIRST, YES, MA'AM.

11 Q. OKAY. AND I BELIEVE YOU DID SAY HE HAD
12 LACERATIONS, CORRECT?

13 A. THE, THE FIRST ONE I OBSERVED WAS THE ONE TO HIS
14 FOREHEAD.

15 Q. OKAY. AND AGAIN, HIS COMPLAINTS WERE, CAN YOU
16 SPECIFICALLY REMEMBER WHAT HE TOLD YOU WAS WRONG
17 WITH HIM?

18 A. I REMEMBER HIM SAYING THAT HIS HEAD AND HIS
19 SHOULDER WERE HURTING. AND AT THAT POINT IS WHEN
20 I REALIZED THAT THERE WERE ABRASIONS TO HIS HEAD,
21 EXCUSE ME, TO HIS SHOULDER AND ALSO TO HIS LEG,
22 ALONG WITH THE INJURY TO HIS HEAD.

23 Q. THERE WAS AN ABRASION TO HIS HEAD ALSO?

24 A. YES, MA'AM, THAT'S CORRECT.

25 Q. OKAY. WHEN YOU ARRIVED ON THE SCENE, TO YOUR

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 KNOWLEDGE HAD OFFICER RAVENELL ALREADY SPOKEN WITH
2 MR. GUESS?

3 A. TO WHAT OFFICER RAVENELL, EXCUSE ME, CAPTAIN
4 RAVENELL ADVISED ME WAS THAT MR. GUESS HAD JUST
5 WALKED UP PRIOR TO ME, AND THAT HE HAD STATED TO
6 HIM THAT HE HAD TO JUMP OUT OF THE VEHICLE. TO MY
7 KNOWLEDGE THAT'S AS FAR AS THE CONVERSATION WENT,
8 AND I ARRIVED ON THE SCENE.

9 Q. WERE THERE ANY OTHER WITNESSES TO THE ACCIDENT?

10 A. NO, MA'AM, NOT THAT I KNOW OF, TO THE VEHICLE
11 ACCIDENT, NO, MA'AM.

12 Q. AND AT THAT POINT DID YOU QUESTION MR. GUESS ABOUT
13 WHAT HAD HAPPENED, OR WHAT HAD LED UP TO YOUR BEING
14 CALLED OUT THERE?

15 A. I CONDUCTED AN INTERVIEW WITH MR. GUESS, THAT'S
16 CORRECT.

17 Q. AND I BELIEVE HE BASICALLY SAID THAT HE WAS WITH
18 SOME FRIENDS AT HIS HOUSE, THEY WERE DRINKING AND
19 TALKING OUTSIDE, IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. OKAY. AND DO YOU REMEMBER HIM TELLING YOU THAT
22 SUPPOSEDLY MR. MONTGOMERY FIRED SEVERAL SHOTS IN
23 THE GROUND?

24 A. THAT'S CORRECT.

25 Q. OKAY. AND AS STATED, YOU PROCESSED, HELPED PROCESS

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 THE SCENE WITH OFFICER RAVENELL LATER ON?

2 A. THAT'S CORRECT.

3 Q. OKAY. I BELIEVE YOU SAID THAT THERE WAS, WHAT YOU
4 FOUND WAS A SMALL HOLE IN THE GROUND, IS THAT
5 CORRECT?

6 A. YES, MA'AM, THAT'S CORRECT.

7 Q. ALRIGHT. AND, I WANT TO MAKE SURE I GET THIS RIGHT
8 -- I BELIEVE YOU SAID IT APPEARED TO BE A BULLET
9 HOLE?

10 A. THAT'S CORRECT.

11 Q. OKAY. WHY DID IT APPEAR TO BE A BULLET HOLE AS
12 OPPOSED TO ANY OTHER KIND OF HOLE?

13 A. IT WAS SMALL IN NATURE, AND IT WAS IN THE AREA
14 WHERE THE VICTIM SAID THAT THE SUSPECT CAME AROUND
15 THE CORNER AND BEGAN FIRING.

16 Q. OKAY. SO, BASICALLY, JUST A SMALL HOLE IN THE
17 GROUND?

18 A. THAT'S CORRECT.

19 Q. NOTHING DISTINCTIVE ABOUT IT THAT WOULD MAKE YOU
20 INSTANTLY KNOW IT WAS A BULLET HOLE, CORRECT?

21 A. NO, MA'AM.

22 Q. OKAY. AND YOU WOULD NOT NECESSARILY HAVE KNOW, IT
23 COULD HAVE BEEN A BULLET HOLE IF IT WERE NOT FOR
24 MR. GUESS TELLING YOU ABOUT SOMEBODY SUPPOSEDLY
25 FIRING INTO THE GROUND?

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 A. THAT'S CORRECT.

2 Q. OKAY. DID YOU FIND ANY BULLETS AT THE SCENE?

3 A. NO, MA'AM.

4 Q. DID YOU FIND ANY SHELL CASINGS OR ANYTHING ELSE OF
5 THAT NATURE?

6 A. NO, MA'AM.

7 Q. OKAY. SO, BASICALLY, ALL YOU FOUND WAS WHAT
8 APPEARED TO BE A BULLET HOLE IN THE GROUND?

9 A. YES, MA'AM, THAT'S CORRECT.

10 Q. OKAY. AND THERE WAS ONLY ONE OF THOSE, CORRECT?

11 A. THAT WE COULD LOCATE, YES, MA'AM, THAT'S CORRECT.

12 Q. AND AT THAT POINT MR. MONTGOMERY IS A SUSPECT, IS
13 THAT CORRECT?

14 A. AT THE POINT, AT WHICH POINT, MA'AM?

15 Q. AFTER YOU INTERVIEW MR. GUESS, I BELIEVE YOU SAID
16 OFFICER RAVENELL HAD ALREADY DETAINED MR.
17 MONTGOMERY?

18 A. CAPTAIN RAVENELL HAD DETAINED HIM, THAT'S CORRECT.

19 Q. OKAY. AND HE HAD HIM IN CUSTODY THE WHOLE TIME,
20 CORRECT?

21 A. HE WAS BEING DETAINED, YES, MA'AM.

22 Q. OR HE WAS BEING DETAINED THE WHOLE TIME?

23 A. YES, MA'AM.

24 Q. HE DIDN'T GET TO LEAVE, HE DIDN'T GET TO GO ANY
25 PLACE, CORRECT?

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 A. THAT'S CORRECT.

2 Q. OKAY. WAS, TO YOUR KNOWLEDGE WAS MR. MONTGOMERY
3 EVER TESTED FOR GUN SHOT RESIDUE?

4 A. TO MY KNOWLEDGE, NO, MA'AM.

5 Q. OKAY. ANY IDEA WHY NOT?

6 A. NO, MA'AM.

7 Q. OKAY. HOWEVER, IF HE HAD INDEED FIRED A GUN, THERE
8 WAS A GOOD POSSIBILITY THERE MIGHT HAVE BEEN GUN
9 SHOT RESIDUE ON HIS HANDS, CORRECT?

10 A. YES, MA'AM.

11 Q. BUT TO YOU KNOWLEDGE NO TEST WAS EVER DONE?

12 A. TO MY KNOWLEDGE, NO, MA'AM.

13 Q. OKAY. AND YOU ALSO INTERVIEWED AFTER THAT OTHER
14 WITNESSES, CORRECT, BESIDES THE VICTIM?

15 A. MARCUS GUESS, YES, MA'AM.

16 Q. OKAY. AND HE ALSO BASICALLY SAID THAT SEVERAL
17 SHOTS HAD BEEN FIRED, IS THAT CORRECT?

18 A. YES, MA'AM.

19 Q. OKAY. WHEN, WHEN YOU TOOK MR. GUESS'S STATEMENT,
20 AT THAT POINT HAD HE TOLD YOU THE WHOLE STORY
21 FIRST, OR WERE YOU WRITING IT DOWN AS HE TOLD YOU?

22 A. HE HAD TOLD ME THE STORY, YES, MA'AM.

23 Q. OKAY. DID YOU HAVE ANY REASON TO THINK -- EXCUSE
24 ME, THAT MR. GUESS KNEW MR. MONTGOMERY?

25 A. MR. GUESS ADVISED THAT HE WAS ABLE TO IDENTIFY MR.

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 MONTGOMERY BY HIS VOICE, WHICH INDICATED TO ME THAT
2 HE OBVIOUSLY WAS AN ACQUAINTANCE OF HIM SOMEHOW TO
3 KNOW HIS VOICE.

4 Q. BUT HE DID SPECIFICALLY SAY, VOICE?

5 A. YES, MA'AM.

6 Q. OKAY. DID, WHEN -- DID ANY OF THE, TO YOUR
7 KNOWLEDGE, DID ANY OF THE PEOPLE WHO RAN FROM THE
8 SCENE THAT NIGHT CALL THIS INCIDENT IN TO THE
9 POLICE?

10 A. TO MY KNOWLEDGE, THERE WAS A NINE ONE ONE CALL THAT
11 WAS CALLED IN. I THINK I'M CORRECT IN SAYING THAT
12 KEVIN MACK WAS THE PERSON THAT CALLED THE NINE ONE
13 ONE CALL IN.

14 Q. OKAY. AND YOU'RE THE, I BELIEVE YOU SAID THE
15 REGIONAL COMMANDER FOR THAT AREA?

16 A. YES, THAT'S CORRECT.

17 Q. AND HOW LONG HAVE YOU BEEN REGIONAL COMMANDER?

18 A. AT THAT TIME OR NOW?

19 Q. UH HUH, AT THAT TIME.

20 A. JUST A FEW MONTHS.

21 Q. OKAY. WERE YOU RELATIVELY FAMILIAR WITH THAT AREA,
22 HOWEVER?

23 A. YES, MA'AM, I'M FAMILIAR WITH THE VANCE AREA.

24 Q. OKAY. AND YOU, HAD YOU BEEN TO THAT PARTICULAR
25 AREA BEFORE ON PATROL OR ON CALL OUTS?

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

163

1 A. YES, MA'AM, THAT'S AN AREA THAT WE FREQUENT. IT'S
2 IN OUR REGION AND WE ARE RESPONSIBLE FOR RIDING ALL
3 THE AREAS OF OUR REGION.

4 Q. OKAY. AND DOES THAT PARTICULAR REGION HAVE A
5 REPUTATION?

6 A. WHAT SORT OF REPUTATION ARE YOU REFERRING TO?

7 Q. FOR DRUG USAGE?

8 A. THAT PARTICULAR AREA IN VANCE?

9 Q. YES.

10 A. THERE IS KNOWN DRUG ACTIVITY IN THAT AREA, YES,
11 MA'AM.

12 Q. TO YOUR KNOWLEDGE DID ANYBODY ELSE IN THAT AREA
13 CALL IN ANY COMPLAINTS OF SHOTS HAVING BEEN FIRED?

14 A. NOT TO MY KNOWLEDGE, NO, MA'AM.

15 Q. AND I BELIEVE MR. GUESS TOLD YOU HOW MUCH MONEY
16 THAT WAS TAKEN FROM HIM, IS THAT CORRECT?

17 A. HE ADVISED APPROXIMATELY FIVE HUNDRED DOLLARS, YES,
18 MA'AM, THREE HUNDRED OF WHICH WAS LOCATED IN THE
19 WALLET THAT WAS TAKEN OFF OF MR. MONTGOMERY.

20 Q. DID YOU DO THAT INVENTORY?

21 A. I WAS PRESENT WHEN THE INVENTORY WAS DONE, YES,
22 MA'AM.

23 Q. WHO ACTUALLY COUNTED THE MONEY?

24 A. CAPTAIN RAVENELL.

25 Q. AND IT WAS REPLACED IN THE WALLET, IS THAT WHAT

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 HAPPENED?

2 A. YES, MA'AM. THREE HUNDRED WAS IN THE WALLET AND
3 THE ADDITIONAL HUNDRED AND THIRTY-NINE WAS IN MR.
4 MONTGOMERY'S POCKET, THAT'S CORRECT.

5 Q. OKAY. AND THE WALLET AND ITS CONTENTS WERE
6 RETURNED TO MR. GUESS, CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND THE HUNDRED AND THIRTY-NINE DOLLARS WAS KEPT?

9 A. YES, MA'AM, THAT'S CORRECT.

10 Q. IS THERE SOME PARTICULAR REASON WHY SOME OF THE
11 MONEY WAS RETURNED AND SOME OF THE MONEY WASN'T?

12 A. THAT DECISION WAS MADE BY CAPTAIN RAVENELL.

13 Q. WHEN YOU INTERVIEWED THE OTHER WITNESSES, TO YOUR
14 KNOWLEDGE DID ANYBODY CORROBORATE MR. GUESS'S
15 VERSION WHERE HE'S ORDERED INTO THE VEHICLE?

16 A. THE ONLY OTHER PERSON THAT INTERVIEWED WAS, AS I
17 SAID, MARCUS GUESS, AND HE SAID ONCE THE SHOTS WERE
18 FIRED AT THAT TIME HE BEGAN RUNNING, SO NO, MA'AM,
19 THERE WAS NO ONE TO CORROBORATE IT.

20 Q. THANK YOU. NOW, I KNOW YOU SAW THE SCRAPES ON HIS
21 ARM AND HIS LEG AND I BELIEVE ON THE SIDE OF HIS
22 FACE?

23 A. THAT'S CORRECT.

24 Q. CONSISTENT BASICALLY WITH JUMPING OUT OF A CAR,
25 ROAD RASH?

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

165

- 1 A. IN MY OPINION, YES, MA'AM.
- 2 Q. OKAY. DID YOU OBSERVE ANY KNOT ON THE BACK OF HIS
- 3 HEAD OR A BUMP ON HIS HEAD, OR ANYTHING OF THAT
- 4 NATURE ON THE BACK OF HIS HEAD?
- 5 A. THE ONLY INJURY I OBSERVED TO HIS HEAD WAS THAT
- 6 ABRASION TO THE FOREHEAD.
- 7 Q. OKAY. AND WHEN THE, WHEN MR. GUESS TOLD YOU HIS
- 8 STORY, HE DID SAY THAT HE WAS DRIVING THE CAR,
- 9 CORRECT?
- 10 A. THAT'S CORRECT.
- 11 Q. AND THAT MR. MONTGOMERY WAS SITTING BEHIND HIM IN
- 12 THE CAR?
- 13 A. THAT IS CORRECT.
- 14 Q. AND WHEN YOU TOOK HIS STATEMENT HE TOLD YOU THAT
- 15 MR. MONTGOMERY SUPPOSEDLY TOLD HIM TO GET OUT OF
- 16 THE VEHICLE SEVERAL TIMES?
- 17 A. YES, MA'AM, THAT'S CORRECT.
- 18 Q. AND I BELIEVE ANOTHER OFFICER EVENTUALLY CAME TO
- 19 THE SCENE, IS THAT CORRECT?
- 20 A. YES, MA'AM.
- 21 Q. AND WOULD THAT BE THE HIGHWAY PATROL?
- 22 A. WELL, IT WAS SERGEANT RANDY CULLER, AND ALSO THE
- 23 HIGHWAY PATROL WAS REQUESTED TO RESPOND IN
- 24 REFERENCE TO THE VEHICLE ACCIDENT.
- 25 Q. OKAY. AND IN WORKING THAT ACCIDENT, WERE THERE

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 OTHER THINGS SEIZED FROM THE CAR?

2 A. NARCOTICS WERE SEIZED, OR WHAT APPEARED TO BE
3 NARCOTICS WERE SEIZED FROM THE CAR, THE VEHICLE.

4 Q. OKAY. SPECIFICALLY, SOME SUBSTANCE THAT APPEARED
5 TO BE MARIJUANA, IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND A SUBSTANCE THAT APPEARED TO BE CRACK
8 COCAINE?

9 A. THAT'S CORRECT.

10 Q. NOW, THAT WAS NOT TESTED, CORRECT?

11 A. TO MY KNOWLEDGE, NO, IT WASN'T.

12 Q. OKAY. WAS ANYONE CHARGED WITH THE POSSESSION OF
13 THOSE DRUGS?

14 A. NO, MA'AM.

15 Q. WERE THERE ANY CONVERSATIONS, WAS ANYONE ASKED
16 ABOUT OWNERSHIP OF THE DRUGS?

17 A. THAT'S CORRECT. MR. GUESS WAS ASKED ABOUT THE,
18 THE, WHAT APPEARED TO BE NARCOTICS, AS WELL AS, I
19 THINK MR. MONTGOMERY WAS ALSO ASKED ABOUT THE
20 NARCOTICS.

21 Q. AND THEIR ANSWERS?

22 A. BOTH DENIED HAVING ANY KNOWLEDGE OF THE NARCOTICS
23 BEING IN THE VEHICLE.

24 Q. BUT AT THAT TIME YOU DID BELIEVE THAT THEY WERE
25 ILLEGAL NARCOTICS, CORRECT?

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 A. IT APPEARED TO BE, YES, MA'AM.

2 Q. OKAY. AND YET, NOBODY WAS CHARGED WITH THEM IN THE
3 CAR?

4 A. NO, MA'AM.

5 Q. AND THE CAR, TO YOUR KNOWLEDGE, BELONGS TO, OR WAS
6 IN THE POSSESSION OF MR. GUESS, CORRECT?

7 A. THAT'S CORRECT.

8 Q. I BELIEVE THE, THE DRUGS WERE FOUND IN A CIGAR BOX,
9 IS THAT CORRECT?

10 A. YES, MA'AM, THAT'S CORRECT.

11 Q. OKAY. DID ANYBODY TRY TO DO ANY FINGER PRINT WORK
12 ON THE CIGAR BOX?

13 A. TO MY KNOWLEDGE, NO.

14 Q. TO YOUR KNOWLEDGE, THERE WAS -- OTHER THAN ASKING
15 MR. GUESS AND MR. MONTGOMERY, THERE WAS NO FOLLOW
16 UP TO TRY TO FIGURE OUT WHO THAT, WHO THOSE
17 SUBSTANCES BELONGED TO, IS THAT CORRECT?

18 A. I CANNOT ANSWER THAT QUESTION, THAT WOULD HAVE TO
19 BE ADDRESSED TO CAPTAIN RAVENELL.

20 Q. OKAY. WELL, BASICALLY, YOU KNOW, YOUR TESTIMONY
21 HERE TODAY IS BASICALLY BASED ON WHAT MR. GUESS
22 RELATED TO YOU ABOUT WHAT HAPPENED THAT EVENING,
23 IS THAT CORRECT?

24 A. THAT IS CORRECT.

25 Q. OKAY. AND YOU WEREN'T PRESENT WHEN ANY OF THE

CROSS - OPHELIA KETCHERSIDE BY MS. HINDS

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1 THINGS BEFORE THE ACCIDENT HAPPENED, CORRECT?

2 A. THAT IS CORRECT.

3 Q. OKAY.

4 MS. HINDS: ONE MOMENT. NO FURTHER
5 QUESTIONS, THANK YOU.

6 WITNESS: THANK YOU.

7 SOLICITOR AVINGER: ONE MOMENT, YOUR
8 HONOR. THAT'S ALL WE HAVE, YOUR HONOR.

9 THE COURT: YOU MAY COME DOWN,
10 OFFICER, THANK YOU.

11 WITNESS: THANK YOU.

12 THE COURT: YOU ARE NOW EXCUSED FROM
13 YOUR SUBPOENA AND MAY REMAIN IN THE COURTROOM.

14 WITNESS: THANK YOU.

15 THE COURT: THANK YOU.

16 WITNESS: YOUR HONOR, WE CALL
17 CAPTAIN RAVENELL.

18 THE COURT: ALRIGHT.

19 CLERK: PLACE YOUR LEFT HAND ON THE
20 BIBLE AND RAISE YOUR RIGHT HAND.

21 CAPTAIN LEROY RAVENELL, BEING FIRST
22 DULY SWORN, TESTIFIES AS FOLLOWS:

23 CLERK: PLEASE HAVE A SEAT AND STATE
24 YOUR FULL NAME.

25 WITNESS: LEROY RAVENELL.

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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DIRECT EXAMINATION LEROY RAVENELL

BY SOLICITOR AVINGER:

Q. CAPTAIN RAVENELL, WHERE ARE YOU EMPLOYED?

A. ORANGEBURG COUNTY SHERIFF'S OFFICE.

Q. AND HOW LONG HAVE YOU BEEN THERE?

A. APPROXIMATELY SEVENTEEN YEARS.

Q. AND WHAT'S YOUR RANK?

A. CAPTAIN.

Q. OKAY. DOES THAT PUT YOU PRETTY HIGH UP IN THE
SHERIFF'S DEPARTMENT?

A. THAT'S WHAT THEY SAY.

Q. THAT'S WHAT THEY SAY?

A. YES, MA'AM.

Q. WHERE DO YOU LIVE?

A. THE SANTEE AREA.

Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO BECOME
INVOLVED IN AN ARMED ROBBERY-KIDNAPPING CASE ON
JULY SECOND OF LAST YEAR?

A. YES, MA'AM, I DID.

Q. CAN YOU PLEASE TELL THE JURY AROUND WHAT TIME OF
DAY IT WAS AND WHERE YOU WERE?

A. I THINK IT WAS APPROXIMATELY ELEVEN O'CLOCK P.M.
THAT NIGHT. I WAS IN THE VANCE AREA AT THE
INTERSECTION OF LODGE HALL AND PINELAND.

Q. OKAY. AND WHAT KIND OF CAR WERE YOU DRIVING?

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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- 1 A. AN UNMARKED PATROL CAR, A FORD.
- 2 Q. OKAY. AND WERE YOU IN UNIFORM?
- 3 A. NO, MA'AM.
- 4 Q. OKAY. AND WHY IS THAT?
- 5 A. I WAS REALLY NOT WORKING, I WAS JUST OUT KIND OF
- 6 PATROLLING AND CHECKING, AND SO I WASN'T IN
- 7 UNIFORM.
- 8 Q. OKAY. AND WHEN YOU CAME TO THAT INTERSECTION WHAT
- 9 DID YOU SEE?
- 10 A. I SAW, I OBSERVED A WHITE VEHICLE THAT HAD COLLIDED
- 11 WITH A UTILITY POLE.
- 12 Q. OKAY. AND WHEN YOU COME UP ON THAT INTERSECTION,
- 13 WHICH DIRECTION WOULD THE CAR HAVE BEEN, TO YOUR
- 14 RIGHT OR TO YOUR LEFT?
- 15 A. TO MY LEFT.
- 16 Q. OKAY. AND WHEN YOU SAW THIS CAR THAT WAS WRECKED,
- 17 WHAT DID YOU DO?
- 18 A. I IMMEDIATELY TURNED IN THAT DIRECTION AND I
- 19 OBSERVED A SUBJECT WALKING AWAY FROM THE VEHICLE.
- 20 Q. OKAY. WHEN YOU SAY YOU OBSERVED A SUBJECT WALKING
- 21 AWAY FROM THE VEHICLE, HOW CLOSE WAS THIS PERSON
- 22 TO THE CAR WHEN YOU FIRST SAW HIM?
- 23 A. HE WAS AT THE PASSENGER SIDE DOOR.
- 24 Q. OKAY. AND WAS THE PASSENGER DOOR OPEN OR CLOSED?
- 25 A. IT WAS OPEN.

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 Q. OKAY. AND WHAT DID YOU NOTICE, IF ANYTHING, ABOUT
2 HIS CLOTHING?

3 A. HE HAD ON DARK CLOTHING AND WHAT APPEARED TO ME TO
4 BE A WHITE TOWEL AROUND HIS NECK.

5 Q. OKAY. AND WHAT DID HE DO ONCE YOU MADE THAT TURN?

6 A. ONCE I MADE THAT TURN AND I SAW HIM WALKING AWAY
7 FROM THE VEHICLE I ACTIVATED MY BLUE LIGHTS AND HE
8 WALKED, HE KIND OF WALKED, NOT IN MY DIRECTION, HE
9 KIND OF WALKED AROUND.

10 Q. AND WHAT DID HE DO AT THAT POINT, IF ANYTHING?

11 A. HE WALKED AROUND TO THE OTHER SIDE OF THE HIGHWAY
12 AND THREW THE TOWEL, WHAT APPEARED TO BE A TOWEL
13 ON THE SIDE OF THE ROAD.

14 Q. OKAY. AND DID YOU GET OUT OF YOUR CAR AT THIS
15 POINT?

16 A. YES, MA'AM.

17 Q. AND WHERE WERE YOU IN RELATION TO THE WRECKED CAR?

18 A. I WAS BEHIND THE WRECKED CAR, THE REAR.

19 Q. OKAY. AND DID YOU HAVE YOUR BLUE LIGHTS ON OR OFF?

20 A. THEY WERE ON AT THAT POINT.

21 Q. ARE THEY IN THE CAR OR ---

22 A. THEY WERE, THEY'RE IN, UP OVER THE SUN VISOR.

23 Q. OKAY. WHEN YOU GOT OUT OF YOUR CAR WHAT DID YOU
24 DO NEXT?

25 A. I, REALLY I WAS TRYING TO -- THE INDIVIDUAL THAT

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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- 1 WAS WALKING AWAY FROM THE CAR, I JUST SAW THAT HE
2 WAS IN AN ACCIDENT AND I WAS TRYING TO GET HIS
3 ATTENTION AND GET HIM OVER THERE SO I COULD, TO
4 RENDER SOME AID IF NECESSARY. LIKE I SAID, HE
5 WALKED AWAY, AND WHEN HE WALKED AWAY, ABOUT A
6 MINUTE OR TWO LATER I, YOU KNOW, ABOUT A MINUTE I
7 CALLED HIM OVER AND HE DIDN'T SAY ANYTHING BUT HE
8 DID WALK BACK IN MY DIRECTION AFTER HE THREW THE,
9 WHAT APPEARED TO BE THE TOWEL IN THE GROUND.
- 10 Q. OKAY. AND DID YOU APPROACH HIM AS HE CAME, AS YOU
11 CALLED HIM OVER?
- 12 A. YES, MA'AM, YES, MA'AM.
- 13 Q. OKAY. AND DID YOU HAVE A CONVERSATION WITH HIM?
- 14 A. YES, MA'AM. I ASKED HIM IF HE WAS IN THE VEHICLE
15 OR IF HE KNEW WHO WAS IN THE VEHICLE, AND AT FIRST
16 HE SAID, NO. AND THEN HE SAID, OKAY, THE FELLOW
17 RAN IN THE TRAILER PARK.
- 18 Q. OKAY. AND IS THERE A TRAILER PARK VERY NEARBY?
- 19 A. YES, MA'AM.
- 20 Q. WHAT TRAILER PARK IS IT?
- 21 A. IT'S CHAPEL DAVIS'S TRAILER PARK.
- 22 Q. OKAY. AND WHAT HAPPENED NEXT?
- 23 A. HE, THEN HE -- I ASKED HIM SOMETHING, BUT HE TOOK,
24 TOOK THE WALLET OUT OF HIS POCKET AND -- HE TOOK
25 THE WALLET OUT OF HIS POCKET AND HE SAID, OKAY,

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1 THIS IS THE FELLOW THAT RAN.

2 Q. OKAY. AND DID HE HAND YOU A WALLET?

3 A.. YES, MA'AM, HE DID.

4 Q. AND DID THE WALLET HAVE IDENTIFICATION IN IT?

5 A. YES, MA'AM.

6 Q. AND WHO WAS THE IDENTIFICATION OF THE WALLET?

7 A. THE VICTIM, TRAVIS GUESS.

8 Q. OKAY. AND IT HAD HIS ID'S IN IT?

9 A. YES, MA'AM, DRIVER'S LICENSE AND SOME OTHER ID.

10 Q. DID IT HAVE MONEY IN IT, AS WELL?

11 A. YES, MA'AM.

12 Q. AND DO YOU REMEMBER HOW MUCH?

13 A. IT WAS APPROXIMATELY THREE HUNDRED DOLLARS.

14 Q.. ONCE THIS PERSON HANDED YOU THE WALLET WITH TRAVIS
15 GUESS'S ID, WHAT DID YOU DO NEXT?

16 A. AT THAT POINT, FROM OBSERVING THE SCENE WHEN I
17 PULLED UP AND THE THINGS WERE JUST KIND OF
18 SUSPICIOUS, I DETAINED MR. MONTGOMERY.

19 Q. OKAY. DO YOU SEE THE PERSON THAT YOU DETAINED HERE
20 IN THE COURTROOM TODAY?

21 A. YES, MA'AM, HE'S SEATED OVER HERE WITH THE PLAID
22 SHIRT.

23 Q. THE DEFENDANT, RUSSELL MONTGOMERY?

24 A. YES, MA'AM.

25 Q.. OKAY. WHAT HAPPENED ONCE YOU DETAINED MR.

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 MONTGOMERY, WHO WAS THE NEXT PERSON TO COME TO THAT
2 AREA?

3 A. AT ONE POINT THERE WAS A FEMALE THAT CAME UP -- A
4 MALE THAT CAME UP AND STATED THAT THERE WAS SOMEONE
5 IN THEIR RESIDENCE THAT WOULDN'T LEAVE, AND I THINK
6 THAT WAS THE LADY THAT WAS UP HERE EARLIER, HER SON
7 CAME OVER.

8 Q. FROM THE MCFARLAND RESIDENCE?

9 A. YES, MA'AM.

10 Q. OKAY. DID OTHER LAW ENFORCEMENT COME TO THE
11 ACCIDENT SCENE?

12 A. YES, MA'AM, I CALLED FOR LIEUTENANT KETCHERSIDE AND
13 ALSO LIEUTENANT RANDY CULLER.

14 Q. DID THEY COME ---

15 A. YES, MA'AM.

16 Q. --- QUICKLY?

17 A. YES, MA'AM.

18 Q. OKAY. DID YOU MEET THE VICTIM, TRAVIS GUESS?

19 A. YES, MA'AM.

20 Q. OKAY. HAD YOU KNOWN TRAVIS GUESS BEFORE?

21 A. NO, MA'AM.

22 Q. HAD YOU EVER HAD ANY DEALINGS WITH HIM THAT YOU CAN
23 RECALL?

24 A. NO, MA'AM. NO, MA'AM.

25 Q. DID YOU SEE MR. GUESS WHEN HE CAME UP?

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 A. YES, MA'AM, I DID.

2 Q. WHAT WAS HIS PHYSICAL APPEARANCE AND Demeanor?

3 A. HE WAS, HE APPEARED TO BE VERY UPSET. HE WAS, HE
4 HAD SOME BRUISES TO HIS, THE SIDE OF HIS FOREHEAD,
5 I THINK HIS SHOULDER, AND ALSO HIS LEG.

6 Q. OKAY.

7 A. HE APPEARED TO BE VERY UPSET, NERVOUS AND SCARED.

8 Q. OKAY. WAS EMS CALLED TO RENDER HIM AID?

9 A. YES, MA'AM.

10 Q. OKAY. WAS THE HIGHWAY PATROL CALLED TO WORK THE
11 WRECK?

12 A. YES, MA'AM.

13 Q. OKAY. WAS ANYONE GIVEN A TICKET?

14 A. NO, MA'AM.

15 Q. OKAY. IF I CAN SHOW YOU -- DID YOU TAKE
16 PHOTOGRAPHS IN THIS CASE?

17 A. YES, MA'AM, I DID.

18 Q. AND IF I CAN SHOW YOU WHAT'S BEEN MARKED AS STATE'S
19 TWO, IF YOU COULD STEP DOWN ---

20 SOLICITOR AVINGER: YOUR HONOR, MAY
21 I USE THE PODIUM THING AGAIN?

22 THE COURT: ARE THESE THE SAME
23 PHOTOGRAPHS WE PREVIOUSLY DISCUSSED.

24 SOLICITOR AVINGER: YES, SIR.

25 THE COURT: MS. HINDS HAS SEEN THEM?

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 MS. HINDS: YES, SIR.

2 SOLICITOR AVINGER: I BEG THE
3 COURT'S INDULGENCE ONE MOMENT. ONE PHOTOGRAPH JUST CAME
4 OFF.

5 Q. WHO WAS PRESENT WITH YOU WHEN THESE PHOTOGRAPHS
6 WERE TAKEN?

7 A. LIEUTENANT KETCHERSIDE.

8 Q. IF I CAN SHOW YOU STATE'S A AND B, CAN YOU TELL THE
9 JURY WHAT THESE SHOW?

10 A. YES, MA'AM.

11 Q. TRY NOT TO BLOCK MY FORELADY.

12 A. THIS IS THE PHOTOGRAPH I TOOK OF THE VEHICLE THAT
13 HAD CONNECTED WITH THE UTILITY POLE RIGHT HERE.

14 Q. OKAY. WAS IT A -- IN YOUR OPINION FROM WHAT YOU SAW
15 THAT NIGHT WAS IT A PRETTY FORCEFUL ---

16 A. YES, MA'AM, IT HAD TO BE FROM THE PICTURES, IT
17 WOULD SHOW NO JUSTICE TO THE DAMAGE TO THE VEHICLE,
18 BUT IT HAD TO BE PRETTY FORCEFUL.

19 Q. OKAY. DID IT DAMAGE THE POLE, ITSELF?

20 A. IT DIDN'T -- IT PUT A DENT OR SOMETHING IN THE
21 POLE, BUT TO THE, TO THIS SIDE THERE'S A RESIDENCE,
22 MR. CHAPEL DAVIS'S RESIDENCE, ON THIS SIDE OF THE
23 POLE, AND IT PULLED THE METER BOX OFF FROM THE,
24 FROM THE RESIDENCE, ITSELF.

25 Q. OKAY. WHAT DOES PHOTOGRAPH C SHOW?

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1 A. PHOTOGRAPH C IS THE WALLET AND IDENTIFICATION THAT
2 WERE TAKEN FROM MR. MONTGOMERY'S POCKET, THAT HE
3 GAVE ME, THAT BELONGED TO THE VICTIM, TRAVIS GUESS.

4 Q. OKAY, WAS THIS GIVEN BACK TO TRAVIS GUESS THAT
5 - NIGHT?

6 A. YES, MA'AM, THIS ALONG WITH THE CASH THAT WAS IN
7 IT.

8 Q. OKAY. WHAT ABOUT PHOTOGRAPH D, WHAT, IF ANYTHING,
9 DOES THAT SHOW?

10 A. THIS IS THE MONEY THAT WAS IN MR. MONTGOMERY'S
11 POCKET, AND I PHOTOGRAPHED IT BEFORE I REMOVED THE
12 MONEY FROM HIS POCKET.

13 Q. OKAY. WELL, WHAT ABOUT, WHAT WAS DONE WITH THAT
14 MONEY?

15 A. THIS WAS TAKEN OUT AND WE PLACED IT -- BECAUSE
16 THERE WAS SOME KEYS AND OTHER ITEMS IN THE POCKET,
17 PLACED THEM ON THE HOOD OF THE CAR, PHOTOGRAPHED,
18 AND WE TOOK THIS INTO EVIDENCE.

19 Q. YOU TOOK THE MONEY INTO EVIDENCE?

20 A. YES, MA'AM.

21 Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S THREE, CAN
22 YOU RECOGNIZE THIS?

23 A. YES, MA'AM.

24 Q. AND WHAT IS THAT?

25 A. THIS IS THE MONEY THAT WAS TURNED OVER TO THE

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1 EVIDENCE CUSTODIAN KINSEY.

2 Q. OKAY. IS ---

3 A. IT HAS MY ---

4 Q. IS THAT YOUR WRITING?

5 A. YES, MA'AM.

6 Q. OKAY. AND ABOUT HOW MUCH MONEY WAS IT, DO YOU
7 RECALL?

8 A. IT WAS A HUNDRED AND THIRTY-NINE DOLLARS, I THINK,
9 AND THIRTY-SIX CENTS.

10 Q. OKAY. PHOTOGRAPH B ALSO SHOWS SOME KEYS, WERE
11 THESE KEYS IDENTIFIED AS BELONGING TO ANYONE?

12 A. YES, MA'AM, THEY WERE IDENTIFIED LATER BY THE
13 VICTIM, TRAVIS GUESS, HE STATED THAT THESE KEYS
14 BELONGED TO HIM.

15 Q. OKAY. AND WERE THEY GIVEN BACK TO HIM?

16 A. YES, MA'AM, THEY WERE GIVEN BACK THAT NIGHT.

17 Q. OKAY. THAT SAME EVENING DID YOU LOOK FOR, LOOK FOR
18 ANY OTHER EVIDENCE THERE AT THE SCENE?

19 A. YES, MA'AM, WE DID. AFTER TALKING WITH THE VICTIM,
20 HE TOLD US APPROXIMATELY WHERE HE JUMPED OUT OF THE
21 VEHICLE AT, SO WE WENT BACK TO THAT AREA AND
22 LOCATED THESE, HIS SHOES AND A PAIR OF EYE GLASSES
23 THAT HE ALSO SAID HE WAS MISSING. THEY WERE ALSO
24 IN THAT SAME AREA.

25 Q. OKAY. WHAT DOES PHOTOGRAPH I SHOW?

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 A. THIS IS THE PHOTOGRAPH THAT I TOOK WHEN I SAW MR.
2 MONTGOMERY THREW WHAT APPEARED TO BE A TOWEL, THAT
3 I LATER DISCOVERED TO BE A T-SHIRT. THIS IS THE
4 PHOTOGRAPH THAT I TOOK THAT NIGHT.

5 Q. IF I CAN SHOW YOU STATE'S FOUR, DOES THAT LOOK
6 FAMILIAR?

7 A. YES, MA'AM.

8 Q. CAN YOU ---

9 A. THIS IS THE T-SHIRT THAT WAS FOUND ON THE SIDE OF
10 THE HIGHWAY.

11 Q. AND WAS IT TURNED INTO EVIDENCE?

12 A. YES, MA'AM, IT WAS.

13 Q. AND WHO IS THE EVIDENCE CUSTODIAN FOR THE SHERIFF'S
14 DEPARTMENT?

15 A. SERGEANT KENNY KINSEY.

16 Q. OKAY. WHAT DOES PHOTOGRAPH J SHOW?

17 A. THIS PHOTOGRAPH IS, WHEN WE, WHEN I WENT BACK TO
18 THIS AREA, RIGHT DOWN FROM NEAR THIS WERE A NINE
19 MILLIMETER HAND GUN THAT WAS FOUND. IT WAS ALSO
20 LOADED, AND IT WAS IN THE SAME AREA OF THIS T-
21 SHIRT.

22 Q. IN PHOTOGRAPH I CAN YOU SEE BOTH ITEMS?

23 A. YES, MA'AM, YOU CAN SEE BOTH OF THEM RIGHT HERE,
24 THEY WERE CLOSE TOGETHER.

25 Q. WHAT WAS DONE WITH THE GUN?

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 A. THE GUN WAS ALSO TURNED OVER TO SERGEANT KENNY
2 KINSEY, THE EVIDENCE CUSTODIAN.

3 Q. IF I CAN SHOW YOU WHAT'S BEEN MARKED STATE'S FIVE
4 AND STATE'S SEVEN ----

5 COURT REPORTER: THAT SHOULD BE SIX.
6 LET ME CHANGE IT.

7 SOLICITOR AVINGER: THANK YOU.

8 Q. CAN YOU IDENTIFY THIS?

9 A. YES, MA'AM, THIS IS THE WEAPON THAT WAS FOUND THAT
10 NIGHT.

11 Q. OKAY. AND IT WAS TAKEN INTO EVIDENCE?

12 A. YES, MA'AM, IT WAS TAKEN INTO EVIDENCE AND TURNED
13 OVER TO SERGEANT KINSEY.

14 Q. OKAY. AND WAS THERE A MAGAZINE?

15 A. YES, MA'AM. AND THIS WAS ALSO TURNED OVER TO
16 SERGEANT KINSEY.

17 Q. OKAY. WHAT DOES PHOTOGRAPH K SHOW?

18 A. PHOTOGRAPH K -- I WENT BACK THE NEXT MORNING JUST
19 TO GET A CLEAR PICTURE, AND THIS IS THE UTILITY
20 POLE, ON THIS SIDE IS THE RESIDENCE OF MR. CHAPEL
21 DAVIS, AND ALSO A FENCED IN AREA SURROUNDING HIS
22 RESIDENCE.

23 Q. OKAY. SO, THE AREA BEHIND WHERE THE CAR WRECKED
24 IS A FENCED IN AREA?

25 A. YES, MA'AM, ON THE LEFT HAND SIDE IS A FENCED IN

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 AREA AND A RESIDENCE.

2 Q. OKAY. WHAT DOES PHOTOGRAPH L SHOW?

3 A. PHOTOGRAPH L IS JUST A DIFFERENT VIEW OF THAT AREA
4 THAT I TOOK, AND THIS AREA OVER HERE IS WHERE THE
5 EVIDENCE WAS FOUND, THE T-SHIRT, AND ALSO THE
6 WEAPON, AND ALSO RIGHT HERE IS WHERE MR., THE
7 VICTIM JUMPED OUT OF THE VEHICLE, BUT RIGHT HERE
8 IS THE ACCIDENT SCENE AND WHERE I PULLED UP WHEN
9 I CAME ---

10 Q. OKAY.

11 A. --- RIGHT BEHIND HIS VEHICLE.

12 Q. IS THE TELEPHONE POLE IN THAT PICTURE, ON THE SIDE?

13 A. YES, MA'AM, RIGHT HERE.

14 Q. OKAY.

15 SOLICITOR AVINGER: I BEG THE
16 COURT'S INDULGENCE.

17 Q. COULD YOU PUT AN X WHERE THIRTEEN AND FOURTEEN WERE
18 FOUND?

19 A. (Witness marks on exhibit.)

20 Q. DO YOU RECALL WHERE F AND G AND H WERE?

21 A. YES, MA'AM, THEY WERE RIGHT HERE.

22 Q. OKAY. AND WHICH WAY WOULD BE THE MCFARLAND'S
23 RESIDENCE, WHERE THE VICTIM RAN?

24 A. IT WOULD BE DIRECTLY ACROSS.

25 Q. OKAY.

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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- 1 A. IN BETWEEN THESE TWO, THESE TWO TRAILERS.
- 2 A. OKAY. WOULD PICTURE M MAYBE SHOW IT BETTER, M AND
- 3 N?
- 4 A. YES, MA'AM. THIS IS ALSO ANOTHER VIEW OF THAT, BUT
- 5 THIS SHOWS IT A LITTLE BETTER. THIS IS THE TRAILER
- 6 RIGHT HERE WHERE THE MCFARLANDS LIVE, AND RIGHT UP
- 7 IN HERE IS WHERE THE, THE SHOES AND THE GLASSES
- 8 WERE FOUND, RIGHT HERE, AND HE RAN DIRECTLY ACROSS
- 9 TO THE MCFARLANDS.
- 10 Q. OKAY. HOW FAR IS IT -- IT'S REALLY HARD TO JUDGE
- 11 ON THE PICTURES -- HOW FAR IS IT FROM WHERE THIS
- 12 UTILITY POLE IS TO WHERE THE GUN AND THE T-SHIRT
- 13 WERE THROWN?
- 14 A. IT'S A SHORT DISTANCE, PROBABLY TWENTY OR TWENTY-
- 15 FIVE FEET FROM THIS.
- 16 Q. OKAY. AND HOW FAR DID TRAVIS GUESS HAVE TO RUN
- 17 FROM THE INTERSECTION WHERE HE BAILED OUT?
- 18 A. FROM HERE TO THAT RESIDENCE IS PROBABLY ABOUT FORTY
- 19 TO FIFTY YARDS.
- 20 Q. OKAY. I THINK YOU CAN HAVE A SEAT -- WELL, WHILE
- 21 YOU'RE UP WE'LL GO AHEAD AND DO STATE'S ONE. THESE
- 22 PHOTOGRAPHS YOU TOOK AS WELL?
- 23 A. YES, MA'AM.
- 24 Q. ARE A, B AND C SOME OF THE INJURIES YOU DOCUMENTED?
- 25 A. YES, MA'AM.

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1 Q. IS THAT HOW HE LOOKED THAT NIGHT?

2 A. YES, MA'AM, THESE ARE THE INJURIES TO HIS FOREHEAD,
3 HIS SHOULDER AND HIS LEG.

4 Q. OKAY.

5 A. YES, MA'AM.

6 Q. PHOTOGRAPHS E, F AND G WERE TAKEN THAT NIGHT?

7 A. YES, MA'AM. THIS IS THE ORIGINAL -- THE INCIDENT,
8 MR. -- THE VICTIM'S RESIDENCE, WE WENT BACK AFTER,
9 AFTER WE PROCESSED THE SCENE AT PINELAND AND LODGE
10 HALL, WE WENT BACK TO THIS RESIDENCE AND TOOK THESE
11 PHOTOGRAPHS.

12 Q. OKAY. PICTURE D, WAS IT THAT NIGHT OR THE NEXT
13 DAY?

14 A. THAT'S THE NEXT DAY.

15 Q. OKAY.

16 A. YES, MA'AM.

17 Q. WERE E, F AND G DONE THAT NIGHT?

18 A. YES, MA'AM, THESE WERE DONE ALL THAT NIGHT.

19 Q. OKAY. AND WHAT DID PHOTOGRAPH G APPEAR TO YOU TO
20 BE?

21 A. WE WENT BACK AND HE GAVE US THE APPROXIMATE AREA
22 THAT THE SHOT WAS FIRED IN, AND WE WENT BACK AND
23 SEARCHED THAT AREA, AND THIS APPEARED TO BE A
24 BULLET HOLE INTO THE GROUND.

25 Q. WERE YOU ABLE TO LOCATE ANY SHELL CASINGS OR

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 ANYTHING OF THAT NATURE?

2 A. NO, MA'AM.

3 Q. THAT'S ALL WITH THIS DOCUMENT.

4 THE COURT: OF COURSE, YOU MAY
5 PUBLISH AT THIS TIME, THEY WILL BE WITH THE JURY DURING
6 THE DELIBERATIONS IN THE JURY ROOM.

7 Q. AS FAR AS THE GUN ITSELF, WHEN IT WAS LOGGED INTO
8 EVIDENCE, DID YOU REQUEST THAT ANY TESTING BE DONE?

9 A. YES, MA'AM.

10 Q. WHAT DID YOU ASK TO BE DONE?

11 A. WE REQUESTED TO SEE IF WE COULD OBTAIN SOME FINGER
12 PRINTS FROM THE WEAPON.

13 Q. DID YOU TALK TO TRAVIS GUESS IMMEDIATELY WHEN HE
14 CAME UP, OR WHAT WERE YOU DOING?

15 A. AT THAT -- YES, MA'AM, I SPOKE WITH HIM BRIEFLY
16 WHEN HE CAME UP.

17 Q. OKAY. AND WHAT WAS THE FIRST THING HE INDICATED
18 TO YOU?

19 A. THAT HE HAD TO JUMP OUT OF HIS VEHICLE, AND THAT
20 HE, HE WAS HELD BY, BY, AT GUN POINT.

21 Q. AND DID HE IDENTIFY IN YOUR PRESENCE RUSSELL
22 MONTGOMERY AS THE ONE WHO KIDNAPPED HIM AND ROBBED
23 HIM AT GUN POINT?

24 A. YES, MA'AM, HE DID.

25 Q. OKAY. AND WAS THIS DONE, I MEAN, HOW LONG WAS IT

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1 BEFORE HE IDENTIFIED HIM?

2 A. IT WASN'T LONG, HE CAME UP AND, LIKE I SAID, HE
3 APPEARED TO BE VERY UPSET AND, LIKE I SAID, I ASKED
4 HIM THAT, AND THEN HE, RIGHT AFTER, HE IDENTIFIED
5 HIM AS BEING -- RUSSELL MONTGOMERY AS BEING THE
6 SUSPECT.

7 Q. HAD YOU ALREADY BEEN GIVEN THE WALLET BY RUSSELL
8 MONTGOMERY?

9 A. YES, MA'AM.

10 SOLICITOR AVINGER: I BEG THE
11 COURT'S INDULGENCE.

12 Q. JUST TO CLARIFY, WHERE WERE THE KEYS THAT WERE
13 GIVEN BACK TO TRAVIS GUESS, WHERE WERE THEY
14 LOCATED?

15 A. IN RUSSELL'S POCKET WITH THE MONEY.

16 Q. WITH THE LOOSE MONEY?

17 A. YES, MA'AM.

18 SOLICITOR AVINGER: PLEASE ANSWER
19 MS. HINDS'S QUESTIONS.

20 THE COURT: THE JURY'S BEEN OUT
21 ABOUT AN HOUR AND A HALF, LET'S TAKE A VERY SHORT BREAK
22 PRIOR TO CROSS-EXAMINATION. I'M GOING TO LET YOU GO TO
23 YOUR JURY ROOM AND RELAX JUST A MINUTE.

24 MADAM FOREMAN, WHEN THE JURY IS
25 READY TO COME BACK PLEASE LET THE BAILIFF KNOW, WE'LL

DIRECT - LEROY RAVENELL BY SOL. AVINGER

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1 BE READY WHEN YOU ARE.

2 FORELADY OF THE JURY: OKAY, ARE WE
3 TAKING THESE NOW?

4 THE COURT: NO, MA'AM, NOT AT THIS
5 TIME, YOU'LL HAVE THEM AT THE END OF THE CASE. THANK
6 YOU.

7 (Whereupon, the jury retires
8 to the jury room.)

9 THE COURT: NOW, LET'S TAKE A VERY
10 SHORT BREAK.

11 (Recess)

12 THE COURT: ARE WE READY?

13 SOLICITOR AVINGER: YES, YOUR HONOR.

14 MS. HINDS: YES, SIR.

15 THE COURT: ALRIGHT, BRING THE JURY
16 BACK IN.

17 (Whereupon, the jury
18 returns to the courtroom.)

19 THE COURT: I REMIND YOU, YOU'RE
20 STILL UNDER OATH.

21 YOU MAY HAVE THE CROSS-EXAMINATION.

22 MS. HINDS: THANK YOU, YOUR HONOR.

23 (NOTE: Blank lines on this page do not indicate any
24 part of record has been omitted.)

CROSS - LEROY RAVENELL BY MS. HINDS

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CROSS-EXAMINATION OF LEROY RAVENELLBY MS. HINDS:

Q. OFFICER RAVENELL, YOU'RE FAMILIAR WITH THE AREA WHERE THIS ACCIDENT HAPPENED, IS THAT CORRECT?

A. YES, MA'AM.

Q. OKAY. DO YOU OFTEN PATROL IN THAT AREA?

A. WHENEVER I HAVE A CHANCE, YES, MA'AM.

Q. OKAY. I BELIEVE YOU SAID YOU WEREN'T ON DUTY THAT NIGHT, AND YOU JUST HAPPENED TO BE IN THE AREA?

A. CORRECT.

Q. OKAY. DO YOU LIVE NEARBY?

A. APPROXIMATELY TEN MILES.

Q. OKAY. AND ON THAT PARTICULAR NIGHT JUST HAPPENED TO BE IN THAT AREA?

A. YES, MA'AM.

Q. OKAY. AND YOU DO PATROL THAT AREA REGULARLY, THOUGH. HAVE THERE BEEN CALLS OUT THERE BEFORE?

A. THERE'S BEEN SOME CALLS OUT THERE, I DON'T PATROL IT REGULARLY BECAUSE I'M NOT ON THE ROAD, A PATROL OFFICER. EVERY CHANCE THE OFFICERS GET THEY GO THROUGH THAT AREA JUST LIKE ANY OTHER AREA.

Q. OKAY. TO YOUR KNOWLEDGE HAVE THERE BEEN DRUG COMPLAINTS ABOUT THAT AREA?

A. YES, MA'AM, I BELIEVE SO.

Q. OKAY. AND AS YOU STATED, YOU JUST HAPPENED TO BE

CROSS - LEROY RAVENELL BY MS. HINDS

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1 IN THE AREA AND NOTICED THE ACCIDENT, IS THAT
2 CORRECT?

3 A. YES, MA'AM.

4 Q. OKAY. SO, COULD YOU TELL -- WAS THERE ANY WAY OF
5 TELLING HOW LONG BEFORE YOU GOT THERE THE ACCIDENT
6 HAD TAKEN PLACE?

7 A. IT APPEARED IT HAD JUST OCCURRED TO ME, FROM THE
8 STEAM AND -- FROM THE VEHICLE IT APPEARED THAT IT
9 HAD JUST OCCURRED.

10 Q. AND THE CAR WAS IN CONTACT WITH THE POLE AT THAT
11 TIME, CORRECT?

12 A. YES, MA'AM.

13 Q. AND I THINK YOUR TESTIMONY WAS THAT IT WAS A PRETTY
14 GOOD IMPACT?

15 A. YES, MA'AM.

16 Q. OKAY. OR, I THINK YOUR EXACT WORDS WERE FORCEFUL,
17 IS THAT CORRECT?

18 A. YES, MA'AM.

19 Q. AND THE PICTURE WHICH SHOWED THAT THE FRONT OF THE
20 CAR WAS DENTED IN PRETTY GOOD, DID IT LOOK PRETTY
21 MUCH LIKE THIS PICTURE?

22 A. YES, MA'AM.

23 Q. WERE THERE ANY ESTIMATES DONE ABOUT HOW FAST THE
24 CAR WAS GOING?

25 A. I DIDN'T DO ANY, I DON'T KNOW IF HIGHWAY PATROL DID

CROSS - LEROY RAVENELL BY MS. HINDS

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1 OR NOT.

2 Q. OKAY. WHEN YOU CAME UPON THE ACCIDENT, THERE WAS
3 NOBODY IN THE CAR, CORRECT?

4 A. NO, MA'AM, NO ONE WAS IN THE CAR.

5 Q. THE CAR WAS COMPLETELY ABANDONED AT THAT POINT?

6 A. THERE WAS NO ONE IN THE CAR BUT THE ONLY ONE, MR.
7 MONTGOMERY WAS NEAR THE CAR.

8 Q. OKAY. AND HE WAS ABOUT HOW FAR AWAY?

9 A. HE WAS NEAR THE PASSENGER SIDE DOOR.

10 Q. OKAY. ABOUT HOW FAR AWAY FROM THE PASSENGER SIDE
11 DOOR?

12 A. IF HE HAD REACHED OUT HE COULD HAVE TOUCHED THE
13 CAR, HE WAS NEAR THE CAR.

14 Q. OKAY. AND THERE ARE TWO PASSENGER SIDE DOORS, WAS
15 HE CLOSER TO THE ONE THAN TO THE OTHER?

16 A. NOT THAT I CAN RECALL.

17 Q. AND HE WAS WALKING AWAY, IS THAT YOUR TESTIMONY?

18 A. YES, MA'AM.

19 Q. WAS HE IN ANY PARTICULAR HURRY?

20 A. NO, MA'AM.

21 Q. OKAY. YOU DIDN'T ACTUALLY SEE HIM GET OUT OF THE
22 CAR, IS THAT CORRECT?

23 A. NO, MA'AM.

24 Q. SO, BY THE TIME YOU GOT THERE HE WAS ALREADY OUT,
25 SUPPOSEDLY, AND TO THE SIDE OF THE CAR?

CROSS - LEROY RAVENELL BY MS. HINDS

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1 A. RIGHT, YES, MA'AM.

2 Q. AND I BELIEVE AT THAT POINT YOU TRIED TO GET HIS
3 ATTENTION, IS THAT CORRECT?

4 A. YES, MA'AM.

5 Q. AND YOU CALLED OUT TO HIM?

6 A. RIGHT.

7 Q. AND HE ACKNOWLEDGED YOU?

8 A. NO, MA'AM.

9 Q. DID HE AT SOME POINT ACKNOWLEDGE YOU AND WALK BACK
10 TOWARDS YOU?

11 A. YES, MA'AM, AS HE WALKED AWAY FROM THE VEHICLE, HE
12 WALKED -- HE DIDN'T COME IN MY DIRECTION, HE WENT
13 KIND OF LIKE AROUND TO THE OTHER SIDE OF THE ROAD,
14 HE TOSSED A, WHAT APPEARED TO BE A TOWEL, I LATER
15 DISCOVERED IT TO BE A T-SHIRT, TOSSED IT ON THE
16 GROUND, AND AT THAT POINT I ASKED HIM, I THINK I
17 ASKED HIM IF HE WAS IN THE VEHICLE OR KNEW WHO WAS
18 IN THE VEHICLE, THEN HE CAME IN MY DIRECTION.

19 Q. OKAY. YOU DIDN'T ORDER HIM TO COME BACK TO YOU?

20 A. NO, MA'AM, AT THAT POINT HE WAS SOMEONE THAT HAD
21 JUST BEEN IN AN ACCIDENT TO ME, I HAD NO REASON TO
22 ORDER HIM TO COME BACK.

23 Q. OKAY. AND YOU SAID HE, HE TOSSED WHAT APPEARED TO
24 BE THE T-SHIRT ON THE GROUND, IS THAT CORRECT?

25 A. YES, MA'AM, THAT'S CORRECT.

CROSS - LEROY RAVENELL BY MS. HINDS

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1 Q. WAS HE IN YOUR LINE OF SIGHT PRETTY MUCH THE WHOLE
2 TIME, FROM WHEN YOU GOT THERE?

3 A. I HAD THE VISUAL OF HIM, YES, MA'AM.

4 Q. AND YOU DID SEE HIM TOSS THE T-SHIRT?

5 A. YES, MA'AM, I DID.

6 Q. OKAY. AND HE DID TELL YOU WHERE MR. GUESS WENT,
7 IS THAT CORRECT? DID HE NOT TELL YOU THAT HE WENT
8 TO THE TRAILER PARK?

9 A. AFTER I ASKED HIM, I THINK I ASKED HIM ONE TIME,
10 HE DIDN'T RESPOND, HE DIDN'T RESPONDS OR SAID HE
11 DIDN'T KNOW. THEN HE DID SAY THAT THE FELLOW RAN
12 INTO THE TRAILER PARK. HE SAID THE FELLOW HAD GOT
13 OUT OF THE VEHICLE AND RAN INTO THE TRAILER PARK.

14 Q. AND AT THAT POINT YOUR TESTIMONY WAS HE GAVE YOU
15 THE WALLET?

16 A. YES, MA'AM, HE DID.

17 Q. OKAY. AND DID HE SAY ANYTHING ELSE WHEN HE GAVE
18 YOU THE WALLET, DID HE MAKE ANY OTHER STATEMENTS?

19 A. HE SAID, THIS IS THE FELLOW THAT RAN INTO THE
20 TRAILER PARK.

21 Q. OKAY. AND DID YOU ASK MR. MONTGOMERY TO IDENTIFY
22 HIMSELF?

23 A. YES, MA'AM.

24 Q. AND DID HE GIVE YOU HIS CORRECT NAME?

25 A. YES, MA'AM, HE DID.

CROSS - LEROY RAVENELL BY MS. HINDS

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1 Q. OKAY. I BELIEVE AT THAT POINT YOU ASKED HIM IF HE
2 HAD ANY WEAPONS ON HIM, IS THAT CORRECT?

3 A. YES, MA'AM.

4 Q. OKAY. AND HE ANSWERED, NO, IS THAT CORRECT?

5 A. RIGHT.

6 Q. YOU DIDN'T FIND ANYTHING ON HIM, DID YOU?

7 A. NO, MA'AM, I DID A PAT DOWN SEARCH AND I DIDN'T
8 FIND ANY WEAPONS.

9 Q. OKAY. ABOUT HOW LONG WERE YOU WITH MR. MONTGOMERY
10 BEFORE MR. GUESS CAME UPON THE SCENE.

11 A. DURING THE WHOLE TIME IT PROBABLY WAS ABOUT,
12 PROBABLY TEN, TEN MINUTES, I GUESS, I'M NOT SURE,
13 APPROXIMATELY.

14 Q. TEN MINUTES FROM THE TIME YOU ARRIVED AND ---

15 A. APPROXIMATELY, APPROXIMATELY TEN MINUTES.

16 Q. OKAY. WHEN MR. GUESS ARRIVED ON THE SCENE, AT THAT
17 POINT DID MR. MONTGOMERY ATTEMPT TO RUN?

18 A. NO, MA'AM.

19 Q. DID HE ATTEMPT TO LEAVE THE SCENE IN ANY WAY?

20 A. NO, MA'AM.

21 Q. HE STAYED RIGHT THERE, IS THAT CORRECT?

22 A. YES, MA'AM, HE DID.

23 Q. DID YOU DO ANOTHER SEARCH OF HIM AT THAT POINT?
24 INITIALLY YOU SAID YOU DID A PAT DOWN SEARCH --

25 A. RIGHT.

CROSS - LEROY RAVENELL BY MS. HINDS

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1 Q. --- AND THERE WAS NO WEAPONS, IS THAT CORRECT?

2 A. RIGHT, YES, MA'AM.

3 Q. ALRIGHT. DID YOU SEARCH HIM AT THAT POINT?

4 A. YES, MA'AM, LATER HE WAS SEARCHED AND AT THAT POINT
5 -- IN THE BEGINNING HE WAS JUST BEING DETAINED.
6 LATER, BEFORE HE WAS ACTUALLY PLACED UNDER ARREST
7 WE SEARCHED HIM AGAIN.

8 Q. OKAY. AND I BELIEVE YOU SAID THAT YOU FOUND SOME
9 MONEY ON HIM?

10 A. YES, MA'AM.

11 Q. AND IT WAS ABOUT A HUNDRED AND THIRTY-NINE DOLLARS
12 AND CHANGE?

13 A. YES, MA'AM.

14 Q. OKAY. AND THAT SUM OF MONEY WAS PLACED INTO
15 EVIDENCE, CORRECT?

16 A. YES, MA'AM.

17 Q. OKAY. IN ADDITION, IT WAS PHOTOGRAPHS, WASN'T IT?

18 A. RIGHT. IT WAS PHOTOGRAPHED BEFORE I TOOK IT OUT OF
19 HIS POCKET.

20 Q. I BELIEVE YOU ALSO SAID YOU TOOK SOME KEYS?

21 A. YES, MA'AM.

22 Q. OKAY. AND THE KEYS WERE PHOTOGRAPHED, AS WELL?

23 A. YES, MA'AM.

24 Q. OKAY. AND I BELIEVE YOUR TESTIMONY WAS THEY WERE
25 LATER RETURNED TO MR. GUESS?

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1 A. YES, MA'AM, THEY WERE.

2 Q. THAT WAS AFTER HE IDENTIFIED THEM AS HIS KEYS?

3 A. YES, MA'AM.

4 Q. OKAY. AT WHAT POINT DID YOU GIVE THE WALLET BACK
5 TO MR. GUESS?

6 A. AFTER THE WALLET WAS -- WE INVENTORIED EVERYTHING
7 IN THE WALLET, AND BECAUSE OF HIS ID AND
8 EVERYTHING, EVERYTHING IN THE WALLET AND THE MONEY
9 WAS RETURNED TO MR. GUESS.

10 Q. OKAY. IS THERE A REASON WHY YOU RETURNED THAT
11 MONEY AND NOT THE HUNDRED AND THIRTY-NINE DOLLARS?

12 A. YES, MA'AM, I DIDN'T WANT TO KEEP HIS DRIVER'S
13 LICENSE, I THINK HIS SOCIAL SECURITY CARD AND SOME
14 OTHER ID WAS IN THE WALLET.

15 Q. OKAY. IS THERE ANY PARTICULAR REASON WHY YOU
16 DIDN'T PHOTOGRAPH THAT MONEY THAT YOU RETURNED TO
17 HIM?

18 A. NO, MA'AM, NO PARTICULAR REASON.

19 Q. OKAY. EXCUSE ME. DID SOMEBODY AID YOU IN THE
20 INVENTORY?

21 A. LIEUTENANT KETCHERSIDE.

22 Q. OKAY. WAS SHE PRESENT WHEN YOU ACTUALLY COUNTED
23 THE MONEY?

24 A. I BELIEVE SHE WAS, YES, MA'AM.

25 Q. OKAY. AND FOR WHATEVER REASON, THAT MONEY WAS

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1 RETURNED TO HIM WITHOUT BEING PHOTOGRAPHED, WITHOUT
2 DOCUMENTED OTHER THAN TO SAY THAT IT WAS RETURNED
3 TO HIM, IS THAT CORRECT?

4 A. RIGHT, YES, MA'AM.

5 Q. AND IN YOUR REPORT DID YOU NOTE THE PRESENCE OF THE
6 MONEY IN THE WALLET?

7 A. I'M NOT SURE IF I DID OR NOT.

8 Q. WOULD YOU LIKE TO LOOK AT YOUR REPORT?

9 A. YES, MA'AM.

10 (Witness examines his report.)

11 Q. IS THERE ANY MENTION OF THE MONEY IN THE WALLET?

12 A. NO, MA'AM, THERE WAS NO MENTION OF THE MONEY OR THE
13 ITEMS.

14 Q. OKAY. AND THAT REPORT WAS WRITTEN ---

15 A. YES, MA'AM, THIS REPORT WAS JUST A BRIEF SUMMARY
16 OF WHAT HAPPENED THAT NIGHT, YES, MA'AM.

17 Q. OKAY. AND IT'S SEVERAL PAGES LONG, IS IT NOT?

18 A. YES, MA'AM.

19 Q. OKAY. AND YOU DID TAKE THE TIME TO PHOTOGRAPH THE
20 OTHER MONEY AND TAKE THAT INTO EVIDENCE, ---

21 A. RIGHT.

22 Q. --- BUT THAT MONEY WAS NOT PHOTOGRAPHED NOR
23 MENTIONED IN THE REPORT, IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. CAN YOU TELL ME WHEN -- I BELIEVE ON THAT REPORT

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1 THE INITIAL LOSS, ACCORDING TO MR. GUESS, WAS FIVE
2 HUNDRED DOLLARS, IS THAT CORRECT?

3 A. NO, MA'AM, THAT'S NOT IN MY REPORT.

4 Q. OKAY. IS IT YOUR UNDERSTANDING, THOUGH, THAT --

5 -

6 A. FROM MY UNDERSTANDING, THAT, I THINK THAT SHOULD
7 HAVE BEEN IN LIEUTENANT KETCHERSIDE'S REPORT.

8 Q. OKAY. THAT THE LOSS WAS APPROXIMATELY FIVE HUNDRED
9 DOLLARS?

10 A. APPROXIMATELY, FROM MY UNDERSTANDING, RIGHT.

11 Q. OKAY. AND -- OKAY, BUT THE INVENTORY OF THE WALLET
12 WAS NOT, NOT COMPLETED AND DOCUMENTED AS TO EXACTLY
13 HOW MUCH MONEY WAS IN THE WALLET, IS THAT CORRECT?

14 A. NOT IN MY REPORT.

15 Q. THANK YOU. ALRIGHT, YOU LOCATED THE HAND GUN
16 EXACTLY WHEN, ABOUT HOW LONG AFTER YOU GOT TO THE
17 SCENE?

18 A. IT WAS PROBABLY THIRTY -- FORTY-FIVE MINUTES LATER.

19 Q. OKAY. AND I BELIEVE YOUR TESTIMONY WAS THAT IT WAS
20 ON THE SIDE OF THE ROAD, IS THAT CORRECT?

21 A. YES, MA'AM.

22 Q. OKAY. AND IT WAS NOT WITH THE T-SHIRT, IS THAT
23 CORRECT?

24 A. IT WAS NEAR THE T-SHIRT.

25 Q. IT WAS NEAR, BUT NOT WITH THE T-SHIRT, IS THAT

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1 CORRECT?

2 A. IT WAS NEAR THE T-SHIRT.

3 Q. HOW CLOSE IS NEAR?

4 A. A COUPLE OF FEET AWAY.

5 Q. OKAY. AND YOU DID SEE MR. MONTGOMERY THROW THE T-
6 SHIRT DOWN, IS THAT CORRECT?

7 A. YES, MA'AM, HE KIND OF TOSSED THE T-SHIRT, YES,
8 MA'AM.

9 Q. OKAY. BUT YOU DID NOT SEE HIM TOSS ANY GUN AWAY,
10 DID YOU?

11 A. I COULDN'T SEE, I DIDN'T SEE THE GUN, BUT I -- NO,
12 MA'AM, I DIDN'T SEE IT, NO.

13 Q. AND I BELIEVE YOU SAID THAT THERE WAS, YOU DID SEND
14 IT TO BE FINGER PRINTED, IS THAT CORRECT?

15 A. YES, MA'AM.

16 Q. DO YOU KNOW THE RESULTS OF THAT?

17 A. I DON'T THINK ANYTHING WAS FOUND ON THE GUN.

18 Q. OKAY. SO, MR. MONTGOMERY'S FINGERPRINTS WERE NOT
19 FOUND ON THE GUN, IS THAT CORRECT?

20 A. FROM MY UNDERSTANDING, NO, MA'AM.

21 Q. AND DID YOU RESPOND TO THE, MR. GUESS'S TRAILER,
22 TO FURTHER RESEARCH THE INITIAL INCIDENT SCENE?

23 A. YES, MA'AM, WE DID.

24 Q. OKAY. AND WHEN YOU WENT THERE I BELIEVE YOU SAID
25 THAT YOU FOUND WHAT APPEARED TO BE A BULLET HOLE

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1 IN THE GROUND?

2 A. YES, MA'AM.

3 Q. OKAY. AND WOULD I BE CORRECT IN SAYING THERE WAS
4 ONLY ONE SUPPOSED BULLET HOLE?

5 A. THAT WE FOUND, YES, MA'AM.

6 Q. AND YOU WERE THERE ABOUT HOW, ABOUT WHAT TIME OR
7 HOW LONG AFTER THIS HAD ALL TAKEN PLACE?

8 A. THIS RESIDENCE WAS THE LAST PLACE THAT WE WENT TO
9 THAT NIGHT SO IT WAS -- AND WE SPENT SOME TIME
10 PROCESSING THE OTHER SCENE. IT COULD HAVE BEEN AN
11 HOUR THIRTY MINUTES, TWO HOURS LATER.

12 Q. BUT STILL WITHIN A RELATIVELY SHORT PERIOD OF TIME,
13 CORRECT?

14 A. YES, MA'AM.

15 Q. OKAY. AND YOUR TESTIMONY IS, IT APPEARED TO BE A
16 BULLET HOLE. IS THERE ANY WAY OF KNOWING WITH
17 CERTAINTY THAT IT WAS A BULLET HOLE?

18 A. NO, MA'AM.

19 Q. OKAY.

20 A. IT WAS JUST THE AREA THAT WE WERE SHOWN AND IT
21 APPEARED TO BE FRESHLY, A FRESH HOLE THAT PROTRUDED
22 THE GROUND, AND THAT'S WHY WE ASSUMED IT WAS A
23 BULLET HOLE.

24 Q. OKAY. AND FROM YOUR SPEAKING WITH MR. GUESS, THERE
25 WAS SUPPOSED TO HAVE BEEN AT LEAST TWO SHOTS FIRED,

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1 IS THAT CORRECT?

2 A. AT SOME POINT, YES, MA'AM.

3 Q. OKAY. BOTH OF THEM INTO THE GROUND?

4 A. YES, MA'AM.

5 Q. BUT YET, YOU ONLY FOUND ONE HOLE, IS THAT CORRECT?

6 A. CORRECT.

7 Q. ALRIGHT. AND YOU DIDN'T FIND ANY BULLETS THERE,
8 IS THAT CORRECT?

9 A. NO, MA'AM, WE DIDN'T.

10 Q. AND YOU DIDN'T FIND ANY OTHER INDICATIONS THAT A
11 GUN HAD BEEN FIRED THERE, IS THAT CORRECT?

12 A. NO, MA'AM.

13 Q. WHEN MR. MONTGOMERY WAS TAKEN INTO CUSTODY WERE
14 THERE ANY ATTEMPTS TO DO A GUN SHOT RESIDUE TEST
15 ON HIM?

16 A. NO, MA'AM. AT THAT POINT THERE, I FELT THAT THERE
17 WAS NO NEED TO CONDUCT THAT TEST BECAUSE ALL THE
18 EVIDENCE WAS FOUND AND HE WAS THE ONLY ONE THAT WAS
19 MENTIONED OF FIRING A WEAPON AT THAT POINT, SO
20 THERE WAS NO NEED TO CONDUCT THAT TEST.

21 Q. BUT HAD HE FIRED THAT GUN THERE'S A BIG CHANCE THAT
22 THERE WOULD HAVE BEEN RESIDUE ON HIS HANDS, IS THAT
23 CORRECT?

24 A. THAT'S POSSIBLE.

25 Q. AND IT COULD HAVE SHOWN POSITIVELY THAT HE EITHER

CROSS - LEROY RAVENELL BY MS. HINDS

200

1 DID OR HE DIDN'T DO IT?

2 A. IT'S POSSIBLE, YES, MA'AM.

3 Q. OKAY. BUT YOU DECIDED THAT IT DIDN'T NEED TO BE
4 DONE?

5 A. YES, MA'AM.

6 Q. OKAY. AGAIN, TO YOUR KNOWLEDGE DID ANYONE ELSE IN
7 THE AREA REPORT IN TO LAW ENFORCEMENT ABOUT SHOTS
8 BEING FIRED THAT NIGHT?

9 A. IF I REMEMBER CORRECTLY I THINK SOMEONE ELSE DID
10 CALL DISPATCH, BUT IT WAS SO MUCH GOING ON AT THAT
11 POINT, AND WE WERE ALREADY IN THE AREA, SO I DIDN'T
12 PAY MUCH ATTENTION TO THAT, OR WHERE IT WAS AT, BUT
13 I THINK SOMEONE DID CALL THE DISPATCH AND REPORT
14 SHOTS FIRED IN THE AREA.

15 Q. HAD YOU EVER HAD ANY DEALINGS WITH MR. GUESS BEFORE
16 THAT EVENING?

17 A. NO, MA'AM.

18 Q. OKAY. HAD YOU EVER SEEN HIM BEFORE?

19 A. I'M NOT SURE, I MAY HAVE SEEN HIM.

20 Q. BUT YOU DON'T KNOW HIM ---

21 A. NO.

22 Q. --- YOU DIDN'T KNOW HIM BEFORE THAT?

23 A. NO, MA'AM.

24 Q. AND YOU DON'T KNOW ANY OF HIS KIN?

25 A. I KNOW HIS GRAND MOTHER NOW, THAT'S HIS GRAND

CROSS - LEROY RAVENELL BY MS. HINDS

201

1 MOTHER THERE, YES, MA'AM.

2 Q. BUT THAT'S ONLY SINCE THE INCIDENT, IS THAT
3 CORRECT?

4 A. YES, MA'AM, RIGHT.

5 Q. BUT THAT'S THE ONLY KIN THAT YOU KNOW?

6 A. YES, MA'AM.

7 Q. WHEN -- WERE YOU PRESENT WHEN THE CIGAR BOX WAS
8 FOUND IN THE CAR?

9 A. YES, MA'AM.

10 Q. OKAY. AND CAN YOU REMIND US AGAIN OF WHAT WAS,
11 WHAT WERE THE CONTENTS OF THAT CIGAR BOX?

12 A. IT APPEARED TO BE, IT WAS A GREEN LEAFY TYPE
13 SUBSTANCE THAT APPEARED TO BE MARIJUANA.

14 Q. OKAY. AND WAS THERE ALSO SOMETHING ELSE?

15 A. YES, MA'AM, SOME WHITE ROCK TYPE SUBSTANCE THAT
16 APPEARED TO BE CRACK COCAINE.

17 Q. OKAY. TO YOUR KNOWLEDGE, WAS ANY, WERE ANY TESTS
18 CONDUCTED TO TRY TO GET FINGERPRINTS FROM THE BOX?

19 A. NO, MA'AM.

20 Q. WAS ANYONE CHARGED WITH THAT ILLEGAL SUBSTANCE?

21 A. NO, MA'AM.

22 Q. IN SOUTH CAROLINA IT IS ILLEGAL TO POSSESS
23 MARIJUANA, IS THAT CORRECT?

24 A. NO, MA'AM. YOU SAID IT'S LEGAL OR ---

25 Q. ILLEGAL?

CROSS - LEROY RAVENELL BY MS. HINDS

202

1 A. YES, MA'AM.

2 Q. EXCUSE ME. AND IN SOUTH CAROLINA, IT'S ILLEGAL TO
3 POSSESS CRACK COCAINE, IS THAT CORRECT?

4 A. YES, MA'AM.

5 Q. THAT, THOSE SUBSTANCES, EXCUSE ME, WERE FOUND IN
6 THAT VEHICLE, CORRECT?

7 A. YES, MA'AM.

8 Q. YET, NO ONE WAS CHARGED WITH THAT?

9 A. YES, MA'AM. AND I MADE THAT DECISION BECAUSE THE
10 ONLY ONE THAT I COULD PLACE TO THE CAR, AT THE CAR
11 AT THE TIME WOULD HAVE BEEN RUSSELL MONTGOMERY, AND
12 IF ANYBODY WOULD HAVE BEEN CHARGED IT WOULD HAVE
13 BEEN RUSSELL.

14 Q. AND YOU CHOSE NOT TO?

15 A. NOT TO BECAUSE WE HAD THE OTHER TWO CHARGES
16 ALREADY, AND TO QUESTION, OR EITHER, I GUESS, THE
17 BENEFIT OF THE DOUBT, I JUST DIDN'T CHARGE ANYONE.
18 I JUST DIDN'T CHARGE HIM, BUT HE WOULD HAVE BEEN
19 CHARGED BECAUSE HE, AT THAT POINT HE WAS THE ONLY
20 ONE AT OR NEAR THE VEHICLE WHEN I ARRIVED.

21 Q. BUT THAT WASN'T HIS VEHICLE, WAS IT?

22 A. I FOUND OUT LATER THAT IT WASN'T, NO, MA'AM.

23 Q. OKAY.

24 A. BUT HE TOOK POSSESSION OF THE VEHICLE.

25 Q. HOWEVER, THAT VEHICLE BELONGED TO MR. GUESS, DID

CROSS - LEROY RAVENELL BY MS. HINDS

203

1 IT NOT?

2 A. YES, MA'AM.

3 Q. OKAY. AND MR. GUESS -- YOU FOUND OUT SHORTLY
4 AFTER YOU ARRIVED ON THE SCENE THAT AT SOME POINT
5 MR. GUESS HAD BEEN IN THAT VEHICLE THAT EVENING,
6 CORRECT?

7 A. YES, MA'AM, AGAINST HIS WILL.

8 Q. OKAY. DID YOU ASK MR. GUESS IF THE DRUGS BELONGED
9 TO HIM?

10 A. YES, MA'AM.

11 Q. AND HE DENIED IT?

12 A. YES, MA'AM.

13 Q. AND YOU TOOK HIS WORD FOR IT?

14 A. WELL, I ASKED MR. GUESS AND I ALSO ASKED RUSSELL
15 MONTGOMERY, SO, LIKE I SAID, I MADE THE DECISION
16 NOT TO CHARGE, BECAUSE IF ANY CHARGES WOULD HAVE
17 BEEN LEVIED IT WOULD HAVE BEEN AGAINST RUSSELL
18 MONTGOMERY.

19 Q. SO, BASICALLY YOU DECIDED NOT TO CHARGE HIM OUT OF
20 THE GOODNESS OF YOUR HEART?

21 A. NOT TO CHARGE HIM OUT OF THE GOODNESS OF MY HEART?
22 NO, MA'AM, I THINK I USED GOOD JUDGEMENT NOT TO
23 CHARGE ANYONE AT THAT POINT, BECAUSE YOU SAID THE
24 VEHICLE BELONGED TO MR. GUESS, BUT THE, MR.
25 MONTGOMERY TOOK POSSESSION OF MR. GUESS AND THE

1 VEHICLE. SO, IF ANYBODY WOULD HAVE BEEN CHARGED,
2 I STATE AGAIN, IT WOULD HAVE BEEN RUSSELL
3 MONTGOMERY.

4 Q. AND YOU SAY YOU'VE BEEN IN LAW ENFORCEMENT
5 SEVENTEEN YEARS?

6 A. YES, MA'AM.

7 Q. OKAY. AND BASICALLY, I THINK YOUR TESTIMONY, AND
8 CORRECT ME IF I'M WRONG, IS THAT YOU WEREN'T A
9 HUNDRED PER CENT SURE WHO THE DRUGS BELONGED TO,
10 IS THAT CORRECT?

11 A. THAT'S CORRECT.

12 Q. OKAY. SO, IN YOUR JUDGEMENT YOU DECIDED NOT TO
13 CHARGE ANYONE?

14 A. THAT'S CORRECT.

15 Q. WOULD YOU SAY, IN NORMAL POLICE PROCEDURE, THAT
16 THAT IS, IS THAT SOMETHING THAT HAPPENS ON A
17 FREQUENT BASIS, THAT NO ONE IS CHARGED WITH THE
18 DRUGS?

19 A. AT TIMES, YES, MA'AM.

20 Q. AT TIMES?

21 A. YES, MA'AM.

22 Q. ISN'T IT ---

23 A. THIS IS, THIS IS ---

24 Q. ISN'T IT MORE ---

25 SOLICITOR AVINGER: OBJECTION.

CROSS - LEROY RAVENELL BY MS. HINDS

205

1 THE COURT: WAIT A MINUTE, WAIT A
2 MINUTE, LET HIM FINISH.

3 A. THIS IS A DIFFERENT SITUATION, IT'S NOT EVERY DAY
4 THAT WE COME ACROSS SOMEBODY THAT'S BEEN KIDNAPPED
5 AND HAD TO REALLY JUMP OUT OF THEIR VEHICLE. SO,
6 I MEAN, AT THAT POINT I SAW THAT MR. GUESS DIDN'T
7 KNOW, REALLY, WHAT WAS IN HIS VEHICLE, HERE AGAIN,
8 NOT KNOWING, SO I MADE THE DECISION NOT TO CHARGE
9 ANYONE WITH THAT CHARGE.

10 Q. AND SO, BASICALLY, THE ONLY REASON THAT YOU DIDN'T
11 CHARGE HIM WAS, YOU WERE GIVING MR. MONTGOMERY THE
12 BENEFIT OF THE DOUBT, IS THAT CORRECT?

13 A. YES, MA'AM.

14 Q. AND THAT WAS BECAUSE YOU HAD COME UPON WHAT YOU
15 PERCEIVED TO BE AN ARMED ROBBERY-KIDNAPPING
16 SITUATION AND YOU WERE GIVING MR. MONTGOMERY THE
17 BENEFIT OF THE DOUBT, IS THAT CORRECT?

18 A. YES, MA'AM.

19 Q. AND THIS IS ALL BASED UPON THE STORY THAT MR. GUESS
20 TOLD YOU, IS THAT CORRECT?

21 A. THIS IS BASED UPON WHAT I SEEN, WHAT I SAW WHEN I
22 ARRIVED AT THE INCIDENT SCENE, AND ALSO AFTER
23 TALKING WITH MR. GUESS AND MR. MONTGOMERY.

24 MS. HINDS: ONE MOMENT. NO FURTHER
25 QUESTIONS.

1 SOLICITOR AVINGER: BRIEFLY, YOUR
2 HONOR.

3 THE COURT: GO AHEAD.

4 (NOTE: Blank lines on this page do not indicate any
5 part of record has been omitted. Headers on testimony
6 pages and hard page breaks between testimony are now
7 required by the Court. See next ensuing page for
8 sequential continuation of record.)

REDIRECT - LEROY RAVENELL BY SOL. AVINGER

207

REDIRECT EXAMINATION OF LEROY RAVENELL

BY SOLICITOR AVINGER:

Q. MS. HINDS WAS ASKING YOU ABOUT DRUG COMPLAINTS DOWN THERE IN VANCE. ARE YOU AWARE OF ANY DRUG COMPLAINTS FROM TRAVIS GUESS'S HOME?

A. NO, MA'AM.

Q. HAD YOU HAD ANY CONTACT THAT YOU KNOW OF WITH TRAVIS GUESS IN THE PAST?

A. NO, MA'AM. AND TO ANSWER THAT, WE HAVE DRUG COMPLAINTS ALL OVER ORANGEBURG COUNTY, SO IT'S NO MORE THAN ANYWHERE ELSE, BUT WE HAVE HAD COMPLAINTS IN THE AREA.

Q. OKAY. BUT NOTHING SPECIFIC TO TRAVIS GUESS'S HOME?

A. NO, MA'AM.

Q. AS FAR AS THE TESTIMONY ABOUT RUSSELL MONTGOMERY TOSSING HIS T-SHIRT, WAS THERE ANYTHING UNUSUAL ABOUT THE WAY HE TOSSED HIS T-SHIRT ON THE SIDE OF THE HIGHWAY?

A. YES, MA'AM. WHEN I TRIED TO GET HIM OVER TO WHERE I WAS AT, HE CAME, I MEAN, HE TURNED AROUND AND APPARENTLY, HE TRIED TO, I MEAN, HE TOSSED IT, LIKE THIS, QUICKLY, AND SO, IT WAS KIND OF SUSPICIOUS TO ME, YOU KNOW, THAT HE WOULD THROW A T-SHIRT DOWN, A TOWEL OR ANYTHING DOWN ON THE SIDE OF THE HIGHWAY, AND THEN COME WALKING BACK IN MY

REDIRECT - LEROY RAVENELL BY SOL. AVINGER

208

1 DIRECTION.

2 Q. AND HOW FAR AWAY WAS THE GUN TO THE T-SHIRT?

3 A. IT WAS ONLY A COUPLE OF FEET AWAY FROM THE T-SHIRT.

4 SOLICITOR AVINGER: THAT'S I HAVE,
5 YOUR HONOR.

6 MS. HINDS: YOUR HONOR, JUST
7 BRIEFLY.

8 (NOTE: Blank lines on this page do not indicate any
9 part of record has been omitted. Headers on testimony
10 pages and hard page breaks between testimony are now
11 required by the Court. See next ensuing page for
12 sequential continuation of record.)

RECROSS - LEROY RAVENELL BY MS. HINDS

209

RECROSS-EXAMINATION OF LEROY RAVENELLBY MS. HINDS:

Q. AND YOU COULD SEE HIM VERY CLEARLY TOSS THE T-SHIRT DOWN, QUICKLY?

A. IT WAS DARK, IT WAS ELEVEN O'CLOCK AT NIGHT, AND IT WAS A WHITE T-SHIRT, YES, MA'AM.

Q. OKAY. BUT YOU DIDN'T SEE HIM TOSS THE GUN, DID YOU?

A. I SAW HIM TOSS THE WHITE, WHAT I THOUGHT TO BE A TOWEL OR A T-SHIRT DOWN.

Q. AND, BUT THAT'S ALL I'M ASKING YOU, ---

A. THAT'S ALL I COULD SEE.

Q. --- THAT'S ALL YOU SAW HIM TOSS DOWN?

A. THAT'S ALL I COULD SEE, YES, MA'AM.

Q. AND YOU THOUGHT THAT WAS VERY SUSPICIOUS?

A. YES, MA'AM.

Q. OKAY. IF IT WAS SO SUSPICIOUS WHY DIDN'T YOU GO OVER TO THAT AREA IMMEDIATELY?

A. WELL, AT THAT POINT I WAS BY MYSELF, ELEVEN O'CLOCK AT NIGHT, AND THINKING AT FIRST THAT IT WAS, SOMEONE WAS INVOLVED IN AN ACCIDENT. MY ATTENTION AT THAT POINT HAD TURNED TO, REALLY TO FIRST, TO ASSIST HIM, THEN WHEN HE STARTED ACTING SUSPICIOUS, THEN MY ATTENTION WAS TO STEER HIM UNTIL I COULD GET SOME BACK UP. AND WE, YOU KNOW, AFTER MY BACK

RECROSS - LEROY RAVENELL BY MS. HINDS

210

1 UP GOT THERE WE KEPT THAT AREA, THERE WAS NO ONE
2 IN THAT AREA AT ALL AFTER, AFTER HE CAME TO ME
3 THERE WAS NO ONE ELSE IN THAT AREA WHERE THE ITEMS
4 WERE FOUND.

5 Q. BUT THE BOTTOM LINE IS, YOU DID NOT SEE HIM TOSS
6 THE GUN?

7 A. I SAW HIM TOSS THE T-SHIRT.

8 Q. THE T-SHIRT ONLY.

9 MS. HINDS: NO FURTHER QUESTIONS.

10 THE COURT: YOU MAY COME DOWN.

11 SOLICITOR AVINGER: YOUR HONOR, WE'D
12 CALL SERGEANT KENNY KINSEY.

13 (Whereupon, the witness
14 enters the courtroom.)

15 CLERK: PLACE YOUR LEFT HAND ON THE
16 BIBLE AND RAISE YOUR RIGHT HAND.

17 SERGEANT KENNY KINSEY, BEING FIRST
18 DULY SWORN, TESTIFIES AS FOLLOWS:

19 CLERK: PLEASE HAVE A SEAT AND STATE
20 YOUR FULL NAME.

21 WITNESS: DETECTIVE SERGEANT KENNY
22 KINSEY.

23 (NOTE: Blank lines on this page do not indicate any
24 part of record has been omitted.)

DIRECT - KENNY KINSEY BY SOL. AVINGER

211

1 DIRECT EXAMINATION OF KENNY KINSEY

2 BY SOLICITOR AVINGER:

3 Q. SERGEANT KINSEY, WHERE ARE YOU EMPLOYED?

4 A. WITH THE ORANGEBURG COUNTY SHERIFF'S OFFICE.

5 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

6 A. APPROXIMATELY NINE YEARS.

7 Q. AND WHAT RANK ARE YOU AND WHAT ARE YOUR DUTIES?

8 A. I'M A DETECTIVE SERGEANT, MY MAIN DUTIES ARE
9 PROCESSING CRIME SCENES, FIRE SCENES, COLLECTION
10 AND PROCESSING OF EVIDENCE.

11 Q. DO YOU HAVE SPECIALIZED TRAINING AS FAR AS
12 PROCESSING A CRIME SCENE AND DUSTING FOR FINGER
13 PRINTS AND DOCUMENTING PHYSICAL EVIDENCE AND THINGS
14 OF THAT NATURE?

15 A. YES, MA'AM, I HAVE.

16 Q. HAVE YOU ATTENDED MANY SEMINARS, COURSES, AND HAD
17 TRAINING SESSIONS ON THE COLLECTION OF EVIDENCE?

18 A. YES, MA'AM, I HAVE.

19 Q. HAVE YOU TESTIFIED IN COURT BEFORE AS AN EXPERT IN
20 EVIDENCE GATHERING?

21 A. YES -- WELL, I WAS QUALIFIED ---

22 Q. FORENSICS?

23 A. --- BEFORE AS AN EXPERT IN FINGER PRINT COMPARISON
24 AND CLASSIFICATION.

25 Q. WERE YOU DID YOU RECEIVE ANY EVIDENCE IN THE CASE

DIRECT - KENNY KINSEY BY SOL. AVINGER

212

1 OF THE STATE OF SOUTH CAROLINA VERSUS RUSSELL
2 MONTGOMERY?

3 A. YES, MA'AM, I DID.

4 Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW YOUR
5 PAPERWORK IN REGARDS TO THAT CASE?

6 A. YES, MA'AM, I HAVE.

7 Q. AND DID YOU COLLECT THE EVIDENCE THAT WAS GIVEN TO
8 YOU AND BRING IT TO COURT WITH YOU HERE TODAY?

9 A. I IMPOUNDED THE EVIDENCE, AND I DID BRING IT TO
10 COURT TODAY.

11 Q. OKAY. AND WHAT EVIDENCE WAS GIVEN TO YOU TO PUT
12 INTO YOUR EVIDENCE PLACE AT THE SHERIFF'S
13 DEPARTMENT?

14 A. IT WAS A SEALED CLEAR PLASTIC BAG CONTAINING A
15 HUNDRED AND THIRTY-NINE DOLLARS AND AN ODD NUMBER
16 OF CHANGE, I CAN'T RECALL FROM MEMORY, A HIGH POINT
17 NINE MILLIMETER PISTOL, THAT PISTOL WAS CONTAINING
18 ONE MAGAZINE AND FOUR BULLETS, AND A T-SHIRT, A
19 WHITE T-SHIRT.

20 Q. IF I CAN SHOW YOU WHAT'S BEEN MARKED AS STATE'S
21 THREE, CAN YOU IDENTIFY THIS?

22 A. YES, I CAN. THIS IS THE MONEY.

23 Q. OKAY.

24 SOLICITOR AVINGER: YOUR HONOR, I'D
25 MOVE STATE'S THREE INTO EVIDENCE.

DIRECT - KENNY KINSEY BY SOL. AVINGER

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1 (State's Exhibit Three
2 marked and filed.)

3 Q. CAN YOU IDENTIFY STATE'S FOUR?

4 A. YES, MA'AM, THIS IS THE T-SHIRT.

5 SOLICITOR AVINGER: YOUR HONOR, I'D
6 MOVE STATE'S FOUR INTO EVIDENCE.

7 (State's Exhibit Four
8 marked and filed.)

9 Q. CAN YOU IDENTIFY STATE'S FIVE?

10 A. THIS IS THE NINE MILLIMETER PISTOL.

11 SOLICITOR AVINGER: YOUR HONOR, I'D
12 MOVE ---

13 Q. AND WHERE DID THIS GUN COME FROM, WHO DID YOU
14 RECEIVE IT FROM?

15 A. CAPTAIN RAVENELL IMPOUNDED IT IN THE EVIDENCE ROOM,
16 I'M THE EVIDENCE CUSTODIAN.

17 SOLICITOR AVINGER: I'D MOVE STATE'S
18 FIVE IN.

19 COURT REPORTER: STATE'S FIVE.
20 (State's Exhibit Five
21 marked and filed.)

22 Q. AND STATE'S SIX?

23 A. YES, MA'AM, THIS IS THE MAGAZINE AND THE FOUR
24 ROUNDS OF AMMUNITION.

25 SOLICITOR AVINGER: YOUR HONOR, I'D

DIRECT - KENNY KINSEY BY SOL. AVINGER

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1 MOVE STATE'S SIX INTO EVIDENCE, AS WELL.

2 COURT REPORTER: STATE'S SIX.

3 (State's Exhibit Six
4 marked and filed.)

5 Q. IN REGARDS TO THIS CASE, WERE YOU ASKED TO PERFORM
6 ANY TESTS ON STATE'S FIVE, WHICH IS THE NINE
7 MILLIMETER CHROME AND BLACK HAND GUN?

8 A. I WAS ASKED -- I WAS ASKED BY CAPTAIN RAVENELL TO
9 PROCESS THE HAND GUN FOR LATENT FINGER PRINTS.

10 Q. AND IS THIS IN GENERAL PROCESSING OF HAND GUNS FOR
11 FINGER PRINTS SOMETHING YOU'VE DONE NUMEROUS TIMES
12 IN THE PAST?

13 A. YES, MA'AM.

14 Q. AND AS YOU SAID BEFORE, YOU'VE RECEIVED, HAVE YOU
15 RECEIVED SPECIFIC TRAINING IN THIS AREA?

16 A. I HAVE.

17 Q. AND HAVE YOU BEEN QUALIFIED AS AN EXPERT BEFORE IN
18 FINGER PRINT ANALYSIS?

19 A. I HAVE.

20 SOLICITOR AVINGER: YOUR HONOR, I
21 OFFER HIM AS AN EXPERT IN FINGER PRINT ANALYSIS AND
22 FORENSIC EVIDENCE GATHERING.

23 MS. HINDS: NO OBJECTION, YOUR
24 HONOR.

25 THE COURT: I QUALIFY HIM AS AN

DIRECT - KENNY KINSEY BY SOL. AVINGER

215

1 EXPERT IN THOSE AREAS.

2 Q. AND DID YOU, IN FACT, PERFORM A TEST ON STATE'S
3 FIVE, WHICH IS THE NINE MILLIMETER HAND GUN?

4 A. YES, MA'AM, I DID, I PROCESSED THE HAND GUN, THE
5 MAGAZINE AND THE FOUR BULLETS.

6 Q. OKAY. AND DID YOU OBTAIN A RESULT?

7 A. YES, MA'AM, I DID.

8 Q. AND WHAT WAS THAT RESULT?

9 A. I OBTAINED A NEGATIVE RESULT FOR SUFFICIENT RIDGE
10 DETAIL.

11 Q. OKAY. IS THE SURPRISING OR NOT SURPRISING?

12 A. NO, MA'AM, IT'S NOT. AND DO YOU WANT ME TO EXPLAIN
13 WHAT THAT MEANS?

14 Q. I WOULD.

15 A. OKAY. RIDGES ARE THE LINES ON YOUR HANDS AND YOUR
16 FEET. WE AS HUMAN BEINGS ARE UNIQUE IN THAT WE
17 ARE THE ONLY ONES THAT HAVE THESE LINES. THEY'RE
18 FOR GRIPPING, THEY'RE VERY SMALL LINES, IF YOU
19 LOOK AT YOUR HANDS YOU CAN SEE THEM. WE HAVE THEM
20 ON OUR HANDS AND OUR FEET. WHEN WE TOUCH
21 SOMETHING, MOST OBJECTS, OR SOME OBJECTS RATHER,
22 THE FATTY OILS AND ACIDS ON YOUR FINGERS TRANSFER
23 TO THAT OBJECT, WHICH ADHERE TO IMPURITIES AND
24 DUST, THOSE KINDS OF THINGS, AND IT WILL LEAVE A
25 PRINT. AND I TESTED THESE ITEMS AND FOUND NO

DIRECT - KENNY KINSEY BY SOL. AVINGER

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1 SUFFICIENT PRINTS TO MAKE AN IDENTIFICATION.

2 SOLICITOR AVINGER: THAT'S ALL I'D
3 HAVE OF THIS WITNESS, YOUR HONOR.

4 (NOTE: Blank lines on this page do not indicate any
5 part of record has been omitted. Headers on testimony
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7 required by the Court. See next ensuing page for
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CROSS - KENNY KINSEY BY MS. HINDS

217

CROSS-EXAMINATION OF KENNY KINSEY

BY MS. HINDS:

Q. SO, BASICALLY, MR. MONTGOMERY'S PRINTS WERE NOT
FOUND ON THE GUN, IS THAT CORRECT?

A. NO, MA'AM, THEY WERE NOT.

Q. THEY WERE NOT FOUND ON THE MAGAZINE?

A. NO, MA'AM.

Q. AND THEY WERE NOT FOUND ON THE BULLETS?

A. NO, MA'AM.

MS. HINDS: THANK YOU.

THE COURT: ALRIGHT, SIR, YOU MAY
COME DOWN. THANK YOU.

ANY OTHER WITNESSES?

SOLICITOR AVINGER: NO, YOUR HONOR.
SUBJECT TO ME GETTING WITH THE COURT REPORTER AND GOING
THROUGH THE EXHIBITS, THE STATE RESTS.

THE COURT: THAT WOULD CONCLUDE THE
STATE'S CASE?

SOLICITOR AVINGER: YES, SIR.

THE COURT: I'M GOING TO LET YOU GO
TO YOUR JURY ROOM JUST A MOMENT, AND I'LL BE CALLING YOU
BACK VERY SHORTLY, MADAM FOREMAN.

(Whereupon, the following
takes place out of the
presence of the jury.)

1 THE COURT: YOU ATTORNEYS COME
2 FORWARD, PLEASE, AND LET ME TALK TO YOU.

3 (Whereupon, a bench conference
4 is held out of the hearing of
5 the jury and the court reporter.)

6 THE COURT: MS. HINDS.

7 MS. HINDS: YOUR HONOR, WE WOULD -
8 - AND I UNDERSTAND THAT SUBJECT TO HER DOUBLE CHECKING
9 HER EVIDENCE, BUT AS FAR AS IT BEING LOOSE ENDS, WE
10 WOULD MOVE AT THIS TIME FOR A DIRECTED VERDICT BASED ON
11 THE FACT THAT WE DO NOT BELIEVE THAT SUFFICIENT EVIDENCE
12 HAS BEEN PRESENTED BY THE STATE TO MEET THEIR BURDEN.

13 THE COURT: I WOULD RESPECTFULLY
14 DENY THAT MOTION. IF BELIEVED, THERE IS TESTIMONY, ONE,
15 THAT HE WAS POSITIVELY IDENTIFIED BY THE VICTIM; TWO,
16 THERE IS TESTIMONY SPECIFICALLY THAT HE WAS FOUND IN OR
17 NEAR THE CAR, TWO FEET AWAY; THREE, THERE WAS TESTIMONY
18 THAT WHOEVER DID THIS USED A MASK OR A T-SHIRT. THIS
19 INDIVIDUAL, IF BELIEVED, WAS SEEN THROWING AWAY A T-
20 SHIRT. IN ADDITION TO THAT THERE IS TESTIMONY THAT THE
21 ALLEGED WEAPON IN THIS EVENT, IF IT OCCURRED, WAS AT
22 THAT T-SHIRT, GIVING RISE TO INFERENCES THAT WHEN HE
23 THREW THE T-SHIRT HE THREW THE PISTOL. THESE, OF
24 COURSE, ARE ISSUES FOR THE JURY TO CONSIDER, AND I
25 THEREFORE, RESPECTFULLY DENY THAT MOTION.

219

1 MS. HINDS: YES, SIR.

2 THE COURT: NOW, I NEED TO KNOW, -

3 - HAVE THE DEFENDANT STAND.

4 (Whereupon, the defendant
5 stands.)

6 THE COURT: ARE YOU AT THIS POINT
7 WHERE HE CAN TELL ME WHETHER HE DESIRES TO TESTIFY OR
8 NOT?

9 MS. HINDS: YES, SIR.

10 (NOTE: Blank lines on this page do not indicate any
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EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT220

EXAMINATION, IN CAMERA, OF DEFENDANT MONTGOMERY

BY THE COURT:

Q. MR. DEFENDANT, THE STATE HAS NOW PRESENTED ITS
CASE. AS I HAVE CHARGED THE JURY, AND I WILL
CHARGE THE JURY, YOU ARE PRESUMED INNOCENT. YOU
DON'T HAVE TO PROVE A THING. NOW, AT THIS TIME THE
STATE -- THE DEFENSE WILL BEGIN PRESENTING ITS
DEFENSE. IN THAT YOU HAVE THE ABSOLUTE RIGHT TO
TESTIFY UNDER OATH, SUBJECT TO CROSS-EXAMINATION,
IF YOU CARE TO, DO YOU UNDERSTAND THAT?

A: YES, SIR.

Q. IN ADDITION TO THAT, AS I'VE INDICATED, YOU DON'T
HAVE TO PROVE A THING, YOU ARE PRESUMED INNOCENT.
YOU HAVE AN ABSOLUTE RIGHT TO REMAIN SILENT. DO
YOU UNDERSTAND THAT?

A. YES, SIR.

Q. IF YOU ELECT TO REMAIN SILENT I WILL CHARGE THE
JURY, AS A MATTER OF LAW, THAT YOU DON'T HAVE TO
TESTIFY, THE FACT THAT YOU DID NOT TESTIFY CANNOT,
MUST NOT BE USED AGAINST YOU IN ANY WAY. I WOULD
CHARGE THE JURY THAT THE FACT THAT YOU DID NOT
TESTIFY MUST NOT EVEN ENTER INTO THEIR
DELIBERATIONS IN THE JURY ROOM. DO YOU UNDERSTAND
THAT?

A. YES, SIR.

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT221

1 Q. HAVING SAID THAT, NOW, DO YOU UNDERSTAND YOUR
2 ABSOLUTE RIGHT TO TESTIFY?

3 A. YES, SIR.

4 Q. DO YOU UNDERSTAND YOUR ABSOLUTE RIGHT NOT TO
5 TESTIFY?

6 A. YES, SIR.

7 Q. OBVIOUSLY, IN A QUESTION OF THIS KIND YOU WOULD
8 CONSULT WITH YOUR ATTORNEY, BUT I TELL YOU THAT THE
9 ULTIMATE DECISION RESTS SOLELY WITH YOU. DO YOU
10 UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. DO YOU HAVE ANY QUESTIONS ABOUT WHAT I HAVE SAID
13 TO YOU?

14 A. NO, SIR.

15 Q. IS IT YOUR DESIRE TO TESTIFY OR NOT TO TESTIFY?

16 A. YES, SIR.

17 Q. SIR?

18 A. TO TESTIFY.

19 THE COURT: TO TESTIFY. WE WILL
20 CERTAINLY ACCEPT THAT. OKAY, THANK YOU, BE SEATED,
21 PLEASE.

22 I SEE NO REASON, IT'S JUST FIVE
23 O'CLOCK, CAN YOU TELL ME ROUGHLY HOW MANY WITNESSES
24 YOU'VE GOT? IF IT IMPAIRS YOUR DEFENSE DON'T SAY IT TO
25 ME, BUT I'M TRYING TO FIGURE CAN WE FINISH THE TESTIMONY

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT222

1 TONIGHT SO IN THE MORNING WE ARGUE AND CHARGE?

2 MS. HINDS: I BELIEVE WE CAN, SIR.

3 THE COURT: MA'AM?

4 MS. HINDS: I BELIEVE WE CAN.

5 THE COURT: ALRIGHT.

6 COURT REPORTER: DO YOU WANT TO GO
7 OVER THESE?

8 SOLICITOR AVINGER: IS EVERYTHING
9 IN?

10 COURT REPORTER: EVERYTHING, ONE
11 THROUGH SIX IS IN, THIS IS NOT.

12 SOLICITOR AVINGER: THAT'S RIGHT,
13 I WITHDREW IT. RIGHT. OKAY. THAT'S FINE.

14 WE PROBABLY NEED TO GO OVER THE
15 DEFENDANT'S RAP SHEET WHILE WE'RE HERE.

16 THE COURT: ALRIGHT.

17 SOLICITOR AVINGER: YOUR HONOR, I -
18 - IT'S THE STATE'S POSITION HE HAS SEVERAL DIFFERENT
19 CONVICTIONS THAT COULD BE USED.

20 THE COURT: WHAT ARE THEY?

21 SOLICITOR AVINGER: STRONG ARM
22 ROBBERY FROM JULY OF NINETY-THREE.

23 THE COURT: OUR COURTS HAVE HELD,
24 THAT'S INVOLVING A CASE RECENTLY, AND IT SAID IT
25 INVOLVES DISHONESTY AND IS ADMISSIBLE.

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT223

1 MS. HINDS: YOUR HONOR, FOR THE
2 RECORD, I WOULD JUST ARGUE THAT THE PREJUDICIAL EFFECT
3 CLEARLY OUTWEIGHS THE PROBATIVE VALUE.

4 THE COURT: YOU'VE READ THE RECENT
5 CASE ON THAT ISSUE WHERE IF IT INVOLVES A MATTER OF
6 DISHONESTY, IT'S ADMISSIBLE, PERIOD?

7 MS. HINDS: I UNDERSTAND THE COURT'S
8 RULING, OUR POSITION IS THAT ---

9 THE COURT: WELL, IT'S THE SUPREME
10 COURT'S DECISION THAT IF IT INVOLVES DISHONESTY YOU
11 DON'T HAVE THE NECESSITY OF WEIGHT.

12 SOLICITOR AVINGER: HE HAS ANOTHER
13 CON ---

14 THE COURT: WHAT ELSE?

15 SOLICITOR AVINGER: HE HAS ANOTHER
16 CONVICTION FROM JUNE OF NINETY-FIVE, FOR STRONG ARM
17 ROBBERY ---

18 THE COURT: SAME THING.

19 SOLICITOR AVINGER: --- AND
20 AGGRAVATED ASSAULT AND BATTERY -- ASSAULT AND BATTERY
21 OF A HIGH AND AGGRAVATED NATURE.

22 THE COURT: I WOULD NOT LET THE
23 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE COME
24 IN. ARE ALL OF THESE WITHIN THE TEN YEAR PERIOD?

25 SOLICITOR AVINGER: THE JULY

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT224

1 CONVICTION, TEN YEARS WOULD HAVE BEEN YESTERDAY, WHICH
2 WAS WHEN WE WERE SUPPOSED TO HAVE STARTED THE CASE, JULY
3 FOURTEENTH.

4 THE COURT: WELL, HE'S ---

5 SOLICITOR AVINGER: BUT ALSO, I KNOW
6 YOUR POSITION HE HAD HIS YOA REVOKED WITHIN THE TEN
7 YEARS ON THAT CHARGE.

8 THE COURT: WELL, THAT'S WHAT I -

9 -

10 SOLICITOR AVINGER: YES, SIR.

11 THE COURT: SO, HE ACTUALLY WAS,
12 PART OF THE SENTENCE WAS WITHIN THE TEN YEARS?

13 SOLICITOR AVINGER: YES, SIR.

14 MS. HINDS: DO YOU AGREE WITH THAT?

15 MS. HINDS: YES, SIR.

16 THE COURT: ALRIGHT, SO YOU'VE GOT
17 TWO?

18 SOLICITOR AVINGER: I'VE GOT TWO,
19 AND THEN I'VE GOT A MAY, TWO THOUSAND ONE, POSSESSION
20 OF COCAINE.

21 THE COURT: NO, MA'AM, I WOULD NOT
22 LET THAT IN.

23 SOLICITOR AVINGER: WELL, MY CONCERN
24 IS, IS, SHE'S THE ONE TRYING TO MAKE THIS INTO A DRUG
25 CASE. IF SHE'S GOING TO TALK -- I DON'T KNOW WHAT'S

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT225

1 GOING TO COME UP, BUT IF SHE'S TALKING ABOUT A DRUG DEAL
2 GONE BAD, I WANT THEM TO KNOW THAT HER GUY IS THE ONE
3 WITH THE DRUG RECORD.

4 THE COURT: I, I'M GOING TO DECLINE
5 TO LET THAT IN, I WOULD NOT WANT TO BE REVERSED ON AN
6 IRRELEVANT MATTER LIKE THAT. I THINK NOT. I AM GOING
7 TO LET -- I WILL NOT LET THE ASSAULT AND BATTERY IN, I
8 WILL LET BOTH ROBBERIES IN, FINDING THAT THEY INVOLVE
9 CRIMES OF DISHONESTY, AND FINDING THAT IN EACH INSTANCE
10 THEY ARE WITHIN THE TEN YEAR PERIOD, AND BY THE SECTION
11 ITSELF INVOLVED, THOSE CASES ARE ADMISSIBLE WITHOUT THE
12 NECESSITY OF DECIDING THE PREJUDICIAL EFFECT VERSUS THE
13 PROBATIVE VALUE.

14 SOLICITOR AVINGER: I UNDERSTAND,
15 YOUR HONOR, THE QUESTION IS, WOULD IT ---

16 THE COURT: JUST THE TWO.

17 SOLICITOR AVINGER: I UNDERSTAND.
18 IF -- WOULD THERE BE ANY WAY THAT I COULD SHOW THAT HE
19 HAD A FELONY CONVICTION IN MAY OF TWO THOUSAND AND ONE?

20 THE COURT: WHAT IS IT?

21 SOLICITOR AVINGER: THAT'S THE DRUG
22 CONVICTION.

23 THE COURT: I DON'T THINK SO.

24 SOLICITOR AVINGER: OKAY.

25 THE COURT: I DECLINE TO DO THAT.

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT226

1 I THINK THE PREJUDICIAL EFFECT -- NOW, DEPENDING ON WHAT
2 HIS TESTIMONY IS, ---

3 SOLICITOR AVINGER: YOUR HONOR,
4 THAT'S MY CONCERN, I THINK ---

5 THE COURT: NO, IF HE GETS INTO
6 THAT, NOW, I'LL LET YOU CHALLENGE HIM WITH IT.

7 SOLICITOR AVINGER: I JUST, YOU
8 KNOW, THE STATE HAS TRIED TO KEEP ANYTHING ABOUT THE
9 DRUGS SEPARATE.

10 THE COURT: WE'RE GOING TO KEEP IT
11 OUT.

12 SOLICITOR AVINGER: I DON'T KNOW -
13 --

14 THE COURT: IF HE SHOULD GET ON THE
15 STAND AND SAY THAT HE'S NEVER BEEN INVOLVED IN DRUGS,
16 KNOWS NOTHING ABOUT THEM, THEN IN MY VIEW YOU'RE
17 ENTITLED TO IMPEACH HIM WITH IT. BUT AS A PRACTICAL
18 MATTER, UNTIL THEN IT SHALL NOT COME IN.

19 SOLICITOR AVINGER: IF HE SAYS --
20 I'M JUST TRYING TO FORESEE, AND THIS IS HARD TO DO, BUT
21 IF ---

22 THE COURT: I UNDERSTAND.

23 SOLICITOR AVINGER: --- HE SAYS, I
24 WAS GOING THERE TO BUY DRUGS, WOULD IT NOT BE RELEVANT
25 FOR THE JURY TO KNOW THAT THAT'S SOMETHING HE DOES, HAS

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT227

DONE IN THE PAST?

MS. HINDS: YOUR HONOR, IF HE --

THE COURT: NO, IF HE SAYS HE WENT THERE TO BUY DRUGS, IF HE'S ADMITTING IT, WHY HAVE YOU GOT TO SHOW IT? NO, MA'AM, I'M NOT GOING TO DO THAT.

SOLICITOR AVINGER: OKAY.

THE COURT: I DON'T THINK IT'S ADMISSIBLE UNLESS YOU'VE GOT, CAN IMPEACH HIM WITH IT.

SOLICITOR AVINGER: I UNDERSTAND, YOUR HONOR.

THE COURT: AND THAT'S NOT IMPEACHMENT, SO LET'S GET IT CLEAR.

SOLICITOR AVINGER: I UNDERSTAND.

THE COURT: AT THIS TIME, UNLESS AN IMPEACHMENT ISSUES ARISES, YOU'RE PERMITTED TO SAY -- NOW, THERE'S NO QUESTION ABOUT THE FACT THAT HIS SENTENCING DID NOT END ON THAT ONE YOA, IT WAS WITHIN THE TEN YEAR PERIOD?

SOLICITOR AVINGER: YES, SIR.

THE COURT: YOU AGREE WITH THAT MS, HINDS?

MS. HINDS: YES, SIR.

THE COURT: BOTH OF THEM CAME WITHIN THE TEN YEARS?

MS. HINDS: YES, SIR.

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT228

1 THE COURT: AND BOTH OF THEM INVOLVE
2 CRIMES OF DISHONESTY.

3 SOLICITOR AVINGER: YES, SIR.

4 THE COURT: I WILL PERMIT IT.

5 ANY OTHER ISSUE?

6 SOLICITOR AVINGER: NO, YOUR HONOR.

7 THE COURT: MS. HINDS?

8 MS. HINDS: NO, SIR.

9 THE COURT: BRING THE JURY IN.

10 (Whereupon, the following
11 takes place in the
12 presence of the jury.)

13 THE COURT: LADIES AND GENTLEMEN,
14 THE STATE OF SOUTH CAROLINA HAS NOW RESTED WITH ITS
15 EFFORTS IN PROSECUTION, AND WE ARE AT THAT STAGE NOW
16 WHERE THE DEFENSE WILL PRESENT SUCH WITNESSES AS THEY
17 DESIRE TO. ORDINARILY WE WOULD BE BREAKING HERE AT A
18 QUARTER AFTER FIVE OR FIVE:THIRTY, BUT THEY TELL ME THAT
19 WE CAN FINISH ALL OF THE TESTIMONY THIS AFTERNOON, SO
20 THAT WHEN YOU RETURN IN THE MORNING WE WILL HAVE JUST
21 FINAL ARGUMENTS AND CHARGE. SO, I'M GOING TO MAKE EVERY
22 EFFORT TO CONCLUDE ALL THE TESTIMONY THIS AFTERNOON. IN
23 DOING THAT I THINK IT WILL SAVE ALL OF US SOME TIME.
24 I HOPE YOU UNDERSTAND.

25 ALRIGHT, YOU MAY CALL YOUR NEXT

EXAM, IN CAMERA - DEFENDANT MONTGOMERY BY THE COURT229

1 WITNESS.

2 MS. HINDS: THE DEFENSE CALLS
3 RUSSELL MONTGOMERY.

4 THE COURT: ALRIGHT. PLACE YOUR
5 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.

6 RUSSELL MONTGOMERY, BEING FIRST DULY
7 SWORN, TESTIFIES AS FOLLOWS:

8 THE COURT: THANK YOU, HAVE A SEAT
9 AND GIVE YOUR FULL NAME, PLEASE.

10 WITNESS: RUSSELL MONTGOMERY.

11 (NOTE: Blank lines on this page do not indicate any
12 part of record has been omitted. Headers on testimony
13 pages and hard page breaks between testimony are now
14 required by the Court. See next ensuing page for
15 sequential continuation of record.)

DIRECT - RUSSELL MONTGOMERY BY MS. HINDS

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DIRECT EXAMINATION OF RUSSELL MONTGOMERY

BY MS. HINDS:

Q. MR. MONTGOMERY, HOW OLD ARE YOU?

A. TWENTY-NINE.

Q. OKAY. AND WERE YOU BORN AND RAISED IN SOUTH CAROLINA?

A. YES, MA'AM.

Q. EXCUSE ME. WHAT KIND OF WORK DO YOU DO?

A. I WAS WORKING FOR SOME TEMP SERVICE, WORKING AT, LIKE, PLANT JOBS, AND WE WAS BUILDING, AND I WAS WORKING FOR THIS MAN ON THE SIDE BUILDING DOCKS.

Q. AND DO YOU REMEMBER AN INCIDENT THAT HAPPENED A YEAR AGO, JULY SECOND, TWO THOUSAND AND TWO?

A. YES, MA'AM.

Q. CAN YOU TELL US WHAT HAPPENED ON THAT NIGHT?

A. YES, MA'AM. WELL, IT'S LIKE THIS, YOU KNOW, ME AND, ME AND TRAVIS DONE HAD DEALINGS BEFORE, YOU KNOW, WHERE I DONE BOUGHT DRUGS FROM HIM. AND AT THAT PARTICULAR NIGHT I WENT TO BUY A FIFTY DOLLAR SLAB. AND HE WENT IN THE HOUSE AND GOT A CIGAR BOX, AND HE WAS, LIKE, Y'ALL COME AND RIDE WITH ME UP THERE TO THE OTHER TRAILER PARK, HE SAID, WE'RE GOING TO MAKE A SALE. SO, I WAS RIDING WITH HIM. AND WE GOT IN A LITTLE ARGUMENT BECAUSE I DIDN'T LIKE WHAT HE WAS GIVING ME. AND I DID SNATCH THE

DIRECT - RUSSELL MONTGOMERY BY MS. HINDS

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1 BOX FROM HIM.

2 Q. HOW MANY TIMES DID YOU HAVE DEALINGS WITH MR.
3 GUESS?

4 A. LIKE, I JUST CAME HOME FROM -- I WAS LOCKED UP FOR
5 CHILD SUPPORT ABOUT A YEAR, AND WHEN I CAME HOME
6 HIM AND MY BROTHER HAD KNOWED EACH OTHER, AND I GOT
7 INTRODUCED TO HIM BY MY BROTHER. SO, I'D SAY ABOUT
8 THREE OR FOUR TIMES.

9 Q. OKAY. HAD YOU EVER BEEN TO HIS TRAILER BEFORE?

10 A. YES, MA'AM, I HAVE. HE HAS BEEN TO MY HOUSE, TOO.

11 Q. WOULD YOU CHARACTERIZE IT AS AN ACQUAINTANCESHIP,
12 THOUGH OR A FRIENDSHIP, OR HOW, HOW WOULD YOU
13 DESCRIBE THE RELATIONSHIP?

14 A. I MEAN, WE WOULD LAUGH AND ALL, THOUGH IT WAS JUST
15 LIKE DRUG, A DRUG TRANSACTION.

16 Q. OKAY. ON THE EVENING IN QUESTION DID YOU COME
17 AROUND FROM BEHIND THE TRAILER?

18 A. NO, MA'AM, I DIDN'T.

19 Q. WHERE WERE YOU COMING FROM?

20 A. NEXT DOOR TO MY BROTHER'S GIRL FRIEND'S HOUSE.

21 Q. OKAY. AND WHERE IS YOUR BROTHER'S GIRL FRIEND'S
22 HOUSE?

23 A. I'D SAY LIKE, ONE OR TWO TRAILERS, LIKE, DOWN FROM
24 HIS.

25 Q. IN THE SAME TRAILER PARK?

DIRECT - RUSSELL MONTGOMERY BY MS. HINDS

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1 A. YES, MA'AM.

2 Q. OKAY. AND WHEN YOU GOT TO HIS TRAILER WHAT
3 HAPPENED?

4 A. WELL, WE JUST STARTED TALKING FOR A LITTLE BIT, AND
5 MY BROTHER WASN'T THERE, MY BROTHER WENT BACK OVER
6 TO HIS GIRL'S HOUSE, AND LIKE I SAID, HE WAS, LIKE,
7 WHAT'S UP, RUSS? WE STARTED TALKING. AND I WAS,
8 LIKE, I WAS LIKE, ARE YOU STRAIGHT? HE WAS LIKE,
9 YEAH, I'M STRAIGHT. SO, HE WENT IN THE HOUSE AND
10 BROUGHT THIS CIGARETTE BOX -- CIGAR BOX OUT, AND
11 THAT'S WHEN ME AND HIM STARTED TALKING. AND HE
12 WAS, LIKE, I'VE GOT TO RUN TO THE OTHER TRAILER
13 PARK, WILL YOU COME AND RIDE WITH ME TO HANDLE THAT
14 WHEN WE GO DOWN THERE. AND THAT'S WHERE WE WENT.

15 Q. WHEN YOU CAME AROUND FROM BEHIND THE TRAILER, DID,
16 WERE YOU BRANDISHING A GUN?

17 A. I DIDN'T COME FROM BEHIND THE TRAILER, I CAME RIGHT
18 IN THE FRONT.

19 Q. OKAY. WHEN YOU CAME UP TO THE TRAILER WERE YOU
20 BRANDISHING A GUN?

21 A. I NEVER HAD A GUN.

22 Q. OKAY. DID YOU AT THAT POINT MAKE HIM GET INTO HIS
23 CAR?

24 A. NO, MA'AM, I DIDN'T.

25 Q. DID YOU EVER HAVE THE KEYS TO HIS CAR?

DIRECT - RUSSELL MONTGOMERY BY MS. HINDS

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1 A. NO, MA'AM, I DIDN'T.

2 Q. OKAY. YOU SAID THERE WAS AN ARGUMENT IN THE CAR?

3 A. YES, MA'AM.

4 Q. WHEN YOU SAY, ARGUMENT, WAS IT VERBAL OR PHYSICAL?

5 A. I MEAN, IT, IT NEVER GOT TO GET TO THAT POINT, YOU
6 KNOW, BECAUSE BY THE TIME WE WAS, BEFORE WE GOT TO
7 THE STOP SIGN, LIKE I SAID, I WAS LOOKING AT THE
8 DRUGS, AND I WAS, LIKE, MAN, I DON'T WANT THIS, I
9 SAID, THIS IS ALL I GET? YOU KNOW, AND HE WAS,
10 LIKE, MAN, THAT'S ALL THE BEST I CAN DO. SO, I
11 MEAN, I DID SNATCH THE BOX FROM HIM, YOU KNOW, AND
12 WE WAS ABOUT TO THE STOP SIGN, YOU KNOW. AND HE
13 JUMPED OUT THE CAR, AND THE CAR JUST RUN STRAIGHT
14 ACROSS THE ROAD.

15 Q. WITH YOU STILL INSIDE?

16 A. YES, MA'AM.

17 Q. BUT HE JUMPED FROM THE CAR?

18 A. YES, MA'AM.

19 Q. DID YOU THREATEN TO KILL HIM BEFORE HE JUMPED FROM
20 THE CAR?

21 A. NO, MA'AM, I DIDN'T.

22 Q. DID YOU HIT HIM ON THE HEAD BEFORE HE JUMPED FROM
23 THE CAR?

24 A. NO, MA'AM, I DIDN'T.

25 Q. DID YOU THREATEN HIS LIFE IN ANY WAY?

DIRECT - RUSSELL MONTGOMERY BY MS. HINDS

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1 A. NO, MA'AM, I DIDN'T.

2 Q. AND WERE YOU STILL IN THE CAR WHEN IT MADE CONTACT
3 WITH THE POLE?

4 A. YES, MA'AM, I WAS.

5 Q. AND WHAT HAPPENED AFTER THE CAR WRECKED?

6 A. LIKE I SAID, I WAS KIND OF, LIKE, SHOCKED HE DID
7 THAT, YOU KNOW. AND WHEN I GOT OUT THE CAR I JUST
8 STAND THERE FOR A MINUTE, AND THAT'S WHEN I SAW
9 OFFICER RAVENELL COMING UP.

10 Q. AND WHAT DID YOU DO AT THAT POINT WHEN YOU SAW
11 OFFICER RAVENELL?

12 A. STAND THERE.

13 Q. AND DID YOU AT SOME POINT WALK AWAY?

14 A. WHEN I WALKED OFF I WALKED OVER THERE TO HIM. YOU
15 KNOW, IF I WOULD HAVE -- IF I WOULD HAVE HAD
16 SOMETHING, IF I WOULD HAVE DID THIS CRIME I WOULD
17 HAVE AT LEAST RAN FROM HIM, I WOULDN'T BE STANDING
18 THERE LIKE THAT.

19 Q. BUT YOU DIDN'T ATTEMPT TO LEAVE?

20 A. NO, MA'AM, I DIDN'T.

21 Q. DID YOU TELL HIM WHERE MR. GUESS HAD GONE?

22 A. NO, MA'AM, I DIDN'T.

23 Q. WHAT HAPPENED THEN?

24 A. AND LIKE HE SAID, BEFORE HE STARTED TALKING TO ME
25 HE WAS, LIKE, YOU WAS IN THIS CAR? WHILE HE WAS

DIRECT - RUSSELL MONTGOMERY BY MS. HINDS

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1 TALKING TO ME HE WAS LOOKING IN THE CAR, HE WAS
2 SEARCHING THE CAR. I NEVER WALKED OFF FROM HIM.

3 Q. AND DID HE ASK YOU ABOUT THE DRUGS?

4 A. NO, HE DIDN'T. THERE WAS ANOTHER COP THAT CAME
5 OVER TO ME, HE WAS, LIKE, BUT THEY DID NOT HAVE ME
6 IN CUSTODY. AND THE OTHER COP CAME, IT WAS WHITE
7 COP, I DON'T KNOW HIS NAME, HE CAME OVER THERE, HE
8 WAS, LIKE, YOU WANT TO, YOU GOT SOMETHING YOU WANT
9 TO TELL ME? I WAS, LIKE, WELL, WHAT I'M SUPPOSED
10 TO TELL YOU? I WAS, LIKE, I JUST CAME OVER THERE
11 TO BUY SOME DRUGS AND ME AND THIS MAN GOT IN A
12 CONFRONTATION. HE WAS, LIKE, YES, TRAVIS GUESS HAD
13 ADMITTED TO THE DRUGS. AND I STAYED THERE, AND HE
14 WENT IN MY POCKET AND GOT THE MONEY OUT OF MY
15 POCKET. AND I STAYED THERE PROBABLY ABOUT FIVE OR
16 TEN MINUTES LONGER, AND THEY TRANSPORTED ME. SO,
17 I DON'T REALLY KNOW WHAT ELSE HAPPENED AFTER THAT.

18 Q. AND WERE YOU PRESENT WHEN MR. GUESS WAS SAYING THAT
19 YOU HAD KIDNAPPED HIM?

20 A. YES, MA'AM, I WAS PRESENT WHEN HE WALKED BACK UP.

21 Q. SO, YOU KNEW WHAT THE POLICE WERE CHARGING YOU WITH
22 AT THAT POINT?

23 A. NO, MA'AM, I DIDN'T.

24 Q. OKAY, WHEN DID YOU REALIZE THAT?

25 A. THE COP PUT ME IN THE CAR FIRST, THEN HE CAME BACK

DIRECT - RUSSELL MONTGOMERY BY MS. HINDS

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1 OUT AND SEARCHED ME, YOU KNOW, AND BY THAT TIME MY
2 FAMILY BEEN DONE GOT THERE. AND HE WOULDN'T LET
3 NOBODY COME OVER THERE, HE WAS TALKING TO ME. AND
4 I'D SAY, ABOUT A LITTLE BIT AFTER THAT HE JUST
5 START READING ME MY RIGHTS.

6 Q. AND HE DIDN'T FIND ANY WEAPONS ON YOU, IS THAT
7 CORRECT?

8 A. NO, MA'AM.

9 Q. WHO HAD THE KEYS?

10 A. I DIDN'T HAVE NO KEYS IN MY POCKET, I HAD MONEY IN
11 MY POCKET, I DIDN'T HAVE THE KEYS.

12 Q. WHERE DID THE MONEY COME FROM?

13 A. I HAD HALF OF THE MONEY, AND SOME OF THE MONEY
14 BEEN IN THE BOX WHERE THE DRUGS WAS AT.

15 Q. WHEN YOU LEFT THE CAR WHERE WERE THE KEYS?

16 A. I ASSUMED THEY STILL BEEN IN THE IGNITION.

17 Q. WAS THE CAR STILL RUNNING WHEN YOU LEFT THE CAR?

18 A. I DON'T KNOW IF THE CAR SHUT OFF OR, I CAN'T
19 REMEMBER.

20 Q. BUT YOU DIDN'T REMOVE THE KEYS FROM THE IGNITION?

21 A. NO, MA'AM, I DIDN'T. WHY WOULD I REMOVE THE KEYS
22 FROM A WRECKED VEHICLE?

23 Q. ON THAT NIGHT DID YOU EVER THREATEN MR. GUESS?

24 A. NO, MA'AM.

25 Q. DID YOU EVER SHOOT IN THE GROUND AT MR. -- OR NEAR

DIRECT - RUSSELL MONTGOMERY BY MS. HINDS

237

1 MR. GUESS?

2 A. NO, MA'AM.

3 Q. DID YOU FORCE HIM INTO THE VEHICLE AND MAKE HIM GO
4 AGAINST HIS WILL?

5 A. NO, MA'AM.

6 Q. DID YOU ROB HIM WITH A GUN?

7 A. NO, MA'AM.

8 Q. DID YOU AT ANY POINT THREATEN HIM THAT EVENING WITH
9 A GUN?

10 A. NO, MA'AM.

11 Q. WHICH HAND IS YOUR DOMINANT HAND?

12 A. RIGHT HAND.

13 Q. IS THAT THE HAND THAT YOU WRITE WITH?

14 A. YES, MA'AM.

15 MS. HINDS: NO FURTHER QUESTIONS,
16 ANSWER ANY QUESTIONS MS. AVINGER HAS FOR YOU.

17 THE COURT: MS. AVINGER.

18 (NOTE: Blank lines on this page do not indicate any
19 part of record has been omitted. Headers on testimony
20 pages and hard page breaks between testimony are now
21 required by the Court. See next ensuing page for
22 sequential continuation of record.)

CROSS - RUSSELL MONTGOMERY BY SOL. AVINGER

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1 CROSS-EXAMINATION OF RUSSELL MONTGOMERY

2 BY SOLICITOR AVINGER:

3 Q. MR. MONTGOMERY, ---

4 A. YES, MA'AM.

5 Q. --- I'M A LITTLE BIT CONFUSED. DO YOU EXPECT THIS
6 JURY TO BELIEVE THAT TRAVIS GUESS JUMPED OUT OF A
7 MOVING CAR AND HURT HIMSELF LIKE THIS FOR NO
8 REASON, IS THAT WHAT YOU'RE SAYING?

9 A. LIKE I SAID, WE HAD A CONFRONTATION, I MEAN, LIKE
10 AN ARGUMENT OR DISAGREEMENT, AND I DON'T KNOW
11 REALLY WHY HE JUMPED OUT THE CAR, I DON'T KNOW IF
12 HE WAS EXPECTING TO FALL DOWN LIKE THAT, I MEAN,
13 WE WAS ALREADY UP ON THE STOP SIGN.

14 Q. OKAY. BUT THAT CAR HIT THE POLE PRETTY HARD,
15 DIDN'T IT?

16 A. WELL, LIKE I SAID, I DIDN'T GOT HURT, SO I DON'T -
17 --

18 Q. AND WHERE WERE YOU SITTING IN THE CAR, MR.
19 MONTGOMERY?

20 A. IN THE BACK SEAT.

21 Q. YOU WERE IN THE BACK SEAT AND TRAVIS WAS IN THE
22 FRONT SEAT?

23 A. YEAH.

24 Q. OKAY. NOBODY ELSE WAS IN THE CAR?

25 A. NO.

CROSS - RUSSELL MONTGOMERY BY SOL. AVINGER

239

1 Q. OKAY. AND YOU DID HAVE ON BLACK CLOTHES, DIDN'T
2 YOU?

3 A. I HAD ON A PAIR OF, LIKE A BLACK SWEAT PANTS AND
4 A BLUE SHIRT.

5 Q. OKAY, DARK COLORS, A DARK COLORED SHIRT, RIGHT?

6 A. YEAH.

7 Q. SO, YOU DIDN'T COME AROUND THE SIDE OF THE HOUSE
8 WITH THIS CHROME PLATED GUN AND THREATEN EVERYBODY
9 THAT WAS THERE THAT NIGHT?

10 A. NO, MA'AM, I DIDN'T.

11 Q. IT DIDN'T HAPPEN?

12 A. NO, MA'AM, I DIDN'T.

13 Q. AND KEVIN MACK AND MARCUS GUESS DIDN'T RUN AWAY IN
14 FEAR?

15 A. NO, MA'AM, NOT THAT I KNOW OF.

16 Q. OKAY. AND TRAVIS GUESS DIDN'T GIVE YOU HIS WALLET
17 THERE AT THE HOUSE?

18 A. NO, MA'AM, HE DIDN'T.

19 Q. HE DIDN'T GIVE YOU ALL THAT LOOSE MONEY FROM HIS
20 POCKET?

21 A. I GOT IT, LIKE I SAID, I GOT THAT MONEY OUT OF HIS
22 CIGAR BOX.

23 Q. OKAY. AND WHEN YOU WENT DOWN Y'ALL WERE RIDING
24 DOWN THE ROAD, YOU DIDN'T HIM ON THE BACK OF THE
25 HEAD WITH THE GUN?

CROSS - RUSSELL MONTGOMERY BY SOL. AVINGER

240

1 A. NO, MA'AM, I DIDN'T.

2 Q. AND TRAVIS DID JUMP OUT OF THE CAR, THOUGH, RIGHT?

3 A. YES, MA'AM, HE DID.

4 Q. AND LET IT ROLL AND HIT A UTILITY POLE?

5 A. YES, MA'AM.

6 Q. AND HE HAD RUN AWAY. HE WASN'T THERE WHEN THE CAR
7 WRECKED, WAS HE?

8 A. NO, MA'AM.

9 Q. OKAY. WERE YOU THERE WHEN MS. MCFARLAND CAME UP?

10 A. THAT'S THE ---

11 Q. HER NIECE AND HER SON CAME UP?

12 A. YES, I WAS THERE.

13 Q. OKAY. AND THEY WERE COMPLAINING BECAUSE SOMEBODY
14 WAS IN THEIR HOUSE, RIGHT?

15 A. I COULDN'T REMEMBER WHAT THEY WAS SAYING TO THE
16 OFFICER.

17 Q. OKAY. BUT YOU DIDN'T -- YOU DIDN'T THROW A T-
18 SHIRT DOWN ON THE SIDE OF THE ROAD, THAT DIDN'T
19 HAPPEN?

20 A. LIKE I SAID, I HAD A T-SHIRT, LIKE, EVERYBODY WEAR,
21 LIKE, BANDANNAS, YOU KNOW. IF THEY DON'T HAVE IT
22 DO RIGHT THEY TAKE THE T-SHIRT AND THEY TIE IT
23 AROUND THEIR HEAD.

24 Q. OKAY.

25 A. AND YES, I DID HAVE A T-SHIRT.

CROSS - RUSSELL MONTGOMERY BY SOL. AVINGER

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1 Q. SO, YOU HAD A T-SHIRT TIED AROUND YOUR HEAD IS THAT
2 WHAT YOU'RE SAYING NOW?

3 A. YES, MA'AM.

4 Q. OKAY. BUT YOU DIDN'T LEAVE IT ON THE SIDE OF THE
5 ROAD, YOU DIDN'T THROW IT AWAY WHEN CAPTAIN
6 RAVENELL DROVE UP?

7 A. I DIDN'T HAVE NO REASON TO THROW IT AWAY LIKE THAT.

8 Q. OKAY. AND THIS GUN WASN'T WRAPPED UP IN THE T-
9 SHIRT THAT YOU THREW ON THE SIDE OF THE ROAD, WAS
10 IT?

11 A. NO, MA'AM.

12 Q. OKAY. DID YOU GIVE TRAVIS GUESS'S WALLET TO
13 CAPTAIN RAVENELL?

14 A. NO, MA'AM, I DIDN'T.

15 Q. THAT DIDN'T HAPPEN?

16 A. NO, MA'AM.

17 Q. AND YOU DIDN'T HAVE TRAVIS GUESS'S CAR KEYS IN YOUR
18 POCKET?

19 A. NO, MA'AM, I DIDN'T. WHY WOULD I TAKE A WRECKED -
20 - WHAT PURPOSE WOULD I HAVE THE KEYS FOR?

21 Q. I DON'T KNOW, MR. GUESS, YOU DON'T GET TO ASK THE
22 QUESTIONS HERE.

23 A. I'M SORRY.

24 Q. BUT THAT DIDN'T HAPPEN?

25 A. NO, MA'AM.

CROSS - RUSSELL MONTGOMERY BY SOL. AVINGER

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1 Q. WERE YOU HERE WHEN CAPTAIN RAVENELL SAID ALL THAT
2 DID HAPPEN?

3 A. YES, MA'AM.

4 Q. OKAY. YOU'VE HAD SOME TROUBLE WITH LAW ENFORCEMENT
5 IN THE PAST, HAVEN'T YOU, MR. MONTGOMERY?

6 A. YES, MA'AM, WHEN I WAS YOUNGER.

7 Q. OKAY. AND YOU'VE HAD TWO CONVICTIONS FOR STRONG
8 ARM ROBBERY, ISN'T THAT RIGHT?

9 A. YES, MA'AM.

10 Q. OKAY. SO, YOU'RE A THIEF?

11 A. LIKE LITTLE -- THEY HAD ME CHARGED WITH, LIKE
12 TAKING LITTLE SPEAKERS, ME AND ANOTHER FELLOW, BUT
13 I WAS YOUNGER BACK THEN, I PAID MY DEBT FOR THAT.

14 Q. OKAY.

15 THE COURT: MADAM FOREMAN, AND
16 LADIES AND GENTLEMEN, I HAVE PERMITTED QUESTIONS AS TO
17 HIS PRIOR RECORD. YOU MAY CONSIDER A PRIOR RECORD, IF
18 YOU FIND THAT HE HAS ONE, ONLY AS TO THE CREDIBILITY AND
19 BELIEVABILITY. YOU MAY USE THAT FOR THAT PURPOSE, AND
20 THAT PURPOSE ONLY. PRIOR RECORDS FOR SOME OTHER
21 INCIDENTS, IF ANY, IS NO EVIDENCE OF HIS GUILT IN THIS
22 CASE, BUT YOU MAY, IF YOU CHOOSE, USE A PRIOR RECORD AS
23 TO HIS CREDIBILITY AND BELIEVABILITY, AND FOR THAT
24 PURPOSE ONLY.

25 YOU MAY PROCEED.

CROSS - RUSSELL MONTGOMERY BY SOL. AVINGER

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1 SOLICITOR AVINGER: NO, YOUR HONOR,
2 I'M DONE WITH THIS WITNESS. THANK YOU.

3 THE COURT: ALRIGHT, YOU MAY COME
4 . DOWN, SIR.

5 CALL YOUR NEXT WITNESS, PLEASE.

6 MS. HINDS: ONE MOMENT, SIR.
7 NOTHING FURTHER FROM THE DEFENSE, YOUR HONOR.

8 THE COURT: ALRIGHT, IS THERE
9 ANYTHING IN REPLY?

10 SOLICITOR AVINGER: BRIEFLY, YOUR
11 HONOR. TRAVIS GUESS.

12 THE COURT: ALRIGHT, SIR. MR.
13 GUESS, I REMIND YOU, YOU ARE STILL UNDER OATH.

14 (NOTE: Blank lines on this page do not indicate any
15 part of record has been omitted. Headers on testimony
16 pages and hard page breaks between testimony are now
17 required by the Court. See next ensuing page for
18 sequential continuation of record.)

DIRECT - TRAVIS GUESS BY SOL. AVINGER

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DIRECT EXAMINATION OF TRAVIS GUESS

BY SOLICITOR AVINGER:

Q. MR. GUESS, WERE YOU INVOLVED IN SOME TYPE OF DRUG
TRANSACTION WITH RUSSELL MONTGOMERY ON JULY SECOND
OF TWO THOUSAND AND THREE ---

A. NO, MA'AM.

Q. --- TWO THOUSAND AND TWO?

A. NO, MA'AM.

Q. HAVE YOU EVER BEEN INVOLVED IN SELLING DRUGS?

A. NO, MA'AM.

Q. DO YOU HAVE A CRIMINAL RECORD?

A. NO, MA'AM.

Q. DID YOU JUMP OUT OF THIS CAR BECAUSE YOU WERE
HAVING AN ARGUMENT ABOUT DRUGS WITH RUSSELL
MONTGOMERY?

A. NO, MA'AM.

Q. DID RUSSELL MONTGOMERY HOLD YOU AT GUN POINT, TAKE
YOUR WALLET, AND TAKE YOUR MONEY, AND MAKE YOU GET
IN YOUR CAR AND DRIVE SOMEWHERE?

A. YES, MA'AM.

SOLICITOR AVINGER: THAT'S ALL I
HAVE, YOUR HONOR.

THE COURT: YOU MAY COME DOWN. I
ASSUME THERE WAS NO FURTHER EXAMINATION?

MS. HINDS: NO, SIR.

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1 THE COURT: ALRIGHT, YOU MAY COME
2 DOWN.

3 ANYTHING ELSE IN REPLY?

4 SOLICITOR AVINGER: NO, YOUR HONOR.

5 THE COURT: ALRIGHT, THAT WILL
6 CONCLUDE THE TESTIMONY IN ITS ENTIRETY IN THE CASE.
7 MADAM FOREMAN AND LADIES AND GENTLEMEN, I WOULD
8 RESPECTFULLY REQUEST THAT YOU RETURN TO THE JURY ROOM
9 PROMPTLY AT NINE:THIRTY IN THE MORNING, AND AT THAT TIME
10 WE'LL HAVE FINAL SUMMATIONS. AS I INDICATED, THEY WILL
11 HAVE AN OPPORTUNITY TO GIVE YOU FINAL COMMENTS ABOUT
12 THEIR RELATIVE POSITIONS. I WILL INSTRUCT YOU WITH
13 REGARDS TO THE LAW, AND AT THAT TIME I WILL ASK THAT YOU
14 BEGIN YOUR DELIBERATIONS. ANY MATTERS THAT I HAVE
15 INTRODUCED INTO EVIDENCE WILL BE WITH YOU IN THE JURY
16 ROOM.

17 NOW, PLEASE REMEMBER MY ADMONITIONS
18 AT LUNCH TIME, WHICH ARE CONTINUING. YOU MUST NOT
19 DISCUSS THIS CASE WITH ANYONE, YOU MUST NOT PERMIT
20 ANYONE TO DISCUSS IT WITH YOU, YOU MUST NOT YET EVEN
21 DISCUSS IT AMONG YOURSELVES. LET ME SAY WHAT HAPPENS
22 SOMETIMES JURORS NOT RECOGNIZING THAT THEY SHOULD NOT
23 DO THIS, SOMETIMES AT LUNCH OR AS WE GO HOME, TWO OR
24 THREE JURORS MIGHT START DISCUSSING SOME ISSUE IN THE
25 CASE AMONG THEMSELVES. THAT IS IMPROPER FOR THE

1 FOLLOWING REASON: ULTIMATELY, WHATEVER YOUR DECISION
2 IS MUST BE THE UNANIMOUS DECISION OF ALL TWELVE OF YOU.
3 AND IF TWO OR THREE OF YOU ARE DISCUSSING AN ISSUE
4 OUTSIDE THE PRESENCE OF YOUR OTHER JURORS, YOU ARE
5 DEPRIVING YOUR FELLOW JURORS OF YOUR THOUGHT PROCESS,
6 AND THEY'RE ENTITLED TO THAT. CONSEQUENTLY, WE SAY THAT
7 ANY DISCUSSION AT ANYTIME INVOLVING ANY ISSUE MUST BE
8 DONE ONLY IN THE PRESENCE OF ALL TWELVE OF YOU. AND SO,
9 THAT'S ONE OF THE REASONS WHY. SO, PLEASE REMEMBER
10 THESE ADMONITIONS, MAKE NO INDEPENDENT INQUIRY, MAKE NO
11 -- THE REASON FOR THIS IS, WHATEVER YOUR VERDICT IS, IT
12 MUST BE BASED ON THE LAW AND EVIDENCE HEARD IN THIS
13 COURTROOM IN THIS CASE, AND FROM NO OTHER PLACE.

14 HAVE A GOOD EVENING, AND I'LL SEE
15 YOU AT NINE:THIRTY. THANK YOU SO MUCH. PLEASE DO NOT -
16 - IT'S NOT LIKELY TO BE ON T.V., AND IF IT HAPPENS TO
17 BE IN THE PAPER, PLEASE DISREGARD THAT. I WANT YOU TO
18 COME IN AND BASE YOUR VERDICT ON WHAT YOU HEAR IN THE
19 COURTROOM. HAVE A GOOD EVENING.

20 (Whereupon, the jury leaves
21 the courtroom for the day.)

22 THE COURT: ANY MOTIONS FOR THE
23 STATE?

24 SOLICITOR AVINGER: NO, YOUR HONOR.

25 THE COURT: ANY MOTIONS FOR THE

1 DEFENSE?

2 MS. HINDS: NO, SIR.

3 THE COURT: LET ME AT THIS TIME
4 ACCEPT A MOTION FOR THE DEFENSE AS TO THE SUFFICIENCY
5 OF THE EVIDENCE, WHEREIN YOU ASKED THAT THE CASE BE
6 DISMISSED BECAUSE OF LACK OF EVIDENCE. AND BASED ON
7 THAT, I WOULD SPECIFICALLY DENY THAT MOTION.

8 MS. HINDS: YES, SIR.

9 THE COURT: DO YOU HAVE ANY OTHER
10 MOTIONS?

11 MS. HINDS: YOUR HONOR, WE WOULD
12 JUST RENEW ALL OF OUR PRIOR MOTIONS.

13 THE COURT: OKAY. THEN, I ACCEPT
14 THE FACT THAT THE MOTIONS YOU MAKE NOW ARE THE SAME AS
15 YOU MADE AT THE END OF THE STATE'S CASE?

16 MS. HINDS: THAT'S CORRECT, YOUR
17 HONOR.

18 THE COURT: UPON THE SAME GROUNDS,
19 AND FOR THE REASONS THEREIN STATED, NOW AT THE
20 CONCLUSION OF ALL THE EVIDENCE THEY ARE, TOO,
21 RESPECTFULLY DENIED, CONCLUDING THAT ALL OF THE ISSUES
22 ARE FOR THE JURY, THERE BEING TESTIMONY AS TO THESE
23 ISSUES.

24 MS. HINDS: YES, SIR.

25 THE COURT: ALRIGHT, IS HE IN

1 CUSTODY NOW?

2 SOLICITOR AVINGER: YES, SIR.

3 MS. HINDS: YES, SIR.

4 THE COURT: HE IS. AND, OKAY, HE
5 WILL REMAIN SO.

6 LET ME ASK YOU THIS, OBVIOUSLY, WE
7 WILL HAVE THE GENERAL CHARGE, PRESUMPTION OF INNOCENCE,
8 I WILL USE THE NEBRASKA CHARGE AS TO THE PRESUMPTION OF
9 INNOCENCE, REASONABLE DOUBT, AND SO FORTH. I'VE ALREADY
10 CHARGED PRIOR RECORD, I WILL DO THAT AGAIN. OBVIOUSLY,
11 WE WILL CHARGE ARMED ROBBERY AND KIDNAPPING. IS THERE
12 ANYTHING ELSE YOU CAN THINK OF? HOW ABOUT IT, MS.
13 HINDS?

14 MS. HINDS: I DON'T BELIEVE SO, YOUR
15 HONOR. I WILL LOOK AT IT AGAIN TONIGHT.

16 THE COURT: OKAY. I WILL CERTAINLY
17 LET YOU -- PERMIT YOU TO.

18 NOW, AS YOU ALL KNOW, JURORS HAVE
19 SAID TO ME IN THE PAST, AND I'VE TAKEN TO DOING THAT,
20 CHARGING, EVEN BEFORE SUMMATION, WITH SOME CONCLUDING
21 REMARKS THEREAFTER. ANY OBJECTION TO THAT?

22 SOLICITOR AVINGER: NO, YOUR HONOR.

23 THE COURT: ANY OBJECTION TO THAT?

24 MS. HINDS: NO, SIR.

25 THE COURT: SO, I'LL GO AHEAD AND

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1 CHARGE THE JURY INITIALLY, AND IN ACCORDANCE WITH THE
2 STATUTE I'LL COME BACK WITH SOME CONCLUDING REMARKS, AND
3 THEN, EVEN THEN I'LL TELL THE -- AND AT THAT TIME I'LL
4 DISCHARGE THE JURY SO THAT I CAN HEAR ANY EXCEPTIONS OR
5 REJECTIONS, OR EXCEPTIONS.

6 MS. HINDS: YES, SIR.

7 THE COURT: AND THEN THE JURY WILL
8 BE CHARGED THAT IF THEY HAVE ANY OTHER QUESTIONS OF LAW
9 THEY WILL BE PENCIL AND PAPER PROVIDED.

10 ALRIGHT, WITHOUT OBJECTION, THEN,
11 I PROPOSE AS I'VE DONE RECENTLY TO CHARGE THE JURY ON
12 THE LAW EVEN PRIOR TO SUMMATIONS.

13 MS. HINDS: YES, SIR.

14 THE COURT: ALRIGHT, I LOOK FORWARD
15 TO SEEING YOU AT NINE:THIRTY IN THE MORNING.

16 SOLICITOR AVINGER: THANK YOU, YOUR
17 HONOR.

18 (Recess for the day.)

19 DATE:

20 JULY 17, 2003

21 THE COURT: BRING THE DEFENDANT IN,
22 PLEASE.

23 SOLICITOR AVINGER: HE'LL BE RIGHT
24 HERE, YOUR HONOR.

25 THE COURT: IS THE SOLICITOR, ARE

1 YOU READY TO START?

2 SOLICITOR AVINGER: YES, YOUR HONOR.

3 THE COURT: IS THE DEFENSE READY?

4 MR. HINDS: YES, SIR.

5 THE COURT: LET THE RECORD REFLECT
6 THAT THE DEFENDANT IS IN THE COURTROOM.

7 NOW, AT THE CONCLUSION OF THE
8 TESTIMONY YESTERDAY I WANT THE RECORD TO REFLECT THAT
9 THE APPROPRIATE MOTIONS FOR DIRECTED VERDICT ON THE
10 SUFFICIENCY OF THE EVIDENCE WAS MADE BY DEFENSE, AND
11 OVERRULED BY ME, RESPECTFULLY.

12 MS. HINDS: YES, SIR.

13 THE COURT: AS I UNDERSTAND IT, AT
14 THE APPROPRIATE TIME, YOU WAIVE OPENING BY THE STATE?

15 MS. HINDS: I DO, YOUR HONOR.

16 THE COURT: DO YOU AGREE WITH THAT?

17 SOLICITOR AVINGER: YES, YOUR HONOR.

18 THE COURT: ALRIGHT, AND IN
19 ACCORDANCE WITH OUR AGREEMENT YESTERDAY, I PROPOSE TO
20 GO AHEAD AND CHARGE THE JURY AT THIS TIME, WITH THE
21 UNDERSTANDING, AT THE CONCLUSION OF SUMMATIONS I'LL BE
22 BACK WITH SOME CONCLUDING REMARKS, IN ACCORDANCE WITH
23 THE STATUTE, AND AT THAT TIME WILL EXCUSE THE JURY TO
24 CONSIDER ANY ADDITIONAL REQUESTS OR EXCEPTIONS TO THE
25 CHARGE. DOES EVERYBODY UNDERSTAND THAT?

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1 SOLICITOR AVINGER: YES, SIR.

2 MS. HINDS: YES, SIR.

3 THE COURT: ALRIGHT, BRING THE JURY
4 IN, PLEASE.

5 (Whereupon, the following
6 takes place in the
7 presence of the jury.)

8 THE COURT: LET THE RECORD REFLECT
9 THAT THE JURY, ACCOMPANIED BY THE ALTERNATES, ARE
10 PRESENT IN THE COURTROOM.

11 GOOD MORNING, MADAM FOREMAN, AND
12 LADIES AND GENTLEMEN, I TRUST THAT ALL OF YOU HAD A
13 RESTFUL NIGHT. YOU'RE ALL LOOKING WELL AND READY TO GO.
14 AGAIN, I CONTINUE TO TELL YOU THAT THIS COURT
15 APPRECIATES YOUR SERVICES HERE TODAY AND YOUR
16 PARTICIPATION IN OUR JUDICIAL PROCESS.

17 AT THE CONCLUSION OF BUSINESS ON
18 YESTERDAY, ALL OF THE TESTIMONY WAS COMPLETED, AND
19 THAT, THEN, IS THE RECORD UPON WHICH YOU WILL BASE
20 YOUR FINDINGS OF FACTS IN THIS CASE, AFTER CONSIDERING
21 ALL OF THE EVIDENCE, THE CREDIBILITY AND THE
22 BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED, AND
23 APPLYING THAT TESTIMONY AND YOUR FACTUAL FINDINGS TO THE
24 LAW OF THE CASE THAT I'M PREPARED TO CHARGE YOU AT THIS
25 TIME.

CHARGE BY THE COURT

1
2 NOW, LADIES AND GENTLEMEN,
3 ORDINARILY THE TRIAL JUDGE GIVES YOU THE LAW AFTER
4 SUMMATION OF COUNSEL, BUT DURING THE PAST FEW YEARS
5 JURORS HAVE SAID TO ME, JUDGE COTTINGHAM, I WISH YOU
6 WOULD HAVE TOLD ME WHAT THE LAW BEFORE THEY GAVE THEIR
7 FINAL ARGUMENTS, I BELIEVE I COULD HAVE FOLLOWED THEM
8 BETTER. AND SO IT IS FOR THAT REASON THAT I'M GOING TO
9 CHARGE YOU THE LAW NOW. I'LL BE BACK WITH SOME
10 CONCLUDING REMARKS AFTER FINAL SUMMATIONS, BUT MADAM
11 FOREMAN, I WANT YOU AND YOUR JURY TO KNOW THAT DURING
12 YOUR DELIBERATIONS THERE WILL BE PENCIL AND PAPER
13 PROVIDED IN THE JURY ROOM. AND IF AT ANYTIME YOU OR ANY
14 MEMBER OF YOUR JURY DESIRE FURTHER INSTRUCTION ON THE
15 LAW, PLEASE WRITE THAT QUESTION DOWN, LET US KNOW, AND
16 I'LL BE DELIGHTED TO CALL YOU BACK AND REINSTRUCT YOU
17 AS TO THE ISSUE THAT YOU REQUESTED.

18 NOW, AS ALL OF YOU ARE AWARE, THE
19 STATE OF SOUTH CAROLINA, UPON THESE TWO INDICTMENTS,
20 CHARGES THIS DEFENDANT, RUSSELL MONTGOMERY, WITH THE
21 OFFENSE OF ARMED ROBBERY, WHICH I WILL EXPLAIN TO YOU,
22 AND WITH THE OFFENSE OF KIDNAPPING, THAT I WILL EXPLAIN
23 TO YOU. THESE INDICTMENTS HAVE BEEN READ TO YOU AND
24 HAVE BEEN FOLLOWED, SO CONSEQUENTLY, I WILL NOT NOW
25 REPEAT THEM. THESE INDICTMENTS WILL BE IN THE JURY ROOM

1 WITH YOU DURING YOUR DELIBERATIONS.

2 NOW, AS I INDICATED AS A THRESHOLD
3 MATTER YESTERDAY, AND EMPHASIZE TO YOU AGAIN, THESE
4 INDICTMENTS, AND THE ALLEGATIONS THAT THEY CONTAIN IS
5 NOT EVIDENCE, IT IS THE ALLEGATIONS ONLY THAT THE STATE
6 MUST PROVE TO YOUR SATISFACTION BEYOND A REASONABLE
7 DOUBT.

8 NOW, IN YOUR DELIBERATIONS, CONSIDER
9 EACH INDICTMENT SEPARATELY AND THE EVIDENCE AS TO EACH
10 INDICTMENT SEPARATELY. AS AN EXAMPLE, AND AS EXAMPLE
11 ONLY, BOTH OF YOUR VERDICTS MAY BE NOT GUILTY OR GUILTY,
12 THEY MAY BE NOT GUILTY OF ONE AND GUILTY OF THE OTHER.
13 I MAKE NO ASSERTION TO YOU WHATSOEVER AS TO WHAT YOUR
14 VERDICTS SHALL BE, I JUST TELL YOU BY EXAMPLE THAT YOU
15 SHALL CONSIDER THE EVIDENCE SEPARATELY AS TO THE CHARGE
16 OF ARMED ROBBERY AND AS TO THE CHARGE OF KIDNAPPING,
17 REMEMBERING THAT WHATEVER YOUR VERDICT IS AS TO EACH
18 INDICTMENT, IT MUST BE THE UNANIMOUS VERDICT OF ALL
19 TWELVE OF YOU. IT CANNOT BE THE VERDICT OF THE MAJORITY,
20 AND OBVIOUSLY, IT WOULD NOT BE ONE OF THE MINORITY. IT
21 MUST BE THE UNANIMOUS VERDICT OF ALL OF YOU.

22 NOW, TWO THESE INDICTMENTS THIS
23 DEFENDANT HAS PLED NOT GUILTY, WHICH AS I INDICATED
24 YESTERDAY, PLACES UPON THE STATE THE BURDEN OF PROVING
25 THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. A

1 PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
2 SOUTH CAROLINA IS NEVER, EVER REQUIRED TO PROVE HIMSELF
3 INNOCENT, THE STATE MUST PROVE HIM GUILTY. I CHARGE YOU
4 THEREFORE THAT IT IS A VITAL, IMPORTANT RULE OF LAW OF
5 EVIDENCE THAT THE DEFENDANT IN A CRIMINAL CASE, NO
6 MATTER HOW SERIOUS MAY BE THE OFFENSE WITH WHICH HE IS
7 CHARGED, MUST ALWAYS BE PRESUMED INNOCENT UNTIL HIS
8 GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. THIS
9 PRESUMPTION OF INNOCENCE REMAINS WITH THIS DEFENDANT AT
10 ALL TIMES FROM THE MOMENT OF HIS ARRAIGNMENT, THROUGHOUT
11 THE TRIAL, AND UNTIL YOU, THE JURY, HAVE, UPON THE
12 TESTIMONY AND EVIDENCE PRESENTED, REACHED A VERDICT OF
13 GUILTY BEYOND A REASONABLE DOUBT. FOR IT IS THE SOLEMN
14 DUTY OF THE JURY, IF NOT CLEARLY CONVINCED OF HIS GUILT
15 BEYOND EVERY REASONABLE DOUBT TO THE CONTRARY, TO ACQUIT
16 THE DEFENDANT.

17 NOW, I'VE USED THE TERM, REASONABLE
18 DOUBT. LET ME DEFINE THAT FOR YOU. THE STATE, AS I'VE
19 INDICATED, HAS THE BURDEN OF PROVING THE DEFENDANT
20 GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE
21 SERVED AS JURORS IN CIVIL CASES WHERE YOU WERE TOLD THAT
22 IT IS ONLY NECESSARY TO PROVE A FACT IS MORE LIKELY TRUE
23 THAN NOT. IN CRIMINAL CASES THE STATE'S PROOF MUST BE
24 MORE POWERFUL THAN THAT, IT MUST BE BEYOND A REASONABLE
25 DOUBT. LADIES AND GENTLEMEN, PROOF BEYOND A REASONABLE

1 DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
2 DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS
3 WIDE WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN
4 CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT
5 OVERCOMES EVERY POSSIBLE DOUBT. IF, LADIES AND
6 GENTLEMEN, BASED ON YOUR CONSIDERATION OF THE EVIDENCE,
7 YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY
8 OF THE CRIMES CHARGED, YOU MUST, UNDER YOUR OATH, FIND
9 HIM GUILTY. IF, ON THE OTHER HAND, YOU THINK THERE IS
10 A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE
11 HIM THE BENEFIT OF THAT DOUBT AND FIND HIM NOT GUILTY.

12 NOW, LADIES AND GENTLEMEN OF THE
13 JURY, UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA
14 I CONTINUE TO EMPHASIZE THAT YOU, AND YOU ALONE, ARE THE
15 SOLE AND ONLY FINDERS OF THE FACTS IN THIS CASE. AS
16 TRIAL JUDGE I AM NOT ENTITLED TO A FACTUAL OPINION, AND
17 I HAVE NONE. IF ANY WORD, RULING OR MANNERISM OF MINE
18 MIGHT TEND TO INDICATE TO ANY OF YOU HOW I FEEL ABOUT
19 ANY FACTUAL SITUATION, PLEASE DISREGARD THAT. I AM NOT
20 ENTITLED TO A FACTUAL OPINION, AND I ABSOLUTELY HAVE
21 NONE. YOU TWELVE ARE THE JUDGES OF THE FACTS, THE SOLE
22 JUDGES IN THIS CASE.

23 YOU ARE ALSO THE JUDGES OF THE
24 CREDIBILITY, MEANING THE BELIEVABILITY OF ALL THE
25 WITNESSES WHO HAVE TESTIFIED. I TOUCHED ON THIS ISSUE

1 BRIEFLY AS WE BEGAN THE TRIAL OF THIS CASE ON YESTERDAY,
2 AND I TOLD YOU THEN, AS I DO NOW, THAT THERE ARE MANY
3 THINGS THAT WE USE IN EVERY DAY LIFE IN SIZING UP
4 STATEMENTS OR TESTIMONY THAT FOLKS TELL US. AS AN
5 EXAMPLE, OBVIOUSLY, YOU WOULD CONSIDER THE APPEARANCE
6 AND MANNER OF A PARTICULAR WITNESS WHO TESTIFIED,
7 SOMETIMES REFERRED TO AS THE Demeanor OF A WITNESS. WAS
8 A WITNESS FORTHRIGHT OR HESITANT? WAS A WITNESS'S
9 TESTIMONY CONSISTENT OR DID IT CONTAIN DISCREPANCIES?
10 YOU MAY CONSIDER WHAT WAS THE ABILITY OF A PARTICULAR
11 WITNESS TO KNOW ABOUT THE FACTS WHICH HE OR SHE HAS
12 TESTIFIED TO. OBVIOUSLY, YOU WOULD CONSIDER WHETHER OR
13 NOT A PARTICULAR WITNESS HAD A CAUSE OR A REASON TO BE
14 BIASED AND PREJUDICED IN FAVOR OF THE TESTIMONY THAT HE
15 OR SHE MAY HAVE GIVEN. YOU MAY, IF YOU CHOOSE, CONSIDER
16 WHETHER OR NOT THE TESTIMONY OF A WITNESS WAS
17 CORROBORATED, OR MADE STRONGER BY OTHER TESTIMONY AND
18 EVIDENCE, OR WAS IT MADE WEAKER OR IMPEACHED BY SUCH
19 OTHER TESTIMONY?

20 LADIES AND GENTLEMEN, AS JURORS, YOU
21 HAVE A RIGHT TO BELIEVE A SMALL PORTION OF A WITNESS'S
22 TESTIMONY AND DISREGARD THE LARGER, OR THE OTHER WAY
23 AROUND. YOU MAY, IF YOU CHOOSE, CONSIDER THE TESTIMONY
24 OF ONE WITNESS AGAINST THAT OF MANY. OBVIOUSLY, YOU DO
25 NOT DETERMINE THE TRUTH OR FALSITY OF A MATTER BY

1 .COUNTING UP THE NUMBER OF WITNESSES WHO MAY HAVE
2 TESTIFIED ON ONE SIDE OR THE OTHER.

3 LADIES AND GENTLEMEN, THROUGHOUT
4 THIS ENTIRE PROCESS, IN CONSIDERING THE CREDIBILITY AND
5 THE BELIEVABILITY OF ANY WITNESS YOU HAVE BUT ONE SINGLE
6 OBJECTIVE, JUST ONE, THAT IS, TO SEEK THE TRUTH. IN
7 JUDGING THE CREDIBILITY AND THE BELIEVABILITY YOUR
8 OBJECTIVE IS TO SEEK THE TRUTH, UPON WHICH YOUR FINDINGS
9 OF FACTS MAY BE BASED.

10 NOW, BY THE SAME CONSTITUTION AND
11 LAWS WHICH MAKE UNTO YOU THE FINDERS OF THE FACTS IN THE
12 CASE, THAT SAME DOCUMENT MAKES UNTO ME THE INSTRUCTOR
13 OF THE LAW. AND UNDER YOUR OATH, NOW, YOU ARE REQUIRED
14 TO ACCEPT THE LAW AS I CHARGE IT TO YOU, EVEN THOUGH
15 YOU, OR I FOR THAT MATTER, MIGHT DISAGREE WITH WHAT THE
16 LAW IS OR OUGHT TO BE. PLEASE, FOR THE PURPOSES OF
17 THESE INSTRUCTIONS, ACCEPT THE LAW AS BEING THE CORRECT
18 LAW, REMEMBERING THAT AS FINDERS OF THE FACTS, YOU TAKE
19 THE FACTS AS YOU FIND THEM TO BE, AND APPLY THOSE FACTS
20 TO THE LAW, AND THEREAFTER REACH A VERDICT. VERDICT
21 COMES FROM THE LATIN WORD, VEREDICTO, MEANING TO SPEAK
22 THE TRUTH.

23 NOW, I'M GOING TO FIRST INSTRUCT YOU
24 AS TO THE ELEMENTS OF ARMED ROBBERY, AND UNDER THE
25 THEORY THAT THE GREATER INCLUDES A LESSER, I'M ALSO

1 GOING TO INSTRUCT YOU UNDER COMMON LAW ROBBERY.
2 LARCENY, AS WE UNDERSTAND IT IN THE LAW, IS SIMPLY
3 STEALING, THAT IS, THE TAKING OF THE PROPERTY OF ANOTHER
4 WITH THE INTENT TO DEPRIVE THE OWNER OF THAT PROPERTY,
5 HIS POSSESSION OF IT. THAT'S THE LEGAL DEFINITION OF
6 STEALING.

7 NOW, ROBBERY IS THE TAKING OF
8 PROPERTY BY FORCE AND VIOLENCE, WHICH IS STEALING BY
9 FORCE AND VIOLENCE, AND I'LL DEFINE IT TO YOU. AND
10 ARMED ROBBERY IS ROBBERY WHICH IS ACCOMPANIED BY THE USE
11 OF A DEADLY WEAPON. THE DIFFERENCE BETWEEN THE ROBBERY
12 AND THE ARMED ROBBERY IS THE PRESENCE OF A DEADLY
13 WEAPON.

14 NOW, IT WILL BE FOR YOU TO DECIDE,
15 FIRST, IS THE DEFENDANT GUILTY OF ARMED ROBBERY? IF YOU
16 CONCLUDE HE IS NOT, THEN YOU WOULD DECIDE WHETHER OR NOT
17 HE IS GUILTY OF COMMON LAW ROBBERY. AND IF YOU DECIDE
18 HE IS NOT, THEN HE IS NOT GUILTY OF ANYTHING WITH
19 REGARDS TO THAT INDICTMENT.

20 NOW, LADIES AND GENTLEMEN, LET ME
21 TALK ABOUT ROBBERY. THE CRIME OF ROBBERY INCLUDES ALL
22 THE ELEMENTS OF STEALING, AS I HAVE JUST EXPLAINED TO
23 YOU. IN ADDITION TO THE FOUR ELEMENTS WHICH IS
24 COMPRISED OF STEALING, ANOTHER ELEMENT IS NECESSARY TO
25 CONSTITUTE OR MAKE OUT THE CRIME OF ROBBERY. THIS

1 ELEMENT IS THE TAKING AND CARRYING AWAY OF THE PROPERTY,
2 JUST HAVE BEEN ACCOMPLISHED BY PLACING THE OTHER PERSON
3 IN FEAR, IN VIOLENCE, OR THREATS OF VIOLENCE, SO AS TO
4 MAKE THE PERSON SURRENDER THE PROPERTY WITH HIS CONSENT
5 AND AGAINST HIS WILL.

6 NOW, ARMED ROBBERY IS AS FOLLOWS:
7 THE CRIME OF ARMED ROBBERY INCLUDES ALL OF THE ELEMENTS
8 OF ROBBERY, THAT IS, THE STEALING BY FORCE AND VIOLENCE,
9 AS I HAVE EXPLAINED TO YOU. IN ORDER TO MAKE OUT THE
10 CRIME OF ARMED ROBBERY, HOWEVER, AN ADDITIONAL ELEMENT
11 IS REQUIRED TO BE PROVEN, THE ROBBERY MUST HAVE BEEN
12 COMMITTED WITH A DEADLY WEAPON, THAT IS, THE PERSON
13 COMMITTING THE ROBBERY HAD AND USED A DEADLY WEAPON WITH
14 WHICH HE PLACED THE ONE POSSESSING THE PROPERTY IN FEAR
15 IN ORDER TO OBTAIN THE PROPERTY. I FURTHER INSTRUCT YOU
16 THAT A PISTOL OR A GUN OR A RIFLE IS A DEADLY WEAPON,
17 WHETHER OR NOT IT WAS ACTUALLY LOADED WITH AMMUNITION
18 AT THE TIME OF THE ROBBERY. ALL OF THESE ELEMENTS AS
19 TO ARMED ROBBERY AND ROBBERY MUST BE PROVEN BY THE STATE
20 TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT.

21 NOW, UPON ANOTHER INDICTMENT THIS
22 DEFENDANT IS CHARGED WITH KIDNAPPING. KIDNAPPING IS THE
23 INTENTIONAL TAKING OF A PERSON AND COMPELLING HIM TO BE
24 DETAINED AGAINST HIS WILL. IS THE WILLFUL AND UNLAWFUL
25 SEIZING OF A PERSON AGAINST HIS WILL, WITH AN INTENT TO

1 CAUSE HIM TO BE CONFINED, IMPRISONED, OR DETAINED. THE
2 ESSENCE OF THE OFFENSE OF KIDNAPPING IS THE UNLAWFUL
3 HOLDING OR IMPRISONMENT OF A PERSON FOR ANY LENGTH OF
4 TIME. KIDNAPPING MEANS THE CARRYING AWAY OF A PERSON BY
5 UNLAWFUL FORCE OR BY FRAUD AGAINST HIS OR HER WILL. THE
6 ELEMENTS OF KIDNAPPING THAT THE STATE MUST PROVE BEYOND
7 A REASONABLE DOUBT IS: ONE, THE UNLAWFUL SEIZURE, OR
8 CONFINED, KIDNAP, OR ADDUCT OR CARRY AWAY ANY OTHER
9 PERSON; TWO, BY ANY MEANS WHATSOEVER, WITHOUT AUTHORITY
10 OF LAW. THE GIST OF THE OFFENSE OF KIDNAPPING IS SOME
11 FORM OF COMPULSION, BUT THE LAW SAYS THAT THE REQUISITE
12 FORCE OR COMPULSION NEED NOT CONSIST OF THE USE OF
13 ACTUAL PHYSICAL FORCE OR VIOLENCE OR OF EXPRESSED
14 THREATS.

15 LADIES AND GENTLEMEN, THE OFFENSE
16 KIDNAPPING COMMENCES WHEN ONE IS WRONGFULLY AND
17 UNLAWFULLY DEPRIVED OF HIS OR HER FREEDOM, AND CONTINUES
18 UNTIL THAT FREEDOM IS RESTORED.

19 NOW, LADIES AND GENTLEMEN, THERE ARE
20 TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED
21 DURING A TRIAL, DIRECT EVIDENCE AND CIRCUMSTANTIAL
22 EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON
23 WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A
24 FACT, SUCH AS AN EYE WITNESS. CIRCUMSTANTIAL EVIDENCE
25 IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES THE

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1 EXISTENCE OF A FACT. THE LAW MAKES ABSOLUTELY NO
2 DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN
3 EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A
4 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
5 EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL
6 OF THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL OF THE
7 EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE
8 DEFENDANT BEYOND A REASONABLE DOUBT YOU MUST FIND THAT
9 DEFENDANT NOT GUILTY.

10 NOW, LADIES AND GENTLEMEN, I
11 INSTRUCT YOU NOW, AS I DID DURING THE COURSE OF THE
12 TRIAL, WITH REFERENCE TO EVIDENCE OF AN ALLEGED PRIOR
13 RECORD OF THE DEFENDANT OF ANOTHER CRIME. THIS EVIDENCE
14 WAS ADMITTED FOR A LIMITED PURPOSE ONLY. I INSTRUCT YOU
15 NOW THAT YOU MUST NOT CONSIDER SUCH EVIDENCE FOR ANY
16 PURPOSE EXCEPT FOR THE PURPOSE FOR WHICH IT WAS ADMITTED
17 BY ME. THIS EVIDENCE WAS ADMITTED AND MAY BE CONSIDERED
18 BY YOU, THE JURY, IF YOU CONCLUDE IT IS TRUE, ONLY FOR
19 THE PURPOSE OF EVALUATING THE CREDIBILITY OR
20 BELIEVABILITY OF THE TESTIMONY PRESENTED BY THE
21 DEFENDANT, HIMSELF, AND FOR NO OTHER PURPOSE. YOU CANNOT
22 AND YOU MUST NOT CONSIDER A PRIOR RECORD, IF ANY, OF
23 THIS DEFENDANT AS ANY EVIDENCE OF HIS GUILT OF THE
24 CHARGE FOR WHICH HE IS NOW BEING TRIED. YOU MAY GIVE
25 TO THIS EVIDENCE OF AN ALLEGED PRIOR RECORD SUCH WEIGHT

1 AND SUCH VALUE, IF ANY, TO WHICH YOU FIND IT IS ENTITLED
2 ON THE SOLE ISSUE OF THE CREDIBILITY OR THE
3 BELIEVABILITY OF THE TESTIMONY OFFERED BY THE DEFENDANT,
4 HIMSELF, BUT NOT AS TO ANY EVIDENCE OF HIS GUILT OF THE
5 CRIMES FOR WHICH HE IS NOW BEING TRIED.

6 NOW, LADIES AND GENTLEMEN, YOU HAVE
7 BEEN SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO
8 IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE,
9 AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE
10 WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT, AND YOU
11 WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU MUST
12 NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF
13 OPINIONS, IF ANY, WHICH YOU MAY HAVE HEARD ON THE
14 OUTSIDE, BUT YOU ARE TO DECIDE THIS CASE ACCORDING TO
15 THE TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE
16 SWORN WITNESSES, ALONG WITH SUCH OTHER DOCUMENTS AS I
17 HAVE PERMITTED INTO THE TRIAL OF THIS CASE, WHICH
18 DOCUMENTS WILL BE WITH YOU, MADAM FOREMAN, DURING YOUR
19 DELIBERATIONS.

20 FOR YOU CONSIDERATION AND
21 CONVENIENCE, MADAM FOREMAN, I HAVE PREPARED A POSSIBLE
22 JURY VERDICT. THERE IS NO SUGGESTION BY ME AS TO WHAT
23 YOUR VERDICTS SHOULD BE BASED ON THE ORDER THAT THEY ARE
24 GIVEN. I COULD JUST AS EASY TURN THEM AROUND THE OTHER
25 WAY. AS I INDICATED, YOU WILL CONSIDER EACH INDICTMENT

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1 SEPARATELY. FIRST, THIS FORM SAYS, WE, THE JURY, FIND
2 IN OUR UNANIMOUS VERDICT THAT THE DEFENDANT, RUSSELL
3 MONTGOMERY, FIRST ON THE CHARGE OF KIDNAPPING, CHECK
4 ONE, HE IS EITHER GUILTY OF KIDNAPPING, OR NOT GUILTY.
5 ON THE SECOND ONE, YOU WOULD THEN SAY, ON THE CHARGE OF
6 EITHER ARMED ROBBERY OR STRONG ARM ROBBERY, YOU WOULD
7 CHECK ONE, HE IS EITHER GUILTY OF ARMED ROBBERY, OR HE
8 IS GUILTY OF STRONG ARM ROBBERY, OR HE IS NOT GUILTY.
9 WHATEVER YOUR VERDICT IS, AND THERE'S ABSOLUTELY NO
10 SUGGESTION BY ME AS TO WHAT IT IS, YOU WOULD SIGN YOUR
11 NAME, MADAM FOREMAN, KNOCK ON THE DOOR, LET US KNOW, AND
12 WE WILL THEN RECEIVE YOUR VERDICT. AS I'VE INDICATED
13 AND EMPHASIZE TO YOU, WHATEVER YOUR VERDICT IS, IT MUST
14 BE THE UNANIMOUS VERDICT OF ALL TWELVE.

15 WE'LL NOW HAVE FINAL SUMMATIONS, AND
16 I'LL BE BACK WITH SOME CONCLUDING REMARKS, AFTER WHICH
17 THE JURY WILL BE EXCUSE SO THAT I MIGHT CONSIDER WITH
18 COUNSEL ANY ADDITIONAL CHARGES OR REQUESTS.

19 LET THE RECORD REFLECT THAT YOU HAVE
20 WAIVED OPENING ARGUMENTS AND YOU MAY NOW PROCEED.

21 MS. HINDS: THANK YOU, YOUR HONOR.

22 MS. AVINGER.

23 CLOSING ARGUMENT BY MS. HINDS

24 GOOD MORNING, LADIES AND GENTLEMEN.

25 I STARTED YESTERDAY AND TOLD YOU

1 THAT THERE WERE TWO SIDES TO THE STORY. YOU HAVE BEEN
2 GIVEN AN OPPORTUNITY FOR MR. MONTGOMERY NOW TO PRESENT
3 TO YOU THE OTHER SIDE OF THE STORY.

4 WE WOULD ASK AGAIN THAT WHEN YOU GO
5 INTO THE JURY ROOM AND DELIBERATION ON THESE CHARGES,
6 THAT YOU KEEP ONE SIMPLE QUESTION IN MIND, DOES THE
7 STATE'S VERSION OF THE EVENTS THAT HAPPENED THAT NIGHT
8 MAKE SENSE? IS THE WITNESSES' TESTIMONY CONSISTENT WITH
9 EACH OTHER, IS IT CONSISTENT WITH THE PHYSICAL EVIDENCE?
10 AND TO REMIND YOU THAT IF YOU HAVE REASONABLE DOUBT THAT
11 THE STORY DOESN'T MAKE SENSE YOU MUST FIND IN FAVOR OF
12 THE DEFENDANT.

13 I WOULD ALSO ASK YOU TO CONSIDER
14 THAT WHAT THE STATE HAS NOT PRESENTED CAN BE EVERY BIT
15 AS IMPORTANT AS WHAT THEY HAVE.

16 NOW, AGAIN, I REMIND YOU THAT
17 SITTING AT THAT TABLE, EQUALLY, TODAY AS YESTERDAY, MR.
18 RUSSELL MONTGOMERY IS PRESUMED INNOCENT, AND UNTIL ALL
19 TWELVE OF YOU FEEL, IF YOU DO, THAT THE STATE HAS MET
20 THEIR BURDEN, HE REMAINS AN INNOCENT MAN.

21 IN LOOKING AT THE TESTIMONY THAT WE
22 HEARD YESTERDAY, FIRST LET'S TALK ABOUT THE EYE WITNESS
23 TESTIMONY. AND THAT WAS BASICALLY KEVIN MACK, MARCUS
24 GUESS, AND SOMEWHAT MS. MCFARLAND, AND OBVIOUSLY, TRAVIS
25 GUESS, THE ALLEGED VICTIM IN THIS INCIDENT. THERE WERE

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1 A LOT OF INCONSISTENCIES IN THAT TESTIMONY, LADIES AND
2 GENTLEMEN. FIRST OFF, TWO OF THE STATE'S WITNESSES SAID
3 THAT THERE WAS ONE SHOT FIRED. MR. GUESS MAINTAINS THAT
4 THERE WERE TWO SHOTS FIRED. THE ONE, I BELIEVE IT WAS
5 MARCUS, AND I'LL REFER TO MY NOTES JUST TO MAKE SURE
6 THAT I DON'T MIS-SPEAK, BUT IF YOU REMEMBER TESTIMONY
7 DIFFERENT THAN WHAT I REMEMBER, YOU USE YOUR OWN
8 JUDGEMENT. HOWEVER, MARCUS GUESS, THE COUSIN OF MR.
9 TRAVIS GUESS, TESTIFIED THAT HE ONLY HEARD ONE SHOT, AS
10 DID KEVIN MACK. THEY RAN, THAT PART WAS CONSISTENT,
11 THEY RAN. HOWEVER, MR. MARCUS GUESS TELLS YOU THAT WHILE
12 HE WAS RUNNING HE EVEN HEARD A CAR START UP. I ASK YOU,
13 LADIES AND GENTLEMEN, IF THERE WERE TWO SHOTS REALLY
14 FIRED, WHY COULD NEITHER OF THOSE WITNESSES HEAR THE
15 SECOND SHOT? HOW FAR COULD THEY HAVE GOTTEN RUNNING?
16 AND NUMBER TWO, HOW COULD HE HAVE HEARD A CAR START UP
17 BUT NOT HAVE HEARD A GUN SHOT? IT DOESN'T MAKE SENSE.

18 AGAIN, THE WITNESSES TO THE
19 BEGINNING OF THIS INCIDENT, ALL THEY HEARD WAS THIS
20 PERSON SAY, DON'T MOVE. THEY NEVER HEARD THREATS OF,
21 GIVE IT UP, AS MR. TRAVIS GUESS SAYS. THEY NEVER HEARD
22 ANY OTHER CONVERSATION. THAT'S AT ODDS WITH WHAT MR.
23 GUESS SAYS. HOWEVER, THERE WERE A LOT OF CONSISTENCIES,
24 AND WE WILL GRANT THAT ALSO IN THEIR TESTIMONY. BUT
25 THINK ABOUT WHAT THE CONSISTENCIES WERE. THEY ALL

1 AGREED THAT THEY WERE SITTING AROUND, VISITING, DRINKING
2 AND TALKING, I BELIEVE ANYWHERE FROM AN HOUR TO THIRTY
3 MINUTES BEFORE THIS INCIDENT HAPPENED AT ALL. THEY ALL
4 AGREE THAT IF THIS MAN CAME FROM THE BACK BEHIND THE
5 TRAILER THAT NIGHT, THAT HE HAD THE GUN IN HIS LEFT
6 HAND. HOWEVER, WE HAVE TESTIMONY THAT MR. RUSSELL
7 MONTGOMERY IS RIGHT HANDED. DOES IT MAKE SENSE THAT A
8 MAN WHO'S RIGHT HANDED WOULD BE WIELDING A GUN IN HIS
9 LEFT HAND? IT DOESN'T MAKE SENSE.

10 WE ALSO KNOW THAT, FROM THE
11 TESTIMONY, EVERYONE AGREES THAT THE VIC -- EXCUSE ME,
12 THAT MR. MONTGOMERY -- OR EXCUSE ME, THAT MR. TRAVIS
13 GUESS STAYED AT THE BEGINNING OF THIS INCIDENT, WHEN
14 THE, AFTER THE FIRST SHOT WAS FIRED. NOW, EVERYONE ELSE
15 RAN. MR. GUESS SAYS HE STAYED BECAUSE HE WAS SCARED.
16 I SUBMIT TO YOU, THAT'S THE VERY REASON WHY EVERYBODY
17 ELSE RAN. WHY DID MR. GUESS STAY BEHIND WHEN EVERYBODY
18 ELSE RAN AWAY? IS IT CONSISTENT WITH MR. MONTGOMERY'S
19 STORY THAT THEY HAD SOME KIND OF DEAL GOING?

20 MR. TRAVIS GUESS ALSO TESTIFIED THAT
21 HE DIDN'T KNOW MR. MONTGOMERY WELL, HE KNEW HIM FROM
22 AROUND SCHOOL, BUT HE COULD RECOGNIZE HIS VOICE BECAUSE
23 HE HAD A FRIEND WHO'S GIRL FRIEND STAYED TWO TRAILERS
24 DOWN, WHO WAS MR. MONTGOMERY'S BROTHER. AND WHEN MR.
25 MONTGOMERY WOULD APPARENTLY COME TO VISIT, HE COULD HEAR

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1 THE VOICE. I ASK YOU, LADIES AND GENTLEMEN, HOW WOULD
2 YOU RECOGNIZE A VOICE OF SOMEBODY THAT YOU'RE NOT VERY
3 FAMILIAR WITH, FROM TALKING TWO TRAILERS AWAY? BECAUSE
4 THAT WAS THE TESTIMONY, TWO TRAILERS AWAY. IT DOESN'T
5 MAKE ANY SENSE.

6 OTHER TESTIMONY WAS THAT HE FORCES
7 MR. GUESS TO GET INTO A CAR AND DRIVE. NOW, MR.
8 MONTGOMERY, IF YOU BELIEVE MR. GUESS, IS CALLING THE
9 SHOTS, HE'S TELLING HIM, DRIVE, HE'S TELLING HIM WHERE
10 TO GO. HOWEVER WHEN HE GETS TO THE ROAD, AND THERE'S
11 A CHOICE OF WHETHER TO MAKE A TURN TO A POPULATED AREA
12 WHERE INDEED THEY ENDED UP IN THE MIDST OF SEVERAL
13 TRAILERS, AS YOU CAN SEE, NOT VERY FAR FROM SEVERAL
14 TRAILERS, OR TO GO THE OTHER WAY, WHICH FROM THE
15 TESTIMONY WOULD HAVE BASICALLY BEEN A DIRT ROAD OR
16 PLACES WHERE THERE WASN'T ANYBODY, IF MR. MONTGOMERY WAS
17 KIDNAPPING MR. GUESS, WOULD YOU TAKE HIM TO A PLACE
18 WHERE THERE'S OTHER PEOPLE AROUND, OR WOULD YOU TAKE HIM
19 OUT IN THE MIDDLE OF NOWHERE? WHICH WOULD MAKE MORE
20 SENSE?

21 MR. GUESS TESTIFIED AND TOLD THE
22 OFFICERS THAT HE WAS TOLD TO GET OUT OF THE CAR SEVERAL
23 TIMES. NOW, REMEMBER, THE TESTIMONY IS, IS THAT MR.
24 GUESS IS IN THE DRIVER'S SEAT, BEING MADE TO DRIVE THIS
25 CAR. MR. MONTGOMERY IS SITTING IN THE BACK SEAT. DOES

1 IT MAKE SENSE FOR A PASSENGER IN THE CAR TO TELL THE
2 DRIVER TO GET OUT, WHEN THEY'RE OBVIOUSLY GOING AT A
3 FAST ENOUGH RATE OF SPEED TO PRODUCE THAT MUCH OF AN
4 ACCIDENT, AND AS THE OFFICER TESTIFIED, THERE WAS A
5 FORCEFUL IMPACT, DOES IT MAKE SENSE THAT HE WOULD ORDER
6 MR. GUESS TO JUMP -- TO GET OUT OF THE CAR, TO GET OUT
7 OF THE CAR? IT DOESN'T MAKE SENSE.

8 MR. GUESS ALSO TELLS YOU THAT HE WAS
9 HIT ON THE BACK OF THE HEAD DURING THIS INCIDENT.
10 HOWEVER, THERE IS ABSOLUTELY NO CORROBORATION OF THAT.
11 WE UNDERSTAND, AND YOU CAN SEE THE PICTURES, HE DOES
12 HAVE SCRAPES TO HIS ARM AND HIS LEG FROM JUMPING OUT OF
13 THE CAR, WE'RE NOT ARGUING THOSE INJURIES. HOWEVER,
14 THERE IS NO DOCUMENTATION FOR ANY KIND OF BUMP OR BRUISE
15 OR ANYTHING ELSE ON THE HEAD WITH THE EXCEPTION OF THAT
16 SCRAP THAT WOULD HAVE BEEN THE ROAD RASH FROM JUMPING
17 OUT OF THE CAR.

18 MR. GUESS SAYS HE GOES TO THE
19 TRAILER FOR HELP, THEN WHEN HE SEES A POLICE OFFICER
20 OUTSIDE, HE GOES TO THAT POLICE OFFICER. YET, WHEN HE
21 GETS TO THE POLICE OFFICER HE DOESN'T IMMEDIATELY TELL
22 HIM THAT MR. MONTGOMERY IS SUPPOSEDLY THE ONE THAT HAS
23 DONE THESE AWFUL THINGS TO HIM, HE WAITS. IF INDEED HE
24 FELT LIKE HE WAS SAVED BECAUSE THE POLICE OFFICER WAS
25 THERE, WHY WOULD HE NOT IMMEDIATELY SAY, "ARREST THAT

1 MAN, THIS IS THE GUY THAT JUST DID THESE THINGS TO ME,
2 HE'S THE REASON WHY I JUMPED OUT OF THE CAR."? BUT HE
3 DIDN'T HE WAITED.

4 FINALLY, MR. GUESS SAYS WHEN HE
5 JUMPED OUT OF THE CAR, WHICH MAKES SENSE, THE KEYS ARE
6 STILL IN THE IGNITION. THE CAR IS STILL MOVING, ALL
7 THAT'S CONSISTENT. HOWEVER, THAT LEADS TO THE
8 CONCLUSION THAT AFTER THE CAR IMPACTS THAT POLE, THAT
9 MR. MONTGOMERY, AFTER BEING IN THIS ACCIDENT, BEFORE HE
10 LEAVES THE SCENE, TAKES THE KEYS OUT OF THE IGNITION AND
11 WALKS OFF WITH THEM. DOES THAT MAKE ANY SENSE? WHY IN
12 THE WORLD WOULD YOU WANT THE KEYS TO A CAR THAT'S
13 OBVIOUSLY WRECKED? IT DOESN'T MAKES SENSE, LADIES AND
14 GENTLEMEN, IT DOESN'T MAKE SENSE.

15 LET'S TALK A LITTLE BIT ABOUT THE
16 OFFICERS' TESTIMONY. AND SOME OF THAT WAS CONSISTENT
17 ALSO. FIRST OFF, BOTH OFFICERS DID SAY THE AREA, NOT
18 THAT TRAILER IN PARTICULAR, BUT THE AREA, THERE HAD BEEN
19 DRUG CALLS. BOTH AGREED THAT WHEN THEY WENT BACK --
20 THAT THEY BOTH WENT BACK TO THE SCENE WHERE MR. GUESS
21 WAS SUPPOSEDLY KIDNAPPED FROM. AND THEY CHECKED OUT,
22 THEY DID THEIR CRIME SCENE INVESTIGATION, AND THEY DID
23 THAT IN ORDER TO VERIFY FACTS, IN ORDER TO VERIFY THINGS
24 THAT MR. GUESS WAS SAYING. NOW, THEY BOTH SAID, AND YOU
25 CAN SEE FROM THE PHOTOGRAPH, THERE WAS AN INDENTATION

1 IN THE GROUND. THEY'RE SAYING IT'S A BULLET HOLE. BUT
2 WHEN I ASKED THEM IF THEY KNEW FOR SURE WHETHER OR NOT
3 IT WAS BULLET HOLE, THEY COULDN'T BE SURE OF THAT.
4 THERE'S ONE INDENTATION IN THE GROUND, AND THERE'S
5 NOTHING ABOUT IT THAT WOULD CLEARLY SHOW THAT IT WAS
6 MADE BY A BULLET. IT COULD HAVE BEEN MADE BY A ROCK,
7 IT COULD HAVE BEEN MADE BY ANYTHING. WE JUST DON'T
8 KNOW. AND, LADIES AND GENTLEMEN, IF THERE WERE INDEED
9 TWO SHOTS FIRED INTO THE GROUND, WHERE IS THE OTHER
10 HOLE? WHERE'S THE OTHER INDENTATION? THEY COULD ONLY
11 FIND ONE. THEY LOOKED THAT NIGHT, THEY WENT OUT THE
12 NEXT DAY WHEN IT WAS SUNNY AND IT WAS LIGHT, AND THEY
13 COULD FURTHER LOOK, AND COLLECT EVIDENCE FROM THE SCENE.

14 THEY ALSO AGREE THAT NO BULLETS ARE
15 FOUND. THAT'S REALLY TELLING. THE SUPPOSED SHOTS ARE
16 FIRED, THEY'RE FIRED INTO THE GROUND, BUT YET, WHEN THE
17 POLICE OFFICERS GO BACK TO THE SCENE, AND BY THEIR
18 TESTIMONY THEY'RE THERE IN A RELATIVELY SHORT PERIOD OF
19 TIME, AN HOUR, TWO HOURS. WE'RE NOT TALKING DAYS OR
20 WEEKS THAT THIS CRIME SCENE HAS BEEN LEFT UNATTENDED.
21 IF THAT GUN WAS SHOT TWICE IN FRONT OF THAT TRAILER,
22 WHERE'S THE BULLETS, LADIES AND GENTLEMEN? WHERE'S
23 SHELL CASINGS? WHERE'S, WHERE'S ANY EVIDENCE THAT A GUN
24 WAS SHOT THERE? THERE WOULD BE SOMETHING. WHERE DID
25 THE BULLETS GO? DOES THAT PART OF THE STORY MAKE SENSE?

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1 THEY ALSO BOTH AGREE THAT NO GUN
2 SHOT RESIDUE TEST WAS EVER DONE. BASICALLY, THAT KIND
3 OF A TEST IS SOMETHING THAT THEY DO TO SEE IF THERE IS
4 POWDER FROM THE FIRING OF THE GUN LEFT ON THE PERSON'S
5 HANDS. NOW, THE POLICE OFFICERS HAD AN ALLEGED SUSPECT
6 IN CUSTODY RIGHT AFTER THIS HAPPENED, YET NO ONE MADE
7 ANY EFFORT TO TAKE MR. MONTGOMERY AND TO HAVE THAT TEST
8 PERFORMED TO SEE IF THERE WAS ANY RESIDUE. LADIES AND
9 GENTLEMEN, THAT WOULD HAVE PROVED EITHER THE CASE FOR
10 THE STATE, PERHAPS, IF THERE HAD BEEN TRACES, OR PROVED
11 HIS INNOCENCE HAD THERE NOT BEEN, AND WOULD HAVE SHOWN
12 THAT HE HAD NOT FIRED A GUN THAT NIGHT. BUT THAT TEST
13 WAS NEVER DONE, SO WE WON'T KNOW. WHY WASN'T IT DONE?
14 BECAUSE OFFICER RAVENELL FELT THERE WAS NO NEED TO. HE
15 HAD ALREADY DECIDED THAT MR. MONTGOMERY WAS GUILTY,
16 BASED ON MR. GUESS'S STORY, AND HE DIDN'T NEED ANYMORE
17 EVIDENCE. LADIES AND GENTLEMEN, I SUBMIT TO YOU, YOU
18 DO. YOU NEED MORE THAN THAT.

19 WE HAD ALSO OFFICER TESTIMONY THAT
20 AGREES THAT THERE WAS ABSOLUTELY NO FINGER PRINTS ON THE
21 WEAPON. OFFICER RAVENELL DID SUBMIT THAT, AND OFFICER
22 KINSEY TESTIFIED AS AN EXPERT THAT HE DID THE TESTS ON
23 THAT WEAPON AND THERE WERE NO FINGER PRINTS. NO FINGER
24 PRINTS ON THE GUN, NO FINGER PRINTS ON THE BULLETS, NO
25 FINGER PRINTS ON THE CARTRIDGE OF THE CLIP, NONE. I ASK

1 YOU, LADIES AND GENTLEMEN, AGAIN, REMEMBERING THAT THIS
2 IS RIGHT AFTER THE INCIDENT, HOW COULD THERE NOT BE SOME
3 KIND OF FINGER PRINTS OF ONE OF HIS FINGERS ON THAT GUN?
4 I BELIEVE THE STATE IS GOING TO TRY TO TELL YOU THAT,
5 WELL, MAYBE HE USED THAT T-SHIRT THAT HE DROPPED, AND
6 WIPED OFF THE FINGER PRINTS BEFORE HE PUT IT ON THE
7 GROUND. LADIES AND GENTLEMEN, THERE WOULD STILL BE
8 FINGER PRINTS ON THE BULLETS, THERE WOULD STILL BE
9 FINGER PRINTS ON THAT CARTRIDGE. AS OFFICER RAVENELL
10 SAID, HE WAS IN HIS LINE OF SIGHT FROM THE MINUTE HE GOT
11 THERE, HE SAW HIM, SUPPOSEDLY, THROW THAT T-SHIRT DOWN,
12 AT LEAST. WOULD HE NOT HAVE NOTICED IF HE WAS OVER
13 THERE WIPING PRINTS, TAKING A GUN APART AND WIPING
14 PRINTS OFF OF THINGS? THERE'S NO FINGER PRINTS. THERE
15 IS NOTHING TO SHOW THAT MR. MONTGOMERY EVER HANDLED THAT
16 GUN, OR THAT THAT GUN WAS HIS.

17 THERE IS ONE OTHER POINT THAT THE
18 OFFICERS WERE CONSISTENT ON, AND THAT'S THE FACT THAT
19 THERE WERE DRUGS, OR SUPPOSED DRUGS, SINCE THEY WERE NOT
20 TESTED, IN THAT VEHICLE. ASK YOURSELVES, LADIES AND
21 GENTLEMEN, DOES IT MAKE SENSE THAT THERE'S DRUGS FOUND
22 IN THAT VEHICLE AND NO ONE IS CHARGED? IT'S ILLEGAL TO
23 HAVE EITHER ONE OF THOSE SUBSTANCES. HOWEVER, OFFICER
24 RAVENELL'S EXPLANATION WAS, HE WANTED TO GIVE HIM THE
25 BENEFIT OF THE DOUBT. WHO THE BENEFIT OF THE DOUBT?

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1 WAS THERE ANYTHING POINTING OUT THAT THAT CIGAR BOX
2 BELONGED TO MR. MONTGOMERY? DID THEY TEST IT FOR
3 PRINTS? NO. THEY DIDN'T FIND ANY -- THEY DIDN'T DO ANY
4 FINGER PRINT TESTING ON IT. AND WHY? BECAUSE THEY
5 WOULDN'T HAVE FOUND HIS PRINTS ON IT.

6 LADIES AND GENTLEMEN, IF YOU BELIEVE
7 THE TESTIMONY OF MR. GUESS AND HIS WITNESSES, THIS MAN
8 COMES AROUND FROM BEHIND THE TRAILER WITH A GUN IN ONE
9 HAND AND FIXING HIS BANDANNA, OR WHATEVER, WITH THE
10 OTHER. NOBODY SAID HE CAME WITH A CIGAR BOX, NOBODY
11 SAID HE HAD ANYTHING ELSE IN HIS HANDS. HE COULDN'T HAVE
12 HAD ANYTHING ELSE IN HIS HANDS. WHY? THAT BOX WASN'T
13 HIS, THAT BOX WAS IN THE CAR. AND WHOSE CAR WAS THAT?
14 MR. GUESS'S CAR. THOSE DRUGS DIDN'T BELONG TO MR.
15 MONTGOMERY. THAT WAS WHY MR. MONTGOMERY WAS THERE,
16 HOWEVER, HE TOLD YOU. NOT PROUD OF IT, BUT HE WAS THERE
17 TO MAKE A DRUG DEAL.

18 THE OTHER THING I WOULD LIKE YOU TO
19 CONSIDER IS ANOTHER INCONSISTENCY IN THE OFFICER'S
20 TESTIMONY WAS THAT -- EXCUSE ME, OFFICER RAVENELL
21 TESTIFIED THAT HE GOT MR. GUESS'S WALLET, HE INVENTORIED
22 IT WITH KETCHERSIDE, OFFICER KETCHERSIDE, AND THEN IT
23 WAS GIVEN BACK. HOWEVER, OFFICER KETCHERSIDE SHE WAS
24 TOLD WHERE THE WALLET HAD COME FROM, BUT SHE WAS NOT
25 PRESENT FOR THE INVENTORY. LADIES AND GENTLEMEN, WE'VE

1 GOT PICTURES OF THE MONEY SUPPOSEDLY FOUND IN MR.
2 MONTGOMERY'S POCKET. WHERE'S A PICTURE OF THE MONEY IN
3 THE WALLET? WHY DID THEY NOT HAVE SOME KIND OF
4 DOCUMENTATION ABOUT WHAT WAS IN THERE? AGAIN, IT
5 DOESN'T MAKE SENSE.

6 LADIES AND GENTLEMEN, MR.
7 MONTGOMERY IS NO ANGEL. HE TOOK THAT STAND YESTERDAY AND
8 HE TOLD YOU HE HAS BEEN IN TROUBLE BEFORE WHEN HE WAS
9 YOUNGER, HE'S HAD HIS PROBLEMS, BUT HE SAT ON THAT
10 WITNESS AND TOLD YOU, I DID NOT ARM ROB ANYBODY, I DID
11 NOT KIDNAP ANYBODY. HE EXPLAINED TO YOU THAT THIS WAS
12 A DRUG DEAL THAT SOMEHOW WENT BAD. HE TOLD YOU SITTING
13 IN THAT CHAIR THAT HE DID SNATCH THE BOX, THE BOX OF
14 DRUGS BELONGING TO MR. GUESS, AND THAT THERE WAS AN
15 ALTERCATION OVER THAT.

16 LADIES AND GENTLEMEN, THE KEY TO
17 THIS, IT COMES BACK TO CREDIBILITY AND THE BELIEVABILITY
18 OF THE WHOLE STORY. DOES IT MAKE SENSE? DOES WHAT THE
19 VICTIM'S SAYING -- BECAUSE THAT'S BASICALLY THIS WHOLE
20 CASE, IS MR. GUESS'S VERSION OF THE WAY IT ACTUALLY
21 HAPPENED THAT NIGHT. AND I SUBMIT TO YOU, IT WASN'T.
22 DOES IT MAKE SENSE FOR A PERSON WHO SUPPOSEDLY HAS JUST
23 COMMITTED AN ARMED ROBBERY KIDNAPPING TO STAY AT THE
24 SCENE OF THAT ACCIDENT, TO START WALKING AWAY, AND THEN
25 WHEN THE OFFICER ARRIVES, TO COME BACK TO HIM, AND THEN

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1 ON TOP OF THAT, TO EVEN TELL HIM OF THE GUY THAT WAS IN
2 THE CAR, THE OTHER GUY, HE'S OVER IN THAT TRAILER OVER
3 THERE. HE TOLD THEM WHERE MR. GUESS HAD GONE. DOES THAT
4 SOUND LIKE SOMEBODY WHO HAD JUST COMMITTED AN ARMED
5 ROBBERY AND A KIDNAPPING? IT DOESN'T MAKE SENSE, LADIES
6 AND GENTLEMEN, IT JUST DOESN'T MAKE SENSE.

7 AGAIN, THE KEY TO THIS IS THE DRUGS,
8 THE CASH, THE GUN. WE KNOW THE DRUGS ARE IN THE CAR.
9 WHERE DID THAT BOX COME FROM? IT CERTAINLY WASN'T MR.
10 MONTGOMERY'S BOX. THE CASH, MR. MONTGOMERY TOLD YOU,
11 I SNATCHED THE BOX, IT HAD DRUGS, IT HAD CASH. THE GUN,
12 THAT'S THE KEY TO THIS, BECAUSE THAT'S WHAT MAKES IT THE
13 ARMED ROBBERY. THERE IS NO TIE SHOWING THAT MR.
14 MONTGOMERY EVER HANDLED THAT GUN, EVER USED THAT GUN,
15 EVER DID WHAT MR. GUESS CLAIMS HAPPENED THAT NIGHT.

16 AGAIN, PLEASE, WHEN YOU'RE BACK
17 THERE REVIEWING THE TESTIMONY, USE YOUR COMMON SENSE.
18 THE JUDGE WILL TELL YOU THAT, THE SOLICITOR WOULD EVEN
19 AGREE, YOU MUST BRING YOUR COMMON SENSE TO THIS.
20 HOWEVER, HE SITS THERE, UNTIL YOU DECIDE, AN INNOCENT
21 MAN, HE SITS THERE TODAY TELLING YOU, AS HE DID
22 YESTERDAY, I'M NOT GUILTY OF ARMED ROBBERY, I AM NOT
23 GUILTY OF KIDNAPPING THIS MAN.

24 LOOK AT THE STORIES, LOOK AT THE
25 EVIDENCE, LOOK AT THE PICTURES. IF THERE'S A DOUBT IN

1 YOUR MIND THAT THIS HAPPENED THE WAY MR. GUESS'S STORY
2 GOES, THEN YOU MUST RESOLVE THAT DOUBT IN MR.
3 MONTGOMERY'S FAVOR. THERE'S A REASON WHY THE STATE HAS
4 THE BURDEN OF PROOF, AND THAT'S BECAUSE AN ACCUSATION
5 IS JUST AN ACCUSATION UNTIL THERE'S PROOF TO BACK IT UP.
6 AND UNTIL YOU'RE CONVINCED THAT THE PROOF DOES BACK IT
7 UP, THEN YOU MUST FIND MR. MONTGOMERY NOT GUILTY, AND
8 WE WOULD ASK YOU TO FIND MR. MONTGOMERY NOT GUILTY OF
9 KIDNAPPING, AND NOT GUILTY OF ARMED ROBBERY.

10 THANK YOU.

11 THE COURT: ONE OF THE JURORS, I
12 THINK, MAY FEEL A LITTLE BAD. I'M GOING TO LET THEM TAKE
13 A SHORT BREAK AND SEE HOW SHE'S FEELING.

14 GO AHEAD. YOU MAY GO TO THE JURY
15 ROOM JUST A MINUTE.

16 (Whereupon, the jury retires
17 to the jury room.)

18 THE COURT: THE YOUNG LADY, THE
19 SECOND ON THE LEFT, WAS FEELING POORLY AND ASKED TO TAKE
20 A QUICK RECESS. WE'LL SEE -- FIND OUT FROM HER IF SHE
21 FEELS LIKE SHE CAN CONTINUE. IF NOT -- I'M GOING TO
22 MAKE AN INQUIRY IF THAT JUROR FEELS LIKE SHE CAN
23 CONTINUE, IF NOT, WE'LL FOLLOW THE RULE AND CALL UP ONE
24 OF THE ALTERNATES.

25 MS. HINDS: YES, SIR.

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1 SOLICITOR AVINGER: YOUR HONOR,
2 WHILE WE'RE ON THIS BREAK, I'M JUST GOING TO RUN TO THE
3 REST ROOM.

4 THE COURT: YEAH, I'LL WAIT ON YOU.
5 JUST LET ME KNOW.

6 GIVE HER A CHANCE, I WOULD PREFER
7 THAT SHE STAY WITH US IF AT ALL POSSIBLE.

8 (Recess)

9 THE COURT: ALRIGHT, THE JUROR FEELS
10 LIKE THAT SHE CAN CONTINUE WHICH IS -- ARE YOU READY?
11 BRING THE DEFENDANT BACK IN, PLEASE.

12 (Whereupon, the defendant
13 enters the courtroom.)

14 THE COURT: ALRIGHT, EVERYONE IS
15 PRESENT, THE DEFENDANT IS IN COURT, ACCOMPANIED BY HIS
16 ATTORNEY. BRING THE JURY IN.

17 (Whereupon, the following
18 takes place in the
19 presence of the jury.)

20 THE COURT: ARE WE NOW READY TO
21 PROCEED, MADAM FOREMAN?

22 FORELADY OF THE JURY: YES, SIR.

23 THE COURT: IF AT ANYTIME YOU OR ANY
24 OF YOUR JURY NEEDS TO TAKE A BREAK ALL YOU HAVE TO DO
25 IS LET ME KNOW.

1 FORELADY OF THE JURY: THANK YOU.

2 THE COURT: ALRIGHT, WE'LL NOW HAVE
3 THE CONCLUDING SUMMATION BY COUNSEL FOR THE STATE. YOU
4 MAY PROCEED, MS. AVINGER.

5 SOLICITOR AVINGER: THANK YOU, YOUR
6 HONOR, MAY IT PLEASE THE COURT.

7 MS. HINDS.

8 CLOSING ARGUMENT BY SOLICITOR AVINGER

9 MADAM FORELADY, AND LADIES AND
10 GENTLEMEN, GOOD MORNING.

11 WHAT'S BEEN GOING ON IN THIS
12 COURTROOM HAS BEEN ABSOLUTELY UNBELIEVABLE. I MEAN,
13 THE DEFENSE WOULD HAVE YOU BELIEVE THAT EVERY WITNESS
14 THE STATE CALLED HAS BEEN UNTRUTHFUL. I MEAN, THAT'S
15 BASICALLY WHAT THE DEFENSE IS SAYING, RIGHT? LET'S GET
16 BACK TO REALITY AND LET'S TALK ABOUT THE EVIDENCE, THE
17 TESTIMONY, AND THE EXHIBITS YOU HAVE, LADIES AND
18 GENTLEMEN.

19 NOW, FIRST LET ME SAY THIS TO YOU,
20 'IN EVERY CASE THAT COMES INTO THIS COURTROOM THERE ARE
21 WAYS THE CASE COULD HAVE BEEN MADE BETTER. THERE ARE
22 OTHER THINGS THAT COULD ALWAYS BE DONE TO HAVE A CASE
23 BETTER PREPARED FOR COURT, AND LAW ENFORCEMENT AND THE
24 SOLICITOR'S OFFICE ARE CONSTANTLY TRYING TO BRING BETTER
25 CASES TO YOU ORANGEBURG JURIES. IN THIS CASE

1 SPECIFICALLY, THERE COULD HAVE BEEN A GUN SHOT RESIDUE
2 KIT DONE ON RUSSELL MONTGOMERY, BUT CAPTAIN RAVENELL HAS
3 EXPLAINED TO YOU WHY AT THE TIME HE FELT IT WAS NOT
4 NECESSARY. HE HAD TRAVIS GUESS, A WITNESS THAT WAS WELL
5 AND ABLE TO COME TO COURT AND TELL YOU WHAT HE SAW, WHAT
6 HE HEARD AND WHAT HE DID. THERE WERE OTHER WITNESSES
7 THAT WERE AVAILABLE FOR COURT. CAPTAIN RAVENEL HAD THE
8 VICTIM'S WALLET, THE VICTIM'S KEYS, AND THE LOOSE MONEY
9 FOUND IN RUSSELL MONTGOMERY'S POCKET. CAPTAIN RAVENELL
10 HAD A GUN THAT MATCHED THE DESCRIPTION GIVEN BY THE
11 PEOPLE THAT WERE THERE AT THE HOUSE THAT WAS FOUND VERY
12 NEAR RUSSELL MONTGOMERY. AND CAPTAIN RAVENELL HAD THE
13 DEFENDANT, RUSSELL MONTGOMERY, AT THE RECENTLY WRECKED
14 CAR. SO, CAPTAIN RAVENELL, LADIES AND GENTLEMEN, SIMPLY
15 MADE A JUDGEMENT CALL, AND HE MADE THAT CALL BASED ON
16 THE EVIDENCE HE HAD AT THE TIME, AND HE ALSO TOOK INTO
17 CONSIDERATION, I ARGUE TO YOU, THE TIME FACTOR INVOLVED,
18 AND THE MONEY AND RESOURCES FACTOR IT WOULD TAKE TO DO
19 THE GUN SHOT RESIDUE KIT.

20 NOW, CAPTAIN RAVENELL COULD HAVE,
21 COULD HAVE EASILY PROBABLY PHOTOGRAPHED THE INSIDE
22 CONTENTS OF THE WALLET, LADIES AND GENTLEMEN, BUT HE
23 DIDN'T. BUT HE WAS HERE AND HE TOLD YOU WHAT HE SAW.
24 LIEUTENANT KETCHERSIDE TOLD YOU THAT SHE WAS THERE, AS
25 WELL. TRAVIS GUESS TOLD YOU THAT THAT THREE HUNDRED

1 DOLLARS WAS IN THE WALLET THAT WAS RETURNED, LADIES AND
2 GENTLEMEN, IT'S REALLY NO BIG DEAL. BUT THE DEFENSE IS
3 NIT PICKING BECAUSE THEY HAVE VERY LITTLE WORK WITH IN
4 THIS CASE. AND JUST BECAUSE THESE TWO THINGS WEREN'T
5 DONE, DOES THAT MEAN YOU'RE SUPPOSED TO IGNORE ALL THE
6 OTHER EVIDENCE THAT YOU HAVE, AND LET A DANGEROUS FELON
7 LIKE RUSSELL MONTGOMERY GO? IS THAT WHAT YOU'RE
8 SUPPOSED TO DO? OF COURSE NOT. OF COURSE NOT.

9 NOW, WAS ANYONE INSULTED BY WHAT
10 DEFENDANT MONTGOMERY SAID YESTERDAY UNDER OATH? HE
11 WOULD HAVE YOU BELIEVE THAT THERE'S SOME TYPE OF BIG
12 CONSPIRACY GOING ON, AND THAT HE'S THE ONLY ONE IN THIS
13 COURTROOM THAT'S TELLING THE TRUTH. MS. HINDS TOLD YOU
14 IN HER OPENING THAT SHE HOPED YOU BROUGHT YOUR COMMON
15 SENSE WITH YOU, AND I HOPE SO, TOO, LADIES AND
16 GENTLEMEN. WAS ANYONE'S INTERNAL LIE DETECTOR MONITOR
17 GOING OFF YESTERDAY, WHEN THIS DEFENDANT, THIS MAN WHO
18 IS ON TRIAL, WITH EVERYTHING TO LOSE, THIS DEFENDANT,
19 WHO IS A CONVICTED FELON, AND THIS DEFENDANT WHO IS A
20 KNOWN THIEF, TOLD YOU THAT CAPTAIN RAVENELL WAS THE ONE
21 LYING, THAT CAPTAIN RAVENELL IS THE ONE COMMITTING
22 PURGERY? HOW RIDICULOUS IS THAT, AND HOW GULLIBLE DOES
23 MR. MONTGOMERY THINK YOU ARE? HOW OFFENSIVE, OFFENSIVE
24 WAS THIS ATTACK ON CAPTAIN RAVENELL? THIS MAN ISN'T A
25 ROAD DEPUTY OUT TO MAKE A CAREER, HE'S MADE HIS CAREER.

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1 LOOK AT THOSE GOLD BARS. SEVENTEEN YEARS IN LAW
2 ENFORCEMENT, AND THEY ATTACK HIS CREDIBILITY LIKE THAT,
3 LADIES AND GENTLEMEN. AND SURE, I COULD HAVE PUT
4 CAPTAIN RAVENELL BACK UP TO SAY WHAT HE SAID WAS A LIE,
5 IT HAPPENED THE WAY I TOLD YOU. THERE WAS NO REASON TO
6 WASTE ANYMORE TIME OF THE AFTERNOON. CAPTAIN RAVENELL
7 HAD ALREADY TOLD YOU EXACTLY WHAT HE SAW, WHAT HE HEARD,
8 AND WHAT HE DID. AND HE HAD TOLD YOU EVERYTHING JUST
9 MINUTES BEFORE RUSSELL MONTGOMERY TOLD YOU HIS LIE,
10 LADIES AND GENTLEMEN.

11 RUSSELL MONTGOMERY SAYS THAT NOT
12 ONLY DID KEVIN MACK AND MARCUS GUESS LIE ABOUT THERE
13 BEING AN ARMED INTRUDER, BUT, BUT TRAVIS GUESS -- TRAVIS
14 GUESS, WHO HAS ABSOLUTELY NO CRIMINAL RECORD, HE TELLS
15 YOU THAT TRAVIS GUESS IS A DRUG DEALER. IS THAT FAIR?
16 WHERE'S THE EVIDENCE OF THAT, LADIES AND GENTLEMEN?

17 RUSSELL MONTGOMERY WOULD HAVE YOU
18 BELIEVE THAT HE DID NOT GIVE CAPTAIN RAVENELL THE
19 VICTIM'S WALLET, THAT HE NEVER HAD THE KEYS IN HIS
20 POCKET, OR THAT LOOSE MONEY, AND THAT HE DIDN'T TOSS
21 THAT WHITE T-SHIRT, WITH THE GUN ON THE SIDE OF THE
22 ROAD. SO, CAPTAIN RAVENELL LIED.

23 BUT TO BELIEVE THAT YOU ALSO HAVE
24 TO BELIEVE THAT LIEUTENANT KETCHERSIDE LIED, BECAUSE SHE
25 TOLD YOU THAT SHE WAS THERE WHEN THEY TOOK THE KEYS OUT

1 OF THE POCKET, AND THE OTHER MONEY, AND WHEN THEY
2 PHOTOGRAPHED ALL THAT. OKAY?

3 AND DON'T FORGET ALSO, JUST AS AN
4 ASIDE, THAT NIGHT, THERE AT THE CAR WRECK SCENE,
5 LIEUTENANT KETCHERSIDE HAD INTERVIEWED MARCUS GUESS, AND
6 MARCUS GUESS HAD TOLD HER THAT THERE HAD BEEN AN ARMED
7 MASKED GUNMAN AT THE HOUSE. WHERE WAS THE TIME FOR THIS
8 STORY TO BE MADE UP BETWEEN MARCUS GUESS AND TRAVIS
9 GUESS? THERE WAS NO TIME FOR SOME CONSPIRACY, LADIES
10 AND GENTLEMEN. AND IF THIS REALLY WERE A CONSPIRACY TO
11 GET RUSSELL MONTGOMERY, WOULDN'T KEVIN MACK AND MARCUS
12 GUESS HAVE IDENTIFIED RUSSELL MONTGOMERY AS THE ONE WHO
13 WAS MASKED AND HAD THE GUN? WOULDN'T THEY HAVE COME IN
14 HERE AND SAID, YEAH, IT WAS HIM? THEY DIDN'T SAY THAT.
15 THEY TOLD YOU THIS PERSON HAD A MASK, AND HE WAS ARMED,
16 AND THEN THEY WENT ON WITH THEIR STORY. BUT IF IT'S A
17 CONSPIRACY, WOULDN'T THEY HAVE MADE THE STORY BETTER?
18 LADIES AND GENTLEMEN, THEY TOLD YOU THE WAY IT REALLY
19 HAPPENED, THEY TOLD YOU THE TRUTH.

20 AND LADIES AND GENTLEMEN, WHAT YOU
21 SAW YESTERDAY, YOU SAW A DESPERATE MAN, AND A DESPERATE
22 MAN WHO IS ON TRIAL, WHO IS TRYING TO TAKE ONE OF YOU
23 JURORS IN, TO FOOL ONE OF YOU, BECAUSE THAT'S ALL HE
24 NEEDS, LADIES AND GENTLEMEN, HE NEEDS ONE OF YOU TO GO
25 HIS WAY. AND PLEASE REMEMBER, THAT THIS DRESSED UP

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1 RUSSELL MONTGOMERY, WHO'S BROUGHT HIS BIBLE WITH HIM
2 EVERY DAY, SOFT SPOKEN YESTERDAY, WELL REHEARSED, THIS
3 COURTROOM RUSSELL MONTGOMERY IS NOT THE SAME MAN THAT
4 TRAVIS GUESS HAD TO DEAL WITH. HE LOOKS KIND OF
5 DIFFERENT FROM WHAT HE WAS JULY SECOND, A GUN TOTING,
6 THREATENING TO KILL PEOPLE, SHOOTING GUNS. KEEP THAT
7 IN MIND, AS WELL, LADIES AND GENTLEMEN.

8 LET'S TALK ABOUT THE DRUGS IN THE
9 CAR. DEFENSE HAS TALKED A LOT ABOUT THAT. DO WE KNOW,
10 WERE THEY REALLY DRUGS? WE DON'T KNOW. WHOSE ARE THEY?
11 WE DON'T KNOW. THE VICTIM AND MR. MONTGOMERY HAVE
12 DENIED ANY KNOWLEDGE OF THEM. WHAT DO THEY HAVE TO DO
13 WITH THE CASE? NO ONE IS CHARGED WITH THEM, LADIES AND
14 GENTLEMEN. CAPTAIN RAVENELL TOLD YOU THAT IF HE HAD
15 CHARGED ANYONE WITH THEM, IT WOULD HAVE BEEN RUSSELL
16 MONTGOMERY, BECAUSE WHAT CAPTAIN RAVENELL KNEW IS THAT
17 RUSSELL MONTGOMERY WAS AT THE CAR, RUSSELL MONTGOMERY
18 HAD THE KEYS TO THE CAR IN HIS POCKET. SO, IF A CHARGE
19 WAS GOING TO BE MADE IT WAS GOING TO RUSSELL MONTGOMERY.
20 BUT I SUBMIT THAT CAPTAIN RAVENELL, WITH ALL HIS
21 EXPERIENCE, HE MADE A WISE DECISION THAT NIGHT, LEAVE
22 THE DRUGS ALONE, IT HAS NOTHING TO DO WITH THIS CASE,
23 AND LET'S GO ON TO THE MORE SERIOUS CHARGES OF
24 KIDNAPPING AND ARMED ROBBERY.

25 MAYBE THERE ARE SOME DETAILS ABOUT

1 THIS INCIDENT THAT WE DON'T KNOW, BUT NOTHING CHANGES
2 WHAT WE DO, IN FACT, KNOW FROM THE TESTIMONY AND THE
3 EVIDENCE. WE KNOW THAT AT TRAVIS'S HOUSE THAT NIGHT,
4 WHERE EVERYBODY SAT OUTSIDE, THAT A MALE WITH A WHITE
5 T-SHIRT WRAPPED AROUND HIS HEAD, AND CARRYING A CHROME
6 PISTOL, CAME AND TERRORIZED EVERYBODY THERE; THAT HE
7 SHOT ONE TIME INTO THE GROUND, AND THEN KEVIN MACK AND
8 MARCUS GUESS RAN. THEY DIDN'T HEAR THE SECOND SHOT,
9 LADIES AND GENTLEMEN BECAUSE THEY WERE RUNNING. IT
10 MAKES PERFECT SENSE. AND THAT TRAVIS WAS TOO SCARED TO
11 LEAVED, HE WAS TOO SCARED TO MOVE. AND WHEN THIS MAN,
12 RUSSELL MONTGOMERY, HOLDING THE GUN, TURNED HIS
13 ATTENTION TO TRAVIS, HE TOLD HIM, GIVE IT UP, AND TRAVIS
14 GUESS COOPERATED. HE GAVE HIM HIS WALLET. BUT THAT
15 WASN'T ENOUGH, HE GAVE HIM THE LOOSE MONEY HE HAD, SO
16 NERVOUS THAT HE EVEN DROPPED SOME ON THE GROUND, AND AT
17 THAT POINT THE DEFENDANT SHOT THE SECOND TIME INTO THE
18 GROUND, AND TRAVIS GAVE HIM THE REST OF THE MONEY. HE
19 TOLD HIM TO, GIVE ME YOU KEYS, BUT THEN HE SAID, NO,
20 LET'S GET IN THE CAR, WE'RE GOING SOMEWHERE. RUSSELL
21 MONTGOMERY SAT IN THE BACK SEAT AND HELD THE GUN TO
22 TRAVIS GUESS'S HEAD, LADIES AND GENTLEMEN. BUT IF IT
23 HAPPENED LIKE RUSSELL MONTGOMERY SAID, THAT TRAVIS JUST
24 ASKED HIM TO RIDE SOMEWHERE WITH HIM, WHY DID HE RIDE
25 IN THE BACK SEAT? DOES THAT MAKE ANY SENSE? DOES THAT

1 MAKE ANY SENSE AT ALL?

2 TRAVIS TOLD YOU THAT THEY WENT DOWN
3 THE DRIVEWAY, OUT THE ROAD, AND HE WAS SCARED TO DEATH,
4 HE WAS SWERVING, THE DEFENDANT HIM IN THE HEAD ONE TIME.
5 AND DURING THIS -- AND TOLD HIM TO STRAIGHTEN UP, DRIVE
6 RIGHT. AND TRAVIS TRIED TO COOPERATE, HIS LIFE WAS AT
7 STAKE. HE TOLD YOU THAT RUSSELL MONTGOMERY WAS TELLING
8 HIM TO STOP THE CAR, TO GET OUT, GET OUT, AND STOP THE
9 CAR. AND TRAVIS MADE THE DECISION, LADIES AND
10 GENTLEMEN, HE MADE THE DECISION TO JUMP OUT OF THE
11 MOVING CAR, AND THEN HIS CAR HIT THAT UTILITY POLE WITH
12 ENOUGH FORCE TO PULL THE METER BOX OFF THE HOUSE NEXT
13 DOOR, LADIES AND GENTLEMEN.

14 BUT THIS RIGHT HERE IS WHERE THE
15 DEFENDANT'S STORY JUST GETS TOO INCREDIBLE TO HAVE ANY
16 TRUTH IN IT AT ALL. THE DEFENDANT WOULD HAVE YOU
17 BELIEVE THAT TRAVIS GUESS JUMPED FROM A MOVING CAR
18 BECAUSE THEY WERE ARGUING ABOUT SOMETHING. AND RUSSELL
19 MONTGOMERY TOLD YOU THAT THERE WAS PHYSICAL GOING ON,
20 NOW, WE WERE JUST ARGUING, AND THEN TRAVIS VOLUNTARILY
21 JUMPED OUT OF A MOVING CAR, AND DID THIS TO HIS BODY,
22 AND DID THIS TO HIS CAR. DOES THAT MAKE ANY SENSE AT
23 ALL? OF COURSE, IT DOESN'T. OF COURSE, IT DOESN'T.
24 AND REMEMBER, THE SOUTH CAROLINA HIGHWAY PATROL
25 INVESTIGATED THAT WRECK, AND DID NOT FIND TRAVIS GUESS

1 AT FAULT, WROTE NO TICKET.

2 LADIES AND GENTLEMEN, WHAT HAPPENED
3 THAT NIGHT IS EXACTLY WHAT TRAVIS GUESS TOLD YOU. THE
4 REASON HE DID THAT TO HIS BODY IS BECAUSE HE WAS SCARED
5 FOR HIS LIFE. HE WAS SCARED FOR HIS LIFE AND HE JUMPED
6 OUT, LOST HIS SHOES, BROKE HIS GLASSES, AND RAN TO THE
7 FIRST HOUSE THAT HAD LIGHTS ON. AND WHAT DID MS.
8 MCFARLAND TELL YOU? SHE TOLD YOU THAT TRAVIS GUESS -
9 - WELL, SHE SAID, SOME GUY, AND THEN SHE IDENTIFIED
10 TRAVIS GUESS -- BUSTED INTO HER HOUSE THAT NIGHT, SCARED
11 HER FAMILY TO DEATH, BROKE THE DOOR, AND HE WAS
12 BLEEDING, BLEEDING AND BRUISED, HE LOOKED LIKE HE HAD
13 JUST BEEN BEAT. SHE TOLD US THAT THIS MAN TOLD HER AND
14 HER FAMILY THAT SOMEONE WAS TRYING TO KILL HIM, THE
15 MAN'S GOT A GUN OUT THERE AND HE'S TRYING TO GET ME.
16 AND HE WOULDN'T LEAVE. AND HE WOULDN'T LEAVE UNTIL HE
17 SAW LAW ENFORCEMENT THERE SOME FIVE TO TEN MINUTES
18 LATER. LADIES AND GENTLEMEN, IF TRAVIS GUESS KNEW THERE
19 WERE DRUGS IN THE CAR, OR THAT THOSE WERE HIS DRUGS,
20 WOULD HE HAVE GONE BACK THERE TO WHERE THE CAR WAS
21 WRECKED? OF COURSE NOT. BUT MS. MCFARLAND'S LAST THING
22 TO Y'ALL SHE SAID, SHE SAID SHE'D NEVER SEEN ANYONE SO
23 FRIGHTENED IN HER LIFE. WASN'T SHE BELIEVABLE?

24 CAPTAIN RAVENELL TOLD YOU WHAT HE
25 SAW AS HE FIRST CAME UP UPON THAT WRECK SCENE, THAT HE

1 WAS IN HIS UNMARKED PATROL CAR, AND THAT RUSSELL
2 MONTGOMERY WAS THERE AT THE WRECKED CAR, AND THERE WAS
3 STEAM STILL COMING OFF THE CAR, AND BELIEVED THAT THE
4 WRECK HAD JUST OCCURRED. AND AS HE HIT HIS BLUE LIGHTS
5 RUSSELL MONTGOMERY WALKED UP THE STREET AND TOSSED THE
6 SHIRT. NOW, THIS IS ANOTHER PLACE I NEED YOU TO USE
7 YOUR COMMON SENSE. IF THE GUN WASN'T WRAPPED IN THE
8 WHITE T-SHIRT, WHY DID RUSSELL MONTGOMERY THROW A T-
9 SHIRT ON THE SIDE OF THE ROAD? USE YOUR COMMON SENSE.
10 AND DON'T FORGET, MR. MONTGOMERY HAS EVEN ADMITTED
11 HAVING A WHITE T-SHIRT TIED AROUND HIS HEAD SOMETIME
12 THAT NIGHT.

13 THE FINGER PRINTS ON THE GUN, THERE
14 WERE NO FINGER PRINTS ON THE GUN. KENNY KINSEY, THE
15 FINGER PRINT EXPERT, TOLD YOU THAT THAT'S NOT UNUSUAL,
16 THAT IT'S DIFFICULT TO GET ENOUGH RIDGE DETAIL LOTS OF
17 TIMES TO MAKE A COMPARISON. LADIES AND GENTLEMEN, THAT
18 GUN WAS WRAPPED IN THE T-SHIRT. BUT ALSO, AS MS. HINDS
19 POINTED OUT, THERE WERE NO FINGER PRINTS ON THE MAGAZINE
20 OR THE BULLETS. LADIES AND GENTLEMEN, IN TODAY'S TIMES,
21 IN TODAY'S WORLD, WITH ALL THE FORENSIC TELEVISION SHOWS
22 AND CSI, AND THINGS OF THAT NATURE, I ARGUE THAT MR.
23 MONTGOMERY, ALONG WITH OTHER DEFENDANTS, ARE MORE
24 CAREFUL NOWADAYS ABOUT FINGER PRINTS ON MAGAZINES AND
25 BULLETS. THAT'S AN EXPLANATION. PLUS, FINGER PRINTS

1 ARE HARD TO DEVELOP, AS KENNY KINSEY TOLD YOU.

2 WHY DIDN'T RUSSELL MONTGOMERY RUN
3 AWAY? WELL, WHERE WAS HE GOING TO GO? IN THE PICTURES
4 YOU CAN SEE ONE WHOLE SIDE OF THAT AREA WHERE THE CAR
5 WAS WRECKED THERE'S A FENCE THAT RUNS THE LENGTH OF THE
6 PROPERTY. AND ALSO, IT WAS TOO LATE, LAW ENFORCEMENT
7 WAS THERE. AND IF HE'D RUN, CAPTAIN RAVENELL, I ARGUE,
8 DEFINITELY WOULD HAVE CHASED HIM DOWN. HE WAS CAUGHT,
9 PLAIN AND SIMPLE. HE HAD THE WALLET ON HIM, HE HAD THE
10 KEYS ON HIM, HE HAD THE LOOSE MONEY ON HIM, HE HAD ABOUT
11 FIVE HUNDRED DOLLARS ON HIM, WITH THREE HUNDRED IN THE
12 WALLET AND THE ONE FORTY IN CHANGE IN LOOSE MONEY.
13 TRAVIS GUESS CAME UP, HE TOLD LAW ENFORCEMENT THAT HE
14 HAD BEEN ROBBED, AND ONCE THE OTHER OFFICERS WERE THERE,
15 WITHIN MINUTES, HE HAD TOLD LAW ENFORCEMENT THAT RUSSELL
16 MONTGOMERY WAS THE ONE WHO HAD COMMITTED THE ARMED
17 ROBBERY, LADIES AND GENTLEMEN.

18 NOW, WHO KNOWS WHAT A NORMAL
19 REACTION WOULD BE? THIS IS ANYTHING, I ARGUE, BUT A
20 NORMAL LIFE EXPERIENCE. SOMEONE NOT IN TRAVIS GUESS'S
21 SHOES, IT WOULD BE HARD TO SAY WHAT'S A NORMAL, QUOTE,
22 UNQUOTE, REACTION. HE HAD JUST BEEN THE VICTIM OF AN
23 ARMED ROBBERY AND KIDNAPPING. HE HAD BEEN IN HIS OWN
24 HOME WHEN A MASKED GUNMAN COMES UP, FIRING SHOTS,
25 THREATENING TO KILL PEOPLE, MAKING THREATS, DON'T MOVE

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1 OR I'LL KILL YOU. GIVE ME WHAT YOU'VE GOT. HE'S BEEN
2 PUT IN A CAR, HAD A GUN HELD TO HIS HEAD. HE'S BEEN
3 THREATENED TO BE KILLED IF HE DIDN'T STRAIGHTEN UP WITH
4 HIS DRIVING. AND THEN HE'S MADE THE DECISION AND HAS
5 JUMPED OUT, BAILED OUT OF A FAST MOVING CAR AND HURT
6 HIMSELF PHYSICALLY. HE'S BEEN THROUGH A LOT. LADIES
7 AND GENTLEMEN, HE DID THE BEST HE COULD THAT NIGHT. HE
8 DID THE BEST HE COULD THAT NIGHT, AND HIS TESTIMONY
9 YESTERDAY WITH US WAS THAT HE WANTED TO BE SURE IT WAS
10 SAFE. WHEN RUSSELL MONTGOMERY WAS IN CUFFS, AND THERE
11 WERE SEVERAL OFFICERS THERE, AND ONCE TRAVIS COULD BE
12 SURE THAT RUSSELL MONTGOMERY COULDN'T GET TO THE GUN
13 AGAIN, HE TOLD. AND HE TOLD ALMOST IMMEDIATELY, IT WAS
14 WITHIN MINUTES. SO, DON'T BE DISTRACTED BY THE
15 DEFENSE'S ARGUMENT THAT HE WAITED SOME LENGTH OF TIME
16 BEFORE HE TOLD. IT WAS WITHIN MINUTES. AND HE TOLD ALL
17 THE LAW ENFORCEMENT OFFICERS THERE.

18 WE KNOW THAT, THAT TRAVIS WAS PRETTY
19 SHOOK UP. I MEAN, ALL THE WITNESSES HAVE TOLD YOU ABOUT
20 HIS PHYSICAL APPEARANCE AND DEMEANOR. EMS HAD TO BE
21 CALLED OUT TO TREAT HIM, LADIES AND GENTLEMEN.

22 AND LET ME JUST REMIND YOU OF
23 SOMETHING THAT'S OBVIOUS, THAT NEEDS TO BE SAID, THIS
24 DEFENDANT, ANY DEFENDANT CAN COME INTO COURT AND TAKE
25 THE WITNESS STAND AND CAN MAKE STORIES UP. THEY CAN

1 OFFER EXPLANATIONS AT TRIAL TIME. WE DON'T EVEN KNOW
2 IF RUSSELL MONTGOMERY IS LEFT HANDED OR RIGHT HANDED.
3 JUST BECAUSE HE SAYS IT DOESN'T MAKE IT SO. THIS ISN'T
4 PERRY MASON, WHERE THE DEFENDANT GETS A SUDDEN ATTACK
5 OF CONSCIENCE AND IS GOING TO CAVE IN AND ADMIT HIS
6 GUILT WHEN HE'S ON THE WITNESS STAND.

7 THIS IS THE REAL WORLD, A REAL
8 COURTROOM, REAL LIFE, LADIES AND GENTLEMEN. AND YOU
9 WERE PICKED TO BE FAIR AND IMPARTIAL JURORS. YOU TOOK
10 AN OATH THAT YOU WOULD BASE YOUR VERDICT ON THE EVIDENCE
11 AND THE LAW. PLEASE DON'T ANY WELL MEANT BUT MISGUIDED
12 SYMPATHY DISTRACT YOU FROM DOING YOUR DUTY. WE TRUST
13 THAT YOU WILL DO ALL THAT YOU PROMISED YOU WOULD DO.

14 ARMED ROBBERY, THE ELEMENTS ARE THAT
15 YOU TAKE THE PROPERTY OF ANOTHER WITHOUT CONSENT WHILE
16 ARMED WITH A DEADLY WEAPON. RUSSELL MONTGOMERY
17 CERTAINLY DID THAT, HE TOOK THE WALLET, HE TOOK THE
18 MONEY. NOW, THE INDICTMENT ACTUALLY MENTIONED SOMETHING
19 ABOUT THE KEYS BEING TAKEN, AND IT SHOULD SAY, TAKE
20 MONEY AND/OR KEYS. IT'S JUST A SCRIVENER'S ERROR, IT'S
21 NO PROBLEM. THOSE PAPERS, AS THE JUDGE TOLD YOU FROM
22 THE BEGINNING, ARE JUST CHARGING PAPERS TO GET YOU INTO
23 COURT.

24 KIDNAPPING, THE ELEMENTS, TO TAKE
25 AWAY, ABDUCT OR CONFINE THE MOVEMENTS UNLAWFULLY WITHOUT

1 CONSENT. LADIES AND GENTLEMEN, IF THIS IS NOT PROOF
2 BEYOND ANY REASONABLE DOUBT, WHAT DOES IT TAKE IN
3 ORANGEBURG COUNTY TO PRESENT SUCH A CASE TO YOU?

4 DON'T BE MISLED BY A GOOD DEFENSE
5 ATTORNEY WHO IS TRYING TO DISTRACT YOU FROM THE
6 OVERWHELMING EVIDENCE OF HER CLIENT'S GUILT, LADIES AND
7 GENTLEMEN. YOU NOTICE HOW TODAY MS. HINDS IS TALKING
8 ABOUT THE LESSER INCLUDED OFFENSE OF STRONG ARM ROBBERY?
9 LADIES AND GENTLEMEN, DON'T REWARD THIS MAN WITH A
10 LESSER CHARGE. IT'S EITHER ARMED ROBBERY OR NOT.

11 LADIES AND GENTLEMEN, THE STANDARD
12 OF PROOF IS PROOF BEYOND ANY REASONABLE DOUBT. THERE
13 ARE FEW THINGS YOU CAN KNOW WITH ABSOLUTE CERTAINTY, BUT
14 IF YOU ARE FIRMLY CONVINCED, THEN YOU MUST CONVICT. IT
15 IS NOT PROOF BEYOND ANY DOUBT, OR PROOF BEYOND EVERY
16 DOUBT, IT IS PROOF BEYOND ANY REASONABLE DOUBT.

17 LET YOUR VERDICT TELL MR. RUSSELL
18 MONTGOMERY THAT WE WILL NOT ALLOW THIS VIOLENT BEHAVIOR
19 IN ORANGEBURG COUNTY. TRAVIS GUESS AND EVERY CITIZEN
20 HERE IN ORANGEBURG COUNTY HAS A RIGHT TO BE SAFE IN
21 THEIR OWN HOME AND IN THEIR OWN CAR. CAPTAIN RAVENELL,
22 HE WAS THERE, ON THE SPOT, RIGHT THERE THAT NIGHT, DOING
23 HIS JOB. AND BECAUSE OF HIS GOOD INSTINCTS, HIS
24 TRAINING AND HIS EXPERIENCE, CAPTAIN RAVENELL WAS ABLE
25 TO GET RUSSELL MONTGOMERY OFF OF OUR STREETS THAT

1 NIGHT. THE VICTIM HAS DONE HIS JOB, HE HAS COME INTO
2 COURT, HE'S TOLD WHAT HAPPENED, HE'S BEEN SUBJECTED TO
3 CROSS-EXAMINATION, HE'S BEEN HERE EVERY DAY, HE'S BEEN
4 CALLED A DRUG DEALER, BUT HE'S DONE HIS PART. THE OTHER
5 WITNESSES HAVE DONE THEIR JOB. THEY'VE BEEN IN HERE AND
6 THEY'VE TOLD YOU WHAT THEY KNOW ABOUT JULY SECOND OF
7 LAST YEAR, LADIES AND GENTLEMEN. I'VE DONE MY PART BY
8 BRINGING THIS CASE TO YOU, BY BRINGING THESE WITNESSES
9 TO YOU, AND HAVING THIS EVIDENCE HERE FOR YOU TO
10 CONSIDER. AND THE JUDGE AND MS. HINDS HAVE DONE THEIR
11 PART, AS WELL. NOW, IT'S TIME FOR YOU TO DO YOUR JOB.
12 LET JUSTICE BE DONE. RUSSELL MONTGOMERY IS GUILTY OF
13 BOTH ARMED ROBBERY AND KIDNAPPING, BEYOND ANY REASONABLE
14 DOUBT, AND I ASK THAT YOU FIND HIM GUILTY OF BOTH
15 COUNTS.

16 THANK YOU VERY MUCH FOR YOUR
17 ATTENTION.

18 THE COURT: THANK YOU, MS. AVINGER,
19 AND THANK YOU, MS. HINDS.

20 CLOSING REMARKS BY THE COURT

21 LADIES AND GENTLEMEN, PRIOR TO
22 SUMMATION BY DISTINGUISHED COUNSEL FOR THE STATE AND FOR
23 THE DEFENSE, I INSTRUCTED YOU WITH REGARDS TO THE
24 VARIOUS ISSUES OF LAW IN THE TRIAL OF THIS CASE AND I
25 ASK, AS YOU EXAMINE THE EVIDENCE AND JUDGE THE

1 CREDIBILITY AND BELIEVABILITY, THAT YOU KEEP THESE
2 INSTRUCTIONS IN YOUR MIND.

3 LET ME BRIEFLY RECAPITULATE WITH
4 REGARD TO THE ISSUES INVOLVED.

5 I HAVE INSTRUCTED YOU WITH REGARDS
6 TO THE PRESUMPTION OF INNOCENCE.

7 I HAVE DEFINED FOR YOU REASONABLE
8 DOUBT. YOU UNDERSTAND THAT THE STATE HAS THE BURDEN OF
9 PROVING, OF EACH AND EVERY ELEMENT OF THE OFFENSE
10 CHARGE, BEYOND A REASONABLE DOUBT.

11 YOU WOULD UNDERSTAND THAT YOU AND
12 YOU ALONE ARE THE SOLE JUDGES OF THE CREDIBILITY AND THE
13 BELIEVABILITY OF EVERY WITNESS WHO TESTIFIES.

14 I'VE EXPLAINED TO YOU THAT I'M THE
15 INSTRUCTOR IN THE LAW AND YOU MUST ACCEPT THE LAW AS I
16 GIVE IT TO YOU, APPLYING THE FACTS TO THAT LAW AS YOU
17 FIND THEM TO BE.

18 I HAVE DEFINED FOR YOU DIRECT
19 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

20 AS I TOLD YOU BEFORE, TOO, THERE WAS
21 INTRODUCED INTO THE TRIAL OF THIS CASE AN ALLEGED PRIOR
22 RECORD OF THE DEFENDANT. IF YOU FIND THAT THERE IS A
23 PRIOR RECORD YOU MAY ONLY USE IT AS TO HIS CREDIBILITY
24 AND BELIEVABILITY, YOU MUST NOT USE ANY ALLEGED PRIOR
25 RECORD AS EVIDENCE OF HIS GUILT IN THE CRIMES FOR WHICH

1 HE IS THIS DAY BEING CHARGED.

2 I HAVE ALSO DEFINED FOR YOU THE
3 ELEMENTS OF KIDNAPPING, WHICH IS THE TAKING AND CARRYING
4 AWAY WITHOUT CONSENT, AND DEPRIVING AN INDIVIDUAL OF HIS
5 LIBERTY FOR ANY PERIOD OF TIME.

6 I HAVE TOLD YOU THAT -- I HAVE
7 DEFINED FOR YOU THE ELEMENTS OF ARMED ROBBERY, AND I
8 HAVE DEFINED FOR YOU THE LESSER INCLUDED OFFENSE OF
9 STRONG ARM ROBBERY, SOMETIMES WE REFER TO IT AS COMMON
10 LAW ROBBERY, BUT TECHNICALLY THE CHARGE IS STRONG ARM
11 ROBBERY. NOW, LET ME RUN OVER THOSE WITH YOU.

12 STEALING UNDER THE LAW, WE CALL
13 LARCENY. LARCENY, OR STEALING IS FIRST THAT THE STATE
14 MUST PROVE THAT THERE WAS A TAKING. SECONDLY, THEY MUST
15 PROVE THAT THE TAKING WAS OF THE PERSONAL PROPERTY OF
16 ANOTHER. THIRD, THEY MUST SHOW THAT THE PROPERTY, AFTER
17 BEING TAKEN, WAS CARRIED AWAY. AND FOURTH, THAT THE
18 TAKING AND CARRYING AWAY OF THE PROPERTY WAS DONE WITH
19 THE INTENT TO STEAL IT. THEY MUST PROVE THESE ISSUES
20 BEYOND A REASONABLE DOUBT.

21 THE CRIME OF ROBBERY, SOMETIMES
22 CALLED STRONG ARM ROBBERY, SOMETIMES CALLED COMMON LAW
23 ROBBERY, INCLUDES THE ELEMENTS OF STEALING, WHICH IS THE
24 CRIME OF LARCENY AS I HAVE EXPLAINED TO YOU. IN
25 ADDITION THE ELEMENTS CONSTITUTING LARCENY, ANOTHER

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1 ELEMENT IS NECESSARY TO CONSTITUTE OR MAKE OUT THE CRIME
2 OF ROBBERY. THAT ELEMENT IS THE TAKING AND CARRYING
3 AWAY OF THE PROPERTY, MUST HAVE BEEN BY PLACING THE
4 OTHER PERSON IN FEAR OF VIOLENCE OR THREAT OF VIOLENCE,
5 SO AS TO MAKE THAT PERSON SURRENDER THE PROPERTY WITHOUT
6 HIS CONSENT AND AGAINST HIS WILL.

7 THE CRIME OF ARMED ROBBERY INCLUDES
8 ALL OF THE ELEMENTS OF ROBBERY AS I HAVE EXPLAINED THEM
9 TO YOU. IN ORDER TO MAKE OUT THE CRIME OF ARMED
10 ROBBERY, HOWEVER, AN ADDITIONAL ELEMENT IS REQUIRED TO
11 BE PROVEN, AND THAT IS, THE ROBBERY, IF ANY, MUST HAVE
12 BEEN COMMITTED WITH A DEADLY WEAPON. AND I CHARGE YOU
13 AS A MATTER OF LAW THAT PISTOL OR A GUN OR RIFLE IS A
14 DEADLY WEAPON.

15 MADAM FOREMAN, I HAVE PREPARED FOR
16 YOU A JURY VERDICT FORM. AFTER YOU'VE REACHED A
17 UNANIMOUS VERDICT PLEASE SELECT WHATEVER YOUR VERDICT
18 IS, SIGN YOUR NAME AS FOREMAN, KNOCK ON THE DOOR AND LET
19 US KNOW.

20 NOW, I'M GOING TO ASK THAT YOU GO
21 TO YOUR JURY ROOM. DO NOT BEGIN YOUR DELIBERATIONS
22 UNTIL I SEND THESE INDICTMENTS IN WITH YOU, AND WHEN I
23 SEND THESE EXHIBITS IN. SO, DO NOT BEGIN YOUR
24 DELIBERATIONS.

25 I'M GOING TO LET THE ALTERNATES GO

1 IN THE JURY ROOM AT THIS TIME UNTIL I DETERMINE WHETHER
2 OR THERE ARE SOME ADDITIONAL INSTRUCTIONS. IF THERE ARE
3 NOT, I'LL BRING THE ALTERNATES BACK OUT. I WANT THE
4 ALTERNATES OUT PRIOR TO ANY DELIBERATIONS.

5 YOU MAY NOW GO TO THE JURY ROOM, AND
6 THANK YOU.

7 (Whereupon, the jury retires
8 to the jury room.)

9 THE COURT: FOR THE STATE, ANY
10 ADDITIONS OR EXCEPTIONS TO THE CHARGE?

11 SOLICITOR AVINGER: NO, YOUR HONOR.

12 THE COURT: FOR THE DEFENSE?

13 MS. HINDS: NO, SIR.

14 THE COURT: ALRIGHT, LET'S AGREE AS
15 TO WHAT THE EXHIBITS ARE, AND LET THEM GO TO THE JURY
16 ROOM.

17 YOU MAY BRING THE ALTERNATES OUT AT
18 THIS TIME, PLEASE. LET THE RECORD REFLECT THAT THE
19 ALTERNATES ARE BEING REMOVED FROM THE JURY POOL PRIOR
20 TO ANY DELIBERATION.

21 (Whereupon, the alternate jurors
22 return to the courtroom.)

23 THE COURT: MADAM ALTERNATES, UNDER
24 OUR RULE WE ONLY PERMIT TWELVE FOLKS TO BE IN THE JURY
25 ROOM DURING THE DELIBERATIONS. I WISH IT WERE THAT WE

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1 COULD LET YOU BE IN THERE, BUT YOU CAN'T. HAVING SAID
2 THAT, THOUGH, I NEED TO KEEP YOU HERE TO MAKE SURE THAT
3 EVERY, WE'VE GOT ALL TWELVE JURORS, BECAUSE OBVIOUSLY,
4 ONE YOUNG LADY HAS BEEN FEELING BAD, AND IT MAY BE, IF
5 SHE CONTINUES TO FEEL BAD AND CANNOT CONTINUE, ONE OF
6 YOU WILL HAVE TO SERVE IN HER PLACE. SO, I'M GOING TO
7 ASK THAT YOU SIT OUT THERE AND BE WITH US, PLEASE.

8 ARE Y'ALL GETTING TOGETHER ON THE
9 EXHIBITS?

10 SOLICITOR AVINGER: WE DID, YOUR
11 HONOR.

12 MS. HINDS: YES, SIR.

13 SOLICITOR AVINGER: WE'VE GOT THEM
14 READY.

15 THE COURT: EVERYBODY AGREES?

16 SOLICITOR AVINGER: YES, SIR.

17 (Whereupon, the jury begins
18 deliberations at 11:05 a.m.)

19 (Recess)

20 (Whereupon, a communication
21 comes in from the jury.)

22 THE COURT: WE HAVE A QUESTION FROM
23 THE JURY. WE'LL READ THIS TOGETHER. THEY WANT THE
24 TESTIMONY WHERE THE DEFENDANT SAYS, "I GAVE THE
25 POCKETBOOK TO MR., TO CAPTAIN RAVENELL." IS THAT THE

1 WAY YOU VIEW IT? THAT'S THE WAY I DO. IS THAT YOUR
2 UNDERSTANDING OF WHAT IT IS?

3 ALRIGHT, LET'S COME TO ORDER,
4 PLEASE, BRING THE JURY IN. WAIT A MINUTE, DON'T BRING
5 THEM IN YET. LET'S FIND IT.

6 COURT REPORTER: DO YOU WANT TO JUST
7 TAKE A RECESS UNTIL I FIND IT? IT'S GOING TO TAKE A
8 LITTLE WHILE.

9 THE COURT: DO YOU WANT TO TAKE A
10 RECESS? I'LL TELL YOU WHAT, LET'S JUST TAKE A RECESS.

11 (Recess)

12 THE COURT: I HAVE RECEIVED THE
13 FOLLOWING COMMUNICATION, WHICH IS IN TOTO.

14 MS. HINDS: YOUR HONOR, SHOULD I GET
15 MR. MONTGOMERY OUT HERE?

16 THE COURT: YES, BRING HIM BACK OUT,
17 AND LET'S GET ON THE RECORD, AND LET'S DEAL WITH THIS
18 ISSUE FIRST.

19 MS. HARRY DOT?

20 COURT REPORTER: YES, SIR.

21 THE COURT: I'M GOING TO NEED TO GET
22 ON THE RECORD WITH YOU ABOUT THIS.

23 COURT REPORTER: ALRIGHT. OKAY,
24 WELL LET ME GET BACK TO WHERE I WAS.

25 THE COURT: I HAVE RECEIVED THE

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1 FOLLOWING COMMUNICATION FROM THE JURY. "WE WOULD LIKE
2 TO SEE THE STATEMENT TO CONFIRM THE DEFENDANT SAYING HE
3 GAVE THE WALLET TO THE OFFICER. IT WAS IN RUSSELL'S
4 POSSESSION AT ONE TIME." FIRST, I DON'T KNOW OF ANY
5 STATEMENT THAT THE DEFENDANT MADE, OTHER THAN HIS
6 TESTIMONY. DOES ANYBODY KNOW ANYTHING ABOUT A
7 STATEMENT?

8 MS. HINDS: NO, SIR, THAT WOULD BE
9 THE ONLY THING THAT ---

10 THE COURT: SO, WHEN THEY SAY,
11 STATEMENT, I ASSUME THEY ARE TALKING ABOUT HIS
12 TESTIMONY.

13 MS. HINDS: YES, SIR.

14 SOLICITOR AVINGER: YOUR HONOR,
15 UNLESS THEY ARE TALKING ABOUT WHAT CAPTAIN RAVENELL SAID
16 THE DEFENDANT SAID. CAPTAIN RAVENELL SAID THE DEFENDANT
17 SAID, AS HE PULLED OUT THE WALLET AND GAVE HIM THE
18 WALLET, HE SAID, HEY, MAN, THE DRIVER IS OVER THERE. I
19 MEAN, THEY MAY HAVE BEEN TALKING ABOUT THAT.

20 THE COURT: I JUST DON'T KNOW. I'M
21 GOING TO ASK THE JURY -- THERE IS TESTIMONY INVOLVING
22 THE WALLET FROM TWO FOLKS, THE DEFENDANT AND CAPTAIN
23 RAVENELL, DO THEY WANT ALL OF IT OR HIS ALLEGED
24 STATEMENT, OR WHAT? I DON'T KNOW.

25 MS. HINDS: YES, SIR.

1 THE COURT: I'M GOING TO HAVE TO
2 FIND OUT. MS. HARRY DOT, ---

3 COURT REPORTER: YES, SIR.

4 THE COURT: --- LET'S FIND OUT WHAT
5 THEY WANT, AND THEN I'LL SEND THEM BACK TO THE JURY
6 ROOM. I THINK -- LET'S BRING THE FOREMAN OUT. BRING
7 THE FOREMAN OUT FOR ME.

8 (Whereupon, the jury forelady
9 enters the courtroom.)

10 THE COURT: MADAM FOREMAN, OCCUPY
11 THAT CHAIR FOR ME, AND I THANK YOU. THAT'S FINE. I
12 JUST WANT A CLARIFICATION AS TO WHAT THE JURY HAS ASKED
13 FOR. I FIND THIS, "WE WOULD LIKE TO SEE THE STATEMENT
14 TO CONFIRM THE DEFENDANT SAYING HE GAVE THE WALLET TO
15 THE OFFICER, IT WAS IN RUSSELL'S POSSESSION AT ONE
16 TIME." THERE IS IN THE RECORD A STATEMENT OF THE
17 DEFENDANT AS TO WHATEVER HE SAID AND DONE, AND YOU WOULD
18 HAVE TO LISTEN TO THAT AND MAKE FOR YOURSELF WHAT THE
19 DEFENDANT SAYS.

20 FORELADY OF THE JURY: YES, SIR.

21 THE COURT: THERE IS ALSO IN THE
22 RECORD A STATEMENT FROM CAPTAIN RAVENELL REGARDING THIS
23 WALLET.

24 FORELADY OF THE JURY: RIGHT.

25 THE COURT: NOW, IS IT -- DO YOU

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1 WANT CAPTAIN RAVENELL'S STATEMENT ABOUT THE WALLET OR
2 DO YOU WANT THE DEFENDANT'S STATEMENT ABOUT THE WALLET,
3 WHATEVER IT IS, OR DO YOU WANT BOTH OF THEM?

4 FORELADY OF THE JURY: WELL, THE
5 JURY WOULD LIKE TO HAVE -- WE ALL AGREE THAT CAPTAIN
6 RAVENELL SAID THAT THE DEFENDANT GAVE HIM THE WALLET.

7 THE COURT: OKAY.

8 FORELADY OF THE JURY: BUT THEY SAID
9 THAT THEY DIDN'T HAVE, THEY DON'T REMEMBER THE
10 INFORMATION THAT THE DEFENDANT SAID THAT HE GAVE A
11 WALLET. SO, WE JUST NEED HIS.

12 THE COURT: SO, YOU WANT THE
13 DEFENDANT'S TESTIMONY?

14 FORELADY OF THE JURY: RIGHT.

15 THE COURT: I JUST WANT TO MAKE SURE
16 THAT YOU DID NOT REQUEST CAPTAIN RAVENELL'S STATEMENT.

17 FORELADY OF THE JURY: RIGHT, WE DID
18 NOT.

19 THE COURT: THERE'S NO AMBIGUITY ON
20 WHATEVER THE JURY THINKS ABOUT THAT?

21 FORELADY OF THE JURY: NO, SIR,
22 RIGHT.

23 THE COURT: ALRIGHT, PLEASE GO TO
24 YOUR JURY ROOM, WE'RE GOING TO FIND THAT TESTIMONY FROM
25 THE RECORD AND PLAY IT BACK, AND CERTAINLY, YOU MAY

1 LISTEN TO IT AND DECIDE FOR YOURSELF WHAT THE EVIDENCE
2 IS IN REGARD TO THAT FROM THE DEFENDANT'S PERSPECTIVE.
3 THAT'S WHAT YOU WANT?

4 FORELADY OF THE JURY: YES, SIR.

5 THE COURT: ALRIGHT.

6 FORELADY OF THE JURY: THANK YOU.

7 THE COURT: PLEASE RETURN TO THE
8 JURY ROOM.

9 (Whereupon, the forelady
10 retires to the jury room.)

11 THE COURT: HARRY DOT'S CHECKING
12 THAT PORTION OF THE RECORD, AND WE WILL RESUME AT THAT
13 TIME.

14 SOLICITOR AVINGER: THANK YOU, YOUR
15 HONOR.

16 (Recess)

17 THE COURT: ALRIGHT, BRING THEM IN.
18 (Whereupon, the jury enters
19 the courtroom.)

20 THE COURT: MADAM FOREMAN, I HAVE
21 RECEIVED YOUR COMMUNICATION ASKING THE FOLLOWING: "WE
22 WOULD LIKE TO SEE THE STATEMENT TO CONFIRM THE DEFENDANT
23 SAYING HE GAVE THE WALLET TO THE OFFICER. IT WAS IN
24 RUSSELL'S POSSESSION AT THE TIME." IN DISCUSSING IT
25 WITH THE FOREMAN OUTSIDE OF YOUR PRESENCE I INDICATED

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1 TO HER THAT THERE MIGHT BE TESTIMONY ON THIS ISSUE NOT
2 ONLY FROM THE DEFENDANT, BUT ALSO FROM CAPTAIN RAVENELL.
3 SHE SAID THAT THE JURY WAS CLEAR WITH REGARD TO THE
4 TESTIMONY OF CAPTAIN RAVENELL, AND I, OF COURSE, OFFERED
5 TO PLAY THAT TESTIMONY, TOO, AND I UNDERSTAND THAT THE
6 JURY IS CLEAR WITH REGARD TO WHATEVER HIS TESTIMONY WAS.

7 THIS TESTIMONY ON THIS ISSUE MAY OR
8 MAY NOT BE IN DIRECT OR CROSS-EXAMINATION, SO IN AN
9 ABUNDANCE OF PRECAUTION, NOT KNOWING EXACTLY WHERE THE
10 TESTIMONY WOULD BE AS TO THIS ISSUE, IF AT ALL, WE ARE
11 GOING TO PLAY IN ITS ENTIRETY THE TESTIMONY OF THE
12 DEFENDANT, HIS TOTAL TESTIMONY. IF DURING THE
13 TESTIMONY, AFTER DIRECT AND CROSS IS PLAYED, YOU ARE
14 SATISFIED THAT YOU RECEIVED WHAT YOU WANT, JUST LET ME
15 KNOW. BUT IN FAIRNESS TO YOU, I THINK THAT YOU SHOULD
16 HEAR THE DIRECT TESTIMONY ON THIS ISSUE, IF ANY, AND
17 ALSO, THE CROSS-EXAMINATION BY THE STATE AS TO THIS
18 ISSUE. BUT ONCE YOU ARE SATISFIED THAT YOU HAVE
19 RECEIVED THE INFORMATION YOU NEED, JUST LET ME KNOW AND
20 WE'LL STOP AT THAT TIME AND LET YOU RESUME YOUR
21 DELIBERATIONS.

22 PLEASE PLAY THAT TESTIMONY OF THE
23 DEFENDANT.

24 (Whereupon, the entire testimony,
25 including all of the direct

1 and cross-examination, of the
2 defendant is played back to
3 the jury.)

4 THE COURT: ALRIGHT, I ASSUME THAT
5 SATISFIES YOUR QUESTION, IS THAT CORRECT?

6 FORELADY OF THE JURY: YES, SIR.

7 THE COURT: ALRIGHT, RESUME YOUR
8 DELIBERATIONS, PLEASE. THANK YOU.

9 (Whereupon, the jury retires
10 to jury room and resumes
11 deliberations.)

12 (Court's Exhibit One
13 marked and filed.)

14 THE COURT: ALRIGHT, THE ALTERNATES
15 MAY COME BACK OUT, PLEASE.

16 (Recess)

17 (Whereupon, the jury sends
18 in another communication.)

19 THE COURT: BRING THE JURY OUT.

20 (Whereupon, the jury
21 enters the courtroom.)

22 THE COURT: MADAM FOREMAN, I HAVE
23 RECEIVED YOUR COMMUNICATION, BUT IT WOULD BE IMPROPER
24 FOR ME TO TALK TO ANY ONE JUROR PERSONALLY.

25 FORELADY OF THE JURY: YES, SIR.

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1 THE COURT: THAT'S JUST NOT
2 PERMITTED IN OUR PROCEDURE. WE'RE GOING TO BREAK FOR
3 LUNCH NOW, AND WHEN YOU COME BACK AT TWO:THIRTY WE WILL
4 RESUME DELIBERATIONS. WE'VE GOT ALL AFTERNOON, TONIGHT
5 AND TOMORROW TO RESOLVE THIS ISSUE. JUST CONTINUE
6 DELIBERATIONS, AND WHEN YOU HAVE REACHED A UNANIMOUS
7 VERDICT PLEASE LET ME KNOW. IF YOU HAVE ANY FURTHER
8 QUESTIONS I'LL BE GLAD TO ANSWER THEM FOR YOU TO THE
9 EXTENT PERMITTED BY LAW. IF YOU NEED TO HEAR ANY OTHER
10 TESTIMONY I'LL CERTAINLY DO THAT. IF ANYBODY NEEDS ANY
11 ADDITIONAL INSTRUCTIONS IN THE LAW, I CERTAINLY WILL DO
12 THAT.

13 NOW, DURING LUNCH HOUR DO NOT
14 DISCUSS THIS CASE WITH ANYONE, INCLUDING YOUR FELLOW
15 JURORS. PERMIT NO ONE TO DISCUSS IT WITH YOU, MAKE NO
16 INDEPENDENT INQUIRY WHATSOEVER. IF ANYBODY ATTEMPTS TO
17 DISCUSS ANY ISSUE IN THIS CASE IN YOUR PRESENCE IT IS
18 YOUR DUTY TO REPORT THAT BACK TO ME. IT'S NOT LIKELY
19 TO OCCUR, BUT PEOPLE AROUND A COURT HOUSE LIKE TO TALK.
20 THAT'S WHY I WANT YOU TO WEAR YOUR JURY BADGES AT ALL
21 TIMES WHILE YOU ARE ON THE PREMISES OF THIS COURT HOUSE.

22 THIS COURT WILL BE IN SESSION THIS
23 DAY ON OTHER MATTERS, AND I'LL BE HERE TOMORROW ON OTHER
24 MATTERS, SO WE HAVE A FULL OPPORTUNITY FOR YOU TO HAVE
25 LENGTHY DELIBERATIONS IF THAT BE NECESSARY.

1 GO TO LUNCH, COME BACK AT
2 TWO:THIRTY. MADAM FOREMAN, DO NOT BEING YOUR
3 DELIBERATIONS UNTIL ALL TWELVE JURORS ARE PRESENT.
4 PLEASE BE BACK ON TIME. THANK YOU SO MUCH.

5 THE ALTERNATES ARE EXCUSED TO GO TO
6 LUNCH, TO BE BACK AT TWO:THIRTY.

7 (Whereupon, the jury leaves
8 the courtroom for lunch
9 break.)

10 THE COURT: I HAVE RECEIVED THIS
11 COMMUNICATION FROM THE JURY WHICH I HAVE SHARED WITH
12 COUNSEL FOR THE STATE AND THE DEFENSE. THIS
13 COMMUNICATION IS NOW MADE A PART OF THE RECORD.
14 ALRIGHT.

15 COURT REPORTER: THAT WILL BE
16 COURT'S TWO.

17 (Court's Exhibit Two
18 marked and filed.)

19 THE COURT: THAT WILL BE COURT'S
20 EXHIBIT NUMBER TWO. WE ARE IN RECESS UNTIL TWO.

21 (Recess)

22 (Whereupon, the two alternates
23 return to the courtroom.)

24 THE COURT: ALRIGHT, LET THE RECORD
25 REFLECT THAT COUNSEL FOR THE STATE AND DEFENSE COUNSEL,

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1 AND THE DEFENDANT ARE PRESENT. I HAVE RECEIVED A
2 COMMUNICATION THAT THE JURY HAS NOW REACHED A VERDICT.
3 THE COUNSEL FOR THE DEFENDANT ARE WELL AWARE OF THE FACT
4 THAT I RECEIVED A COMMUNICATION A FEW MOMENTS AGO WHICH
5 I HAVE SHARED WITH THEM. I NOW DESIGNATE THIS AS COURT'S
6 EXHIBIT THREE, BEING THE THIRD COMMUNICATION RECEIVED,
7 AND IT IS SPECIFICALLY MADE A PART OF THE RECORD. DO
8 YOU WANT ME TO -- YOU HAVE READ IT, IS THERE ANY
9 NECESSITY THAT I PUBLISH THIS AT THIS TIME?

10 MS. HINDS: NO, SIR.

11 SOLICITOR AVINGER: NO, SIR.

12 THE COURT: ALRIGHT, LET THE RECORD
13 REFLECT THAT NEITHER ONE DESIRES THAT IT BE PUBLISHED,
14 BUT BOTH OF YOU AGREE THAT I HAVE SHARED IT WITH YOU,
15 IS THAT RIGHT?

16 SOLICITOR AVINGER: YES, YOUR HONOR.

17 MS. HINDS: YES, SIR.

18 THE COURT: ALRIGHT. MAKE THIS A
19 PART OF THE RECORD.

20 (Court's Exhibit Three
21 marked and filed.)

22 THE COURT: ALRIGHT, BRING THE JURY
23 IN.

24 SOLICITOR AVINGER: YOUR HONOR,
25 COULD I HAVE JUST ONE MINUTE. CAPTAIN RAVENELL HAS GONE

1 TO MOVE HIS CAR, HE'S ON THE WAY BACK UP. THEY'RE
2 LOOKING FOR HIM AND HOLLERING FOR HIM. I'M SORRY.

3 THE COURT: ALRIGHT, THAT'S FINE.
4 (Whereupon, Captain Ravenell
5 enters the courtroom.

6 THE COURT: CAPTAIN, WE WOULD NOT
7 HAVE STARTED WITHOUT YOU, IF YOU WERE SMOKING A CIGAR.
8 BRING THE JURY IN, PLEASE.

9 (Whereupon, the jury returns
10 with a verdict at 5:40 p.m.)

11 THE COURT: MADAM FOREMAN, HAVE YOU
12 AND YOUR JURY REACHED A UNANIMOUS VERDICT AS TO BOTH
13 INDICTMENTS?

14 FORELADY OF THE JURY: YES, SIR, WE
15 HAVE.

16 THE COURT: IF THIS BE THE UNANIMOUS
17 VERDICT OF ALL TWELVE, SO SIGNIFY, PLEASE, BY RAISING
18 YOUR RIGHT HAND.

19 (Affirmative response from jury panel.)

20 THE COURT: AND I THANK YOU FOR
21 THAT, LET THE RECORD SO REFLECT.

22 ACCEPT THE INDICTMENTS AND THE
23 VERDICT FORM.

24 (Whereupon, the Court examines
25 the verdict.)

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1 THE COURT: PUBLISH THE VERDICT,
2 PLEASE.

3 VERDICT OF THE JURY

4 CLERK: WE CALL THE COURT'S
5 ATTENTION TO INDICTMENT NUMBER 2002-GS-38-1573, THE
6 STATE OF SOUTH CAROLINA VERSUS RUSSELL MONTGOMERY,
7 INDICTED FOR KIDNAPPING. THE VERDICT OF THE JURY IS
8 GUILTY, SIGNED JULY SIXTEENTH BY MADAM FORELADY, SHIRL
9 HAYNES.

10 THE COURT: IS THAT YOUR VERDICT OF
11 GUILTY OF KIDNAPPING?

12 FORELADY OF THE JURY: YES, SIR.

13 THE COURT: THANK YOU.

14 CLERK: WE CALL THE COURT'S
15 ATTENTION TO INDICTMENT NUMBER 2002-GS-38-1574, THE
16 STATE OF SOUTH CAROLINA VERSUS RUSSELL MONTGOMERY,
17 INDICTED FOR ARMED ROBBERY, THE VERDICT OF THE JURY IS
18 GUILTY OF STRONG ARM ROBBERY, SIGNED JULY SIXTEENTH,
19 TWO THOUSAND THREE, BY MADAM FORELADY SHIRL HAYNES.

20 THE COURT: IS THAT YOUR VERDICT,
21 MADAM FORELADY?

22 FORELADY OF THE JURY: YES, SIR.

23 THE COURT: THANK YOU.

24 ALRIGHT, IF THERE'S ANY -- THE JURY
25 HAS SIGNIFIED BY THE RAISING OF THEIR RIGHT HAND THE

1 VERDICT IS UNANIMOUS TO BOTH INDICTMENTS. ANYTHING
2 FURTHER REQUIRED?

3 MS. HINDS: WE'D STILL ASK THAT THEY
4 BE POLLED, YOUR HONOR.

5 THE COURT: ALRIGHT, WE WILL ASK YOU
6 AS TO BOTH INDICTMENTS, WE'LL DO BOTH INDICTMENTS AT THE
7 SAME TIME.

8 MS. HINDS: YES, SIR.

9 THE COURT: IS THIS YOUR VERDICT,
10 AND IS IT STILL YOUR VERDICT? THAT QUESTION WILL BE
11 ASKED, AND AS SHE CALLS YOUR NAME I RESPECTFULLY REQUEST
12 THAT YOU STAND. THIS IS A PROCEDURE THAT WE USE IN THE
13 COURTROOM.

14 PROCEED.

15 CLERK: JUROR NUMBER TWO TWENTY,
16 CHARLES SMITH.

17 THE COURT: MR. SMITH, PLEASE STAND.

18 CLERK: MR. SMITH, WAS THIS YOUR
19 VERDICT?

20 JUROR SMITH: YES, IT IS.

21 CLERK: IS IT STILL YOUR VERDICT?

22 JUROR SMITH: YES, IT IS.

23 CLERK: THANK YOU.

24 JUROR NUMBER SEVENTY-SEVEN, SHIRL
25 HAYNES. MS. HAYNES IS THIS YOUR VERDICT?

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1 JUROR HAYNES: YES.

2 CLERK: WAS THIS YOUR VERDICT? IS
3 IT STILL YOUR VERDICT?

4 JUROR HAYNES: YES.

5 THE COURT: THANK YOU.

6 JUROR NUMBER ONE SEVENTY-ONE, BETTY
7 STEADMAN. MS. STEADMAN, WAS THIS YOUR VERDICT?

8 JUROR HAYNES: YES.

9 CLERK: IS IT STILL YOUR VERDICT?

10 JUROR HAYNES: YES.

11 CLERK: THANK YOU.

12 JUROR NUMBER FORTY-SEVEN, LINDA
13 EVANS. MS. EVANS, WAS THIS YOUR VERDICT?

14 JUROR EVANS: YES.

15 CLERK: IS IT STILL YOUR VERDICT?

16 JUROR EVANS: YES.

17 CLERK: THANK YOU.

18 JUROR NUMBER ONE SIXTY-NINE, JOHN
19 SPENCER. MR. SPENCER, WAS THIS YOUR VERDICT?

20 JUROR SPENCER: YES.

21 CLERK: IS IT STILL YOUR VERDICT?

22 JUROR SPENCER: YES.

23 CLERK: THANK YOU.

24 JUROR NUMBER ONE SIXTY-EIGHT, GEORGE
25 SNELGROVE. MR. SNELGROVE, WAS THIS YOUR VERDICT?

1 JUROR SNELGROVE: YES, MA'AM.

2 CLERK: IS IT STILL YOUR VERDICT?

3 JUROR SNELGROVE: YES, MA'AM.

4 CLERK: THANK YOU.

5 JUROR NUMBER EIGHTY-NINE, SAMMY
6 HUTTO. MR. HUTTO, WAS THIS YOUR VERDICT?

7 JUROR HUTTO: YES, MA'AM.

8 CLERK: IS IT STILL YOUR VERDICT?

9 JUROR HUTTO: IT'S STILL MY VERDICT.

10 CLERK: THANK YOU.

11 JUROR NUMBER NINETY-SIX, LEVIN
12 JAMISON. MR. JAMISON, WAS THIS YOUR VERDICT?

13 JUROR JAMISON: YES.

14 THE COURT: IS IT STILL YOUR
15 VERDICT?

16 JUROR JAMISON: IT'S STILL MY
17 VERDICT.

18 CLERK: THANK YOU.

19 JUROR NUMBER ONE TWENTY-TWO, FREDDY
20 LIVINGSTON. MR. LIVINGSTON, WAS THIS YOUR VERDICT?

21 JUROR LIVINGSTON: YES.

22 CLERK: IS IT STILL YOUR VERDICT?

23 JUROR LIVINGSTON: YES.

24 CLERK: THANK YOU.

25 JUROR NUMBER ONE THIRTY, KELLEY,

1 MITCHELL. MR. MITCHELL, WAS THIS YOUR VERDICT?

2 JUROR MITCHELL: YES.

3 CLERK: IS IT STILL YOUR VERDICT?

4 JUROR MITCHELL: YES.

5 CLERK: THANK YOU.

6 JUROR NUMBER THIRTY-TWO, WENDELL
7 COLLINS. MR. COLLINS, WAS THIS YOUR VERDICT?

8 JUROR COLLINS: YES, IT WAS.

9 CLERK: IS IT STILL YOUR VERDICT.

10 JUROR COLLINS: YES, MA'AM.

11 CLERK: THANK YOU.

12 JUROR NUMBER ONE O FIVE, CRYSTAL
13 JOHNSON. MS. JOHNSON, WAS THIS YOUR VERDICT?

14 JUROR JOHNSON: YES.

15 CLERK: IS IT STILL YOUR VERDICT?

16 JUROR JOHNSON: YES.

17 CLERK: THANK YOU.

18 THE COURT: ANYTHING FURTHER?

19 MS. HINDS: NO, SIR.

20 THE COURT: ALRIGHT. I WANT THIS
21 JURY -- LADIES AND GENTLEMEN, IN THE COURSE OF THE TRIAL
22 THE LAW PERMITTED ME, PERMITTED THE STATE TO BRING OUT
23 THIS DEFENDANT'S PRIOR RECORD AS TO ROBBERY BECAUSE IT
24 INVOLVED QUESTIONS OF DISHONESTY. THERE WERE OTHER
25 CHARGES THAT I WOULD NOT PERMIT TO COME IN BECAUSE I DID

1 NOT WANT TO PREJUDICE THE DEFENDANT IN YOUR
2 DELIBERATIONS. YOU ARE NOW ENTITLED TO KNOW -- WHAT WAS
3 THE ADDITIONAL CHARGES?

4 SOLICITOR AVINGER: YOUR HONOR, THE
5 FIRST STRONG ARM ROBBERY WAS JULY OF NINETY-THREE, HE
6 GOT A YOUTHFUL OFFENDER, THAT WAS REVOKED IN SEPTEMBER
7 OF NINETY-FOUR.

8 THE COURT: REVOKED FOR
9 NONCOMPLIANCE WITH THE SENTENCE?

10 SOLICITOR AVINGER: YES, SIR. JUNE
11 OF NINETY-FIVE, HE WAS CONVICTED OF ANOTHER STRONG ARM
12 ROBBERY. HE WAS ALSO CONVICTED OF ASSAULT AND BATTERY
13 OF A HIGH AND AGGRAVATED NATURE. IN FEBRUARY OF NINETY-
14 EIGHT HE WAS CONVICTED OF SIMPLE POSSESSION OF MARIJUANA
15 AND DRIVING UNDER SUSPENSION. IN APRIL OF NINETY-NINE
16 HIS PRIOR PAROLE WAS REVOKED FOR NONCOMPLIANCE, AND IN
17 MAY OF TWO THOUSAND AND ONE HE HAD A CONVICTION FOR
18 POSSESSION OF COCAINE.

19 THE COURT: I KNOW THAT AS A JUROR
20 YOU WOULD HAVE LIKED TO HAVE HAD THAT INFORMATION, BUT
21 UNDER OUR RULES, AND PROPERLY SO, WE WANT A DEFENDANT
22 TO BE CONVICTED, IF AT ALL, BASED ON THE FACTS IN THIS
23 CASE. AND YOU HAVE DONE THAT IN ACCORDANCE WITH THE LAW
24 AND THE EVIDENCE. I REALLY HAVE NO COMMENT TO MAKE UPON
25 IT, YOU WERE THE FINDERS OF THE FACTS, EXCEPT TO SAY,

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1 IT WAS ABSOLUTELY WARRANTED BY THE LAW AND THE EVIDENCE
2 IN THIS CASE. BECAUSE THIS WAS ONE OF THE STRONGEST -
3 - I'VE BEEN ON THE BENCH TWENTY YEARS AND THIS WAS ONE
4 OF THE STRONGEST CASES OF KIDNAPPING AND ROBBERY THAT
5 I'VE SEEN. I CERTAINLY HAVE NO QUALMS WITH YOUR
6 DECISION AS TO COMMON LAW ROBBERY AND ARMED ROBBERY, I
7 HAVE NO QUESTION ABOUT THAT. I WAS INTERESTED, MADAM
8 FOREMAN, WHEN YOU ASKED THE QUESTION ABOUT WHETHER OR
9 NOT HE GAVE THE POCKET BOOK TO THE DETECTIVE OR NOT. BUT
10 AT THE TIME I WONDERED IN MY MIND, I SAID, WELL, I
11 WONDER WHAT THEY'RE THINKING ABOUT THE GUN THAT WAS
12 FOUND RIGHT BY THE T-SHIRT? THAT WOULD HAVE BEEN THE
13 BIGGEST COINCIDENCE THAT I'VE EVER SEEN IN MY LIFE IF
14 A GUN HAPPENED -- A NINE MILLIMETER BRAND NEW GUN
15 HAPPENED TO BE LAYING BY THE T-SHIRT. I DON'T BELIEVE
16 THE JURY OF HIS BROTHERS, SWORN TO TELL THE TRUTH, COULD
17 HAVE FOUND HIM NOT GUILTY ON THESE CHARGES. IT'S JUST,
18 THE EVIDENCE IS JUST SIMPLY OVERWHELMING. BUT THOSE
19 DECISIONS WERE FOR YOU TO MAKE, AS FINDERS OF THE FACTS.
20 AND MS. JOHNSON, I HOPE THAT WE DIDN'T IMPOSE UPON YOU
21 TOO MUCH. I NOTE THAT YOU WERE FEELING BAD THIS
22 MORNING, AND I DO APPRECIATE -- ARE YOU FEELING BETTER
23 NOW?

24 JUROR JOHNSON: YES, SIR.

25 THE COURT: IT'S BEEN A LONG DAY.

1 LET ME SAY TO YOU THAT AS CITIZENS OF THIS COUNTY AND
2 OF THIS STATE, NONE OF YOUR ASKED TO COME IN HERE AND
3 GIVE A WEEK OF YOUR TIME. CERTAINLY, NONE OF YOU ASKED
4 TO SIT ON THIS SERIOUS CASE. HAVING DONE THAT, THOUGH,
5 YOU ARE -- THIS COURT AND THE PEOPLE OF ORANGEBURG
6 COUNTY AND OF THE STATE OF SOUTH CAROLINA ARE INDEBTED
7 TO YOU.

8 YOU NEED TO KNOW THAT IN ORANGEBURG
9 COUNTY YOU HAVE THE HIGHEST INCIDENCE OF VIOLENCE PER
10 CAPITA IN THIS STATE. AND YOU NEED TO KNOW THAT IN THE
11 ENTIRE UNITED STATES, SECOND TO WASHINGTON, D.C., THIS
12 COUNTY HAS THE HIGHEST INCIDENCE OF VIOLENCE PER CAPITA,
13 THE SECOND IN THIS ENTIRE NATION.

14 NOW, BY YOUR VERDICT YOU ARE SENDING
15 A WORD HERE THAT VIOLENCE IS NOT GOING TO BE TOLERATED
16 BY THE GOOD CITIZENS OF ORANGEBURG COUNTY. AND BELIEVE
17 ME WHEN I SAY TO YOU, THE WORD WILL GO OUT THAT A
18 DISTINGUISHED JURY OF ORANGEBURG COUNTY HAS FOUND A
19 HARDENED CRIMINAL, AND HE IS A HARDENED CRIMINAL BASED
20 ON HIS RECORD, FOUND HIM GUILTY OF ROBBERY AND
21 KIDNAPPING. PEOPLE INTERESTED IN LAW AND ORDER IN
22 ORANGEBURG COUNTY ARE IN YOUR DEBT. AND THIS COURT AND
23 THIS JUDGE THANKS YOU FOR YOUR SERVICES.

24 WE HAVE CONCLUDED ALL THE BUSINESS
25 OF THE COURT THIS WEEK THAT WOULD REQUIRE ACTION BY THE

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1 JURY. TOMORROW WE WILL BE HERE WITH NUMEROUS GUILTY
2 PLEAS, AS WE HAVE RECEIVED THIS WEEK. THERE WILL BE
3 OTHER MATTERS INVOLVING PROBATION, BUT WILL NOT REQUIRE
4 THE SERVICES OF THE JURY, AND CONSEQUENTLY, I'M IN THE
5 POSITION TO RELEASE YOU NOT ONLY FOR THIS EVENING BUT
6 FOR THE REST OF THE WEEK. AND MADAM FOREMAN, YOU AND
7 YOUR JURY GO WITH MY HEARTFELT THANKS FOR YOUR SERVICES.
8 I WATCHED YOU THROUGHOUT THE TRIAL OF THIS CASE, AND I
9 WAS IMPRESSED WITH YOUR DILIGENCE IN LISTENING TO ALL THE
10 TESTIMONY. I WAS ESPECIALLY IMPRESSED WITH THE QUESTIONS
11 THAT YOU ASKED, BECAUSE THAT TOLD ME THAT I HAD TWELVE
12 FOLKS BENT ON DOING WHAT THE OATH REQUIRED, AND THAT
13 WAS FINDING THE TRUTH. AND AGAIN, I APPRECIATE THAT.
14 I JUST LOVE -- I'VE GOT TO TELL YOU THAT I WAS A LAWYER
15 FOR THIRTY-TWO YEARS, AND I'VE BEEN ON THE BENCH NOW,
16 THIS IS MY TWENTIETH YEAR. AND ONCE IN A WHILE IT'S
17 WRONG, BUT GENERALLY, THE JURY SYSTEM WORKS, BECAUSE
18 THEY'VE COME TO UNDERSTAND THAT THE JURY VERDICT IS THE
19 BOARD OF LAW AND ORDER IN THIS COUNTRY AND IN THIS
20 SOCIETY. AND CRIMINALS NEED TO KNOW THAT A JURY, IF
21 THEY ARE FOUND GUILTY, AND A JURY WILL FIND THEM GUILTY
22 IF THE EVIDENCE IS THERE, A JURY WILL CONVICT. AND AS
23 THEY KNOW THAT, YOUR NEIGHBORHOOD AND YOUR GROUP AND
24 YOUR SOCIETY BECOME SAFER FOR YOU AND FOR YOUR CHILDREN.

25 I WANT TO THANK ALL OF YOU, YOU ARE

1 NOW DISCHARGED.

2 (Whereupon, the jury leaves
3 the jury box.)

4 MS. HINDS, I'LL NEVER KNOW MORE
5 ABOUT THE CASE THAN I KNOW RIGHT NOW, I'LL BE DELIGHTED
6 TO HEAR ANY POST TRIAL MOTIONS.

7 MS. HINDS: YOUR HONOR, WE WOULD ASK
8 THAT THE VERDICT SET ASIDE, EXCUSE ME, AND IN THE
9 ALTERNATIVE, A NEW TRIAL.

10 THE COURT: THE EVIDENCE WAS SIMPLY
11 OVERWHELMING IN THE CASE, SO AS PUBLIC DEFENDER YOU DID
12 A SUPERB JOB. HE RECEIVED EVERY DEFENSE TO WHICH HE WAS
13 ENTITLED AND MORE UNDER THE LAWS OF THIS STATE.

14 MS. HINDS: YOUR HONOR, JUST FOR THE
15 RECORD I WOULD SAY THAT WE BELIEVE, OUR POSITION WOULD
16 BE THAT THE VERDICT WAS INCONSISTENT.

17 THE COURT: I UNDERSTAND. WELL, I
18 DON'T KNOW -- HOW IS IT INCONSISTENT, COMMON LAW ROBBERY
19 AND KIDNAPPING, HOW IS THAT -- I'M JUST CURIOUS.

20 MS. HINDS: WELL, BASED ON THE FACTS
21 OF THIS CASE I THINK THAT THEY EITHER HAD TO BELIEVE
22 THAT THE GUN WAS INVOLVED OR NOT INVOLVED, AND I BELIEVE
23 THAT'S IT'S INCONSISTENT. IF THEY BELIEVED ONE THEY
24 WOULD HAVE CONVICTED ON ARMED ROBBERY.

25 THE COURT: NO, THEY-- IN MY VIEW

BAILIFF: YES, SIR, SHE'S GONE.

1 THE COURT: OKAY LET ME SHARE THE
2 VERDICT FORM WITH YOU. WHERE IS THE VERDICT FORM?

3 CLERK: IT'S HOOKED TO THOSE.

4 THE COURT: THIS IS THE VERDICT
5 FORM. I THINK THERE'S NO PROBLEM WITH IT, IT'S ATTACHED
6 TO THE INDICTMENT.

7 SOLICITOR AVINGER: YOUR HONOR, IF
8 IT IS A CONCERN WE COULD ASK THE CLERK TO CALL HER TO
9 COME BY TOMORROW AND SIGN IT.

10 THE COURT: DO THAT, BUT ---

11 MS. HINDS: I WOULD ASK, OUT OF AN
12 ABUNDANCE OF CAUTION, YOUR HONOR.

13 THE COURT: OKAY. HAVE -- I'M
14 SORRY, I SHOULD HAVE DONE THAT.

15 SOLICITOR AVINGER: I SHOULD HAVE
16 REMINDING YOU, I'M SORRY.

17 THE COURT: OKAY. CALL THE FOREMAN
18 AND TELL HER -- YOU MIGHT SEE IF SHE'S OUTSIDE YET. IF
19 YOU DO, GO OUT THERE AND CHECK FOR ME. AND THE VERDICT
20 FORM, YOU UNDERSTAND, THE VERDICT FORM IS CONSISTENT
21 WITH THE INSTRUCTIONS GIVEN?

22 MS. HINDS: YES, SIR.

23 THE COURT: LET THE RECORD REFLECT
24 THAT COUNSEL FOR THE STATE AND THE DEFENDANT HAVE LOOKED
25 AT THE VERDICT FORM, AND THEY AGREE THAT IT IS

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1 CONSISTENT WITH THE INSTRUCTIONS PREVIOUSLY GIVEN.

2 MS. HINDS: YES, SIR.

3 THE COURT: SHE HAS INDICATED A
4 GUILTY OF KIDNAPPING, INDICATED A GUILT OF STRONG ARM
5 ROBBERY, AND HAS SIGNED HER NAME, AS AFFIXED THERETO.
6 THE GUILTY VERDICT FORM IS A TECHNICAL MATTER, I'LL HAVE
7 HER SIGN ON THE BACK OF THE INDICTMENT.

8 ALRIGHT, ANYTHING FURTHER?

9 SOLICITOR AVINGER: YOUR HONOR, IF
10 YOU COULD HEAR FROM CAPTAIN RAVENELL, AS FAR AS
11 SENTENCING?

12 THE COURT: YES, SIR, I'LL BE GLAD
13 TO HEAR FROM THE DISTINGUISHED CAPTAIN.

14 CAPTAIN RAVENELL: THANK YOU, YOUR
15 HONOR. YOUR HONOR, WE WOULD SIMPLY ASK THAT, BECAUSE OF
16 THE VIOLENCE AND THE, THE, IN THIS CASE AND OTHER CASES
17 WITH THIS DEFENDANT, WE WOULD SIMPLY ASK THAT YOU IMPOSE
18 THE MAXIMUM SENTENCE. THERE'S NO DOUBT THAT HE'S A
19 DANGER TO SOCIETY. THANK YOU, SIR.

20 THE COURT: WELL, BASED ON HIS
21 RECORD, I CONCLUDE THAT.

22 MS. HINDS.

23 MS. HINDS: YOUR HONOR, I WOULD TELL
24 YOU ONLY THAT HE DOES HAVE CHILDREN -- JUST A SECOND.
25 HE'S TWENTY-NINE YEARS OLD, SIR, HE HAS THREE CHILDREN,

1 A TWELVE YEAR OLD, A FOUR YEAR OLD, AND A THREE YEAR
2 OLD. TENTH GRADE EDUCATION, WAS A HARD WORKING MAN, HAD
3 WORKED AT FEDERAL MOGUL WAS HIS LAST JOB. BEFORE THAT
4 HE HAD WORKED FOR A MR. CRAVEN IN SANTEE BUILDING DOCKS
5 THERE, AND BEFORE THAT GOLDKIST. SO, HE HAS BEEN
6 EMPLOYED AND, YOU KNOW, TO THAT EXTENT, A PRODUCTIVE
7 MEMBER OF SOCIETY.

8 THE COURT: ANYTHING -- DOES THE
9 VICTIM, HIMSELF, ASK TO SAY ANYTHING?

10 MS. HINDS: NO, SIR.

11 THE COURT: I WOULD NOT REQUIRE IT,
12 BUT IF HE CARES TO, AND YOU AGREE TO IT, I'LL BE GLAD
13 TO HEAR FROM HIM.

14 MS. HINDS: NO, YOUR HONOR, HE'S
15 INDICATED TO ME THAT HE DID NOT WANT TO BE HEARD ON
16 SENTENCING.

17 THE COURT: OKAY. HOW ABOUT THE
18 DEFENDANT? I ASKED YOU, AS HIS ATTORNEY, I WOULD NOT
19 REQUIRE IT, BUT I DON'T WANT HIM TO SAY OR DO ANYTHING
20 THAT WOULD JEOPARDIZE HIS RIGHTS TO APPEAL.

21 SOLICITOR AVINGER: YOUR HONOR, IF
22 I MAY BRIEFLY BE HEARD.

23 THE COURT: YES, MA'AM.

24 SOLICITOR AVINGER: YOUR HONOR, WE
25 CONCUR, OBVIOUSLY, WITH WHAT CAPTAIN RAVENELL HAS SAID.

1 BASED ON MR. MONTGOMERY'S RECORD, HIS CONVICTIONS, HIS
2 PAROLE REVOCATIONS, HE IS JUST, HE HAS NOT BEEN A GOOD,
3 PRODUCTIVE, LAW ABIDING MEMBER OF SOCIETY. AND WE FELT
4 THAT SOME TYPE OF MAXIMUM SENTENCE IS WARRANTED. MR.
5 MONTGOMERY NEEDS TO UNDERSTAND THAT HIS ACTIONS HAVE
6 CONSEQUENCES. BUT BY THE SAME TOKEN, AS YOU WERE
7 TELLING THE JURY, THE SENTENCE ALSO WOULD HAVE,
8 HOPEFULLY, A DETERRENT EFFECT ON OTHER PEOPLE, POTENTIAL
9 DEFENDANTS IN THE COMMUNITY. SO NOT ONLY TO PUNISH MR.
10 MONTGOMERY, BUT ALSO FOR THE DETERRENT EFFECT HERE IN
11 ORANGEBURG COUNTY.

12 ALSO, YOUR HONOR, YOU HEARD WHAT MR.
13 MONTGOMERY TESTIFIED UNDER OATH. IT WOULD BE THE STATE'S
14 POSITION THAT HE QUITE BLATANTLY COMMITTED PURGERY, HE
15 CALLED CAPTAIN RAVENELL A LIAR, AND JUST TOTALLY
16 DISPARAGED HIM, AND BECAUSE OF THAT, AS WELL, YOUR
17 HONOR, WE FEEL A MAXIMUM SENTENCE IS APPROPRIATE.

18 SENTENCE OF THE COURT

19 TO THE CHARGE OF KIDNAPPING, IT IS
20 THE SENTENCE AND JUDGEMENT OF THIS COURT THAT YOU BE
21 CONFINED FOR A PERIOD OF TWENTY YEARS.

22 UPON THE INDICTMENT FOR ARMED
23 ROBBERY, TO WHICH YOU HAVE BEEN FOUND GUILTY OF COMMON
24 LAW ROBBERY, IT IS THE SENTENCE AND JUDGEMENT OF THE
25 COURT THAT YOU BE CONFINED FOR A PERIOD OF FIFTEEN

1 YEARS, CONSECUTIVE TO THE SENTENCE PREVIOUSLY IMPOSED
2 FOR KIDNAPPING.

3 THAT WILL BE THE JUDGMENT AND
4 SENTENCE OF THE COURT.

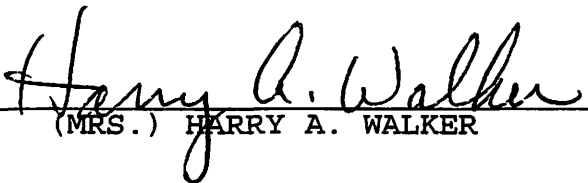
5 SOLICITOR AVINGER: THANK YOU, YOUR
6 HONOR.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE SIXTEENTH AND SEVENTEEN DAY OF JULY, 2003.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: OCTOBER 24, 2003


(MRS.) HARRY A. WALKER

COUNTY: ORANGEBURG DATE: JULY 16, 2003

Case No.: 02-GS-38-1573 AND 1574

VOIR DIRE (PAGE 1 OF 2)

Judge: EDWARD B. COTTINGHAM

Pl./State:
STATE OF SOUTH CAROLINA

State/Pl's.Atty:
ANGELA GARRICK AVINGER

Defendant:
RUSSELL MONTGOMERY

Defense Atty:
MARGARET PEGGY HINDS

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Strikes:				Def.	Accept
		Sex	Race	Pl.			
216	JAMES HUGGINS	M	B	X			
220	CARL SMITH	M	U				X
77	SHIRL HAYNES	F	B				X
171	BETTY STEADMAN	F	B				X
163	KATHLEEN SMITH	F	W			X	
47	LINDA EVANS	F	B				X
134	HARRY OTT	M	W			X	
169	JOHN SPENCER	M	W				X
17	CHRISTINE BRADLEY	F	B	X			
175	CAROLYN STROMAN	F	B			X	
168	GEORGE SNELGROVE	M	W				X
89	SAMMY HUTTO	M	W				X
96	LEVI JAMISON	M	B				X
43	SHIRLEY DIBBLE	F	W			X	
122	FREDDY LIVINGSTON	M	W				X
46	GEORGE ELENBARK	M	W			X	

COUNTY: ORANGEBURG DATE: JULY 16, 2003

Case No.: 02-GS-38-1573 AND 1574

VOIR DIRE (PAGE 2 OF 2)

Judge: EDWARD B. COTTINGHAM

Pl./State:
STATE OF SOUTH CAROLINA

State/Pl's.Atty:
ANGELA GARRICK AVINGER

Defendant:
RUSSELL MONTGOMERY

Defense Atty:
MARGARET PEGGY HINDS

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Sex	Strikes:		Pl.	Def.	Accept
			Race				
151	JARNELL RYANT	M	B			X	
15	MICHAEL BOCHETTE	M	W		X		
59	KARA GIBBS	F	B		X		
218	REBECCA ZEIGLER	F	W			X	
130	KELLEY MITCHELL	M	B				X
32	WENDELL COLLINS	M	W				X
142	JACKIE PROVEAUX	F	W			X	
118	NATALIE WEEKS	F	B		(DISQUALIFIED)		
105	CRYSTAL JOHNSON	F	W				X
ALTERNATE NO. 1							
154	GENE SCOTT	M	W				X
ALTERNATE NO. 2							
51	SONYA FOGLE	F	W				X

FORM 5

STATE OF SOUTH CAROLINA)

County of Orangeburg)Russell Montgomery, 294838)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-38-01201

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
JUL 10 2013
ORANGEBURG, SC

2013 SEP 27 PM 12:24

R

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 Ridgeland Correctional Institution (RCI), CA-
_____, P. O. Box 2030, Ridgeland, S. C. 29936
2. Name and location of Court which imposed sentence Orangeburg County Court
of General Sessions
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) 2002-GS-38-1573
 - (b) 2002-GS-38-1574

RECEIVED

OCT 18 2013

Referred to

Harrison/dm

Answered

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Kidnapping (20 years) July 16, 2003
- (b) Strong arm robbery (15 years) July 16, 2003
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Trial by jury
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied relief
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted April 1, 2006, Filed April 20, 2005
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UP No. 2005-UP-285
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Na
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- Ineffective Assistance of Counsel
- (a) _____
- (b) New case law precedent (Christopher Broadnax Appellate v. State) See attached memorandum in support;
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- Counsel failed to request a continuance based on untimely receipt of discovery;
- (a) _____
- Counsel failed to object, move to suppress evidence; Counsel failed to object to evidence and witness(es) not timely revealed in response to discovery;
- (b) _____
- Counsel failed to impeach evidence; failed to request exclusion of impeachment evidence; failed to object to improper questions by the solicitor;
- (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? yes
- (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)? yes
- (d) any other petitions, motions or applications in this or any other Court? yes
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. Federal habeas corpus
- ii. Certiorari to U. S. Sup. Ct.
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. District Court of South Carolina
- ii. United States Supreme Court
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. denied
- ii. cert. denied
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. unknown
- ii. unknown
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. none
- ii. none
- 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?

First filing:

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Na
- ii. Na
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- 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) Facts just became available, first filing.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Margaret Percy Hinds, Orangeburg Court public Defender

Robert Budeik, Esq., S. C. Appellate Defense

ii. C. Bradley Rutte, Esq., P. O. Box 1084, Orangeburg, S. C. 29116

iii. _____

(b) the proceedings at which each such attorney represented you:

i. trial and sentencing;

direct appeal;

ii. _____

iii. preparation and post proceedings;

19. State clearly the relief you seek in filing this application:

to be granted an order of habeas corpus and conduct an evidentiary hearing in
the Superior Court of the application and record for
the same.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of _____)

I, Russell Montgomery, 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.

Russell Montgomery

SWORN to and subscribed before me this 24
 day of Sept., 2013.

Virginia Rolinson (L.S.)
 Notary Public

My Commission Expires: May 20, 2021

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Russell Montgomery, 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.

Russell Montgomery
Applicant

SWORN or affirmed to and subscribed before me this

24 day of Sept., 2013.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

FOR RECORD
CLERK OF COURT
ORANGEBURG, SC

27 PM 12:25

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS

Russell Montgomery, --Petitioner,

-vs-

State of South Carolina, --Respondent.

FILED FOR RECORD
WINNIE D. CLARK
CLERK OF COURT
ORANGEBURG, SC

2013 SEP 27 PM 12:25

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST-CONVIC-
TION RELIEF (APCR) PURSUANT
TO: S. C. CODE ANN. §§ 17-
27-20 THROUGH 160

Russell Montgomery, SCDC #2014838
Ridgeland Correctional Institution
(RCI, CA-31) P. O. Box 2030
Ridgeland, S. C. 29936

FACTS: Appellant during trial decided to testify in his own defense and the trial court conducted an inquiry into appellant's prior record to determine which conviction(s) could be admitted into evidence. The trial court found two prior from 1994, which was two strong arm robbery convictions were admissible; in addition to prior conviction for simple possession of cocaine, possession of marijuana, pursuant to Rule 609(A)(2), SCRE. The trial court noted *State v. Al-Amin*, 353 S.C. 405, 578 S.E.2d 32 (Ct.App. 2003), reversed its decision that any robbery convictions were crimes of dishonesty. However, the trial court also stated Al-Amin involved a defendant on trial for murder; whereas, appellant was charged with armed robbery and kidnapping. Noting the difference had the potential to increase the prejudicial impact of admitting the prior strong arm robbery convictions. Despite this distinction, the trial court followed the Court in Al-Amin and determined that just made it clear as Rule 603 analysis applied to any convictions admitted for impeachment purposes under Rule 609(2). Appellant contended the State denied him his due process right to a fair trial by eliciting testimony of his prior convictions for strong arm robbery and by soliciting that went beyond the fact of the conviction itself to inquire of appellant, "see you're a thief".

The Supreme Court stated that they recognize this Court held in Al-Amin that armed robbery was a crime of dishonesty pursuant to Rule 609(A)(2). *State v. Al-Amin*, 353 S.C. 405, 425, 578 S.E.2d 32, 43 (Ct.App. 2003). However, since Al-Amin our Supreme Court has decided Bryant.

Rule 609(1) SCRE provides that for the purpose of attacking the credibility of witness: (1) Evidence that a witness other than an accused has been convicted of a crime shall be admitted subject to 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted; and evidence that an accused has been convicted of such a crime shall be admitted if court determines that the probative value of admitting the evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment. "Under Rule 609(A)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because, prior conviction involving dishonesty or false statement must be admitted regardless of their probative value or prejudicial effect." *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006); see *State v. Al-Amin*, 353 S.C. 405, 425-27, 578 S.E.2d 32, 43-44 (Ct.App. 2003) (stating crimes involving dishonesty or false statement are automatically admissible for impeachment purposes because they have the greatest probative value on the issue of truth and veracity").

However, our Supreme Court held in *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006) that "A conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not

probative of truthfulness." See *United States v. Smith*, 181 F.Supp.2d 904 (N.D.Ill. 2002) (stating that since the government did not know that any of the convictions of robbery, burglary, theft, or drug possession involved any false statements or acts of deceit beyond the basic crime itself, they were not admissible under the Federal Rules of Evidence 609(A)(1)). Unlike in *Albarran*, our Supreme Court has stated stealing is not always a crime of dishonesty if there are no additional affirmative false statements or acts of deceit beyond the crime itself.

If the crime of armed robbery is not considered a crime of dishonesty under 609(A)(2), it may still be admitted under Rule 609(A)(1), but it would be subject to a balance test under Rule 609(A)(1). The trial court must determine if the probative value of admitting the evidence outweighs its prejudicial effect to the accused. Moreover, our Supreme Court laid out other various factors to consider when determining whether to admit prior convictions under 609(A)(1): (1) the impeachment value of the prior crime; (2) the point in time the conviction and the witness' subsequent history; (3) the similarity of past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. *Bryant*, 393 S.W.2d 517, 62-1, 633 S.W.2d at 155, n. 1 (citing *State v. Martin*, 345 S.W.2d 522, 43-1, 535 S.W.2d 706, 710-11 (1st App. 2001)).

The Supreme Court stated that after careful consideration of previous case law, we take this opportunity to folk *Bryant* in deciding these prior armed robberies, without more, are not crimes of dishonesty. We are not ruling that prior armed robberies are per se inadmissible; however, as the court in *Bryant* stated, to be admissible under Rule 609(A)(1), there simply must be something beyond the basic crime. In appellant's case, the state did not show any future influence over statement of "BROADNAX" beyond the basic crime itself. Accordingly, the Supreme Court found the trial court erred in admitting Broadnax's prior convictions of armed robbery pursuant to Rule 609(A)(2). 3022, and the probative value of Broadnax's prior armed robbery convictions should have been weighed against their prejudicial effect prior to their admission pursuant to Rule 609(A)(1). The trial court also erred in admitting appellant's prior convictions of strong arm robbery convictions should have been weighed against their prejudicial effect prior to their admission pursuant to Rule 609(A)(1).

The Supreme Court stated that because Broadnax's prior convictions were the identical charge as the offense in the present case, we reverse because Broadnax was not prejudiced by that prior offenses or convictions. See *State v. Howard*, 398 S.W.2d 177, 180-81, 399 S.W.2d 511, 517-18 (1st App. 2011); see also *Bryant*, 393 S.W.2d at 517-18, 633 S.W.2d at 155 (holding that when a prior offense is similar to the charged offense the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission") *State v. Scriver*, 339 S.W.2d 101, 102-103, 104 S.W.2d 71, 70-72 (1st App. 2005) (holding that the prior conviction was "similar or identical to charged offenses, and the likelihood of a high degree of prejudice to the accused is

inescapable").

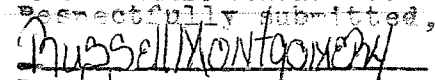
Because we find the admission of Broadnax's prior armed robberies created such a high degree of prejudice in this case we reverse and remand for a new trial.

Opinion finds that because of admission of his prior strong-arm robbery(ies) created such a high degree of prejudice in this case that he's also entitled to have the case reversed and remand for a new trial.

In *McCoy v. State* (Opinion No. 27214, Feb. 6, 2013) the S. C. Supreme Court reversed and remand for hearing the dismissal of the petitioner's PCR application. The Supreme Court held that summary dismissal of the petitioner's second PCR application was error because genuine issues of material fact(s) existed as to whether his claim was successive or barred by the statute of limitations. "When considering one state's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts proffered by the applicant are true and view those facts in light most favorable to the applicant. *Loamen v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-30). Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR Court. A question of fact is raised which can only be resolved by a hearing. Cf. *Delaney v. State*, 369 S.C. 555, 556, 338 S.E.2d 679, 6__ (1977).

Therefore, after reviewing the statement of facts and issues presented, the instant application presents sufficient questions of law and fact warranting an evidentiary hearing in the instant matter. *Sharper v. State*, 305 S.E.2d 247 (S.C. 1983)

Therefore, petitioner respectfully prays that competent counsel be appointed and an evidentiary hearing convened at the earliest convenience.

Respectfully submitted,

 Russell Montgomery

STATE OF SOUTH CAROLINA)

County of ORANGEBURG)

IN THE COURT OF COMMON PLEAS

RUSSELL MONTGAMERY#294838)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2013-CP-38-01488

APPLICATION FOR

POST-CONVICTION RELIEF

2013 DEC 20 PM 1:16
 FILED FOR RECD
 WINTER HALL
 CLERK OF COURT
 ORANGEBURG

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention RIDGELAND CORRECTIONAL INSTITUTION
POST OFFICE BOX 2039 RIDGELAND, S.C. 29936
2. Name and location of Court which imposed sentence ORANGEBURG COUNTY
COURT OF GENERAL SESSIONS
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) 2002-GS-38-1573

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
KIDNAPPING(20 YEARS)JULY 16, 2003
- (a) _____
- (b) STRONG ARMED ROBBERY(15 YEARS)JULY 16, 2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty TRIAL BY JURY

- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES

8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
SOUTH CAROLINA COURT OF APPEALS
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED RELIEF

- ii. _____
- iii. _____
- (c) the date of each such result:
SUBMITTED APRIL 1, 2005 / FILED APRIL 20, 2005
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
UP.NO.2005-UP-285
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
N/A
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- INEFFECTIVE ASSISTANCE OF COUNSEL
- (a) _____
- (b) NEW CASE PRECEDENCE (CHRISTOPHER, BROADNAX APPELLATE

- (c) V. STATE) SEE ATTACHED MEMORANDUM IN SUPPORT

11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- A COUNSEL FAILED TO REQUEST A CONTINUANCE BASED ON UNTIMELY RECEIPT OF DISCOVERY:, COUNSEL FAILED TO OBJECT MOVE TO SUPPRESS EVIDENCE:, COUNSEL FAILED TO OBJECT TO EVIDENCE AND WITNESSES NOT TIMELY REVEALED IN RESPONSE TO DISCOVERY REQUEST: COUNSEL FAILED TO IMPEACH EVIDENCE:, FAILED TO REQUEST EXCLUSION OF IMPEACHMENT EVIDENCE:, FAILED TO OBJECT TO IMPROPER QUESTIONS BY THE SOLICITOR
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES

- (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)? YES

- (d) any other petitions, motions or applications in this or any other Court? YES

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- FEDERAL HABEAS CORPUS
- i. _____
- ii. CERTIORARI TO US SUPREME COURT

- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- DISTRICT COURT OF SOUTH CAROLINA
- i. _____
- ii. UNITED STATES SUPREME COURT

- iii. _____

iv. _____

(c) the disposition thereof:
DENIED

i. _____

ii. CERTIORARI DENIED

iii. _____

iv. _____

(d) the date of each such disposition:
UNKNOWN

i. _____

ii. UNKNOWN

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NONE

ii. NONE

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?
FIRST FILING

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:
N/A

i. _____

ii. N/A

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

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) FACTS JUST BECAME AVAILABLE, FIRST FILING

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. MARGRETT PEGGY HINDS, ORSNGEBURG COURT PUBLIC DEFENDER

ii. ROBERT DUDEK, esq S.C. APPELLATE DEFENSE

iii. C. BRADLEY HUTTO, esq P.O. BOX 1084, ORANGEBURG,
S.C. 29116

(b) the proceedings at which each such attorney represented you:

i. TRIAL AND SENTENCING

ii. DIRECT APPEAL

iii. _____

19. State clearly the relief you seek in filing this application:
 APPOINT COUNSEL AND CONDUCT AN EVIDENTIARY HEARING, OR IN
 THE ALTERNATIVE GRANT THE APPLICATION AND REMAND FOR NEW
 TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

2013 DEC 20 PM 11:16
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 WINTERA CIVIL
 CLERK OF COURT
 ORANGEBURG, SC
 Revised 3/2003

STATE OF SOUTH CAROLINA)

County of ORANGEBURG)

VERIFICATION

I, Russell Montgomery, 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.

Russell Montgomery

SWORN to and subscribed before me this 17
 day of Dec., 2013.

Virginia Rohrer (L.S.)
 Notary Public

My Commission Expires: May 20, 2021

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Russell Montgomery, 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.

Russell Montgomery
Applicant

SWORN or affirmed to and subscribed before me this

17 day of Dec., 2013.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

FILED FOR RECORD
WINTER, CLARK
CLERK OF COURT
DAVENPORT, NC
2013 DEC 20 PM 11:16

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS

MR. RUSSELL MONTGOMERY#294838

PETITIONER,

MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST
CONVICTION RELIEF

PURSUANT TO: S.C. CODE ANN.
§§17-27-20 THROUGH §160

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

s/ Russell Montgomery
RUSSELL MONTGOMERY#294838
RIDGELAND CORR.INST. CA-RM#31
POST OFFICE BOX 2039
RIDGELAND, S.C. 29936

PRO SE

2016 DEC 20 PM 11:16

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC

NEW CASE PRECEDENCE
THE STATE RESPONDENT
V.
CHRISTOPHER BROADNAX, APPELLANT
APPELLATE CASE NO. 2010-166606

REVERSED AND REMANDED

FACT: APPELLANT DURING TRIAL DECIDED TO TESTIFY IN HIS OWN DEFENSE, AND THE TRIAL COURT CONDUCTED AN INQUIRY INTO APPELLANT PRIOR RECORD TO DETERMINE WHICH CONVICTIONS COULD BE ADMITTED INTO EVIDENCE. THE TRIAL COURT FOUND TWO PRIOR FROM 1993 AND 1994, WHICH WAS TWO STRONG ARMED ROBBERY CONVICTIONS WERE ADMISSIBLE, IN ADDITION TO PRIOR CONVICTION FOR SIMPLE POSSESSION OF COCAINE, POSSESSION OF MARIJUANA, PURSUANT TO RULE 609(A)(2), SCRE. THE TRIAL COURT NOTED STATE V. ALMIN, 353 S.C. 405, 578 S.E. 2d 32 (CT.APP.2003) SUPPORTED IT'S DECISION THAT ARM ROBBERY CONVICTIONS WERE CRIMES OF DISHONESTY. HOWEVER, THE TRIAL COURT ALSO STATED AL-AMIN INVOLVED A DEFENDANT ON TRIAL FOR MURDER WHEREAS APPELLANT WAS CHARGED WITH ARMED ROBBERY AND KIDNAPPING NOTING THE DIFFERENCE HAD THE POTENTIAL TO INCREASE THE PREJUDICIAL IMPACT OF ADMITTING THE PRIOR STRONG ARM ROBBERY CONVICTIONS DESPITE THAT DISTINCTION, THE TRIAL COURT FOLLOWED THE COURT IN AL-AMIN AND DETERMINED THAT CASE MADE IT CLEAR NO RULE 403 ANALYSIS APPLIED TO ANY CONVICTIONS ADMITTED FOR IMPEACHMENT PURPOSES UNDER RULE 609 a(2). APPELLANT, CONTENDED THE STATE DENIED HIM HIS DUE PROCESS RIGHT TO A FAIR TRIAL BY Eliciting TESTIMONY OF HIS PRIOR CONVICTION FOR STRONG ARM ROBBERY AND BY SOLICITOR THEN WENT BEYOND THE FACT OF THE CONVICTION ITSELF TO INQUIRE OF APPELLANT "SO YOU'RE A THIEF". THE SUPREME COURT STATED THAT THEY RECOGNIZE THIS COURT HELD IN AL-AMIN THAT ARMED ROBBERY

WAS A CRIME OF DISHONESTY PURSUANT TO RULE 609(a)(2).STATE V.
 AL-AMIN.353 S.C. 405, 425, 578 S.E. 2d. 32,43(CT.APP.2003).
 HOWEVER , SINCE AL-AMIN OUR SUPREME COURT HAS DECIDED BRYANT.
 RULE 609(a) SCRE PROVIDES THAT FOR PURPOSE OF ATTACHING THE
 CREDIBILITY OF A WITNESS: EVIDENCE THAT A WITNESS OTHER THAN
 AN ACCUSED HAS BEEN CONVICTED OF A CRIME SHALL BE ADMITTED
 SUBJECT TO 403,IF THE CRIME WAS PUNISHABLE BY DEATH OR IMPRIS-
 ONMENT IN EXCESS OF ONE YEAR UNDER THE LAW UNDER WHICH THE
 WITNESS WAS CONVICTED, AND EVIDENCE THAT AN ACCUSED HAS BEEN
 CONVICTED OF SUCH A CRIME SHALL BE ADMITTED IF COURT DETERMINES
 THAT THE PROBATIVE VALUE OF ADMITTING THE EVIDENCE OUTWEIGHTS
 IT"S PREJUDICIAL EFFECT TO THE ACCUSED; AND EVIDENCE THAT ANY
 WITNESS HAS BEEN CONVICTED OF A CRIME SHALL BE ADMITTED IF IT
 INVOLVED DISHONESTY OR FALSE STATEMENTS REGARDLESS OF THE PUNISH-
 MENT. "UNDER RULE 609(a)(2),SCRE, IF A CRIME IS VIEWED AS ONE
 INVOLVING DISHONESTY, THE COURT MUST ADMIT THE PRIOR CONVICTION
 BECAUSE PRIOR CONVICTION INVOLVING DISHONESTY OR FALSE STATEMENTS
 MUST BE ADMITTED REGARDLESS OF THEIR PROBATIVE VALUE OR
 PREJUDICIAL EFFECT."STATE V. BRYANT, 369 S.C. 511,517,633,S.E.
 2d 152,155,(2006);SEE STATE V. AL-AMIN, 353 S.C. 405,425-27,
 578 S.E. 2d 32,43-44 (CT.APP.2003)(STATING CRIMES INVOLVING
 DISHONESTY OR FALSE STATEMENT ARE AUTOMATICALLY ADMISSIBLE FOR
 IMPEACHMENT PURPOSES BECAUSE THEY HAVE THE GREATEST PROBATIVE
 VALUE ON THE ISSUE OF TRUTH AND VERACITY"). HOWEVER, OUR SUPREME
 COURT HELD IN STATE V. BRYANT,369 S.C. 511,517,633 S.E.2d 152,
 155,(2006) THAT A "CONVICTION FOR ROBBERY,BURGLARY,THEIF,AND

DRUG POSSESSION,BEYOND THE BASIC CRIME ITSELF; IS NOT PROBATIVE OF TRUTH FULNESS. "SEE UNITED STATES V. SMITH,181 F.SUPP. 2d 904 (NDI.2002)(STATING THAT SINCE THE GOVERNMENT DID NOT SHOW THAT ANY OF THE CONVICTIONS OF ROBBERY,BURGLARY,THEIF, OR DRUG POSSESSION INVOLVED ANY FALSE STATEMENTS OR ACTS OF DECEIT BEYOND THE BASIC CRIME ITSELF,THEY WERE NOT ADMISSIBLE UNDER THE FEDERAL RULE OF EVIDENCE 609(a)(1) UNLIKE IN AL-AMIN, OUR SUPREME COURT HAS STATED STEALING IS NOT ALWAYS A CRIME OF DISHONESTY IF THERE ARE NO ADDITIONAL AFFIRMATIVE FALSE STATEMENTS OR ACTS OF DECEIT BEYOND THE CRIME ITSELF IF THE CRIME OF ARMED ROBBERY IS NOT CONSIDERED A CRIME OF DISHONESTY UNDER 609 (a)(2),IT MAY STILL BE ADMITTED UNDER RULE 609(A)(1),BUT IT WOULD BE SUBJECT TO A BALANCING TEST. UNDER RULE 609(a)(1),THE TRIAL COURT MUST DETERMINE IF THE PROBATIVE VALUE OF ADMITTING THE EVIDENCE OUTWEIGHTS IT"S PREJUDICIAL EFFECT TO THE ACCUSED. MOREOVER, OUR SUPREME COURT LAID OUT OTHER VARIOUS FACTORS TO CONSIDER WHEN DETERMING WHETHER TO ADMIT PRIOR CONVICTIONS UNDER 609(a)(1) (1).THE IMPEACHMENT VALUE OF THE PRIOR CRIME; (2).THE POINT IN TIME THE CONVICTION AND THE WITNESS SUBSEQUENT HISTORY;. (3).THE SIMILARITY OF PAST CRIME AND THE CHARGED CRIME; (4).THE IMPORTANCE OF THE DEFENDANTS TESTIMONY: AND (5).THE CENTRALITY ISSUE.BRYANT,369 S.C. AT 517 n.1,633 S.E. 2d AL 155 n.1(CITING STATE V. MARTIN, 347 S.C. 522,530-31,556 S.E. 2d 706,710-11(CT. APP.2001)). THE SUPREME COURT STATED THAT AFTER CAREFUL CONSIDERATION OF PREVIOUS CASE LAW, WE TAKE THIS OPPORTUNITY TO FOLLOW

BRYANT IN DECIDING THESE PRIOR ARMED ROBBERIES, WITHOUT MORE ARE NOT CRIMES OF DISHONESTY. WE ARE NOT RULING THAT PRIOR ARMED ROBBERIES ARE PER SE INADMISSIBLE; HOWEVER AS THE COURT IN BRYANT STATED; TO BE ADMISSIBLE UNDER RULE 609(a)(2), THERE SIMPLY MUST BE SOMETHING BEYOND THE BASIC CRIME. IN APPELLANT CASE, THE THE STATE DID NOT SHOW ANY FUTURE AFFIRMATIVE FALSE STATEMENT OR ACTS OF DECEIT BEYOND THE BASIC CRIME ITSELF. ACCORDINGLY, THE SUPREME COURT FIND THE TRIAL COURT ERRED IN ADMITTING BROADNAXS PRIOR CONVICTIONS OF ARMED ROBBERY PURSUANT TO RULE 609(a)(2), SCRE, AND THE PROBATIVE VALUE OF BROADNAXS PRIOR ARMED ROBBERY CONVICTIONS SHOULD HAVE BEEN WEIGHTED AGAINST THEIR PREJUDICIAL EFFECT PRIOR TO THEIR ADMISSION PURSUANT TO RULE 609(a)(1). THE TRIAL COURT ALSO ERRED IN ADMITTING APPELLANT PRIOR CONVICTIONS OF STRONG ARM ROBBERY PURSUANT TO RULE 609(a)(2), SCRE, AND THE PROBATIVE VALUE OF APPELLANT PRIOR STRONG ARM ROBBERY CONVICTIONS SHOULD HAVE BEEN WEIGHTED AGAINST THEIR PREJUDICIAL EFFECT PRIOR TO THEIR ADMISSION PURSUANT TO RULE 609(a)(1). THE SUPREME COURT STATED THAT BECAUSE BROADNAX'S PRIOR CONVICTIONS WERE THE IDENTICAL CHARGE AS THE OFFENSE IN THE PRESENT CASE, WE CANNOT CONCLUDE BROADNAX WAS NOT PREJUDICIAL BY THAT PRIOR OFFENSES OR CONVICTIONS . SEE STATE V. HOWARD, 396 S.C. 173,180-81,720 S.E. 2d 511,515-16(CT.APP.2011);SEE ALSO BRYANT,369,S.C.al 517-18,633 S.E. 2d al 156(HOLDING THAT WHEN A PRIOR OFFENSE IS SIMILAR TO THE CHARGED OFFENSE THE "DANGER OF UNFAIR PREJUDICE TO THE DEFENDANT FROM IMPEACHMENT BY THAT PRIOR OFFENSE WEIGHTS AGAINST ITS ADMISSION") STATE V. SCRIVEN,339 S.C. 333,343-44,529 S.E. 2d 71,76-77(CT.APP.2000)

(HOLDING THAT THE PRIOR CONVICTIONS ARE "SIMILAR OR IDENTICAL TO CHARGED OFFENSES, AND THE LIKELIHOOD OF A HIGH DEGREE OF PREJUDICE TO THE ACCUSED IS INESCAPABLE"). BECAUSE WE FIND THE ADMISSION OF BROADNAX'S PRIOR ARMED ROBBERIES CREATED SUCH A HIGH DEGREE OF PREJUDICE IN THIS CASE WE REVERSE AN REMAND FOR A NEW TRIAL. APPELLANT FEELS THAT BECAUSE OF ADMISSION OF HIS PRIOR STRONG ARM ROBBERYS CREATED SUCH A HIGH DEGREE OF PREJUDICE IN THIS CASE THAT HE'S ALSO ENTITLED TO HAVE HIS CASE REVERSE AN REMAND FOR A NEW TRIAL. IN MCCOY V. STATE (OPINION NO.27214 FED 6, 2013) THE S.C. SUPREME COURT REVERED AND REMANDED FOR HEARING THE DISMISSAL OF THE PETITIONER'S PCR APPLICATION. THE SUPREME COURT HELD THAT SUMMARY DISMISSAL OF THE PETITIONER'S SECOND PCR APPLICATION WAS ERROR BECAUSE GENUINE ISSUES OF MATERIAL FACT EXISTED AS TO WHETHER HIS CLAIM WAS SECESSIVE OR BARRED BY THE STATUTE OF LIMITATIONS. "WHEN CONSIDERING THE STATE'S MOTION FOR SUMMARY DISMISSAL, WHERE NO EVIDENTIARY, HEARING HAS BEEN HELD, THE PCR JUDGE MUST ASSUME FACTS PRESENTED BY THE APPLICANT ARE TRUE AND VIEW THOSE FACTS IN THE LIGHT MOST FAVORABLE TO THE APPLICANT (LEAMON V. STATE, 363 S.C. 432, 434 611 S.E. 2d 494, 495 (2005) (CITING S.C. CODE ANN §§17-27-80). WHERE AN APPLICANT ALLEGES FACTS THAT WOULD ESTABLISH AN EXCEPTION TO EITHER THE STATUTE OF LIMITATIONS OR THE PROHIBITION AGAINST SUCCESSIVE PCR APPLICATIONS AND THOSE FACTS ARE NOT CONCLUSIVELY RETUTED BY THE RECORD BEFORE THE PCR COURT, A QUESTION OF FACT

IS RAISED WHICH CAN ONLY BE RESOLVED BY A HEARING. CF DELANEY
V. STATE, 269 S.C. 555,556,238 S.E. 2d 679,679(1977).

CONCLUSION

WHEREFORE, AFTER REVIEWING THE STATEMENT OF FACTS AND ISSUES
PRESENTED, THE INSTANT APPLICATION PRESENTS SUFFICIENT QUESTIONS
OF LAW AND FACT WARRANTING AN EVIDENTIARY HEARING IN THE INSTANT
MATTER. SHARPER V. STATE, 305 S.E. 2d 247 (S.C. 1983)

THEREFORE, PETITIONER RESPECTFULLY PRAYS THAT COMPETENT COUNSEL
BE APPOINTED AND AN EVIDENTIARY HEARING CONVENED AT THE EARLIEST
CONVENIENCE.

RESPECTFULLY SUBMITTED,

s/ Russell Montgomery

RUSSELL MONTGOMERY #294838
RIDGELAND CORR. INST. CA-RM#31
POST OFFICE BOX 2039
RIDGELAND, S.C. 29936
PRO SE

DATED: 12/17/2013

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Russell Montgomery, #294838,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-38-01201

2013-CP-38-01488

ORDER OF MERGER

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC
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Applicant in the above-captioned matters has filed two applications for post-conviction relief; the first of those was filed September 27, 2013 (2013-CP-38-01201), and the second was filed December 20, 2013 (2013-CP-38-01488). Since an applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90), this Court hereby orders that the two proceedings be merged. The application for post-conviction relief filed December 20, 2013 (2013-CP-38-01488) will be considered an amendment to the initial application for post-conviction relief filed September 27, 2013 (2013-CP-38-01201).

The Clerk of Court is therefore ordered to merge the two cases, with docket number 2013-CP-38-01201 being the surviving case. Hereafter, the word "Application" will refer to docket number 2013-CP-38-01201; the word "Amendment" will refer to docket number 2013-CP-38-01488, which will be considered as an amendment to the application for post-conviction relief.

Orangeburg

IT IS THEREFORE ORDERED that the ~~Orangeburg~~ County Clerk of Court merge docket number 2013-CP-38-01488 into docket number 2013-CP-38-01201, with file 2013-CP-38-01201

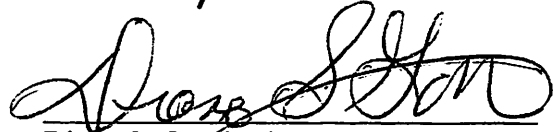
ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

being the surviving file and all future pleadings bearing docket number 2013-CP-38-01201.

Docket number 2013-CP-38-01488 will be dismissed upon the merger.

AND IT IS SO ORDERED this 16 day of April, 2014.



Diane S. Goodstein
Chief Judge for Administrative Purposes
First Judicial Circuit

Summerville South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Russell Montgomery, #294838,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-38-01201

RETURN AND MOTION TO DISMISS

In response to the post-conviction relief (PCR) application filed September 27, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the August 2002 term of the Orangeburg County Grand Jury for Kidnapping (2002-GS-38-01573) and Armed Robbery (2002-GS-38-01574). Applicant was represented on the charges by Margaret Peggy Hinds, Esquire. Applicant proceeded to trial before the Honorable Edward B. Cottingham on July 16, 2003. The jury convicted Applicant of Kidnapping and the lesser offense of Strong Arm (i.e. common law) Robbery. Judge Cottingham sentenced Applicant to twenty (20) years confinement for Kidnapping and fifteen (15) years, consecutive for robbery.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Robert M. Dudek represented Applicant on his appeal, submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and petitioned the court to be relieved as counsel. Applicant did not file a *pro se* brief. The South Court of Appeals dismissed the appeal and granted counsel's request to be

relieved. State v. Montgomery, Op. No. 2005-UP-285 (S.C. Ct. App. filed April 20, 2005). Applicant filed a petition for rehearing on April 28, 2005, that was denied on June 22, 2005. The remittitur was issued on July 27, 2005.

2006-CP-38-000209

Applicant subsequently filed an application for post-conviction relief on February 21, 2006, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that
 - a. Petitioner alleges that trial counsel failed to properly prepare for the trial of this case; failed to request continuance based on untimely receipt of discovery; failed to move to suppress evidence; failed to object to evidence and witnesses not timely revealed in response to discovery request; failed to object impeachment evidence; failed to request exclusion of impeachment evidence; failed to object to improper questions by Solicitor; and such other grounds as may become apparent after a complete review of the record.

Respondent filed its return on or about December 7, 2006. An evidentiary hearing was convened on January 12, 2007. Applicant was present and represented by counsel C. Bradley Hutto, Esquire. The State was represented by Assistant Attorney Lance S. Boozer. Applicant testified on his own behalf. Also testifying was Applicant's former trial counsel, Ms. Hinds. On June 26, 2005, the Honorable James C. Williams, Jr., issued an Order of Dismissal finding that counsel was not ineffective.

Applicant appealed the decision made by the PCR court and filed a notice of appeal. Applicant was represented by Appellate Defender Katherine H. Hudgins. On January 10, 2008, counsel filed a Johnson Petition for Writ of Certiorari in the Supreme Court of South Carolina and moved to be relieved as counsel. By letter dated January 11, 2008, the Clerk of the South Carolina Supreme Court advised Applicant of his right to file a *pro se* response. Applicant filed a *pro se* brief on January 29, 2008. By Order dated July 11, 2008, the Supreme Court transferred

the case to the South Carolina Court of Appeals. On January 30, 2009, the South Carolina Court of Appeals denied the petition and granted counsel Hudgins' request to withdraw. The Court of Appeals issued the remittitur on February 20, 2009.

2009-cv-00778-HMH

Applicant then filed a petition for writ of habeas corpus on March 31, 2009, in federal district court. Petitioner raised the following issues verbatim:

1. Ineffective Assistance of counsel in that counsel failed to: request continuance, failed to suppress evidence, failed to object to evidence and witness not timely revealed in response request; object to impeachment evidence, failed to request exclusion of impeachment evidence, failed to object to improper questions by Solicitor.
2. Whether the courts erred by allowing Applicant to be impeached with is prior Robbery Conviction. Where he was on trial for Robbery, since the prejudicial effect of that conviction out weighted its provation value under Rule 403 S.C.R.E., And the Court failed to conduct the requisite. State –v– Colf Analysis?

On August 10, 2009, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated January 20, 2010, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on February 5, 2010. The Fourth Circuit Court of Appeals issued an order enforcing the judgment on May 28, 2010.

2011-CP-38-0857

Applicant then filed a second application for post-conviction relief on July 20, 2011, where he alleged he was being held unlawfully for the following reasons verbatim:

1. Does the extraordinary circumstances in the instant case entitle Petitioner to a second application to address the remaining issue the PCR court failed to address in the original application, since PCR counsel failed to file a timely Rule 59(e) motion to address all of Petitioner's claims that were presented in his original applicant and this court's barring of hyryd representation that precluded Petition

from filing a pro-se Rule 59(e), motion, that resulted in a denial of due process and equal protection.

The State filed its Return and Motion to Dismiss on or about October 9, 2012, requesting that the application be summarily dismissed as being filed outside the one year statute of limitations and as successive. Pursuant to this request, the court issued a Conditional Order of Dismissal dated November 13, 2012, provisionally denying and dismissing the action. The court gave Applicant twenty (20) days from the date of service of said order to respond as to why the case should not be dismissed. Applicant responded by way of a document captioned "Answer to Respondents Motion for Dismissal," on October 18, 2012. The Honorable Edgar W. Dickson signed a Final Order of Dismissal on May 16, 2013, denying relief.

II.

In his *third* and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that
 - a. "Counsel failed to request a continuance based on untimely receipt of discovery;"
 - b. "Counsel failed to object, move to suppress evidence;"
 - c. "Counsel failed to object to evidence and witness (es) not timely revealed in response to discovery;"
 - d. "Counsel failed to impeach evidence; failed to request exclusion of impeachment evidence; failed to object to improper questions by the solicitor."
2. "New case law precedent (Christopher Broadnax Appellate v. State)."

Applicant then filed a subsequent PCR application on December 30, 2013 (2013-CP-38-01488). This Court by Order filed April 22, 2014, directed the Orangeburg County Clerk to merge the application into case number 2013-CP-38-01201 and that the application filed December 30, 2013 be treated as an amendment to the application filed September 27, 2013 (2013-CP-38-01201). In this amendment, Applicant raises the same issues as in the original application.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, Applicant's prior PCR records, and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

This Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief applications. The Applicant has failed to present any reasons why he could not have raised

the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent also submits this Application for Post-Conviction Relief should also be dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was found guilty on the offenses he challenges on July 16, 2003. The remittitur from Applicant's direct appeal was issued on July 27, 2005, so he was, therefore, required to file his application on or before **July 28, 2006**. This Application was filed on September 27, 2013, which was over seven (7) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

Additionally, this Court should dismiss the Applicant's allegations of ineffective assistance of counsel as barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. This application presents allegations that could have been and were raised in those prior proceedings. The Applicant has raised the issue of ineffective assistance of counsel in his prior post-conviction relief and federal habeas proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCF, the Court should dismiss these claims as barred by *res judicata*.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to Applicant's previous PCR applications and was filed after the statute of limitations had expired.

(signatures on following page)

Respectfully submitted,

ALAN M. WILSON
Attorney General

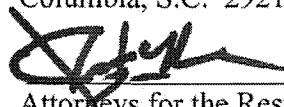
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina

May 16, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2013-CP-38-01201
	)	
RUSSELL MONTGOMERY, #294838	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Russell Montgomery, #294838
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, South Carolina 29936**

DATED this 16th day of May, 2014.


Kelly Oppenheimer, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Russell Montgomery, #294838,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-38-01201

CONDITIONAL ORDER OF DISMISSAL

FILED
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA

2014 JUN - 14 11:55

PM

This matter comes before this Court by way of an application for post-conviction relief filed September 27, 2013.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the August 2002 term of the Orangeburg County Grand Jury for Kidnapping (2002-GS-38-01573) and Armed Robbery (2002-GS-38-01574). Applicant was represented on the charges by Margaret Peggy Hinds, Esquire. Applicant proceeded to trial before the Honorable Edward B. Cottingham on July 16, 2003. The jury convicted Applicant of Kidnapping and the lesser offense of Strong Arm (i.e. common law) Robbery. Judge Cottingham sentenced Applicant to twenty (20) years confinement for Kidnapping and fifteen (15) years, consecutive for robbery.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Robert M. Dudek represented Applicant on his appeal, submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and petitioned the court to be relieved as counsel. Applicant did not file a *pro se* brief. The South Court of Appeals dismissed the appeal and granted counsel's request to be relieved. State v. Montgomery, Op. No. 2005-UP-285 (S.C. Ct. App. filed April 20, 2005).

ATTEST: TRUE COPY

Wingja B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

Applicant filed a petition for rehearing on April 28, 2005, that was denied on June 22, 2005. The remittitur was issued on July 27, 2005.

2006-CP-38-000209

Applicant subsequently filed an application for post-conviction relief on February 21, 2006, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that
 - a. Petitioner alleges that trial counsel failed to properly prepare for the trial of this case; failed to request continuance based on untimely receipt of discovery; failed to move to suppress evidence; failed to object to evidence and witnesses not timely revealed in response to discovery request; failed to object impeachment evidence; failed to request exclusion of impeachment evidence; failed to object to improper questions by Solicitor; and such other grounds as may become apparent after a complete review of the record.

Respondent filed its return on or about December 7, 2006. An evidentiary hearing was convened on January 12, 2007. Applicant was present and represented by counsel C. Bradley Hutto, Esquire. The State was represented by Assistant Attorney Lance S. Boozer. Applicant testified on his own behalf. Also testifying was Applicant's former trial counsel, Ms. Hinds. On June 26, 2005, the Honorable James C. Williams, Jr., issued an Order of Dismissal finding that counsel was not ineffective.

Applicant appealed the decision made by the PCR court and filed a notice of appeal. Applicant was represented by Appellate Defender Katherine H. Hudgins. On January 10, 2008, counsel filed a Johnson Petition for Writ of Certiorari in the Supreme Court of South Carolina and moved to be relieved as counsel. By letter dated January 11, 2008, the Clerk of the South Carolina Supreme Court advised Applicant of his right to file a *pro se* response. Applicant filed a *pro se* brief on January 29, 2008. By Order dated July 11, 2008, the Supreme Court transferred the case to the South Carolina Court of Appeals. On January 30, 2009, the South Carolina Court

of Appeals denied the petition and granted counsel Hudgins' request to withdraw. The Court of Appeals issued the remittitur on February 20, 2009.

2009-cv-00778-HMH

Applicant then filed a petition for writ of habeas corpus on March 31, 2009, in federal district court. Petitioner raised the following issues verbatim:

1. Ineffective Assistance of counsel in that counsel failed to: request continuance, failed to suppress evidence, failed to object to evidence and witness not timely revealed in response request; object to impeachment evidence, failed to request exclusion of impeachment evidence, failed to object to improper questions by Solicitor.
2. Whether the courts erred by allowing Applicant to be impeached with is prior Robbery Conviction. Where he was on trial for Robbery, since the prejudicial effect of that conviction out weighted its provation value under Rule 403 S.C.R.E., And the Court failed to conduct the requisite. State –v– Colf Analysis?

On August 10, 2009, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated January 20, 2010, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on February 5, 2010. The Fourth Circuit Court of Appeals issued an order enforcing the judgment on May 28, 2010.

2011-CP-38-0857

Applicant then filed a second application for post-conviction relief on July 20, 2011, where he alleged he was being held unlawfully for the following reasons verbatim:

1. Does the extraordinary circumstances in the instant case entitle Petitioner to a second application to address the remaining issue the PCR court failed to address in the original application, since PCR counsel failed to file a timely Rule 59(e) motion to address all of Petitioner's claims that were presented in his original applicant and this court's barring of hyryd representation that precluded Petition from filing a pro-se Rule 59(e), motion, that resulted in a denial of due process and equal protection.

The State filed its Return and Motion to Dismiss on or about October 9, 2012, requesting that the application be summarily dismissed as being filed outside the one year statute of limitations and as successive. Pursuant to this request, the court issued a Conditional Order of Dismissal dated November 13, 2012, provisionally denying and dismissing the action. The court gave Applicant twenty (20) days from the date of service of said order to respond as to why the case should not be dismissed. Applicant responded by way of a document captioned "Answer to Respondents Motion for Dismissal," on October 18, 2012. The Honorable Edgar W. Dickson signed a Final Order of Dismissal on May 16, 2013, denying relief.

CURRENT APPLICATION

In his second and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that
 - a. "Counsel failed to request a continuance based on untimely receipt of discovery;"
 - b. "Counsel failed to object, move to suppress evidence;"
 - c. "Counsel failed to object to evidence and witness (es) not timely revealed in response to discovery;"
 - d. "Counsel failed to impeach evidence; failed to request exclusion of impeachment evidence; failed to object to improper questions by the solicitor."
2. "New case law precedent (Christopher Broadnax Appellate v. State)."

Applicant then filed a subsequent PCR application on December 30, 2013 (2013-CP-38-01488). This Court by Order filed April 22, 2014, directed the Orangeburg County Clerk to merge the application into case number 2013-CP-38-01201 and that the application filed December 30, 2013 be treated as an amendment to the application filed September 27, 2013 (2013-CP-38-01201). In this amendment, Applicant raises the same issues as in the original application.

Before this Court are the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections,

Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief, and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

This Court further finds that this Application for post-conviction relief must also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was found guilty on the offenses he challenges on July 16, 2003. The remittitur from Applicant's direct appeal was issued on July 27, 2005, so he was, therefore, required to file his application on or before July 28, 2006. This Application was filed on September 27, 2013, which was over seven (7) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

Res Judicata

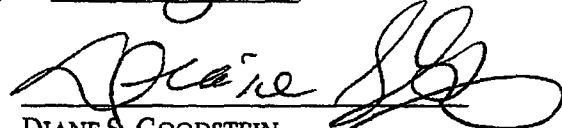
This Court further finds that the doctrine of *res judicata* bars the Applicant's allegations of ineffective assistance of counsel. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. The Applicant raised the issue of ineffective assistance of counsel in his previous PCR and federal habeas corpus proceedings. The public interest in the finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, this Court finds that these claims are barred by *res judicata*.

III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division – 1th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 26 day of May, 2014.


DIANE S. GOODSTEIN
Chief Judge for Administrative Purposes
First Judicial Circuit


 , South Carolina

Case # 2013-CP-38-01201

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF ORANGEBURG

4 -----x

5 RUSSELL MONTGOMERY,)

6 Plaintiff,)

7 vs.)

Transcript of Record
2018-CP-38-01488

8 STATE OF SOUTH CAROLINA)

9 -----x

10 July 20, 2017

11 B E F O R E:

12 The Honorable Edgar W. Dickson, Presiding Judge

13

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

15 Arthur Aiken, Esq.
Attorney for the Plaintiff

16

17 Ruston Neely, Esq.
Attorney for the State

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24 Court Reporter: Hilda Jordan

25 Transcriber: Bobbi Fisher, RPR, CET

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I N D E X

PAGE

Argument by Mr. Aiken

3

Argument by Mr. Neely

10

E X H I B I T S

(None.)

1 P R O C E E D I N G S

2 THE COURT: Mr. Neely, if you'd call the case, please,
3 sir.

4 MR. NEELY: Thank you, Your Honor. This is the case of
5 Russell Montgomery versus the State of South Carolina, Case
6 No. 2013-CP-38-01201. This is the motion from the State to
7 dismiss the case based on successive PCRs and the statute of
8 limitations.

9 THE COURT: All right. And I have got a copy of your
10 motion and I have looked through that. And this is --
11 according to your motion, this is his third PCR?

12 MR. NEELY: That's correct, Your Honor.

13 THE COURT: Okay. All right. Anything else?

14 MR. NEELY: I would only add that I was originally shown
15 this morning by Mr. Aiken a document that he had been provided
16 by Mr. Montgomery that I believe he intends to enter as a
17 motion on his client's behalf that asserts that he believes
18 that State v. Broadnax should be applied retroactively. And
19 I'll respond to that after that motion is made.

20 THE COURT: Okay. All right. Thank you, sir.

21 Mr. Aiken, be glad to hear from you, please, sir.

22 MR. AIKEN: Thank you, Your Honor. May it please the
23 Court.

24 THE COURT: Yes, sir.

25 MR. AIKEN: I think it's important to sort of go back to

1 the trial to set up the argument for why this PCR should go
2 forward.

3 THE COURT: Okay.

4 MR. AIKEN: Mr. Montgomery was charged with armed robbery
5 and kidnapping. He went to trial, and during his trial, when
6 he elected to testify, the Government was permitted to
7 cross-examine him on prior strong-armed robbery convictions.
8 And, ultimately, at the conclusion of the trial, he was
9 convicted, interestingly enough, of strong-armed robbery --
10 not armed robbery, but strong-armed robbery and kidnapping,
11 and he got a 35-year sentence.

12 And he, of course, has filed prior post-conviction relief
13 applications: One in 2006 and one in 2011. Since the 2011
14 filing, the -- first, the South Carolina Court of Appeals, in
15 January 9th, 2013, in a South Carolina Supreme Court, on
16 July -- excuse me, September 8, 2015, decided the case of
17 State v. Broadnax. Before State v. Broadnax, there was a bit
18 of a split of authority in South Carolina concerning whether
19 robbery -- prior robbery convictions were considered crimes of
20 dishonesty under Rule 609 of the South Carolina rules of
21 evidence.

22 And if you remember, Judge, how Rule 609 is set up,
23 there's 609(a)(1), which says essentially, if you're convicted
24 of a crime that carries a penalty of more than one year and
25 you're a criminal defendant on trial, that conviction can be

1 used against you so long as the probative value substantially
2 outweighs the prejudicial effect.

3 THE COURT: Right.

4 MR. AIKEN: And then there's 609(a)(2), which deals with
5 crimes of dishonesty and basically says crimes of dishonesty
6 are admissible and it does not require that the trial judge
7 engage in that balancing that's required under 609(a)(1).

8 In Mr. Montgomery's trial, the trial judge followed a
9 case called Al Ameen, which was a case decided by the Court of
10 Appeals. And in the Al Ameen case, the Court of Appeals
11 concluded that armed robbery was a crime of dishonesty, and
12 therefore, it was not necessary under 609(a)(2) for the Court
13 to engage in the balancing test.

14 Now, the Broadnax case, which was decided by the Court of
15 Appeals in 2003 and the Supreme Court and 2015 says that
16 robbery, in and of itself, is not a crime of dishonesty and
17 that a Court, when faced with a robbery prior conviction, has
18 to use a 609(a)(1) balancing test. And the Court further held
19 in that case, which dealt with an issue concerning an armed
20 robbery, that if you have crimes that are identical or very,
21 very similar, it's almost always more prejudicial than
22 probative. All right?

23 So, in this case, what the trial judge did was let in the
24 prior strong-armed robbery convictions in an armed robbery
25 case, and ultimately, Mr. Montgomery was convicted of

1 strong-armed robbery, exactly the same as his prior
2 conviction.

3 Now, our position in this case, Your Honor, is that
4 Mr. Montgomery's PCR is neither -- or his PCR based on an
5 argument of the applicability of Broadnax is neither barred by
6 the statute of limitations nor barred by the rule concerning
7 successive PCRs because the Broadnax rule did not even come
8 into existence until after his two prior post-conviction
9 relief applications and the first Broadnax opinion by the
10 Court of Appeals was January 9th of 2013 and the current
11 post-conviction relief application that we're here on today,
12 Your Honor, of Mr. Montgomery was filed initially September
13 27th of 2013, which was within one year of the announcement of
14 the new Broadnax rule by the Court of Appeals.

15 And also in this case, we don't have a successiveness
16 issue because the issue could not have been raised until such
17 time as the Broadnax case had been decided. And the new rule
18 in collateral attack post-conviction relief case law in South
19 Carolina is all but non-existent, but having done 2254s and
20 2255s in federal court, my understanding of the rule in
21 federal habeas, which is very, very similar to State
22 post-conviction relief, is that new law should be applied to
23 prevent a manifest injustice. If the new law changes the
24 elements of the offense such that the evidence that's actually
25 been presented in the case is no longer sufficient to convict

1 under the new standard. That's No. 1;

2 No. 2, that it's an announcement of a rule that is of
3 constitutional dimensions;

4 or, No. 3, it alters the mode of trial.

5 In this case, we have No. 2 and No. 3 because what we're
6 talking about here, Your Honor, is an analysis of whether
7 someone is prejudiced by evidence. Mr. Montgomery had a right
8 to a fair trial under the federal and the state constitutions.
9 If evidence that was clearly prejudicial to him was admitted
10 in that trial, then that would be a violation of his
11 constitutional right to a fair trial.

12 And so the new rule in Broadnax, while not specifically
13 based upon a constitutional provision, has constitutional
14 dimensions. Also, the Broadnax case -- the new rule of the
15 Broadnax case changed the mode of trial because it changed how
16 evidence of prior crimes not involving dishonesty changed how
17 courts were supposed to determine whether a crime involved
18 dishonesty and was, therefore, under 609(a)(2) or did not
19 involve dishonesty and, therefore, was under 609(a)(1),
20 understanding the critical difference between those two,
21 (a)(1) requiring the prejudice-probative value balance and
22 (a)(2) not requiring anything.

23 So our argument, Your Honor, is this is neither barred by
24 the statute of limitations nor barred by successiveness in as
25 much as it's based upon the new rule announced in Broadnax by

1 the Court of Appeals and the Supreme Court.

2 THE COURT: Mr. Aiken, just before you sit down, did -- I
3 have not read Broadnax, but did the Court in that order
4 mention whether or not it was retroactive or not?

5 MR. AIKEN: I don't think so. I don't believe it did.
6 I'll be happy to check. I skimmed it this morning again, and
7 I did not see that.

8 THE COURT: You know, because sometimes they specifically
9 say either it's not to be applied retroactively or they don't
10 address it at all. And I'll read it. I just wanted you to --

11 MR. AIKEN: I don't see it, Your Honor. I think if I --
12 I read it so if I had seen that, I'm sure I would have argued
13 it.

14 THE COURT: Okay. I'm pretty comfortable that you would
15 have. But let me ask you another question.

16 MR. AIKEN: Yes, sir.

17 THE COURT: As a general rule, though, when -- at least
18 it's always my understanding as the general rule, whatever
19 changes are made -- you know, we'd have a way -- everybody's
20 been doing this. I'll try and think of the case where they
21 said you couldn't use -- if there was an element -- if the
22 defendant was using self-defense, you couldn't --

23 MR. AIKEN: Belcher, I think, is the one.

24 THE COURT: Right, yeah.

25 But they didn't say that that could be applied

1 retroactively, as I recall.

2 MR. AIKEN: I don't recall exactly how that was worked
3 out in Belcher.

4 THE COURT: And it seems to me like, generally speaking,
5 they don't apply retroactively. Is that --

6 MR. AIKEN: I would agree with that.

7 THE COURT: Okay.

8 MR. AIKEN: I would agree that's the general rule. Yes,
9 Your Honor.

10 THE COURT: But you're telling me it should be applied in
11 this case because of the constitutional issues because it
12 affected the mode of trial substantially.

13 MR. AIKEN: That's correct. That's correct, Your Honor.

14 THE COURT: And the reason you think it affected the mode
15 of trial so substantially is he was charged with armed robbery
16 but, yet, they convicted him with the same strong arm robbery
17 in a prior conviction.

18 MR. AIKEN: That's correct.

19 THE COURT: Which you think -- which makes you think that
20 the jury, in their deliberations, was somewhat swayed by that.

21 MR. AIKEN: I believe that's correct, Your Honor. That's
22 my argument.

23 THE COURT: Okay. All right. Thank you.

24 MR. AIKEN: Thank you, Judge.

25 THE COURT: Mr. Neely.

1 MR. NEELY: Thank you, Your Honor. And as Your Honor's
2 already stated, there's a general -- the Court looks
3 unfavorably on findings retroactively. There are only two
4 exceptions which the Court looks at to see if a rule should be
5 followed retroactively. One is whether the rule is a
6 substantive rule of law, and we see that in Aiken v. Buyers
7 where an entire class of defendants is protected from a
8 certain infringement and it is no longer legally applicable to
9 those defendants, and therefore, it applies retroactively.

10 And as Your Honor stated, those cases generally say this
11 is going to apply retroactively, and they have made the
12 finding in the order itself that it's going to apply
13 retroactively, or whether it's a watershed rule kind of
14 procedure, is the second exception.

15 This is not a watershed rule kind of procedure and this
16 is not a substantive change of a class of defendants or a
17 crime that would make a certain class of criminals not
18 criminals or a certain class of punishments illegal.

19 So this is not a case where it should be applied
20 retroactively. I think that's fairly obvious. Even in State
21 v. Broadnax, Mr. Aiken argued that it was a constitutional
22 issue and that it severely impaired his client's right to a
23 fair trial. Even if the State v. Broadnax opinion, they found
24 that the -- though the Court was in error and though they
25 reversed Al Ameen, they actually found it was harmless error,

1 where the Court admitted an armed robbery conviction to
2 impeach the defendant, they found it was harmless error.

3 So while that certainly tweaks how cases are prosecuted
4 and how defendants are impeached, post Broadnax, it certainly
5 does not apply retroactively. And as Your Honor mentioned, I
6 think Belcher was even more -- much more of a landmark case
7 than this case.

8 And, in fact, I would go so far as to say that -- I can't
9 remember the case name off the top of my head, but the case
10 where -- in criminal sexual conduct cases, forensic
11 interviewers were allowed to bolster, basically, a victim's
12 testimony, and the Court can issue a very strong opinion.

13 THE COURT: But you can't do that.

14 MR. NEELY: But you can't do that and it should never
15 have been done. And even in those cases, it was not applied
16 retroactively, despite the strong language of the Court that
17 this practice was inappropriate.

18 THE COURT: Right. And, Mr. Neely, I understand exactly
19 what you're saying, but I was just -- while you were talking,
20 I was thinking, if I was representing somebody in that --
21 like, a criminal sexual conduct case we just talked about and
22 say I had finished my trial and lost it the week before they
23 changed the law, it would have me, both as an attorney and as
24 a defendant, unhappy. And seems it -- in some ways, it seems
25 unfair that when the Court essentially re-interprets or

1 redefines the law, that people that have been prosecuted under
2 the prior interpretation and are now sitting in jail because
3 of that, they seem to just be sitting in jail because of the
4 timing of it more than anything else.

5 MR. NEELY: Well, Your Honor, that's certainly one
6 argument.

7 THE COURT: Yeah.

8 MR. NEELY: I think that the State's argument would be
9 that there has to be some solidarity and some consistency.
10 And you can't retry every single case every single time the
11 Court tweaks a rule or interprets a rule differently. I can
12 certainly -- I certainly sympathize with somebody that was
13 tried under a harsher, for lack of a better word --

14 THE COURT: Mm-hmm, right.

15 MR. NEELY: -- interpretation of the rule.

16 THE COURT: Mm-hmm.

17 MR. NEELY: But there has to be some steadfastness in the
18 criminal system, and when rules change, that's why the
19 prohibition against retroactivity only has two exceptions and
20 they're very, very strong exceptions.

21 THE COURT: Right. And let -- and going to that, going
22 to the watershed rule that you mentioned earlier, in this
23 situation, since, now, a sitting judge would have to decide
24 whether or not the prior conviction was more probative than
25 prejudicial, your opinion is that would not -- that's not a

1 watershed decision.

2 MR. NEELY: No, sir.

3 THE COURT: Okay.

4 MR. NEELY: I believe the wording for a watershed
5 decision is a bedrock, procedural element or principle, and
6 certainly, I don't think tweaking how you impeach a defendant
7 that is on the witness stand is a bedrock procedural rule of
8 principle.

9 THE COURT: I just wrote down that phrase so I could
10 remember it. It was very good. Thank you.

11 Anything else?

12 MR. NEELY: That's all from the State, Your Honor.

13 THE COURT: All right. Anything in response?

14 MR. AIKEN: Your Honor, may I speak with my client for
15 just a moment?

16 MR. NEELY: Sure.

17 MR. AIKEN: Thank you.

18 (Counsel confers with his client off the record.)

19 MR. AIKEN: I have nothing further, Your Honor.

20 THE COURT: Okay. All right. Gentlemen, what I'm going
21 to do is, I have not read Broadnax in a while; I'm sure I read
22 it when it came out. But let me look over the situation and
23 I'll get back to y'all with my decision. I may ask y'all to
24 send me -- well, I may contact you and ask you to send
25 proposed orders, but right now, I'm not going to do that.

1 Right now -- and, Mr. Aiken, one reason I do that is -- when I
2 was practicing law, I hated that.

3 MR. AIKEN: Yes, sir.

4 THE COURT: It's just more work and I just wanted the
5 judge to make up his mind and tell me.

6 MR. AIKEN: Yes, sir.

7 THE COURT: Okay. All right. Okay. Thank y'all.

8 (The above hearing concluded.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Russell Montgomery vs. The State

3 2013-CP-38-01488

4 DATE OF PROCEEDING: July 20, 2017

5 COURT REPORTER: Hilda Jordan

6
7 I, Bobbi J. Fisher, do hereby certify that the
8 foregoing transcript is a true and correct record of the
9 recorded proceedings; that said proceedings were transcribed
10 to the best of my ability from the audio recording and
11 supporting information; and that I am neither counsel for,
12 related to, nor employed by any of the parties to this case,
13 and I have no interest, financial or otherwise, in its
14 outcome.

15
16 

18 _____
19 Bobbi J. Fisher, RPR, CET

20 NCRA Registered Professional Reporter (RPR)

21 AAERT Certified Electronic Transcriber No. CET-1148

22 Prepared: November 18, 2019
23
24
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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Russell Montgomery,
S.C.D.C. No. 294838,

Plaintiff,

vs.

State of South Carolina,

Defendant.

Russell Montgomery,
S.C.D.C. No. 294838,

Plaintiff,

vs.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2013-CP-38-01201

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

CASE NO.: 2013-CP-38-01488

2013 JUN -6 PM 10:00
CLERK OF COURT
RECORD

This matter is before the Court by way of an application for Post-Conviction Relief ("PCR") filed by Plaintiff Russell Montgomery ("Montgomery") on September 27, 2013 ("the Application"). Defendant State of South Carolina ("the State") made its return, requesting that the Application be summarily dismissed for the following reasons: 1) as barred by the doctrine of *res judicata*; 2) for Montgomery's failure to file the Application within the requisite statute of limitations period; and 3) as successive to Montgomery's previous PCR application(s). A hearing was convened before this Court on July 20, 2017, at the Orangeburg County Courthouse. Applicant was represented by Arthur K. Aiken, Esquire. Respondent was represented by Assistant Attorney General Ruston W. Neely. After review of the motions, supporting documents, statutes, case law, and arguments of counsel, and for the reasons stated below, this Court grants Defendant's Motion to Dismiss.

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1/11 2018
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

PROCEDURAL HISTORY

Montgomery is presently confined in the South Carolina Department of Corrections ("SCDC") pursuant to order of commitment of the Orangeburg County Clerk of Court. Montgomery was indicted during the August 2002 term by the Orangeburg County Grand Jury for Kidnapping (2002-GS-38-01573) and Armed Robbery (2002-GS-38-01574). He was represented by Margaret Peggy Hinds, Esquire in his July 16, 2003 jury trial where he was convicted of Kidnapping and the lesser offense of Strong Arm Robbery. The Honorable Edward B. Cottingham sentenced Montgomery to twenty (20) years confinement for Kidnapping and fifteen (15) years for Robbery, consecutively.

A notice of appeal was filed and an appeal perfected. Following review, the appeal was dismissed. State v. Montgomery, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005). Applicant's Petition for Rehearing was denied, and the remittitur was sent on July 27, 2005.

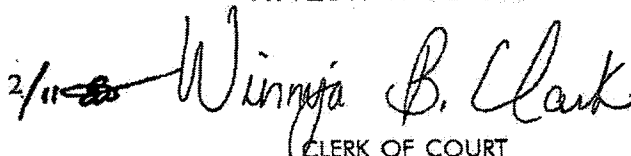
2006-CP-38-000209

Applicant subsequently filed a PCR application on February 21, 2006 (2006-CP-38-000209), wherein Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failure to properly prepare for the trial of this case;
 - b. Failure to request continuance based on untimely receipt of discovery;
 - c. Failure to move to suppress evidence;
 - d. Failure to object to evidence and witnesses not timely revealed in response to discovery request;
 - e. Failure to object to impeachment evidence;
 - f. Failure to object to improper questions by Solicitor; and
 - g. Such other grounds as may become apparent after a complete review of the record.

The State made its return on December 7, 2006. An evidentiary hearing was convened before the Honorable James C. Williams, Jr. on January 12, 2007. Applicant was present and represented by

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C. Bradley Hutto, Esquire. Judge Williams dismissed the application finding that counsel was not ineffective.

Montgomery filed a notice of appeal represented by Appellate Defender Katherine H. Hudgins. Counsel filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina and moved to be relieved as counsel. Montgomery subsequently was advised of his right and did file a *pro se* brief on January 29, 2008. The matter was transferred to the South Carolina Court of Appeals which denied the petition and granted Hudgins' request. The remittitur was issued February 20, 2009.

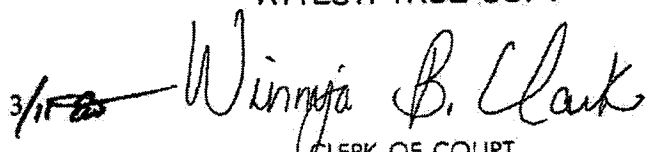
2009-cv-0078-HMH

Montgomery then filed a writ of habeas corpus on March 31, 2009 in federal district court. Montgomery raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failure to request continuance;
 - b. Failure to suppress evidence;
 - c. Failure to object to evidence not timely revealed in response request;
 - d. Failure to object to impeachment evidence;
 - e. Failure to request exclusion of impeachment evidence; and
 - f. Failure to object to improper questions by the Solicitor
2. Whether the courts erred by allowing Applicant to be impeached with his prior Robbery conviction where he was on trial for Robbery, since the prejudicial effect of that conviction outweighed its probative value under Rule 403 SCRE.

The State filed its return on August 10, 2009 along with its motion for summary judgment. The Court granted the motion on January 20, 2010, finding the claims without merit. Montgomery filed his notice of appeal on February 5, 2010. The Fourth Circuit of Appeals issued its order enforcing the judgment on May 28, 2010.

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2011-CP-38-0857

Montgomery filed a second PCR application on July 20, 2011 (2011-CP-38-0857).

Applicant set forth the following grounds for relief verbatim:

1. Does the extraordinary circumstances in the instant case entitle Petitioner to a second application to address the remaining issue the PCR court failed to address in the original application, since PCR counsel failed to file a timely Rule 59(e) motion to address all of Petitioner's claims that were presented in his original application and this court's barring of hybrid representation that precluded Petitioner from filing a pro-se Rule 59(e) motion, that resulted in a denial of due process and equal protection.

The State filed its return and Motion to Dismiss on October 9, 2012. The court issued a Conditional Order of Dismissal on November 13, 2012, giving the Applicant twenty (20) days from the date of service to respond as to why the case should not be dismissed. Montgomery responded on October 18, 2012 by way of a document "Answer to Respondents Motion for Dismissal." This Court signed a Final Order of Dismissal on May 16, 2013, denying relief.

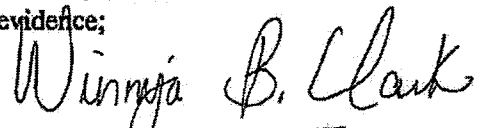
Current Allegations

Montgomery filed his third and current PCR application on September 27, 2013 (2013-CP-38-01201). Applicant then filed a fourth PCR application on December 30, 2013 (2013-CP-38-01488). On April 22, 2014 this Court ordered the merger of the applications; treating the latter as an amendment to the former. In this application, Montgomery sets forth the following grounds for relief:

1. Ineffective assistance:
 - a. Counsel failed to request a continuance based on untimely receipt of discovery;
 - b. Counsel failed to object, move to suppress evidence;

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- c. Counsel failed to object to evidence and witness(es) not timely revealed in response to discovery;
 - d. Counsel failed to impeach evidence;
 - e. Counsel failed to request exclusion of impeachment evidence;
 - f. Counsel failed to object to improper questions by the Solicitor.
2. "New case law precedent (Christopher Broadnax Appellate v. State)."

Respondent submitted its Return and Motion to Dismiss on May 16, 2014.

The State asks this Court to dismiss the Applicant's allegations because it is barred by the doctrine of *res judicata*, fails to comply with filing procedures set forth in S.C. Code Ann. §§ 17-27-10 to 160; the Uniform Post-Conviction Procedure Act ("the Act"), and is successive to the previous application.

DISCUSSION

In a PCR action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442 (1985). The Act provides that a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the application or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(c). "The granting of a new trial because of after-discovered evidence is not favored." State v. Irvin, 270 S.C. 539, 545 (1978). Section 17-27-90 of the South Carolina Code of Laws states the following:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted

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in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

A. Montgomery's application is not barred by the Statute of Limitations.

PCR applications filed after July 1, 1996 must be filed within one year after the entry of judgment; within one year after the sending of the remittitur to the lower court from an appeal; or the filing of the final decision upon an appeal, whichever is later. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The applicable statute provides that an applicant alleging evidence of material fact not previously presented and heard must file within one year after the date of actual discovery or after the date when the facts could have been ascertained with reasonable diligence. S.C. Code Ann. § 17-27-45.

This Court recognizes that Montgomery would have been required to file his application within one year after the remittitur was issued on July 27, 2005. S.C. Code Ann. § 17-27-45(a) (Supp. 2003). At first glance, the application filed on September 27, 2013 falls outside the statutory requirements for those material issues previously presented. However, Montgomery takes the position that "new case law precedent" requires a review of his application. The case relied upon was before the Court of Appeals and decided on Jan. 9, 2013. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013). That ruling was appealed and a final decision by the Supreme Court was issued July 29, 2015. State v. Broadnax, 414 S.C. 468, 478, 779 S.E.2d 789 (2015) (rehearing granted September 8, 2015) (hereinafter "Broadnax"). As a result, Montgomery, citing Broadnax, would be required to file the current application by Jan. 9, 2014. That is assuming he could have reasonably discovered the ruling at that time. Montgomery filed his current application

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ORANGEBURG COUNTY, SOUTH CAROLINA

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on September 27, 2013. Therefore, because Montgomery's application raises facts not previously presented as to case law precedent, the current application is timely as to the statute of limitations.

B. The doctrine of *res judicata* is not applicable to Montgomery's assertion that new case law supports his position.

The State submits that Montgomery's current application is barred by the doctrine of *res judicata*. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." S.C. Pub. Interest Found. v. Greenville Cty., 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013). Res judicata bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding. *Id.* Thus, parties are precluded from relitigation on the merits those issues which were actually and necessarily determined in the first suit. Bell v. Bennett, 307 S.C. 286, 292, 414 S.E.2d 786, 790 (Ct. App. 1992). The doctrine of *res judicata* flows from the principle that public interest requires an end to litigation and no one should be sued twice for the same cause of action, while the doctrine of collateral estoppel, or issue preclusion, rests generally on equitable principles. S.C. Pub. Interest Found., 401 S.C. 377 at 386.

In the current matter, Montgomery raises a new question. Specifically, whether his filing is justified based simply on the holding of Broadnax which came after his initial application. Broadnax, 414 S.C. 468. Many of Montgomery's current assertions mirror his prior applications. Among these are: failure to properly prepare for the trial of this case; failure to request continuance based on untimely receipt of discovery; failure to move to suppress evidence; failure to object to evidence and witnesses not timely revealed in response to discovery request; failure to object to impeachment evidence; failure to object to improper questions by Solicitor; and such other grounds as may become apparent after a complete review of the record.

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Nonetheless, Montgomery does not stop there. In the current matter he suggests the "new case law precedent" is deserving of an equitable review. This Court is inclined to agree since Montgomery's argument is that it would essentially be impossible to have raised the issue at least until the Court of Appeal's decision. Therefore, Montgomery's current application may be considered notwithstanding the doctrine of *res judicata*.

C. Montgomery's allegations are successive to his previous post-conviction relief applications.

Finally, the State avers that despite the holding of Broadnax, the current application is successive to those previous filed and therefore should be dismissed. Successive post-conviction relief applications are disfavored, but they are not prohibited. Williams v. Ozmint, 380 S.C. 473, 671 S.E.2d 600 (2008). Successive applications are disfavored unless an applicant provides "sufficient reason" why new grounds were not previously raised or could not have been raised in the prior application. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); see also Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). In comparing the current and previous applications, it is clear that Montgomery parrots his earlier allegations that counsel failed to 1) request continuance based on untimely receipt of discovery; 2) to object or suppress evidence; 3) object to evidence and witness(es) not timely revealed in response to discovery; and 4) to impeach evidence, request exclusion of impeachment evidence, and to object to improper questions.

Consequently, his only support would come from his position that "new case law precedent" supports his prior application. Specifically, he points to Broadnax, which held that the circuit court should have weighed the probative value of the defendant's prior convictions for armed robbery against their prejudicial effect prior to their admission. Broadnax, 414 S.C. 468. Therefore, the ultimate question is whether the holding of Broadnax should relate back and

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retroactively apply to his 2003 trial where the government was permitted to cross-examine him on other strong-armed robbery offenses.

The US Supreme Court has found the retroactivity of federal criminal procedure decisions turns on whether they constitute a "new rule." Lucero v. State, 414 S.C. 238, 245-46, 777 S.E.2d 409, 413 (Ct. App. 2015) (citing Chaidez v. United States, 568 U.S. 342, 348, 133 S. Ct. 1103, 1107, 185 L. Ed. 2d 149 (2013)). A case announces a new rule when it breaks new ground or imposes a new obligation on the government; or, if the result was not dictated by precedent existing at the time the defendant's conviction became final. Id. A person whose conviction is already final may not benefit from the decision in a habeas or similar proceeding if the decision proscribes a "new rule." Id. Therefore, as applied an applicant may avail himself of the decision on collateral review only when the Court applies a settled rule. Id.

Conversely, a case does not announce a new rule when it is "merely an application of the principle that governed a prior decision to a different set of facts." Id. At the time of Montgomery's trial, a reasonable jurist in his case may well have relied on State v. Al-Amin, decided just four months prior to Montgomery's trial. State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). In Al-Amin, the court held that Armed Robbery was (emphasis added) a crime of dishonesty for purposes of impeachment, and therefore did not require a balancing test. Id. Montgomery's reliance on Broadnax is therefore misplaced.

The holding in Broadnax establishes a new rule which states that for impeachment purposes, crimes of "dishonesty or false statement" are crimes in the nature of "crimen falsi" that bear upon a witness's propensity to testify truthfully; Armed Robbery does not. Broadnax, 414 S.C. 468 at 478. The holding does not preclude the introduction of past crimes of Armed Robbery. Instead, it allows the trial judge to conduct a balancing test pursuant to SCRE Rule 609(a)(2). Id.

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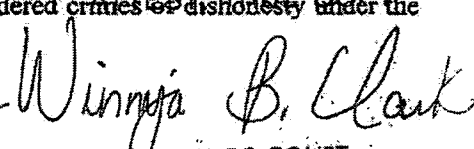
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ORANGEBURG COUNTY, SOUTH CAROLINA

Furthermore, new procedural rules should not be applied retroactively to cases unless they fall into one of two exceptions. Lucero v. State, 414 S.C. 238, 250, 777 S.E.2d 409, 413 (Ct. App. 2015).

Whether a new rule relates back depends on its classification as substantive or procedural. Substantive rules prohibit the State from criminalizing certain conduct or to prohibit "a certain category of punishment for a class of defendants because of their status or offense." Aiken v. Byars, 410 S.C. 534, 540, 765 S.E.2d 572, 575 (2014). See also, Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (holding mandatory life without parole sentences on juveniles constituted cruel and unusual punishment). New substantive rules will apply retroactively on collateral review because they "necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him." Aiken, 410 S.C. 534 at 540-541.

By contrast, a rule that merely regulates the manner in which a defendant is adjudicated guilty is procedural. Id. Thus, a second exception allows relation back of a new rule which "requires the observance of those procedures that ... are implicit in the concept of ordered liberty." Lucero v. State, 414 S.C. 238, 250, 777 S.E.2d 409, 413 (Ct. App. 2015). This is reserved for "watershed rules of criminal procedure" which implicate the fundamental fairness and accuracy of the proceeding. Id. at 251. In order to qualify as "watershed rule" of criminal procedure, such as may be applied retroactively on collateral review, the decision must meet two requirements. First, it must be necessary to prevent impermissibly large risk of inaccurate conviction. Whorton v. Bockting, 549 U.S. 406, 127 S. Ct. 1173, 167 L. Ed. 2d 1 (2007). Second, it must alter the courts' understanding of bedrock procedural elements essential to fairness of proceeding. Id.

At the time of Montgomery's trial, impeachment evidence on other strong armed robbery offenses would have been permitted against him and considered crimes of dishonesty under the

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 ORANGEBURG COUNTY, SOUTH CAROLINA

rule of Al-Amin. That case's successor, Broadnax, did not announce a watershed rule of criminal procedure akin to the right to counsel or freedom from cruel and unusual punishment. Instead, the holding simply provides a new procedural rule which reinforces the discretion placed upon the trial judge in making evidentiary determinations.

CONCLUSION

Therefore, contrary to Montgomery's assertion, Broadnax does not preclude the trial judge from introducing evidence of past crimes, including Armed Robbery. Nor is the holding in Broadnax a "watershed rule" requiring retroactive application.

Accordingly, IT IS THEREFORE ORDERED that Montgomery's application for Post-Conviction Relief be, and hereby is DENIED and the Defendant's Motion to Dismiss is GRANTED.

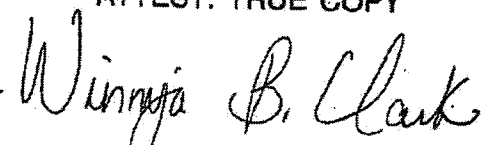
AND IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, First Judicial Circuit

June 6, 2019
Orangeburg, South Carolina

ATTEST: TRUE COPY

11/11/19 

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

WITNESSES

CAPT. LEROY RAVENELL/OCSD

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

G691899
Arrested: Jul 03, 2002

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: August 19, 2002

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2002GS38-1573

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

August 26, 2002 TERM

THE STATE
vs.

Russell Montgomery

Indictment for

KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class: FEL-A

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
[Signature]
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

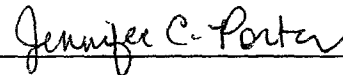
INDICTMENT
2002GS38-1573

At a Court of General Sessions, convened on August 26, 2002 the Grand Jurors
of Orangeburg County present upon their oath:

KIDNAPPING

That Russell Montgomery, did in Orangeburg County, on or about July 2, 2002, willfully
and unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away one Travis
Guess, without authority of law. This offense being a violation of Section §16-3-910 of
the South Carolina 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.



Jennifer C. Porter SOLICITOR

WITNESSES

CAPT. LEROY RAVENELL/OCSD

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

G691900
Arrested: Jul 03, 2002

**ACTION OF GRAND JURY
TRUE BILL**

Hen Ho Hubler

Foreperson of Grand Jury
Date: August 19, 2002

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2002GS38-1574

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

August 26, 2002 TERM

**THE STATE
vs.**

Russell Montgomery

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-0330
CDR Code: 0139
Class: FEL-A(V)

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
James W. Mendenhall
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

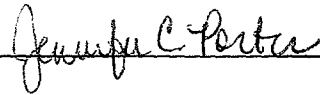
INDICTMENT
2002GS38-1574

At a Court of General Sessions, convened on August 26, 2002 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That Russell Montgomery, did in Orangeburg County, on or about July 2, 2002, feloniously take from the person or presence of the victim, Travis Guess, by means of force or intimidation, while armed with a deadly weapon being a 9mm semi-automatic handgun, goods or monies of the said victim, being described as follows: monies and vehicle keys. This offense being a violation of Section §16-11-330 of the South Carolina 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.



Jennifer C. Porter SOLICITOR