

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

TASHON HURELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001172

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT

2015-GS-18-085; 86; 87

State of South Carolina,)
))
Plaintiff,)
))
v.) Transcript of Record
))
Tashon Hurell,)
))
Defendant.)
))
_____)

February 8, 9, 10, 2016
St. George, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge and a jury

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

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John Loy, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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1 THE COURT: All right. Ladies and gentlemen, we are
2 getting ready to pick a jury in the case of State of South
3 Carolina verses Tashon Hurell.

4 Did I pronounce that right?

5 MR. LOY: Yes, sir.

6 THE COURT: Okay. And the State is represented by Mr.
7 Justis and Mr. Ward.

8 Would you mind standing up and introducing yourselves
9 and identifying anybody else?

10 MR. JUSTIS: My name is Glenn Justis. I'm an assistant
11 solicitor here in the First Circuit. With me on this case
12 is Kyle Ward. He's also an assistant solicitor. We work
13 for the elected solicitor, which is David Pascoe. The other
14 solicitors in our office are Don Sorenson, Phil Giese,
15 Michael Speers, Sheila Mims and Virgil Deas.

16 THE COURT: Thank you, Mr. Justis.

17 Is any member of the jury panel related by blood or
18 marriage or close personal friend of Mr. Justis, Mr. Ward or
19 anyone who is employed in the office of the solicitor; if so
20 please stand at this time?

21 No one is standing.

22 Any member of the jury panel or any member of their
23 immediate family been involved in a case where a family
24 member or they were represented by the solicitor's office;
25 if so please stand at this time?

1 No one stands.

2 Any member of the jury panel or member of their
3 immediate family been involved in a case where the
4 solicitor's office was prosecuting against that family
5 member; if so please stand at this time?

6 Yes, ma'am. Your name, please.

7 MS. JOHNSON: Maria Johnson.

8 THE COURT: Okay. Juror No. 86?

9 MS. JOHNSON: Yes, sir.

10 THE COURT: Ms. Johnson, a member of your immediate
11 family was prosecuted by the solicitor's office?

12 MS. JOHNSON: Yes, sir.

13 THE COURT: Okay. The fact that a member of your
14 immediate family was prosecuted by the solicitor's office,
15 would that affect your ability to listen to the evidence in
16 this case and render a fair and impartial verdict?

17 MS. JOHNSON: No, it wouldn't.

18 THE COURT: It wouldn't? Okay. If you'd stay with us
19 then. Thank you, ma'am.

20 All right. No one else is standing.

21 All right. Mr. Hurell is presented by John Loy. Mr.
22 Loy if you would stand up, introduce yourself and the
23 members of the public defender's office and Mr. Hurell, if
24 you don't mind.

25 MR. LOY: Thank you, Your Honor.

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1 My name is John Loy. I'm assistant public defender here
2 in Dorchester County. I work for Mr. Mark Leiendecker who
3 is the circuit-wide public defender. Other attorneys in our
4 office include Mr. Pierce Wayman, John Kornegay, Mary
5 Lamatty, Michelle Williams and Don Chisholm.

6 I'm here today, I represent Mr. Hurell. Mr. Hurell,
7 would you stand up and face the jury. This is Tashon
8 Hurell. I'm the attorney at this trial. He is a resident of
9 Dorchester County, has been most of his life.

10 THE COURT: Thank you. You may be seated.

11 Is anybody related by blood or marriage or close
12 personal friends of Mr. Loy or any member of the public
13 defender's office; if so please stand at this time.

14 All right. No one is standing.

15 Is any member of the jury panel or their immediate
16 family ever been represented by Mr. Loy or a member of the
17 public defender's office; if so please stand at this time?

18 Your name, please, ma'am?

19 MS. FRAMPTON: Susan Frampton.

20 THE CLERK: No. 56.

21 THE COURT: All right. A member of the family has been
22 represented by the public defender's office?

23 MS. FRAMPTON: Yes, sir.

24 THE COURT: Okay. The fact that a member of your family
25 has been represented by the public defender's office, will

1 that affect your ability to listen to the evidence in this
2 case and render a fair and impartial verdict?

3 MS. FRAMPTON: No.

4 THE COURT: Okay. Please stay with us, ma'am.

5 All right. No one else is standing.

6 Is any member of the jury panel related by blood or
7 marriage or close personal friend of Mr. Tashon Hurell; if
8 so please stand at this time.

9 All right. No one is standing.

10 Ladies and gentlemen, there are a number of people who
11 maybe called as witnesses in this case. I've got a fairly
12 long list. That does not mean that every one of them will
13 be called. I just need to make you aware of who may be
14 called as witnesses and I need to find out if anybody -- if
15 any possible jurors know these people and would that affect
16 their ability to be a fair and impartial juror in this case.

17 Mary Pecorara -- I'm not pronouncing that right, am I?

18 MR. WARD: Pecorara, Your Honor.

19 THE COURT: Pecorara -- may be called as a witness in
20 this case. Is any member of the jury panel related by blood
21 or marriage or close personal friend of Ms. Mary Pecorara;
22 if so please stand at this time?

23 No one is standing.

24 Traquan Hurell may be called as a witness. Is anybody
25 related by blood or marriage or a close personal friend of

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1 Traquan Hurell; is so please stand.

2 No one is standing.

3 Tashima Jones may be called as a witness in this case.
4 Anyone on the jury panel related by blood or marriage or a
5 close personal friend of Tashima Jones; if so please stand.

6 No one is standing.

7 Tramaine Hurell may be called as a witness in this
8 case. Any member of the jury panel related by blood or
9 marriage or a close personal friend of Tramaine Hurell,
10 please stand at this time.

11 No one is standing.

12 Janah Hurell may be called as a witness in this case.
13 Anyone related by blood or marriage or a close personal
14 friend of Janah Hurell; if so please stand.

15 No one is standing.

16 Sonja Case may be called as a witness in this case.
17 Any member of the jury panel related by blood or marriage or
18 a close personal friend of Sonja Case; if so please stand.

19 No one is standing.

20 Stephanie Richards may be called as a witness. Any
21 member of the jury panel related by blood or marriage or
22 close personal friend of Stephanie Richards; if so please
23 stand.

24 No one is standing.

25 Shanaya Goodwine may be called as a witness in this

1 case. Any member of the jury panel related by blood or
2 marriage or close personal friend of Shanaya Goodwine; if so
3 please stand.

4 No one is standing.

5 Sharoya Mulligan may be called as a witness. Any
6 member of the jury panel related by blood or marriage or a
7 close personal friend of Sharoya Mulligan; if so please
8 stand.

9 No one is standing.

10 Shelbi Bradt. Any one related by blood or marriage or
11 close personal friend of Shelbi Bradt; if so please stand.

12 No one is standing.

13 Lucas Hartman. Any member of the jury panel related by
14 blood or marriage or a close personal friend of Lucas
15 Hartman; if so please stand.

16 No one is standing.

17 Dr. Michael Lecholop of MUSC may be called as a witness
18 in this matter. Any member of the jury panel related by
19 blood or marriage or a close personal friend of Dr. Michael
20 Lecholop or a patient of Dr. Lecholop.

21 No one is standing.

22 Detective Michael Weaver of the Summerville Police
23 Department may be called as a witness. Any member of the
24 jury panel related by blood or marriage or a close personal
25 friend of Detective Michael Weaver; if so please stand.

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1 No one is standing.

2 Detective Nick Santanna, also a member of the
3 Summerville Police Department, may be called as a witness.
4 Any member of the jury panel related by blood or marriage or
5 a close personal friend of Detective Nick Santanna; if so
6 please stand.

7 No one is standing.

8 James McClellan, also of the Summerville Police
9 Department. Any member of the jury panel related by blood or
10 marriage or a close personal friend of James McClellan; if
11 so please stand.

12 No one is standing.

13 Bernard Nelson, also of the Summerville Police
14 Department. Any member of the jury panel related by blood
15 or marriage or a close personal friend of Bernard Nelson; if
16 so please stand.

17 No one is standing.

18 Hobie Williams, also with the Summerville Police
19 Department. Any member of the jury panel related by blood
20 or marriage or a close personal friend of Hobie Williams; if
21 so please stand.

22 No one is standing.

23 Lieutenant Sandy Williams with the Summerville Police
24 Department may also be called as a witness. Any member of
25 the jury panel related by blood or marriage or a close

1 personal friend of Lieutenant Sandy Williams; if so please
2 stand.

3 No one is standing.

4 Dennis Henderson may be called as a witness. He is also
5 a member of the Summerville Police Department. Any member
6 of the jury panel related by blood or marriage or a close
7 personal friend of Dennis Henderson; if so please stand.

8 No one is standing.

9 Angelina Johnson of the Dorchester County EMS may be
10 called as a witness. Any member of the jury panel related
11 by blood or marriage or a close personal friend of Angelina
12 Johnson; if so please stand.

13 No one is standing.

14 George Floyd of the Verizon Wireless may be called as a
15 witness in this matter. Any member of the jury panel
16 related by blood or marriage or a close personal friend of
17 George Floyd; if so please stand.

18 No one is standing.

19 Marilyn Dilly of Sprint Wireless may be called as a
20 witness. Any member of the jury panel related by blood or
21 marriage or a close personal friend of Marilyn Dilly; if so
22 please stand.

23 No one is standing.

24 Scott McDonald of the Richland County Sheriff's Office
25 may be called as a witness. Any member of the jury panel

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1 related by blood or marriage or a close personal friend of
2 Scott McDonald; if so please stand.

3 No one is standing.

4 Travis Holdorf of the Richland County Sheriff's Office
5 may be called as a witness. Any member of the jury panel
6 related by blood or marriage related to Travis Holdorf.

7 No one is standing.

8 Samuel Stewart of the South Carolina Law Enforcement
9 Division may be called as a witness. Any member of the jury
10 panel related by blood or marriage or a close personal
11 friend of Samuel Stewart; if so please stand at this time.

12 No one is standing.

13 And Derek Cheek of the First Circuit Solicitor's Office
14 may be called as a witness. Any member of the jury panel
15 related by blood or marriage or a close personal friend of
16 Derek Cheek; if so please stand.

17 No one is standing.

18 Ladies and gentlemen, this case involves an incident
19 that occurred at Kangaroo Convenience Store on Boon Hill
20 Road in Knightsville on April 23, 2014. As a result of this
21 incident was charged with attempted murder, armed robbery
22 and kidnaping.

23 Does anybody know anything about this incident, heard
24 anything about this incident; if so please stand at this
25 time?

1 Yes, ma'am. Now, I just need -- you need to just
2 respond to my questions, please ma'am. Your name, please
3 ma'am?

4 MS. AYERS: Jennifer Ayers, 119.

5 THE COURT: 119. Ms. Ayers, you have heard something
6 about this incident?

7 MS. AYERS: I think.

8 THE COURT: You think? Okay. And the fact that you
9 have heard something about this incident, would it affect
10 your ability to listen to the evidence in this case and
11 render a fair and impartial verdict?

12 MS. AYERS: Potentially.

13 THE COURT: Potentially. Okay. All right. Ms. Ayers,
14 I am going to excuse you from the jury.

15 MS. AYERS: Okay.

16 THE COURT: Thank you, ma'am.

17 Anyone else?

18 No one else is standing.

19 Now, does any member of the jury panel have any
20 particular interest in the outcome of this case; if so
21 please stand at this time.

22 All right. No one is standing.

23 Is any member of the jury panel aware of any bias of
24 prejudice that they may have regarding this case; if so
25 please stand at this time.

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1 No one is standing.

2 Is there any member of the jury panel who is a member
3 of or contributor to any group which has as its primary
4 concern the promotion of law enforcement or victim's rights.
5 These groups would include but certainly not be limited to
6 MADD, SADD or CAVE, Citizens Against Violent Crime; if so
7 please stand at this time.

8 All right. No one is standing.

9 Does any member of the jury panel know of any reason
10 why he or she should not serve as a juror in this case with
11 particular emphasis being placed on your ability to be fair
12 and impartial in this matter; if so please stand at this
13 time.

14 No one is standing.

15 All right. Any other questions the State would like
16 for me to entertain?

17 MR. JUSTIS: Nothing from the State, Your Honor.

18 THE COURT: Mr. Loy, any other questions that the
19 defense would like me to entertain?

20 MR. LOY: No, Your Honor. Thank you.

21 THE COURT: Okay. All right.

22 Ladies and gentlemen, you are now all qualified to
23 serve on the jury in this case.

24 Let me tell you what is going to happen now is --

25 THE CLERK: Alternates?

1 THE COURT: Two alternates.

2 THE CLERK: Strikes?

3 THE COURT: The strikes are ten and five, right?

4 MR. JUSTIS: Yes, Your Honor.

5 THE CLERK: And two alternates.

6 THE COURT: But now -- All right. Ladies and gentlemen,
7 let me tell you what's going to happen now. All of y'all's
8 names are now placed in the computer. When I started
9 practicing law your names were put in a basket and somebody
10 would draw the names out. Now we just -- it's all in the
11 computer. The computer rearranges everybody's name and like
12 that. Once your names have been rearranged we will then
13 start calling you to come up here so the attorneys can
14 decide whether or not they want you to serve on this jury,
15 okay. Each one of the attorneys, the State and the Defense,
16 have a certain number of strikes they can have.

17 Now, when your name is called you will need to come
18 forward. If you have anything with you, a coat a raincoat
19 or something like that, you need to bring it forward. You
20 need to come and stand in front of the desk and turn and
21 face the attorneys. Then they will decide whether or not
22 they want to seat you or excuse you from jury duty. If you
23 are accepted to be on jury duty you will then come and sit
24 -- you will be told to come and sit in the jurors box.

25 We're going to pick 12 jurors and two alternates. And

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1 it's going to take us just a minute to get the list out and
2 then we'll be ready to go and start picking your jury on
3 this, okay.

4 (Pause.)

5 THE COURT: Is State ready?

6 MR. JUSTIS: State's ready.

7 THE COURT: Defense ready?

8 MR. LOY: Ready, Your Honor.

9 THE COURT: Yes, ma'am, Madam Clerk.

10 THE CLERK: Thank you.

11 As I call your name, please come forward, turn around
12 and face the back of the courtroom.

13 Keri Miles Sandefur.

14 What says the State?

15 MR. JUSTIS: Please present the juror.

16 THE CLERK: The Defense?

17 MR. LOY: Swear the juror, please.

18 THE CLERK: Have a seat to the jury box to your left.

19 Juror No. 7, Jamie Barfield.

20 What says the State?

21 MR. JUSTIS: Please present the juror.

22 THE CLERK: The Defense?

23 MR. LOY: Excuse Ms. Barfield, please.

24 THE CLERK: Have a seat back in the audience.

25 Juror No. 149, Cody Ward.

1 What says the State?

2 MR. JUSTIS: Please present the juror.

3 THE CLERK: The Defense?

4 MR. JOY: Swear Mr. Ward, please.

5 THE CLERK: Have a seat in our jury box.

6 Juror No. 102, Edward Manuel.

7 What says the State?

8 MR. JUSTIS: Please present the juror.

9 THE CLERK: The Defense?

10 MR. LOY: Swear the juror, please.

11 THE CLERK: Have a seat in our jury box.

12 Juror No. 80, Richard Hogue.

13 What says the State?

14 MR. JUSTIS: Please present the juror.

15 THE CLERK: The Defense?

16 MR. LOY: Swear the juror, please.

17 THE CLERK: Have a seat in our jury box.

18 Juror No. 52, Christopher Felder.

19 What says the State?

20 MR. JUSTIS: Please present the juror.

21 THE CLERK: The Defense?

22 MR. LOY: Swear Mr. Felder, please.

23 THE CLERK: Juror No. 92, Michael Knotts.

24 What says the State?

25 MR. JUSTIS: Please present the juror.

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1 THE CLERK: The Defense?

2 MR. LOY: Swear the juror, please.

3 THE CLERK: Juror No. 36, Melissa Demaria.

4 What says the State?

5 MR. JUSTIS: Please excuse the juror.

6 THE CLERK: Have a seat back in the audience.

7 Juror No. 20, Leanne Brewer.

8 What says the State?

9 MR. JUSTIS: Please present the juror.

10 THE CLERK: The Defense.

11 MR. LOY: Swear the juror, please.

12 THE CLERK: Have a seat in the jury box, please.

13 Juror No. 12, Mardell Bates.

14 What says the State?

15 MR. JUSTIS: Please excuse the juror.

16 THE CLERK: Have a seat back in the audience.

17 Juror No. 1, David Albright.

18 What says the State?

19 MR. JUSTIS: Please present the juror.

20 The Defense?

21 MR. LOY: Excuse Mr. Albright, please.

22 THE CLERK: Have a seat back in the audience.

23 Juror No. 159, Chelsea Wright.

24 What says the State?

25 MR. JUSTIS: Please excuse the juror.

1 THE CLERK: Have a seat back in the audience.
2 Juror No. 151, James Wendel.
3 What says the State?
4 MR. JUSTIS: Please excuse the juror.
5 THE CLERK: Have a seat back in the audience.
6 Juror No. 112, Joshua Mraz.
7 What says the State?
8 MR. JUSTIS: Please excuse the juror.
9 THE CLERK: Have a seat back in the audience.
10 Juror No. 85, Laverda James.
11 MR. LOY: I'm sorry. What was the number, Madam Clerk?
12 THE CLERK: No. 85.
13 What says the State?
14 MR. JUSTIS: Please present the juror.
15 THE CLERK: The Defense?
16 MR. LOY: Swear the juror, please.
17 THE CLERK: Have a seat in the jury box.
18 Juror No. 56, Susan Frampton.
19 What says the State?
20 MR. JUSTIS: Please present the jury.
21 THE CLERK: The Defense?
22 MR. LOY: Swear the juror, please.
23 THE CLERK: Have a seat in our jury box.
24 Juror No. 87, Russell Johnson.
25 What says the State?

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1 MR. JUSTIS: Please present the juror.

2 THE CLERK: The Defense?

3 MR. LOY: Excuse the juror, please.

4 THE CLERK: Juror No. 127, Fernand Sandoval.

5 What says the State?

6 MR. JUSTIS: Please present the juror.

7 THE CLERK: The Defense?

8 MR. LOY: Please excuse the juror.

9 THE CLERK: Have a seat back in the audience.

10 Juror No. 122, Gloria Rios Browne.

11 What says the State?

12 MR. JUSTIS: Please present the juror.

13 THE CLERK: The Defense?

14 MR. LOY: I'm sorry. What was the number, ma'am?

15 THE CLERK: No. 122.

16 MR. LOY: Swear the juror, please.

17 THE CLERK: Have a seat in our jury box.

18 Juror No. 60, Karen Goeckel.

19 What says the State?

20 MR. JUSTIS: Please present the juror.

21 THE CLERK: The Defense?

22 MR. LOY: Swear the juror, please.

23 THE CLERK: Have a seat in the jury box.

24 Juror No. 10, Daniel Barr.

25 What says the State?

1 MR. JUSTIS: Please present the juror.

2 THE CLERK: The Defense?

3 MR. LOY: Please excuse the juror.

4 THE CLERK: Juror No. 86, Maria Johnson.

5 What says the State?

6 MR. JUSTIS: Please present the juror.

7 THE CLERK: The Defense?

8 MR. LOY: Swear Ms. Johnson, please.

9 THE CLERK: Have a seat in the jury box.

10 THE COURT: That's juror number twelve?

11 THE CLERK: Yes, sir.

12 THE COURT: All right. Now, we'll pick the first
13 alternate. Strikes are one and two.

14 THE CLERK: Okay.

15 MR. LOY: Yes, sir.

16 MR. JUSTIS: Yes, Your Honor.

17 THE CLERK: Juror No. 114, Regina Nelson.

18 What says the State?

19 MR. JUSTIS: Please present the juror.

20 THE CLERK: The Defense?

21 MR. LOY: Excuse the juror, please.

22 THE CLERK: Have a seat back in the audience.

23 Juror No. 120, Howard Primus.

24 What says the State?

25 MR. JUSTIS: Please present the juror.

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1 THE CLERK: The Defense?

2 MR. LOY: Swear Mr. Primus, please.

3 THE CLERK: Have a seat in our jury box.

4 Alternate One.

5 THE COURT: One more.

6 THE CLERK: Juror No. 142, Andrew Thomas.

7 What says the State?

8 MR. JUSTIS: Please present the juror.

9 THE CLERK: The Defense?

10 MR. LOY: Swear the juror, please.

11 THE CLERK: Have a seat in our jury box.

12 THE COURT: All right. Any issues regarding jury
13 selection from the State?

14 MR. JUSTIS: None from the State, Your Honor.

15 THE COURT: Any issues regarding jury selection from the
16 Defense?

17 MR. LOY: There are not, Your Honor.

18 THE COURT: All right. You ladies and gentlemen out
19 there who weren't lucky enough to be chosen -- this is the
20 only trial we've got this week; is that correct?

21 MR. JUSTIS: That's correct, Your Honor.

22 THE COURT: Okay. All right. Y'all are excused. If
23 you need to get anything from the clerk's office to say that
24 you were actually here, you'll need to go down stairs and
25 they will give you an excuse. I'm sorry you didn't get a

1 chance to serve. Maybe next time. Thank y'all.

2 (Remaining jury panel excused at 4:05 p.m.)

3 THE COURT: All right, ladies and gentlemen,
4 congratulations. I know there are other things that y'all
5 would rather be doing, but this will really be a good
6 experience for you. I'm glad you're willing to serve even
7 though I know willing meant you got subpoenaed and you were
8 told to be here, I'm glad you showed up.

9 Now, we're going to get ready to start the trial of
10 this case but before we get ready to start the trial of this
11 case we're going to take a short break. I'm going to talk
12 over some matters before we get started. I'm going to let
13 you go back into the jury room. When you go back into the
14 jury room the first 12 of y'all are the jury. The last two
15 chosen, you're alternates, okay. The 12 of you, I want
16 y'all to go back and pick a foreperson for the jury. The
17 foreperson of the jury sits right here and the foreperson is
18 charged with presiding over the discussions in the jury room
19 when you are allowed to begin discussing this case. You are
20 the one that will write any questions that will come out
21 once you begin your deliberations and the foreperson is also
22 the one to fill out the verdict form that we will use in
23 this case. Now, you don't know a whole lot about this case,
24 okay. One of things that I'm going to harp on, y'all will
25 get tired of me saying it, but I'm going to remind you of it

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1 the whole time is during the trial, after we've heard the
2 witness and things like that, you cannot talk among
3 yourselves about this case until I tell you at the
4 conclusion of the case, after you've heard all the
5 testimony, after the attorneys have done their closing
6 arguments, after I have charged you on the law I will tell
7 you you can begin your deliberations. Until that time you
8 cannot talk with anyone about this case. And you certainly
9 -- the natural inclination of everybody is we'll have a
10 witness on the stand, they will testify, we're going to take
11 a break, you go back in the jury room, the first thing
12 everybody wants to do is to start talking about what that
13 witness said. You cannot do that. You cannot do that until
14 we've heard all of the testimony until I tell you you can
15 begin your deliberations.

16 Now, another thing you need to know and be aware of is
17 you can't talk to anyone outside of this jury about this
18 case. If someone comes up to you and wants to talk to you
19 about this case I need to find out who they are, because
20 they're not allowed to.

21 The other thing, I've given you some information about
22 this case. I know now with smart phones and like that, that
23 are computers, everybody goes and Googles things and tries
24 to find out information. You can't do that. I don't know
25 that there's going to be anything written in the paper about

1 this case, but you can't read anything in the paper. You
2 can't do any research, can't do anything, any independent
3 looking to find out any information about this case.
4 Everything that you are going to need to make your decision
5 in this case you are going to find out in this courtroom and
6 nowhere else. And I'm going to harp, I'm going to mention
7 that over and over the next couple of day. Y'all just need
8 to be aware of it, okay.

9 Right now I'm just going to get y'all to go back in the
10 jury room. The Bailiff is going to show y'all where the
11 jury room is. That's where you're going to report to in the
12 morning. When you get back there, the first 12 of you I
13 need for you to pick a foreperson while I talk with the
14 attorneys. Then I'll bring you back out here and we'll go
15 forward with the case, okay.

16 Again, thank y'all for serving. I think y'all are
17 going to enjoy it.

18 (Jury out at 4:12 p.m.)

19 THE COURT: All right. Can I just see y'all up here for
20 a minute.

21 (Off the record bench conference with counsel and the
22 Court.)

23 THE COURT: If you don't mind. After the jury has voted
24 on a foreperson, tell them they can go for today. They need
25 to be back in the jury room at 9:30.

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1 THE BAILIFF: Yes, sir.

2 THE COURT: Okay. Thank y'all.

3 MR. JUSTIS: You're just going to tell them to go,
4 right?

5 THE COURT: Yes. Right.

6 (Court in recess for 2/8/16 at 4:20 p.m.)

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1 (Court in session for 2/9/16 at 9:40 a.m.)

2 COURT REPORTER: All of the exhibits have been marked.

3 THE COURT: Oh, they marked them?

4 COURT REPORTER: Yes, sir. They are marked through
5 State's 39. I have a list if you need it.

6 THE COURT: Okay.

7 MR. JUSTIS: I'll just put it on the record.

8 THE COURT: These are all in?

9 COURT REPORTER: Yes, sir.

10 MR. JUSTIS: They are all in, stipulated to by the
11 defense.

12 (State's Exhibit No. 1, photo,
13 outside front of store, was marked for ID.)

14 (State's Exhibit No. 2, photo,
15 front counter and door, was marked for ID.)

16 (State's Exhibit No. 3, photo,
17 front inside of store, was marked for ID.)

18 (State's Exhibit No. 4, photo,
19 swinging door, was marked for ID.)

20 (State's Exhibit No. 5, photo,
21 victim on floor, was marked for ID.)

22 (State's Exhibit No. 6, photo,
23 victim's face, was marked for ID.)

24 (State's Exhibit No. 7, photo, cash
25 register, was marked for ID.)

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1 (State's Exhibit No. 8, photo
2 footprint (1), was marked for ID.)

3 (State's Exhibit No. 9, photo,
4 footprint (2), was marked for ID.)

5 (State's Exhibit No. 10, photo,
6 footprint (3), was marked for ID.)

7 (State's Exhibit No. 11, photo,
8 footprint (4), was marked for ID.)

9 (State's Exhibit No. 12, photo,
10 parking lot G-4, was marked for ID.)

11 (State's Exhibit No. 13, photo,
12 dollar on porch, was marked for ID.)

13 (State's Exhibit No. 14, photo,
14 dollar on porch close up, was marked for ID.)

15 (State's Exhibit No. 15, photo,
16 police in apartment, was marked for ID.)

17 (State's Exhibit No. 16, photo,
18 brother and nephew, was marked for ID.)

19 (State's Exhibit No. 17, photo,
20 video screenshot, was marked for ID.)

21 (State's Exhibit No. 18, photo,
22 video screenshot - jumping, was marked for ID.)

23 (State's Exhibit No. 19, photo, G-4
24 bushes/fence, was marked for ID.)

25 (State's Exhibit No. 20, photo,

1 Grand Am, was marked for ID.)

2 (State's Exhibit No. 21, Photo,
3 front of G building, was marked for ID.)

4 (State's Exhibit No. 22, photo,
5 screenshot of suspect, was marked for ID.)

6 (State's Exhibit No. 23, 911 tape,
7 was marked for ID.)

8 (State's Exhibit No. 24,
9 surveillance video, was marked for ID.)

10 (State's Exhibit No. 25, aerial map
11 - large, was marked for ID.)

12 (State's Exhibit No. 26, Tashon
13 phone Powerpoint, was marked for ID.)

14 (State's Exhibit No. 27, Traquan
15 phone Powerpoint, was marked for ID.)

16 (State's Exhibit No. 28, dollar
17 bill, was marked for ID.)

18 (State's Exhibit No. 29, SLED kit,
19 was marked for ID.)

20 (State's Exhibit No. 30, Facebook
21 photos (shoes), was marked for ID.)

22 (State's Exhibit No. 31, cell phone
23 records, Verizon, was marked for ID.)

24 (State's Exhibit No. 32, cell phone
25 records, Sprint, was marked for ID.)

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1 (State's Exhibit No. 33, photo,
2 Sneaker Nike Air Force One, was marked for ID.)

3 (State's Exhibit No. 34, photo,
4 Sneaker side swoosh, was marked for ID.)

5 (State's Exhibit No. 35, Photo,
6 Sneaker side plain, was marked for ID.)

7 (State's Exhibit No. 36, photo,
8 Sneaker top, was marked for ID.)

9 (State's Exhibit No. 37, photo,
10 Sneaker tread pattern, was marked for ID.)

11 (State's Exhibit No. 38, Occupancy
12 Apt. G-4, was marked for ID.)

13 (State's Exhibit No. 39, Photo,
14 Facebook family photo, was marked for ID.)

15 THE COURT: All right. Is the State ready?

16 MR. JUSTIS: We are with one thing, Your Honor.
17 The State is going to ask for a sequestration of witnesses
18 so we're going to sequester ours and all the rest, so.

19 THE COURT: All right. You know we had an issue
20 about that yesterday. And I think the only exception that
21 y'all made was his mother?

22 MR. LOY: Well, and she's not present in the
23 courtroom at this point.

24 THE COURT: All right. So that's not an issue?

25 MR. LOY: Well, she may come rolling in and so it

1 would be an issue, you know, because she's not here pursuant
2 to my subpoena. I'm not planning to call her and I don't
3 have a great deal of control. It is my client's family.
4 I'm not asking for witnesses to be sequestered. If they're
5 present, if they're in the courthouse and want to present
6 for the proceeding, I think they're entitled to.

7 THE COURT: Okay. Well, at the present time I'll
8 go along with sequestration. And when she comes in, if you
9 want to bring it back up when she comes in, we'll talk about
10 it.

11 MR. LOY: I will, Your Honor.

12 THE COURT: Okay.

13 MR. JUSTIS: And we would ask all of our witnesses
14 -- with the exception, obviously, of the victim. She's
15 going to be the first witness anyway.

16 THE COURT: Okay.

17 MR. JUSTIS: And then, of course, my case officer
18 Detective Weaver.

19 THE COURT: Okay. Let's make Mr. Chisholm leave
20 too, just to kind of even everything out.

21 MR. LOY: Well, I think that's a good idea, Your
22 Honor.

23 MR. JUSTIS: But other than that, I think we're
24 ready, Your Honor.

25 THE COURT: Okay. All right. Defendant ready?

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1 MR. LOY: Yes, sir.

2 THE COURT: Okay. All right.

3 If you'd bring the jury on in.

4 And for the record y'all know that Juror No. 80 was
5 chosen at the foreman --

6 MR. JUSTIS: I am well aware of that, Your Honor.

7 MR. LOY: 80, Your Honor.

8 THE COURT: Yeah. It would be Juror No. 80, he
9 was Number 5 on the list.

10 (Court's Exhibit No. 1, jury
11 foreperson, Juror No. 80, Richard Hogue.)

12 (Jury in at 10:00 a.m.)

13 THE COURT: All right. Ladies and gentlemen,
14 we're getting ready to start this trial and we've got to
15 swear you in first, okay? So the clerk's going to swear you
16 in as the actual jury in this case. Thank you.

17 (WHEREUPON, the jury was duly
18 sworn.)

19 COURT'S OPENING REMARKS

20 THE COURT: All right. Ladies and gentlemen, you
21 have already been introduced to the people that are going to
22 be involved in the trial. This trial might be different
23 than what you expect. Many people do not have a chance to
24 attend actual court sessions and may think from watching
25 televisions or movies or reading books that trials are

1 always full of high drama and intense action and riveting
2 circumstances. While all of these things may be true at
3 times, this trial is not for entertainment. It is a
4 fundamental part of our democracy, a search for truth in an
5 effort to make sure that justice is done between the parties
6 before the court. Searching for the truth and making sure
7 that justice is done is often slow, deliberate, and
8 repetitive, the opposite of what you may have seen on
9 television or read in books.

10 The courtroom is a place of honor, dedicated to the
11 protection and preservation of citizens' rights through what
12 many have called the greatest justice system ever created.
13 The attorneys appearing before you are advocates for the
14 parties they represent. So first and foremost they are
15 officers of this court, sworn to uphold the integrity and
16 fairness of our judicial system and to help you in the
17 search for truth. You will find them to be professional,
18 competent and ethical in the representation of their clients
19 interest. Remember, you have just taken an oath to try this
20 case and reach a true verdict. You are also expected to be
21 professional, reasonable and ethical.

22 Now, what I'm going to tell you is just an introduction
23 to the trial. This is not a charge on the law. I will
24 charge you on the law at the conclusion of this case. This
25 is merely an explanation of the procedure that we will

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1 follow in the trial so that you may better understand what
2 may be happening.

3 The Defendant, as you know, has been charged with an
4 indictment filed with this Court for the crimes of attempted
5 murder, armed robbery and kidnaping. The elements of those
6 crimes will be explained to you later. The indictment is
7 simply the charge by which a case is brought into court. It
8 is not in any sense evidence of any of the allegations it
9 contains. The Defendant has pled not guilty to these
10 indictments. The State, therefore, has the burden of
11 proving each of the elements of the indictments beyond a
12 reasonable doubt and it will be your duty, ladies and
13 gentlemen, to decide whether the State has met that burden.
14 Your job, your duty as jurors is to find and determine the
15 facts. You are the sole judges of the facts. If at any
16 time during this trial I make a comment regarding the facts
17 you must disregard it. You are to determine the facts from
18 the testimony you hear and other evidence introduced in
19 court. It is up to you to determine the inferences which
20 you feel may properly be drawn from this evidence. It is
21 especially important that you perform your duty of
22 determining the facts diligently and conscientiously because
23 ordinarily there is no way to correct an erroneous
24 determination of facts by a jury.

25 The same law that makes you the judges of the facts

1 makes me the judge of the law. The law is given by this
2 Court is the only law you may consider. You must accept and
3 follow it, even though you may disagree with it. I cannot
4 tell you what the facts are and you cannot disagree with me
5 about what the law is or should be. Your job is to take the
6 law as I give it to you and apply it to the facts as you
7 find them through the testimony of the witnesses and other
8 evidence that is introduced. After doing that, you will
9 render your verdict, a true verdict, under the solemn oath
10 that you just took. Until I advise you to begin your
11 deliberations, you must not discuss this case with anyone
12 including fellow jurors, friends, family members or anyone
13 involved in the case. After the case is submitted to you,
14 you must discuss it only in the jury room with your fellow
15 jurors.

16 The attorneys and the parties in this case have been
17 advised that they are not to talk to you at all. So if you
18 see anyone involved in this case and they don't even say
19 hello, they're not being unfriendly. They're just following
20 my instructions.

21 During the trial do not read, listen to or watch any
22 news reports about this case. This includes anything that
23 may be in newspapers or on the internet, radio or
24 television. You must not consider anything you may have
25 read or hear about the case outside the courtroom whether

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1 before or during the trial and as I mentioned yesterday, you
2 cannot do any independent investigations on your own. It is
3 important that you keep an open mind and not decide any
4 issue in this case until all of the evidence has been
5 presented. That's one reason why you're not allowed to talk
6 about the case among yourselves until everything has been
7 heard. Again, you cannot begin talking about this case
8 until all the evidence has been presented, the parties have
9 made their closing arguments and I have instructed you in
10 the law.

11 It is your solemn responsibility to determine the guilt
12 and innocence of this defendant. And your verdict must be
13 based solely on the evidence as it is presented to you in
14 this trial and on the law as I instruct you during and at
15 the close of the trial.

16 In a moment the Solicitor will make what is called an
17 opening statement, in which the Solicitor will explain to
18 you what the Solicitor believes the issues are in this case.
19 The attorney for the Defendant may also make an opening
20 statement, although he's not required to do so. What the
21 attorneys tell you during their opening statements is not
22 evidence in this case. It is only their contention as to
23 what the issues are. The evidence in this case will be
24 presented to you by the testimony of sworn witnesses of this
25 witness stand and any exhibits that may be introduced into

1 evidence.

2 From time to time the attorneys may have a question of
3 law that they need to discuss with me or you may see them
4 approach the bench or sometimes I, myself, might find it
5 necessary to excuse you from the courtroom for a short
6 while, while the attorneys and I discuss a matter of law.
7 You are excused because you are the judges of the facts in
8 this case. And sometimes when I am discussing matters of
9 law with attorneys it may be necessary for me to make some
10 comment as to the facts in connection with ruling on whether
11 or not a particular law applied. In these instances I will
12 excuse you from the courtroom while these discussions take
13 place so that you will not be influenced in any way by
14 anything that I might say or do in connection with these
15 facts.

16 In determining what the true facts are in this case,
17 you must decide whether or not the testimony of a witness is
18 believable. It is my responsibility to rule as a matter of
19 law as to whether certain testimony is admissible or not.
20 But once the testimony is admitted, whether or not you
21 believe it is solely for you to determine. In deciding
22 whether to believe a witness you have the right to consider
23 the interest of any witness, the bias of any witness, the
24 prejudice of any witness, the opportunity for the witness to
25 have seen the matters and things about which the witness may

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1 testify and the way the witness acts on the witness stand.
2 You have the right to consider anything that is in the
3 record that will help you evaluate the testimony of the
4 witnesses. That being said it is your duty to pay close
5 attention to these witnesses, to observe them, to listen to
6 them and to pay close attention to what they say.

7 Now, we are now getting ready to begin the trial. As I
8 told you, the Solicitor will have the first opening
9 statement and that's going to be Mr. Ward.

10 Yes, sir.

11 MR. LOY: Your Honor?

12 THE COURT: Yes, sir.

13 MR. LOY: Your Honor, that the contingency we
14 discussed earlier has occurred.

15 THE COURT: Oh, okay. Well, could I see y'all up
16 here for a second?

17 (Off the record bench conference with counsel and the
18 Court.)

19 (Mr. Loy leaves the courtroom)

20 THE COURT: That was one of those things. Did
21 y'all notice that sound?

22 THE JURY: (Unanimous affirmative response)

23 THE COURT: Could you hear anything?

24 THE JURY: (Unanimous negative response)

25

25 MR. WARD: Thank you, Your Honor. May it please

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1 the Court?

2 THE COURT: Yes, sir.

3 STATE'S OPENING STATEMENT

4 BY MR. WARD:

5 A man wearing a bandanna over his face, a hood over
6 him, wearing gloves, went into the Kangaroo Gas Station with
7 a baseball bat and hit Miss Mary in the head. He dragged
8 her to the cash register, steals the money. That's why the
9 Defendant Tashon Hurell is charged with attempted murder,
10 kidnaping and armed robbery and throughout this trial
11 there's going to be two things that we have to prove to you.
12 First, that these crimes actually occurred. We have to
13 prove each element of each crime, but that's not going to be
14 an issue in this case because you will get to see the
15 surveillance footage from the Kangaroo Gas Station. You'll
16 be able to see these crimes occur. And there will be no
17 doubt after you watch that video you witnessed an armed
18 robbery, attempted murder and a kidnaping take place. The
19 second thing we must prove is that Tashon Hurell is the
20 person that committed these crimes. That's what this case
21 comes down to in this trial is the identity of the person
22 wearing the mask and the hood and the gloves. And we
23 believe it is Tashon Hurell. And we're going to prove that
24 to you through the witness testimony and all the exhibits we
25 admit into evidence.

1 In any trial there's two types of evidence, direct and
2 circumstantial. And in this case, all of our evidence is
3 based solely on circumstantial evidence. Direct evidence
4 would be an eyewitness that could identify him, DNA that he
5 left behind, blood or sweat, or a confession. We don't have
6 any of that. But what we do have is circumstantial
7 evidence. And you can find him guilty based on all of our
8 circumstantial evidence. And what that means is
9 circumstantial evidence is defined as a chain of
10 circumstances that tend to prove the existence of a fact.
11 And what we will be presenting here at trial is links in a
12 chain. From witness one to our last witness, each one is
13 going to be a link. And at first you may think, oh, that's
14 just a coincidence that it points to Tashon Hurell. Maybe
15 one or two things. But by the end of the trial you'll be
16 convinced that each one of them is a link that proves that
17 he is the person that did it. It's not a coincidence any
18 more. It's evidence. And throughout the trial you're going
19 to hear, as the Judge has instructed you, the Defendant is
20 presumed innocent and it's our burden to prove him guilty
21 beyond a reasonable doubt. And that's important because
22 outside this courtroom at times people are presumed guilty.
23 You may watch TV, read the newspapers, see a headline, bank
24 robber caught. And you think to yourself oh, they got him.
25 He's guilty. And that's okay. Everyone does it. But in

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1 this courtroom, he's presumed innocent until we prove him
2 guilty. And we have to prove beyond a reasonable doubt.

3 Now, let me be clear. That does not mean beyond any
4 and all single, every doubt. It's just simply beyond a
5 reasonable doubt. If, at the end of the trial, you are
6 firmly convinced that the Defendant is the person you see on
7 that surveillance footage, then you can find him guilty.

8 All I ask of you, all twelve of you, is to pay close
9 attention to each of one our witnesses, because like I said,
10 we're not going to have just one key piece of evidence that
11 may prove his guilt. Each witness in this case is going to
12 be very important and it's going to go from the first
13 witness to the last witness to prove the identity of that
14 man in that video. So when you go back there and deliberate
15 when the trial's over, remember, each one of the witnesses -
16 - take a look at all the evidence, and, at that point, that
17 presumption of innocence will be gone because you will be
18 firmly convinced that the man that hit Miss Mary in the head
19 with a baseball just to steal a few dollars was, in fact,
20 Tashon Hurell.

21 THE COURT: Thank you, Mr. Ward.

22 Mr. Loy.

23 MR. LOY: Thank you, Your Honor.

24 DEFENSE'S OPENING STATEMENT

25 BY MR. LOY:

1 Good morning ladies and gentlemen. That was the high
2 point of the State's case, the opening you just heard
3 because the way the whole operation has run so far, the
4 whole thing they've got going is a crime occurred, law
5 enforcement was involved and contacted. They talked to
6 witnesses, they took photographs and videos. They executed
7 search warrants and they took evidence. They did all sorts
8 of things and nobody second-guessed them anywhere along the
9 way. There was nobody behind them. They get called, they
10 respond, they do their reports, they take their statements.
11 People are arrested. Tashon was arrested, locked up, put in
12 jail. People are bonded at preliminary hearings and other
13 proceedings. And nowhere along the way does the State get
14 second-guessed. Nobody checks behind them. And that's
15 y'all's job. Y'all actually are a buffer for when we have a
16 jury trial, the juror acts as a buffer between the citizen
17 who says I am wrongly accused, I did not do this and the
18 State that says, yeah, you did it and we can prove it.

19 So today, finally, a long time down the road. We've
20 been waiting for Tashon's day in Court. It's put up or shut
21 up. Show us what you got. And it's show us what you got,
22 State.

23 A lot of what Mr. Ward, he and I would agree on. He's
24 absolutely right. The burden of proof is solely on this
25 table here. And y'all took an oath earlier. And you might

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1 want to reflect on that for just moment because there's very
2 few times in your life you are required to take an oath as
3 to what you are going to do prospectively. Here's what I'm
4 going to do. If you become a citizen of this country,
5 you're required to take an oath of allegiance. If you join
6 the military, if you marry, all of these times you take an
7 oath. Today's one of those times too. And what you've done
8 is you've promised to set aside any preconceived notions,
9 any bias, any prejudice that you may have, to set aside what
10 Mr. Ward correctly referred to as a presumption of guilt
11 because that's what exists out in the rest of the world.
12 When you read the paper and you see someone's been arrested
13 for robbing banks in Charleston. You don't tell your spouse
14 generally speaking, oh, someone was charged. You say oh,
15 they got the guy who robbed that bank down in Charleston.
16 You want to believe they'd get it right. That's harmless.
17 That's fine. You're entitled to do that -- not today.
18 Within this courtroom you set that aside. You look at this
19 table with Mr. Hurell and you say he is an innocent person.
20 I have presumed him innocent. He sits there. I have heard
21 nothing against him. Nothing could change me one way or the
22 other, nothing to make me think that he is guilty. He sits
23 there an innocent man and that's the presumption of
24 innocence. And then you turn to the State and say, okay,
25 call your witnesses, present your evidence and prove guilt

1 beyond every reasonable doubt. It's not forthcoming.
2 You're not going to get that during the course of this
3 trial. It sounds almost as though the Solicitor is already
4 back peddling. Explaining away, well, we won't have this
5 evidence. We won't have that evidence. We won't have
6 anything real dramatic that you're going to look at to see,
7 oh, yeah, this proves our case.

8 As a matter of fact let me tell you what we're going to
9 have is some circumstantial evidence and the Judge will
10 instruct you at the end of the trial on circumstantial
11 evidence. But what you really need to understand about
12 circumstantial evidence is, it's special. There's a
13 different test. And the law, and the Judge will tell you,
14 that to the extent you rely on circumstantial evidence in
15 the course of a trial here in the Court of General Sessions,
16 all of the circumstances must be completely consistent with
17 each other. They must point conclusively to the guilt of
18 the Defendant to the exclusion of every other reasonable
19 hypothesis, that is to a moral certainty. So at the end of
20 the trial when we say to the exclusion of every other
21 reasonable hypothesis, that means you're required to think
22 up other explanations, other than the guilty of the
23 Defendant. If you come up with one, the verdict is not
24 guilty. At the end of this trial you can come up with
25 fifty. You can take turns coming up with them because the

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1 evidence is not there. You're not going to get a
2 fingerprint from the Defendant that ties him to this crime.
3 You're not going to get DNA that in any way ties him to this
4 crime. Nobody can identify the person who did these things.
5 The bag of money is not found under his bed or in the
6 drawer, a weapon is not -- there's nothing. Just so we're
7 clear on this, there is nothing to tie Tashon Hurell to this
8 crime. So at the close of this case there really will be no
9 other possible verdict, except not guilty. Thank you.

10 THE COURT: Thank you, Mr. Loy.

11 Call your first witness?

12 MR. JUSTIS: Yes, Your Honor.

13 THE COURT: Mr. Justis.

14 MR. JUSTIS: May it please the Court?

15 THE COURT: Yes, sir.

16 MR. JUSTIS: The State calls Mary Pecorora.

17 (WHEREUPON, Mary Pecorora, was duly
18 sworn)

19 THE COURT: Okay. Ms. Pecorora?

20 MS. PECORORA: Yes, sir.

21 THE COURT: First of all, let me apologize for
22 messing up your name yesterday.

23 MS. PECORORA: Oh, everybody does.

24 THE COURT: Okay. The other thing is you need to
25 speak loudly, okay?

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1 MS. PECORORA: Okay.

2 THE COURT: Okay. Better than that. Better than
3 that, okay?

4 MS. PECORORA: Okay.

5 THE COURT: Very good. There you go.

6 All right. Mr. Justis.

7 MR. JUSTIS: Thank you, Your Honor, and may it
8 please the Court.

9 THE COURT: Yes, sir.

10 MARY PECORORA - DIRECT EXAMINATION

11 BY MR. JUSTIS:

12 Q Miss Mary, could you tell the jury where you live?

13 A Summerville, South Carolina.

14 Q And do you have any children?

15 A Five.

16 Q And are you currently employed?

17 A No.

18 Q When was your last employment?

19 A April the 23rd, when the incident happened.

20 Q And where were you employed?

21 A At the Kangaroo.

22 Q And where is the Kangaroo located?

23 A 1365 Boone Hill Road, Summerville.

24 Q And that's Dorchester County?

25 A Dorchester County.

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1 Q And back in April of 2014, what was your work schedule?

2 A Eleven to seven. I worked three nights a week.

3 Q And were you working the evening of April 22nd?

4 A Yes.

5 Q And was there anyone working at the store with you that
6 evening?

7 A No.

8 Q And could you tell the jury what happened late evening
9 of the 22nd, early morning hours of the 23rd?

10 A Well, I was ringing out customers and doing the cleanup
11 work that is required of the third shift. And I had gone to
12 the bathroom to get supplies and I heard the buzzer on the
13 door. So I started back out to the front. And when I got
14 to the door that separates the front and back, I saw someone
15 coming around the corner had on a mask, had a bat that was
16 raised and he came straight to the door and started yelling
17 at me and hit me in the head.

18 Q And do you recall anything that this person said to
19 you?

20 A You gonna get it bitch. You know, you know what's
21 coming. And he kept repeating to me that he was going to
22 cut my throat.

23 Q And so when he approached you, you stated he had a bat.
24 What did he do with the bat?

25 A He had it raised and it came down and hit me in the

1 head.

2 Q And when you were struck in the head with the bat, what
3 did you do at that point?

4 A I fell forward and he grabbed me by the neck and drug
5 me down to the cash register.

6 Q Was he saying anything to you as he grabbed you?

7 A Yeah, that he would cut my throat.

8 Q And when you got to the cash register, what happened?

9 A He told me to open the register and not touch anything
10 else.

11 Q And did you do that?

12 A I immediately punched the screen and the drawer opened
13 and he grabbed the money.

14 Q Okay. And what did he do after he grabbed the money?

15 A He hopped over the counter and took off out the door.

16 Q Okay. Now, let's backtrack just a little bit. What do
17 you remember? What can you say about the description of
18 this person?

19 A He was about 5'10", 5'11"; he had on a ski mask and a
20 bandanna, and he had on a jacket with a hood on it. He had
21 on gloves and red shoes.

22 Q And what was -- what type of -- what body type did he
23 have?

24 A He was kind of slender. He wasn't fat.

25 Q Could you tell what race the individual was?

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1 A He was Afro-American. You could see through the slits
2 on the mask.

3 Q And after he left the area, what did you do next?

4 A I was down on the floor, but I had left the store
5 telephone up on the counter next to the register and I
6 reached up and got it and called 9-1-1.

7 Q Okay. I see you're wearing glasses today. Were you
8 wearing glasses back then?

9 A Yes, sir. And when he hit me in the head with the bat,
10 he knocked my glasses off and they went down the hallway
11 there. And so while I was talking to the police on this
12 end, I managed to crawl back to where my glasses were and
13 got my glasses and put them on so that I could take my cell
14 phone out and call my store manager and my daughter.

15 Q Were you able to -- I guess how well or how bad can you
16 see without your glasses?

17 A I can see at a distance fine, but I can't see anything
18 up close.

19 Q And were you able to make contact with the 9-1-1
20 operator?

21 A Yes, sir.

22 Q And at some point subsequent to that phone call, did a
23 police arrive on scene?

24 A Yes. EMS got there first and the police came right
25 behind them.

1 Q Did you have an opportunity at that point to speak to
2 police?

3 A Not very much because EMS was working with me and I
4 really didn't get to talk to the police very much. I tried
5 to give them what little description that I could. But,
6 agin, the EMS was working with me.

7 Q Okay. And at some point were you transported from the
8 station, gas station?

9 A I was transported to MUSC.

10 Q And you were treated there?

11 A Yes, sir.

12 Q How long did you spend at MUSC?

13 A I went in, got there that morning. They did surgery on
14 Friday afternoon and then released me on Saturday afternoon.

15 Q So would it be fair to say you were there several days?

16 A Yes, sir.

17 Q I'm showing you what's been marked as State's 23.

18 MR. JUSTIS: May I approach the witness, Your
19 Honor.

20 THE COURT: You may.

21 BY MR. JUSTIS:

22 Q Do you recognize that, Miss Mary?

23 A Yes, I do.

24 Q And what does that appear to be?

25 A It was the 9-1-1 call.

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1 Q Okay. Did you have an opportunity to listen to this
2 phone call prior to testifying today?

3 A Yes.

4 Q And is it a fair and accurate representation?

5 A Yes.

6 MR. JUSTIS: At this time the State would offer
7 State's 23 into evidence.

8 MR. LOY: There's no objection, Your Honor.

9 THE COURT: Okay. State's 23 is in without
10 objection.

11 (State's Exhibit No. 23, 9-1-1
12 tape, was marked and entered.)

13 MR. JUSTIS: And the State would also ask to
14 publish State's 23?

15 THE COURT: Okay.

16 (State's Exhibit No. 23, 9-1-1 tape
17 was published.)

18 BY MR. JUSTIS:

19 Q Miss Mary, at some point subsequent to this incident,
20 did you have the opportunity to talk to law enforcement, a
21 detective?

22 A You mean after it happened?

23 Q Yes, ma'am?

24 A Yes, sir.

25 Q Okay. And at any point did that detective show you any

1 kind of lineups?

2 A Yes, he did.

3 Q Were you able to identify anybody in those lineups that
4 he showed you?

5 A I identified one.

6 Q And what did you identify that person as?

7 A As a customer, a frequent customer, and one that I had
8 seen standing outside right before my shift started that
9 night.

10 Q Okay. Was that the person that committed this robbery
11 of you?

12 A No. Huh-uh. (Negative response.)

13 Q How are you so sure that that person wasn't the person?

14 A Because that customer came in several times every
15 night. I pretty much knew the way he walked and the way he
16 moved and the way he sounded.

17 Q And what was his body type?

18 A He was taller and a little huskier.

19 MR. JUSTIS: I beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 BY MR. JUSTIS:

22 Q No further questions, Miss Mary. Please answer any
23 questions Mr. Loy might have for you.

24 MR. LOY: I don't have any questions for you.

25 Thank you.

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1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you, ma'am. And be careful
4 stepping down.

5 Mr. Justis, is the State prepared to call its next
6 witness.

7 MR. JUSTIS: At this time the State would call Dr.
8 Michael Lecholop.

9 (WHEREUPON, Michael Lecholop was
10 duly sworn.)

11 THE COURT: Dr. Lecholop, you need to speak up,
12 please, sir.

13 DR. LECHOLOP: Okay.

14 THE COURT: Thank you. You did good.

15 Okay. Your witness.

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

18 THE COURT: Yes, sir.

19 MICHAEL LECHOLOP - DIRECT EXAMINATION

20 BY MR. JUSTIS:

21 Q Dr. Lecholod, could you tell the jury where you work?

22 A Medical University of South Carolina.

23 Q And how long have you worked there?

24 A Four years.

25 Q And what's your job title there?

1 A I'm an oral maxillofacial surgeon with a sub-speciality
2 in cranial facial reconstruction.

3 Q And could you tell us a little bit about your
4 educational background?

5 A My background includes you go to dental school, then
6 you do your medical part and a four-year residence. So it's
7 four years of dental school, four years of residence with
8 your medical part, and then I did a one-year fellowship in
9 cranial facial reconstruction.

10 Q And do you have any specialized training in facial
11 reconstruction?

12 A I do.

13 Q And what is that training?

14 A Particularly facial trauma, pathology removal, cranial
15 facial reconstruction, cleft pallet.

16 Q Do you have any specialized certifications?

17 A I'm a board certified oral maxillofacial surgeon and
18 part of the American Cranial Facial Association.

19 Q Okay.

20 MR. JUSTIS: At this time, Your Honor, the State
21 would offer Dr. Lecholod as an expert in facial
22 reconstruction.

23 THE COURT: Any objection?

24 MR. LOY: None, Your Honor.

25 THE COURT: Okay. Ladies and gentlemen of the

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1 jury, Dr. Lecholod has been qualified as a expert in facial
2 reconstruction. And he is, therefore, qualified to give an
3 opinion as to facial reconstruction because he is an expert
4 in that area. But I would caution you and let you know just
5 because he is an expert, you don't have to take his opinion
6 -- you get to judge the believability of his opinion just
7 like any other witness okay? All right.

8 Mr. Justis.

9 MR. JUSTIS: Thank you, Your Honor.

10 BY MR. JUSTIS:

11 Q Doctor, did you have the opportunity to treat a Miss
12 Mary Pecorora?

13 A Yes, sir.

14 Q And what injuries did she present with when you treated
15 her?

16 A She presented to the emergency room with a anterior
17 wall sinus and posterior wall sinus fracture with a complex
18 forehead laceration.

19 Q And in laymen's terms what would be that be?

20 A Basically -- you have two tables on your forehead.
21 Your frontal sinuses up here and both of those were cracked
22 and she had a real bad cut on her forehead that required
23 repair.

24 Q Okay. And what did you do to repair those injuries?

25 A We took her to the operating room where the fractures

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1 were reduced, titanium plate and screws were placed, to
2 reduce those fractures. And then the complex facial
3 laceration on her forehead was then repaired.

4 Q And after you committed or did those surgeries, was she
5 referred to any other medical treatment for follow-up?

6 A Yeah. Post-operatively she had some post-concussive
7 symptoms, dizziness, vertigo, not feeling quite like
8 herself, and so I referred her to a neurologist to get
9 further evaluation.

10 Q And, Doctor, in your medical expert opinion can you
11 give us an opinion as far as the type of force it would take
12 to create the injuries that she presented with?

13 A It would be an extreme amount of force.

14 Q Thank you. No further questions. Please answer any
15 questions Mr. Loy might have.

16 MR. LOY: None, Your Honor.

17 THE COURT: All right. Dr. Lecholop, you may step
18 down.

19 DR. LECHOLOP: Thank you.

20 THE COURT: Thank you, sir. May he be excused
21 from his subpoena?

22 MR. LOY: He may, Your Honor.

23 MR. JUSTIS: No objection, Your Honor.

24 THE COURT: Thank you, sir.

25 DR. LECHOLOP: Uh-huh. (Affirmative response.)

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1 THE COURT: Is the State prepared to call its next
2 witness?

3 MR. WARD: Yes, Your Honor.

4 THE COURT: Mr. Ward?

5 MR. WARD: The State would call Officer Nelson.

6 (WHEREUPON, Bernard Nelson was duly
7 sworn.)

8 THE COURT: All right. Officer Nelson, I need you
9 to speak loudly, please, sir?

10 MR. NELSON: Yes, sir.

11 THE COURT: You done good.

12 MR. NELSON: Thank you, sir.

13 THE COURT: Mr. Ward.

14 MR. WARD: Thank you, Your Honor. May it please
15 the Court.

16 THE COURT: Yes, sir.

17 BERNARD NELSON - DIRECT EXAMINATION

18 BY MR. WARD:

19 Q Officer Nelson, where are you currently employed?

20 A Summerville Police Department.

21 Q And how long have you been employed there?

22 A About four years.

23 Q And what is your job title?

24 A Right now I'm on a special enforcement team where we
25 work calls and traffic control, basically.

1 Q Okay. And what are some of the duties that you do?

2 A Respond to emergency calls, armed robberies, shooting,
3 kidnapings, assist patrol when answering calls if they're
4 backed up, stuff like that.

5 Q Okay. And were you on duty back on April 23rd of 2014?

6 A Yes.

7 Q And were you on patrol at that time?

8 A Yes.

9 Q And could you tell the jury how you became involved in
10 this case?

11 A We had tones for an armed robbery that had just
12 occurred at the Boone Hill, respond to there and we
13 basically made contact with the victim once we got there.

14 Q What is the address that you responded to?

15 A It's 1365 Boone Hill Road.

16 Q And is that in the town of Summerville?

17 A Yes, sir.

18 Q In the County of Dorchester?

19 A Yes, sir.

20 Q Okay. And what did you do when you first arrived?

21 A Once I first arrived there I initially observed people
22 outside. Went inside and made contact with the victim, and
23 observed her lying on the floor and rendered aid to her.

24 Q Okay. And what did you observe on Miss Mary when you
25 arrived?

3 Q And were you able to speak to the victim at that point?

6 Q Okay. And then after speaking with her, what did you
7 do?

11 Q Okay. And while you were there, were you able to take
12 any photographs?

14 MR. LOY: Your Honor, I have no objection to the
15 introduction of 1 through 11.

17 MR. LOY: The photographs the Solicitor's holding.

20 MR. WARD: Thank you, Your Honor.

23 State's Exhibit No. 2, photo, front
24 counter and door, was marked and entered.)

25 State's Exhibit No. 3, photo, front

1 inside of store, was marked and entered.)

2 State's Exhibit No. 4, photo,
3 swinging door, was marked and entered.)

4 State's Exhibit No. 5, photo,
5 victim on floor, was marked and entered.)

6 State's Exhibit No. 6, photo,
7 victim's face, was marked and entered.)

8 State's Exhibit No. 7, photo, cash
9 register, was marked and entered.)

10 State's Exhibit No. 8, photo,
11 footprint (1), was marked and entered.)

12 State's Exhibit No. 9, photo,
13 footprint (2), was marked and entered.)

14 State's Exhibit No. 10, photo,
15 footprint (3), was marked and entered.)

16 State's Exhibit No. 11, photo,
17 footprint (4), was marked and entered.)

18 BY MR. WARD:

19 Q Officer Nelson, I'm showing you State's Exhibit No. 1.
20 If you could just tell the jury what they're looking at?

21 A This is the Kangaroo where the armed robbery occurred
22 at. This is the front, the entrance where the subject made
23 entrance, or entry to.

24 Q I'm showing you State's Exhibit 5. Is that where you
25 first found the victim?

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1 A Yes.

2 Q I'm showing you State's Exhibit 7. And what is this a
3 photograph of?

4 A This is basically the cash register that's opened after
5 the money was taken out of it and blood from the victim.

6 Q And while you're photographing the crime scene, did you
7 observe any footprints?

8 A I believe there was a footprint on the counter from the
9 subject jumping the counter. And that's it.

10 Q I show you State's Exhibit 9. Are these one of the
11 footprints you observed?

12 A Correct.

13 Q After you took photographs of the crime scene, were you
14 able to make contact with anyone that worked at the
15 Kangaroo?

16 A Yes. We called in the manager that night to review the
17 video.

18 Q And at that point were you able to view the video
19 surveillance?

20 A Correct. And gather more of a description of the
21 subject as well.

22 Q I'm showing you State's Exhibits 17 and 18.

23 MR. LOY: No objection, Your Honor.

24 THE COURT: Okay. All right. State's 17 and 18
25 are into evidence without objection.

3 (State's Exhibit No. 18, photo,
4 video screenshot - jumping, was marked and entered.)

6 Q Do you recognize those photos?

8 Q And what are they photos of?

11 Q So these are still photographs from the video?

13 Q I show you State's Exhibit 17. After you saw the video
14 and saw this photograph, what did you do with this
15 information?

17 Q Okay. And what was -- were you able to provide a
18 description to the other units at that time?

21 Q Yes, please?

22 A Was a black male subject wearing a light hoodie with
23 the multi-colored graphic designs on the front. Bright lime
24 green hoodie, black pants, red shoes, black gloves, dark
25 colored bandana over his face. He was a medium build and

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1 had a husky voice carrying a baseball bat.

2 Q Okay. And showing you State's Exhibit 18. Were you
3 able to give a description of the shoes at that point?

4 A At this point, yes. They were red.

5 Q And after you provided the description to the
6 responding units, what did you do after that?

7 A Basically stayed on scene, notated what the subject
8 said in the videos and basically left after that.

9 Q And did you document that description in your report
10 later?

11 A Yes.

12 MR. WARD: I beg the Court's indulgence.

13 THE COURT: Take your time.

14 BY MR. WARD:

15 Q One more photograph. I show you State's Exhibit 2.
16 What is that photograph of?

17 A It's a photograph of the inside of the store, the
18 office where the victim came out of was on this side, far
19 left. The suspect made entry was right there and he jumped
20 the counter.

21 Q Okay. And if you were able to remember about -- when
22 you stood next to the counter, about how high was that
23 counter?

24 A Probably, it's close to my chest, like up there.

25 Q Thank you. No further questions. Please answer the

1 Defense may have.

2 BERNARD NELSON - CROSS-EXAMINATION

3 BY MR. LOY:

4 Q Good morning?

5 A Good morning.

6 Q So when you received a call to a scene such as this,
7 your first duty, I guess, when you get there is to render
8 aid?

9 A Yes.

10 Q And you did that in this case; is that right?

11 A Correct.

12 Q Excuse me?

13 A Yes, sir.

14 Q Okay. And secondly, once you've done -- and I know
15 you're not EMT, but once you've done what you can, to try to
16 preserve life and liberty, I guess, then you commence to
17 gather evidence, that is to take the photographs, to take
18 statements if you can, that sort of thing; is that right?

19 A Correct.

20 Q And you did that in this case?

21 A Correct.

22 Q And you were part of the process as far as securing the
23 actual videotape that you viewed; is that right?

24 A Correct.

25 Q And you did that for a couple of reasons. To gather

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1 the evidence, to preserve it, to document what was there,
2 but also to get that information out in realtime, if you
3 will, for in case someone could be apprehended matching that
4 description or at least found nearby matching the
5 description that you gave; is that right?

6 A Correct.

7 Q Okay. And further there were other officers who
8 responded, either to the scene or to the general area who
9 would help with the initial investigation; is that right?

10 A Correct.

11 Q And you communicated, you coordinated with those folks
12 also; is that right?

13 A Correct.

14 Q You attempted to get as much information as you could
15 and put it out there so the police department could be as
16 likely as possible to apprehend the person who had done
17 this; is that right?

18 A Correct.

19 Q You got information somewhere along the line as to what
20 type of car the subject was alleged to have left in, did you
21 not?

22 A I did not.

23 MR. LOY: Can I approach the witness, Your Honor?

24 THE COURT: You may.

25 BY MR. LOY:

1 Q I'm going to ask you first, is this a copy of your
2 report?

3 A Yes.

4 Q This is a copy of your report?

5 A Yes.

6 Q And if we look here on the second -- this is still your
7 report, is it not?

8 A This is actually -- there's a lot of supplements
9 attached to this.

10 Q Right. But this is not a supplement, though. This
11 references a supplement when you said the subject was said
12 to have gone to G4 before driving away in a white Ford
13 Mustang; isn't that correct?

14 MR. WARD: Your Honor.

15 THE COURT: Yes, sir.

16 MR. WARD: May we approach briefly?

17 THE COURT: Yes, sir.

18 (Off the record bench conference with counsel and the
19 Court.)

20 THE COURT: Ladies and gentlemen, I'm going to let
21 you -- we're going to take a break. We need to discuss some
22 matters and now is probably a pretty good time to take a
23 break so I'm going to let y'all go back in the jury room and
24 I'll get y'all back out here in just a second.

25 Okay. Now remember you can't talk about anything

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1 you've heard so far, okay? Thank y'all.

2 (Jury out at 10:58 a.m.)

3 THE COURT: After they get out we've got another
4 thing we've got to talk about. So we'll go back in chambers
5 and then we'll talk about it there, okay.

6 MR. LOY: You mean that first one.

7 THE COURT: Well, we need to do that. I think we
8 need to take that up first.

9 MR. LOY: Okay.

10 THE COURT: The Bailiff just advised me of
11 something, okay?

12 All right. Now you're under oath. While we take a
13 break you stand up and walk around but you can't talk to
14 anybody about your testimony. You've this before, I guess?

15 MR. NELSON: Yes, sir.

16 THE COURT: Okay. All right. Thank you, sir.

17 MR. NELSON: Yes, sir.

18 THE COURT: We'll be about five minutes or so and
19 then we'll be back in here.

20 (Court in recess for a short break
21 at 10:58 a.m.)

22 (Court in session after short break
23 at 11:10 a.m.)

24 THE COURT: All right. Thank y'all. Y'all can be
25 seated. I'm going to get him to come in so we can talk to

1 him in front of the court reporter, okay?

2 MR. LOY: Yes, sir.

3 THE COURT: Would you bring the juror in?
4 Officer Nelson, I need for you to leave the courtroom for
5 just a second, okay?

6 MR. NELSON: Okay.

7 (Officer Nelson leaves the
8 courtroom.)

9 (Cody Ward, Juror No. 149, enters
10 courtroom.)

11 THE COURT: Okay. Y'all come on down.

12 (Counsel approaches the bar.)

13 THE COURT: Come here for a second.

14 (Cody Ward, Juror No. 149,
15 approaches the bar.)

16 THE COURT: All right. What's your name again,
17 please, sir?

18 JUROR NO. 149: Cody Ward.

19 THE COURT: Cody Ward, Juror No. 149. Okay.

20 JUROR NO. 149: Yes, sir.

21 THE COURT: Okay. All right. Now, Mr. Ward, you
22 indicated to the Bailiff that you recognized Officer Nelson?

23 JUROR NO. 149: Yes. I didn't know him as Officer
24 Nelson, I know him as B.J.

25 THE COURT: You know him as B.J. How do you know

1 him?

2 JUROR NO. 149: A kid I used to go to school with
3 is really good friends with him and he's really good friends
4 with his father because his father is also an officer. So
5 hanging out with him, I've seen him a few times.

6 THE COURT: Okay. All right. Now, the fact that
7 you've seen him a few times and you know him, would that
8 affect your ability to listen to the evidence in this case
9 and render a fair and impartial verdict. Would that affect
10 your ability to be a fair and impartial juror in this case?

11 JUROR NO. 149: I don't want to say no and I don't
12 want to say yes, but it's a possibility. I do like that kid
13 a lot. I don't know how that would make my mind set.

14 THE COURT: Okay. Okay. Well, I understand, you
15 know. Okay. I'm going to let you just step out in the hall
16 for one second. Let me talk to the attorneys for a second,
17 okay?

18 (Juror No. 149 exits courtroom)

19 THE COURT: Y'all come around. Okay. All right.

20 MR. LOY: I mean, clearly, I want to exclude him
21 or to excuse him from the proceedings. He's indicated he
22 doesn't know whether or not he could be fair and impartial.
23 That's the test.

24 MR. JUSTIS: Yeah. I mean, he wasn't unequivocal.

25 THE COURT: No, he wasn't.

23 THE COURT: Thank you, sir. Y'all can be seated.
24 All right. Oh, yeah. Let's get Officer Nelson back in
25 here.

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1 someone else.

2 MR. LOY: The long and short of it, it is his
3 report, I believe. And I have asked the witness and he's
4 denied it. He's never confirmed it up to this point.

5 THE COURT: Okay. I understand. Let him ask
6 those questions and then we'll come back. Go ahead.

7 BERNARD NELSON - PROFFER CROSS-EXAMINATION

8 BY MR. LOY:

9 Q The report that you and I were referencing earlier when
10 you said, no that's not my report, that's someone else.
11 That is, in fact, your report?

12 A Correct, that is. But it came from someone else.

13 Q Right. And so your answer is yes.

14 A Yes, it's in there. Yes, sir.

15 Q Thank you.

16 THE COURT: Okay. And then your argument --
17 anything else, Mr. Wade before I --

18 MR. WARD: Nothing, Your Honor.

19 THE COURT: And Mr. Loy, your argument?

20 MR. LOY: Your Honor, he has been asked
21 extensively about his investigation, the information he
22 collected, why he collected it, what he did with it. How he
23 put it out. The description of the person who was on the
24 scene. This is information that he put out -- If it's
25 incorrect, it's incorrect but it's relevant to the

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1 investigation. During the course of a trial, we certainly
2 need to explore the investigation each step of the way, what
3 law enforcement's done and neglected to do and why they did
4 the things that they did. This is what he put in his
5 report.

6 THE COURT: Okay. All right. Looking through the
7 case law, Mr. Ward and Mr. Loy, trying to find something and
8 it appears to me that -- I understand if he was offering
9 this as the truth -- I'm assuming you're not offering this
10 as the truth of the matter asserted.

11 MR. LOY: No.

12 THE COURT: But just offering whether to explain
13 the outline of the officer's investigation and looking at
14 the case of State v. Thompson where the officer was allowed
15 to testify regarding statements by a bystander, you know,
16 where they were not offered for the truth of the matter
17 asserted, just to go along with the way the investigation
18 was. So Mr. Ward what I would tend to indicate is when the
19 jury comes back, I'm going to let you make that objection
20 again. I'll overrule the objection but I'll tell the jury
21 that it's -- that this part of it is being introduced not
22 for the truth of the matter assert, just to go along with
23 the way the investigation was being handled.

24 MR. WADE: Just the fact that he put in his report
25 it was a mustang.

1 THE COURT: Right.

2 MR. WADE: That somebody told him it was a white
3 mustang.

4 THE COURT: Right. It's just part of the
5 investigation, not for the truth of the matter asserted.
6 That's how it's coming in, okay, Mr. Loy?

7 MR. LOY: It sounds like a comment on the facts,
8 Your Honor.

9 THE COURT: Well, it does sound like a comment on
10 the facts but I think also that I think for me to let it in
11 as a comment that that is a true statement. He doesn't know
12 it's a true statement. He didn't investigate it. He didn't
13 observe it.

14 MR. LOY: Your Honor, and I don't mean to
15 negotiate with the Court obviously, would it be appropriate
16 if, instead of Your Honor making the comment --

17 THE COURT: Uh-huh. (Affirmative response)

18 MR. LOY: -- if I were to preface my question with
19 -- I'm not saying this is what happened or not what
20 happened, I'm just asking you is this -- in the course of
21 your investigation, is this what your report reflects.

22 THE COURT: That'd be fine with me.

23 MR. LOY: I'll do it that way.

24 THE COURT: That way you look sharper.

25 MR. LOY: Thank you, Your Honor.

1 THE COURT: And that helps. Anything helps.

2 MR. LOY: I appreciate.

3 THE COURT: Okay. All right. Okay.

4 And when they come in I will tell them that one juror
5 just had to be excused, okay? And not go into any detail,
6 okay?

7 All right. If you'd bring the jury on back in. I
8 won't comment on they're dropping like flies. I need to
9 tell Mr. Primus he's now moved into a prime seat.

10 (Jury in at 11:20 a.m.)

11 THE COURT: All right. Now, Mr. Primus, one of
12 the jurors had to be excused, not for any bad reason but he
13 had to be excused for his service on the jury. You are the
14 first alternate so you now get to move down into the jurors
15 chairs, okay?

16 JUROR NO. 120: Okay.

17 THE COURT: Okay. Thank you, sir.

18 All right. Ladies and gentlemen, we are now going to
19 continue with the examination of Officer Nelson.

20 Mr. Loy.

21 MR. LOY: Thank you, Your Honor.

22 BERNARD NELSON - CROSS-EXAMINATION CONTINUED

23 BY MR. LOY:

24 Q Officer Nelson, when we were in the courtroom earlier,
25 you had indicated this was not a part of your report, the

1 paragraph that I referenced. Do you recall that?

2 A Correct.

3 Q Since then we've had a chance to review it in
4 completion and to discuss it a little more. We've reached a
5 conclusion this is, in fact, your report; isn't it?

6 A Correct.

7 Q Okay. And when I'm asking you about this one little
8 item at the tail end of your report here today, it's not to
9 prove that is what happened, isn't what happened, etcetera,
10 I just want to talk to you about your investigation. Do you
11 understand?

12 A Correct.

13 Q And your investigation did reveal that information was
14 received from someone, that a subject was alleged to have
15 driven away in a white Ford Mustang; is that correct?

16 MR. WARD: Objection, Your Honor. Hearsay.

17 THE COURT: I note your objection. Your objection
18 is overruled and I'll allow you to continue. You may answer
19 the question.

20 A Can you repeat for me?

21 BY MR. LOY:

22 Q Yes. The question was despite where the information
23 came from or whether it's accurate, the information you
24 received on that particular night was that the subject was
25 alleged to have driven away in a white Ford Mustang?

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1 A Correct.

2 Q Thank you.

3 MR. LOY: I have no more questions.

4 THE COURT: Mr. Ward, anything on redirect?

5 MR. WARD: Real briefly, Your Honor.

6 THE COURT: Okay.

7 BERNARD NELSON - REDIRECT EXAMINATION

8 BY MR. WARD:

9 Q The car that the Defense just described, you have no
10 first-hand knowledge of that car being involved; correct?

11 A No, sir.

12 Q Okay. That information was relayed to you?

13 A Correct.

14 Q Thank you.

15 MR. WARD: No further questions.

16 THE COURT: Anything on recross?

17 MR. LOY: No, Your Honor. Thank you.

18 THE COURT: Okay. All right. Officer Nelson, you
19 may step down.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you, sir.

22 May he be excused?

23 MR. WARD: He may, Your Honor.

24 MR. LOY: No objection, Your Honor.

25 THE COURT: Is the State ready to call its next

1 witness?

2 MR. JUSTIS: The State is, Your Honor.

3 THE COURT: All right. Mr. Justis.

4 MR. JUSTIS: At this time the State would call
5 Sonja Case.

6 (WHEREUPON, Sonja Case was duly
7 sworn)

8 THE COURT: All right. Ms. Case, get comfortable.

9 MS. CASE: Okay.

10 THE COURT: Okay. Now, you need to speak loudly,
11 please, ma'am?

12 MS. CASE: Okay.

13 THE COURT: Okay. Very good. Okay.

14 Mr. Justis.

15 MR. JUSTIS: Thank you, Your Honor. May it please
16 the Court?

17 THE COURT: Yes, sir.

18 SONJA CASE - DIRECT EXAMINATION

19 BY MR. JUSTIS:

20 Q Ms. Case, where do you work?

21 A I work currently for Oakbrook Express. It's a
22 convenience store chain.

23 Q And where did you work back in April of 2014?

24 A I worked for the Pantry, Incorporated, which is
25 Kangaroo Convenience Stores as a district manager.

State v Hurell

Sonja Case - Direct

2/9/16

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1 Q Okay. And what were some of your responsibilities as
2 district manager?

3 A I oversaw twelve locations within the Summerville area.

4 Q Okay. And did you have an opportunity -- let me turn
5 your attention to April 22nd, the evening of April 22nd,
6 early morning hours of April 23rd, 2014. Did you have an
7 opportunity to respond to any of the stores under your
8 control?

9 A Yes, sir.

10 Q And which store was that?

11 A Store number 499 on Orangeburg Road in Boone Hill.

12 Q And what did you observed when you arrived at the
13 store?

14 A When I got to the store the store was barricaded off
15 with police. There was an ambulance there. Basically,
16 that's really it. I went to the store and was outside
17 waiting. I saw the ambulance come and was taking Miss Mary
18 out.

19 Q Okay. And did you know Miss Mary?

20 A Yes, I do.

21 Q And did you have an opportunity to speak with law
22 enforcement that evening?

23 A Yes.

24 Q And what did you speak to law enforcement about that
25 evening?

1 A They asked me if I could help them watch the video.
2 They were unable to reach the store manager at the time.
3 They were able to reach me. So I went down and I was able
4 to help them look at video from the cameras, surveillance
5 cameras and helped them burn video.

6 Q Okay. And tell us just a little bit about the cameras
7 that they had at that store?

8 A A basic DVR unit. It has about sixteen cameras in that
9 location, inside and outside. You know, pretty much in a
10 lot of areas that we need to see in the store.

11 Q Does it also have audio with the video?

12 A Yes, it does.

13 Q And who did you show the video to?

14 A I honestly can't remember the name, who I showed it to.

15 Q Were they law enforcement?

16 A Yes. They were law enforcement.

17 Q And after showing them the video, did you do anything
18 else with the video?

19 A Just hand it -- gave them what we could, what we were
20 able to burn and signed a release for that information.

21 Q And you put that on a DVD?

22 A Yes.

23 MR. LOY: Thank you, Your Honor. I have no
24 objection.

25 Q Ms. Case, I'm showing you State's 24.

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1 MR. JUSTIS: May I approach the witness?

2 THE COURT: You may.

3 State's 24 is in without objection.

4 (State's Exhibit No. 24,
5 surveillance video, DVD, was marked and entered.)

6 BY MR. JUSTIS:

7 Q Do you recognize that?

8 A Yes, sir.

9 Q And what is that?

10 A That is the video that we burned that evening.

11 Q And you've had an opportunity to view these videos?

12 A I have.

13 Q Are they a fair and accurate representation?

14 A Yes, sir.

15 MR. JUSTIS: At this time, Your Honor, the State
16 would publish State's 24.

17 THE COURT: Okay.

18 (State's Exhibit No. 24,
19 surveillance video, DVD, was published.)

20 (Mr. Justis continues with direct examination of Ms. Case
21 while the surveillance video is playing for the jury.)

22 BY MR. JUSTIS:

23 Q Can you tell us what angle this is?

24 A This angle is from the very back, left-hand corner of
25 the store, looking out over the whole entire store. The

1 registers and things are up in the front.

2 Q Okay. What angle are we looking here?

3 A This is right in the front of the store, in the very
4 back of the cigarette -- in the back where the customers
5 look at, right over the top of the front register. The
6 front door is to the left.

7 Q And what's this angle?

8 A This angle is over at the far left of the store,
9 towards the front of the store, looking out at the front
10 entrance of the store.

11 Q And finally, what's this one?

12 A This is on the -- when you pull in the front of the
13 store, over to the left. If you're looking at the store,
14 there's a camera that shows the grass area. And there's a
15 tiny little walkway that goes through the grass and the
16 trees through there.

17 Q So that's next to the store?

18 A Yes.

19 Q And those are the videos you found and turned over to
20 law enforcement?

21 A Yes, sir.

22 Q Now, Ms. Case, were you able to determine if any money
23 was taken that evening from the store?

24 A Yes, sir.

25 Q And did you report that to law enforcement?

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1 A Yes, sir.

2 MR. JUSTIS: I beg the Court's indulgence.

3 THE COURT: Take your time.

4 MR. JUSTIS: No further questions.

5 Q Please answer any questions Mr. Loy might have for you.

6 THE COURT: Mr. Loy, anything on cross?

7 SONJA CASE - CROSS-EXAMINATION

8 BY MR. LOY:

9 Q Good morning.

10 A Good morning.

11 Q How you doing? The last little video clip that the
12 Solicitor showed you, that's the rear of the store or the
13 side of the store?

14 A It's the front of the store. It's kind of directly in
15 the front of the store on the side of the store.

16 Q Looking down the side of the store toward the woods?

17 A Yeah. If the store is here, it's like directly aside
18 the store.

19 Q And there's an -- it appears to show a little wooded
20 area there.

21 A It's trees. It's a wooded area. It's not a pathway
22 that was an intentional pathway. It's just a pathway people
23 have made.

24 Q So it's not a sidewalk. It's more like a trail?

25 A Right.

1 Q Okay. And do you know where that trail goes?

2 A I know that there is an adult learning center. It's
3 where the busses and all the school district busses park.
4 And I don't really know the area all that well, but I think
5 there's some apartments behind there.

6 Q Okay. So the trail runs basically from the convenience
7 store to some apartments, etcetera up --

8 A Not directly, but it does lead to those, yes.

9 Q And the Kangaroo there, the store would be the closest
10 one to that set of apartments that you know of?

11 A It would be the closest convenience store, yes.

12 Q And if you know -- I mean, people from that area, the
13 residential area nearby use this little trail to cut --
14 that's why it's there. People walk up and down it to the
15 --

16 A I would assume, but I don't live in that area and I
17 don't frequent that store, you know, all the time. I'm not
18 working in that store all the time.

19 Q Regardless, we could agree it appears to run from the
20 convenience store to the apartments nearby?

21 A Yes.

22 Q Thank you.

23 MR. LOY: I don't have any more questions.

24 THE COURT: Anything on redirect?

25 MR. JUSTIS: No, Your Honor.

2 MS. CASE: Thank you.

4 MR. JUSTIS: She may, Your Honor.

7 MR. WARD: Yes, Your Honor. The State would call
8 Hobie Williams.

11 THE COURT: Officer Williams, you need to speak
12 loudly, please, sir?

14 THE COURT: Okay.

16 MR. WARD: Thank you, Your Honor. May it please
17 the Court.

19 HOBIE WILLIAMS - DIRECT EXAMINATION

21 Q Mr. Williams, where are you currently employed?

23 Q And were you previously employed?

25 Q And what was your title at the Summerville Police

1 Department?

2 A I was a K-9 handler.

3 Q And how long did you work as a K-9 handler?

4 A Approximately two years.

5 Q. And what type of training do you go through to do K-9
6 handling?

7 A National certification through the North American
8 Police Work Dog Association.

9 Q And was the K-9 certified?

10 A Yes, sir. We're certified as a team.

11 Q Okay. And were you employed back with the Summerville
12 Police Department in April 2014?

13 A Yes, sir.

14 Q And were you on duty the early morning hours of April
15 23rd?

16 A I was, sir.

17 Q How did you become involved in this case?

18 A Well, getting off-duty and heading to my house I
19 overheard on the radio that there was an armed robbery that
20 was in progress and I responded from there.

21 Q And about how long did it take for you to respond?

22 A I'm not positive on the exact time, but it was pretty
23 quickly.

24 Q Okay. And then once you arrived on scene -- you said
25 at the gas station?

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1 A Yes, sir. It was a Kangaroo Gas Station 1365 Boone
2 Hill Road.

3 Q Okay. What did you do when you arrived there?

4 A When I arrived there I made contact with Officer Nelson
5 who was the first officer on scene and tried to obtain any
6 additional information that he had.

7 Q Okay. And with that information, what did you do?

8 A Once we obtained information from him, I went ahead and
9 pulled out my partner, which is Vox is his name, my K-9 unit
10 and deployed him near the rear of the store.

11 Q Okay. And what were you attempting to do with your K-
12 9?

13 A At that point we didn't know exactly what had happened
14 or which way the person exited the store. So I did what's
15 called casting, basically place the dog in an area where we
16 believe somebody had freshly gone through and you instruct
17 the dog to search or to locate. And he'll locate human
18 odor.

19 Q And how is the K-9 trained to detect that?

20 A Once he detects -- casting is typically used for
21 tracking people. So once he picked up on the scent, he
22 lowered his head, stiffed up his body and began to head a
23 direction. And that's where we move into tracking, where
24 we're actually tracking the freshest human odor that he
25 found.

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1 Q Okay. I'm showing you State's Exhibit 1. Could you
2 tell the jury which way the K-9 picked up a track, I guess.

3 A So at this point I deployed him around the side here
4 and went around behind the store. Where we got the track
5 was towards the side over here is where we picked it up and
6 he started to actually show a full sign of tracking.

7 Q Okay. And what did you do once the dog started
8 pulling?

9 A We notified the on-duty supervisor that we had a track.
10 I believe Lieutenant or Officer McClellan was with me and we
11 went ahead and started tracking.

12 Q And where did the track take you too?

13 A Off the back of the store over here you've got an area
14 of woods that opens up into a parking lot area, an adjacent
15 parking lot area. It's an education center. I can get you
16 the exact address. The Dorchester Adult Education Center
17 parking lot, 1325 Boone Hill Road.

18 Q Okay. And did the track continue past there?

19 A Yes, sir. It continued going through the parking lot
20 where it met the next wood line, the wood line that's
21 between the Flowertown Baptist Church and also abuts up
22 against Somerset Apartments. At that point, we stopped the
23 track.

24 Q I'm sorry. Go ahead.

25 A We're moving into an area where we're going to need

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1 additional units to set up a perimeter for safety.

2 Q And were you able to continue the track from there?

3 A At that point we were told there was no additional
4 units available so no perimeter could be set up at that
5 time. So we went ahead and secured the dog back in the car
6 because there's no point in tracking if you can't set up a
7 perimeter.

8 Q And once you secured your K-9, what did you do?

9 A Decided to go on foot. Myself and Officer McClellan
10 decided to go in that area on foot, to see if anything --
11 any evidence on the ground that we can find.

12 Q And what path did you take?

13 A We continued through. It's a well-worn path that goes
14 through there. And it hooks around, comes in the back of --
15 I guess you could say the side of Somerset. And from there
16 we walked through, went around the G building or around the
17 E building to the G building where we saw a white male was
18 on the upper level smoking and we decided to go talk with
19 him.

20 Q I'm showing you what's been marked as State's Exhibit
21 21 for identification purposes.

22 A Yes, sir.

23 Q Do you recognize that photograph?

24 A I do, sir.

25 Q And what is the photograph of?

State v Hurell Hobie Williams - Direct 2/9/16 96

1 A The G building, sir, at Somerset.

2 Q Is that a fair and accurate representation of what the
3 building looked like?

4 A Yes, sir.

5 MR. WARD: At this time, Your Honor, the State
6 would move State's Exhibit 21 into evidence.

7 MR. LOY: No objection, Your Honor.

8 THE COURT: State's 21 is into evidence without
9 objection.

10 (State's Exhibit No. 21, photo,
11 front of G building, was marked and entered.)

12 BY MR. WARD:

13 Q I'm showing you State's 21. So you stated that's the
14 building you came upon that night?

15 A Yes, sir.

16 Q And where was the male you made contact with?

17 A That would be the upper level, right here, sir.

18 Q Okay. And was he able to give you any information at
19 that time?

20 A He was, sir. He advised --

21 Q I got it.

22 A I'm sorry, sir. He advised that he observed a black
23 male with a baseball bat running from the fence line around
24 the F building to the apartment below his, which would have
25 been G-4. And he advised that the black male was wearing a

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1 dark tee shirt, baseball cap and dark shorts.

2 Q Okay. So once you got that information, what did you
3 do?

4 A From there, as we were talking to the gentlemen, we
5 were right out here. I could see a dollar bill was laying
6 on the ground, inside the breezeway. I went into the actual
7 building and made contact with the owner or the occupant of
8 that building.

9 MR. LOY: Your Honor, if the Solicitor's going to
10 introduce these four photographs, I have no objection.

11 THE COURT: Okay. What are the numbers of those
12 photographs?

13 MR. WARD: Okay. Exhibits 12, 13, 14, and 19,
14 Your Honor.

15 THE COURT: 12, 13, 14, and 19 are all into
16 evidence without objection.

17 (State's Exhibit No. 12, photo,
18 parking lot G-4, was marked and entered.)

19 (State's Exhibit No. 13, photo,
20 dollar on porch, was marked and entered.)

21 (State's Exhibit No. 14, photo,
22 dollar on porch close-up, was marked and entered.)

23 (State's Exhibit No. 19, photo, G-4
24 bushes and fence, was marked and entered.)

25 BY MR. WARD:

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1 Q You stated you saw a dollar bill. I'm showing you
2 State's Exhibit 13. What is this a picture of?

3 A This is going to be a picture of the balcony area that
4 I pointed out earlier in G-4. And you can see that dollar
5 bill.

6 Q I'm also showing you State's Exhibit 14. Again, a
7 picture of the dollar bill?

8 A Yes, sir.

9 Q And what, if anything, did you notice about the dollar
10 bill?

11 A The dollar bill appeared to be dry. Everything else
12 around the area had been wet so it's obvious -- it's sitting
13 in the area completely dry. It also had what appeared to be
14 blood on it.

15 Q So once you observed the dollar bill, what did you do?

16 A At that point I also went on the radio and notified
17 Chief of what we had and went and made contact with the
18 owner of the -- or the person who was staying there.

19 Q And if you can recall, about what time was this when
20 you made contact at the apartment?

21 A I don't recall off the top of my head.

22 Q And did you announce yourself as police when you
23 arrived or what did you do?

24 A Yes. We announced ourselves as police and we
25 identified that we had a robbery in the area. We were

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1 trying to gather additional information and we were
2 inquiring as to the possibility that evidence might be on
3 her balcony or the person's balcony.

4 Q And do you remember who you spoke with?

5 A Yes. Ms. Jones.

6 Q Do you know her first name?

7 A Tashima?

8 Q Okay.

9 A I'm sorry. I didn't want to mess up that
10 pronunciation.

11 Q That's okay. And did she identify herself as the owner
12 of the apartment?

13 A She did.

14 Q Okay. And did she allow you to come in?

15 A She did.

16 Q And did you ask her consent to search?

17 A I asked for consent to conduct a search of the property
18 or a protective sweep of the property. And I asked also to
19 recover evidence off the balcony. And fingerprint her door.

20 Q And she allowed you to do so?

21 A She did.

22 Q Were there any other occupants in the apartment at the
23 time?

24 A There was. There was a male by the name of Traquan
25 Hurell.

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1 Q Hurell?

2 A Sorry.

3 Q I'm showing you what's been marked as State's Exhibits
4 15 and 16 for identification purposes. Do you recognize
5 those two photos?

6 A I do, sir.

7 Q And what are they photos of?

8 A In the inside of the residence at G-4.

9 Q All right. And are they fair and accurate
10 representations of what you observed that night?

11 A Yes, sir.

12 MR. WARD: At this time, Your Honor, the State
13 would move Exhibits 15 and 16 into evidence.

14 MR. LOY: No objection, Your Honor.

15 THE COURT: State's 15 and 16 are in without
16 objection.

17 (State's Exhibit No. 15, photo,
18 police in apartment, was marked and entered.)

19 (State's Exhibit No. 16, photo,
20 brother and nephew, was marked and entered.)

21 BY MR. WARD:

22 Q I'm showing you State's Exhibit 15. And what is this a
23 picture of?

24 A It's going to be the main room that you come into where
25 the officer is at here at the door. It's the main entryway.

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1 The breezeway is on the other side of that door.

2 Q And you stated you did a protective sweep and search of
3 the apartment?

4 A Correct, sir.

5 Q Did you find anything at that point?

6 A At that point on the interior, no, sir.

7 Q Okay. I'm showing you State's Exhibit 16. Do you know
8 what you see in this photograph?

9 A It's going to be the occupants.

10 Q And do you know who the person is that looks like
11 laying down with the gray sweat pants?

12 A That's going to be Traquan.

13 Q Okay. Thank you. When you made contact with Ms.
14 Jones, did she -- were you able to get any information from
15 her about herself?

16 A I don't recall right off the top of my head. I believe
17 she said she worked for the prison system. I can't remember
18 anything about that.

19 Q Did she provide you a phone number?

20 A She did provide me a phone number, sir.

21 Q And did you record that phone number in a report?

22 A I did, sir. It's in my initial report and it's going to
23 be 570-412 apartment. It's going to be that 843-730-0172.

24 Q And did you have an opportunity to speak with who you
25 identified as Traquan Hurell?

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1 A Very limited. But, yes, I did speak with him.

2 Q All right. And did he provide you a phone number?

3 A He also provided a phone number, sir.

4 Q And what was that phone number?

5 A It's going to be 843-437-4946.

6 Q And then did you have an opportunity to collect the
7 dollar bill?

8 A I did.

9 Q How do you collect evidence of that nature?

10 A You put on gloves, secure it. Place it into an
11 evidence bag and have it sealed.

12 Q And is that what you did in this case?

13 A Yes, sir.

14 Q I'm showing you what's been marked as State's Exhibit
15 28. Do you recognize that envelope?

16 A I do, sir.

17 Q And what is it?

18 A It's the envelope that I put it in for property and
19 evidence.

20 Q And what's inside the envelope as well?

21 A The dollar bill that was placed into evidence from the
22 scene.

23 Q And once you collected that where did you take that
24 dollar bill?

25 A I went back to the Summerville Police Department and it

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1 was placed into the evidence deposit there.

2 Q Is that in a secure location?

3 A Yes, sir.

4 MR. WARD: At this time, Your Honor, we'd ask that
5 State's Exhibit 28 be admitted into evidence.

6 THE COURT: Is there any objection, Mr. Loy?

7 MR. LOY: There is not, Your Honor.

8 THE COURT: State's 28 is in without objection.

9 (State's Exhibit No. 28, envelope/
10 dollar bill, was marked and entered.)

11 BY MR. WARD:

12 Q Were you able to pull any fingerprints at that time?

13 A A few partials. And we also turned those into evidence
14 to be processed.

15 MR. WARD: I beg the Court's indulgence.

16 THE COURT: Take your time.

17 BY MR. WARD:

18 Q Thank you.

19 MR. WARD: No further questions.

20 THE COURT: Mr. Loy, anything on cross?

21 MR. LOY: Yes, sir. Thank you.

22 HOBIE WILLIAMS - CROSS-EXAMINATION

23 BY MR. LOY:

24 Q Good morning?

25 A Good morning.

1 Q So on this occasion, on this evening, you just happened
2 to be nearby and had the radio on or the scanner and heard
3 this was taking place, thought that your dog might be useful
4 in the investigation and so you responded and went there.
5 Is that what happened?

6 A Well, that and the fact that I'm also the on-call K-9.
7 I had just gotten off that night.

8 Q So you heard it on the radio that this had taken place
9 and you responded; is that correct?

10 A Correct.

11 Q And as you stated -- and tracking -- I believe you
12 alluded it was for two purposes. I mean, obviously it was
13 to chase this person down. But it's also, whoever it is, to
14 chase them into a perimeter; is it not? You said, you
15 referenced setting up the perimeter?

16 A Correct, sir.

17 Q And when you do that essentially you put other officers
18 around at various points, where they can sort of maintain
19 eye contact and see whether or not this dog can flush them
20 out, so to speak; is that right?

21 A Best case scenario. Yes, sir.

22 Q And in this case, on short notice, which would have
23 been obviously required under the circumstances, the
24 manpower wasn't there to set up the perimeter; is that
25 correct?

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1 A And that point, yes, sir.

2 Q So you, and I believe there was one other officer out
3 there with you; is that correct?

4 A Right, sir. Officer McClellan.

5 Q So you and Officer McClellan secured your dog and then
6 just cast around the place? I don't know if that's your
7 technical term, casting. But you looked around to see if
8 you saw anything that might be relevant to what had
9 occurred; is that right?

10 A Cast is what we use with the dog.

11 Q That's my -- more like canvas?

12 A Right.

13 Q So I back off that. Not cast around. You looked
14 around; is that right?

15 A Right. More like a canvas, though. We wanted to see
16 if any witnesses, anybody sees anything, any evidence,
17 things like that.

18 Q And you did find a witness.

19 A Yes.

20 Q And that was -- well, maybe more than one. But you
21 found a witness who was upstairs on the balcony who said I
22 saw some things that were relevant to your investigation; is
23 that correct?

24 A Yes, sir.

25 Q And you talked with him and you documented the things

1 that he told you; is that right?

2 A Yes, sir.

3 Q And you also saw the dollar bill as you've described;
4 is that right?

5 A Yes, sir.

6 Q Now, at that point in time you were a uniformed
7 officer?

8 A Assigned to K-9. Correct, sir.

9 Q You weren't a detective?

10 A No. No, sir.

11 Q Okay. And when you saw the dollar and thought it might
12 be something important, did you then contact someone else
13 about how to proceed?

14 A I called up to notify the supervisor of what I found,
15 yes.

16 Q And they advised you to collect that as well as to
17 first knock on the door, tell the occupants, you know, who
18 you were what you were doing there and ask for permission to
19 collect this item?

20 A I believe that's how it went. I'm not a hundred
21 percent sure, but --

22 Q Sounds correct?

23 A Sounds correct.

24 Q And you did that. I mean, you knocked the door and I
25 think you said Ms. Jones opened the door; is that right?

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1 A Correct.

2 Q Do you recall approximately what time this was?

3 A I didn't, sir. I don't have it written down in front
4 of me.

5 Q Nighttime?

6 A It was nighttime, yes, sir.

7 Q Late?

8 A It was late. Or I would say early.

9 Q And Ms. Jones appeared to be in sleeping attire? I
10 mean, sweats and a tee shirt, something like that?

11 A Yes, sir.

12 Q And you told her who you were and why you were there?

13 A Yes.

14 Q Did she express concern?

15 A She was concerned, yes.

16 Q She said if someone had been on her porch or her
17 property, she wanted someone prosecuted for this and she
18 would cooperate with that; is that right?

19 A I don't know if she wanted them prosecuted but she was
20 concerned as to might have been on her balcony.

21 Q Now, at that point in time, other than the knock on the
22 door, you didn't really have any right to demand entry into
23 her home, did you?

24 A We didn't demand entry into her home.

25 Q I know. My question is -- your understanding, you

1 didn't have the right to -- you weren't in hot pursuit of
2 anyone.

3 A Correct.

4 Q You didn't have a search warrant. I mean, you just
5 knocked on the door and asked her to talk; is that right?

6 A Correct.

7 Q And despite the fact that it was late or very early,
8 and despite the fact she was there in sleeping attire or
9 something like that, she was cooperative, was she not?

10 A Very cooperative. Yes, sir.

11 Q Yes, sir, something going on. Y'all come on in.
12 Something like that; is that right?

13 A Yes, sir.

14 Q Now, even to the next level where you said basically a
15 protective sweep but then a slash search. You were not only
16 looking for people protective sweep, but also any evidence
17 that might be relevant to what had occurred at the Kangaroo;
18 is that correct?

19 A Correct, sir.

20 Q Okay. And so you asked her, can we take a look around?
21 Can we do a search here? And she said y'all can do what
22 y'all need to do or something like that; is that correct?

23 A I don't recall the exact working but it was probably
24 something to that effect.

25 Q The exact wording was not my point. The point is she

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1 consented?

2 A She provided consent. Yes, sir.

3 Q And y'all did the search and you found nothing of
4 relevance within the home, nothing that you thought was of
5 relevance; is that correct?

6 A Correct, as far as me. Yes.

7 Q Now, You also said you spoke to a person who purported
8 to be a witness upstairs. I think, Hartman.

9 A Let me be exact -- Yes, Hartman.

10 Q Did you do that before or after you had been in Ms.
11 Jones' home?

12 A I spoke with him before and then went in and then came
13 back out and spoke with him again.

14 Q Did he come down to where y'all were? Did you go up to
15 his apartment? Where did y'all talk?

16 A I think he came down. I'm not a hundred percent sure.
17 It's been a little bit.

18 Q Yeah, it's been a little bit. And you told the
19 Solicitor about things that he had described. A person
20 coming out of the woods, jumped the balcony, that sort of
21 thing; is that right?

22 A Correct.

23 Q That's not all the information that you were able to
24 glean from him that was important and was document in your
25 report, however; is it?

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1 A He provided additional information. Yes, sir.

2 Q And he told you that the person who had come out of the
3 wood line, who he had described, had left in a white Ford
4 Mustang; is that right?

5 A I want to be a hundred percent. Hold on one second.

6 Q I'm looking at page two of your narrative at the top?

7 A I'm on there too. I'm just slow at finding stuff. I'm
8 sorry. Yes, a white Mustang.

9 Q Okay. So there was a person left, as a matter of fact,
10 three times in your report. He's told you yes, the person
11 left in this white Ford Mustang; is that right?

12 A He said the black male jumped the balcony from G-4
13 before driving away in a white Mustang. The suspect then
14 returned a few minutes later, jumped the balcony back to the
15 G-4 again before leaving a second time back in the Mustang.

16 Q And then a little further down he references it again?

17 A Correct.

18 Q And you asked -- you live here. You've been around
19 here. Is this a car you know or something to that effect;
20 did you not?

21 A It's possible. I don't recall that.

22 Q Do you recall if he told you I've never seen that
23 vehicle before?

24 A He did say that.

25 MR. LOY: I don't have anymore questions.

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1 THE COURT: Anything on redirect?

2 MR. WARD: Nothing, Your Honor.

3 THE COURT: Thank you, sir.

4 THE WITNESS: Thank you, sir.

5 THE COURT: You may step down. Appreciate it.

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: Is the State ready to call its next
8 witness?

9 MR. JUSTIS: Yes, Your Honor.

10 THE COURT: Who's next

11 MR. WARD: May Mr. Williams be excused? Mr.
12 Williams can be excused.

13 THE COURT: Oh, yeah. You're excused. Thank you,
14 sir.

15 MR. WILLIAMS: Thank you, sir.

16 THE COURT: Appreciate it.

17 MR. WARD: The State would call Lucas Hartman.

18 (WHEREUPON, Lucas Hartman was duly
19 sworn.)

20 THE COURT: All right. Mr. Hartman, you need to
21 speak out up there, sir.

22 MR. HARTMAN: Yes, Your Honor.

23 THE COURT: Okay. Thank you, sir.

24 Mr. Ward.

25 MR. WARD: Thank you, Your Honor. May it please

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1 the Court?

2 THE COURT: Yes, sir.

3 LUCAS HARTMAN - DIRECT EXAMINATION

4 BY MR. WADE:

5 Q Mr. Hartman, how old are you?

6 A 21 years old.

7 Q And where are you currently living?

8 A Currently living over in Kuwait. I'm stationed on
9 deployment.

10 Q And how long have you been there?

11 A Four months now.

12 Q And before being deployed where were you living?

13 A Ft. Riley, Kansas.

14 Q And then before that?

15 A South Carolina, Summerville.

16 Q And were you -- and that would have been during April
17 2014?

18 A That's correct.

19 Q And where were you living in South Carolina?

20 A I was living with a buddy, Steven Jones, at the time,
21 at Somerset Apartments in Summerville.

22 Q And what apartment number were you staying?

23 A I honestly can't remember.

24 Q No problem. And about how long did you live at
25 Somerset Apartments?

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1 A Four or five months, approximately.

2 Q And during that time period were you working?

3 A Yes, I was.

4 Q Where were you working at?

5 A Target in Azalea Square.

6 Q Do you kind of remember the hours you were working?

7 A It was pretty often. It was five times a week, five
8 days a week.

9 Q All right. I want to turn your attention back to April
10 23rd of 2014. What, if anything, do you remember from that
11 night or that early morning hours?

12 A Early morning hours, I was just sitting out in the
13 balcony. It was about 1:30, 2:00 in the morning. And I saw
14 this guy. He was wearing black clothes, shorts. He walked
15 up from behind the building across from me. And he had a
16 baseball bat and a backpack. And he just kind of nodded at
17 me and I nodded back, you know, hey. And then he jumped
18 over the balcony below me. He went in. You know, I heard
19 the door open. I'm assuming that he went in for a few
20 moments. And then he came back out the same way, jumped
21 back over the balcony. Went to his white vehicle. It could
22 have been a -- possibly a Mustang. Drove off for a few
23 moments, came back, did the same exact thing. Jumped over
24 the balcony. I'm assuming he went in. The door opened and
25 closed. In there for about the same time, a few moments,

1 jumped back out, went back to his car and left. I hadn't
2 seen him any more that night.

3 Q I showing you State's Exhibit 21. Do you recognize
4 this building?

5 A Yes. That is the building that I stayed in.

6 Q Okay. And if you'd touch the screen, can you circle
7 where you would have been that evening?

8 A Right up there.

9 Q And where did you see the person enter?

10 A The one below, the balcony below, down there.

11 Q And can you remember, is it a very well-lit area at
12 that time of night?

13 A Oh, no. It was like a few street lights but --

14 Q Did you know the people living below you?

15 A No, I did not.

16 Q And the police came and spoke to you that evening?

17 A That is correct.

18 Q And you gave them a written statement?

19 A That's correct.

20 Q And at that time you stated -- what type of vehicle did
21 you believe it was?

22 A It was a white Mustang. It was definitely white but it
23 could have been a Mustang, possibly a Mustang.

24 Q You're not an expert in cars are you?

25 A No, I'm not.

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1 Q I'm showing you State's Exhibit 12. This is a picture
2 from Somerset parking lot. Can you describe where you
3 observed the man coming from?

4 A Oh, yes, sir. Behind this building from here, walked,
5 came across the street there.

6 Q And how long do you think you were out on your balcony
7 before the police arrived?

8 A Thirty minutes at the most.

9 Q And I believe you stated you were out there. It was
10 like 1:30 or something in the morning?

11 A That's correct.

12 Q You don't remember looking at your watch that evening?

13 A I do not.

14 Q Okay. It was just some time late or early morning?

15 A Yes. That's correct.

16 MR. WARD: I beg the Court's indulgence.

17 BY MR. WARD:

18 Q When you saw this man with a baseball bat, did you find
19 that odd?

20 A I knew it was a little strange, but like I wasn't
21 really paying attention to be honest.

22 Q At that point you didn't feel it necessary to call the
23 police or anything?

24 A No, I didn't. They did show up, so --

25 Q Right. Okay. Thank you.

1 MR. WARD: No further questions.

2 THE COURT: Anything on cross-examination?

3 MR. LOY: Yes, sir, Your Honor.

4 THE COURT: Your witness, Mr. Loy.

5 LUCAS HARTMAN - CROSS-EXAMINATION

6 BY MR. LOY:

7 Q It's a long way to come just this morning; is it not?
8 How long have you been in town?

9 A Just for a few more days.

10 Q On that evening law enforcement responded, they saw you
11 and they began to ask you questions; is that right?

12 A That is correct.

13 Q And you were cooperative and attempted to provide them
14 all the information that you could; did you not?

15 A That is correct.

16 Q When you talked to both the uniformed guys, police
17 officers who were on scene that night, you tried to tell
18 them as clearly and plainly as you could what it was you had
19 seen; is that right?

20 A That is correct.

21 Q And did you fill out or give a written statement for
22 them that evening?

23 A That is correct. I did.

24 Q Have you had the opportunity to review that statement
25 at all recently?

1 A Not recently, no.

2 Q Okay. Would you think back, would you agree that you,
3 what you said was got in a white Mustang, drove off?

4 A That is correct.

5 Q And you don't equivocate at that point. You don't say
6 it could have been a Pontiac. It could have been a Buick.
7 You just say -- when you talk with them, when it was fresh
8 in your mind what you said was he got in a white Mustang and
9 left; isn't that correct?

10 A That is correct.

11 Q And that wasn't the last time that you talked with
12 anyone from law enforcement about what you'd seen that
13 night; was it?

14 A No, it wasn't. I believe it was the other day or day
15 after that two people -- I don't remember where they were
16 from -- came to talk to us at our apartment with me and the
17 person that was living there at the time.

18 Q And at one point in time you talked with Detective
19 Weaver about what you had seen; is that correct?

20 A I believe so.

21 Q And when you told Detective Weaver what you had seen
22 was a white Mustang that the man left in he said something
23 to the effect of could it have been a Pontiac Grand Am?

24 MR. WARD: Object. Objection, Your Honor,
25 hearsay.

1 MR. LOY: No, it's not hearsay.

2 THE COURT: I'm going to overrule the objection.

3 Go ahead and answer the question.

4 A I don't recall him ever saying anything about a Pontiac
5 to be honest.

6 BY MR. LOY:

7 Q Well, I appreciate it and I think you will be honest.
8 Do you recall testifying at a prior proceeding here in this
9 court?

10 A Previously?

11 Q Yes?

12 A That is correct. I have been here before.

13 Q Okay.

14 MR. LOY: May I approach the witness, Your Honor.

15 THE COURT: You may.

16 BY MR. LOY:

17 Q I'm going to show you a transcript of that proceeding.
18 And I'm on page 87, line 1. And the Qs are the questions.
19 It says, Okay. And I've got your statement here and that's
20 what you said. It doesn't say anything about a Pontiac or
21 anything else. It says later to get in a white Mustang. Is
22 that correct or is that right. And your answer was?

23 A That's correct.

24 Q That is correct. And then the next question. Okay.
25 Do you recall when you first heard anything about a Pontiac?

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1 Did Detective Weaver asked you when he talked with you,
2 could it have been a Pontiac Grand Am? And your answer was?

3 A I believe so.

4 Q I believe so, sir. Thank you.

5 MR. LOY: No more questions.

6 THE COURT: No other questions? Mr. Loy, did I
7 hear you say you're through?

8 MR. LOY: Excuse me?

9 THE COURT: Are you through with this witness?

10 MR. LOY: I am, Your Honor.

11 THE COURT: Okay. I'm sorry. I'm getting old and
12 can't hear. I tell the witnesses to speak up. I guess I'll
13 have to remind you, too.

14 MR. LOY: I'll try, Your Honor.

15 THE COURT: All right. Thank you, sir.

16 Anything on redirect?

17 MR. WARD: Just briefly, Your Honor.

18 THE COURT: Okay.

19 LUCAS HARTMAN - REDIRECT EXAMINATION

20 BY MR. WARD:

21 Q Mr. Hartman, when you spoke to the police that evening,
22 were you positive it was a white Mustang?

23 A No, I was not.

24 Q Are you positive today that it was a white Mustang?

25 A No, I am not.

1 Q Thank you.

2 MR. WARD: No further questions.

3 THE COURT: Anything on recross?

4 MR. LOY: No, Your Honor. Thank you.

5 THE COURT: Thank you, sir. You may step down.

6 MR. HARTMAN: Yes, Your Honor.

7 THE COURT: May he be excused?

8 MR. WARD: Yes, Your Honor.

9 THE COURT: Okay. Good luck. Thank you, sir.

10 Is the State ready to call its next witness?

11 MR. JUSTIS: I think we are, Your Honor. We just
12 need to check and make sure they're here.

13 THE COURT: Okay. Well, do you want to let the
14 jury take a short break or --

15 MR. JUSTIS: I think we can check. He would be a
16 very quick witness.

17 THE COURT: Okay.

18 MR. JUSTIS: Why don't I check and then we'd
19 probably be ready to break for lunch.

20 THE COURT: Okay. All right.

21 MR. WARD: The State would call Travis Holdorf,
22 Your Honor.

23 THE COURT: Okay.

24 (WHEREUPON, Travis Holdorf was duly
25 sworn.)

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1 THE COURT: Officer Holdorf, you need to speak
2 loudly, please, sir.

3 MR. HOLDORF: Yes, sir.

4 THE COURT: You did good. Thank you.
5 Okay. Mr. Ward.

6 MR. WARD: Thank you, Your Honor. May it please
7 the Court?

8 THE COURT: Yes, sir.

9 TRAVIS HOLDORF - DIRECT EXAMINATION

10 BY MR. WARD:

11 Q Mr. Holdorf, have you ever had an opportunity to come
12 in contact with Mr. Tashon Hurell?

13 A Yes, sir.

14 Q And were you able to speak with him at that point?

15 A Yes, sir.

16 Q And during that opportunity to speak with him, did he
17 ever provide you with a phone number?

18 A Yes, sir.

19 Q And what was that phone number?

20 A It was 843-371-2320.

21 Q And do you recall about what date this was when you
22 were able to meet with him?

23 A This was 6/20 of 2014.

24 MR. WARD: I beg the Court's indulgence.

25 THE COURT: Okay.

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1 MR. WARD: Nothing further, Your Honor.

2 THE COURT: Anything on cross, Mr. Loy?

3 MR. LOY: No, Your Honor. Thank you.

4 THE COURT: All right. Thank you, sir. You may
5 step down.

6 MR. HOLDORF: Thank you.

7 THE COURT: Appreciate it.

8 MR. LOY: May we approach real quickly, Your
9 Honor?

10 THE COURT: Yes, sir. Come on down.

11 (Off the record bench conference with counsel and the
12 Court.)

13 THE COURT: Now, the reason we had that is that
14 was a really important discussion. We're trying to find out
15 when we're going to break for lunch and how long we're going
16 to take. So now I can tell you. Okay, we're going to take
17 a break for lunch now. I ask y'all to be back at 1:30 and
18 we're going to start back at 1:30 with the testimony in this
19 case, all right?

20 So, now, remember you've heard from, I think, six,
21 seven witnesses right now. You still can't talk about this
22 case among yourselves or do any investigation or anything
23 like, okay? Enjoy lunch and I'll see y'all back at 1:30.
24 Thank you.

25 (Jury out at 12:15 p.m.)

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1 THE COURT: I need to also talk to Ms. Hurell. If
2 you don't mind.

3 MR. LOY: No.

4 THE COURT: Ms. Hurell, I need you -- come up
5 here, please, ma'am.

6 (Ms. Hurell approaches the bench.)

7 THE COURT: Come over here where the court
8 reporter is, right over her.

9 (Ms. Hurell complies.)

10 THE COURT: Ms. Hurell, I don't know if you were
11 listed on the witness list --

12 MS. HURELL: Yes, sir.

13 THE COURT: -- and your sons are also listed on
14 the witness list.

15 MS. HURELL: Yes.

16 THE COURT: The State wanted you not to be in here
17 to hear testimony. I'm allowing you in here because your
18 son's on trial.

19 MS. HURELL: Yes, sir.

20 THE COURT: And I think for that reason you need
21 to be in here so you can watch. But since your other sons
22 could be called as witnesses --

23 MS. HURELL: Yes, sir.

24 THE COURT: I don't want you talking with them at
25 all about any of the testimony you've heard this morning.

1 MS. HURELL: No, sir.

2 THE COURT: Do you understand that?

3 MS. HURELL: Yes, sir. I understand.

4 THE COURT: Okay. Okay. That's very important.

5 MS. HURELL: Yes, sir.

6 THE COURT: Okay. Anybody else have any problems
7 with --

8 MR. LOY: No, Your Honor. If I could just follow
9 up.

10 THE COURT: Yes.

11 MR. LOY: When he says he doesn't want you to, it
12 means you can be sanctioned. You are ordered not to.

13 MS. HURELL: Yes, sir. Yes.

14 THE COURT: Well, I just wanted to make sure you
15 understood that, okay?

16 MS. HURELL: Yes, sir. I understand.

17 THE COURT: Okay. Thank you, ma'am.

18 MR. LOY: Thank you.

19 THE COURT: Something else y'all need to talk to
20 me about?

21 MR. LOY: No, No. I was just going to ask you one
22 thing though, Judge, off the record. I don't need a record.

23 THE COURT: Okay.

24 (Off the record bench conference with counsel and the
25 Court.)

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1 THE COURT: All right. Well, I'll see y'all at
2 1:30.

3 (Court in recess for lunch at 12:
4 20 p.m.)

5 (Court in session after lunch at
6 1:40 p.m.)

7 THE COURT: And Hilda, just so we'll have the
8 record, this will be Court's 2, courtroom notice.

9 (Court's Exhibit No. 2, jury note,
10 was marked for ID.)

11 THE COURT: Is the State ready?

12 MR. JUSTIS: The State's ready, Your Honor.

13 THE COURT: Okay. Is Defense ready?

14 MR. LOY: Yes, sir.

15 THE COURT: Okay. All right. Bring the jury on
16 out and tell them we're hopeful that it's going to get
17 warmer.

18 THE BAILIFF: Okay.

19 (Jury in at 1:43 p.m.)

20 THE COURT: All right. We got your note. We keep
21 you cold so you'll be awake. We're actually working on
22 trying to get the heater a little cranked up. So we'll --
23 I'll know when it's working when I see y'all start taking
24 your coats off. All right.

25 Is the State ready to call its next witness?

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1 MR. WARD: Yes, Your Honor.

2 THE COURT: All right. Mr. Ward.

3 MR. WARD: The State would call Marilyn Dilly.

4 (WHEREUPON, Marilyn Dilly was duly
5 sworn.)

6 THE COURT: All right. Ms. Dilly, you need to
7 speak up, please, ma'am?

8 MS. DILLY: (Nodding head affirmatively)

9 THE COURT: That's a yes.

10 MS. DILLY: Yes, sir.

11 THE COURT: Okay. Good. That's what we were
12 trying to see. I'm just trying to get it straight. Okay.
13 All right.

14 Mr. Ward.

15 MR. WARD: Thank you, Your Honor. May it please
16 the Court.

17 THE COURT: Yes, sir.

18 MARILYN DILLY - DIRECT EXAMINATION

19 BY MR. WARD:

20 Q Ms. Dilly, where are you currently employed?

21 A Sprint.

22 Q And how long have you been employed there?

23 A Forty-three years.

24 Q And what are some of your current duties with Sprint?

25 A Part of my duties is to testify to telephone records in

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1 court proceedings. And I supervise the trial team and
2 another team that pulls the telephone records for subpoenas
3 and court orders we receive.

4 Q And have you been designated as a records custodian?

5 A Yes.

6 Q And were you requested through a court order to provide
7 phone records for a phone number in this case?

8 A Yes.

9 Q And was that phone number 843-437-4946?

10 A Yes.

11 MR. WARD: Your Honor, may I have just a moment,
12 please?

13 THE COURT: Yes, sir.

14 BY MR. WARD:

15 Q I'm showing you what's been marked as State's Exhibit
16 32 for identification purposes. Are those the records that
17 were provided regarding that account?

18 A Yes.

19 Q And are these records kept in the regular course of
20 business by Sprint?

21 A Yes.

22 Q And is it the regular practice of Sprint when providing
23 cellular service to make and keep reports and records such
24 as these?

25 A Yes.

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1 MR. WARD: At this time, Your Honor, the State
2 would move to admit State's Exhibit --

3 THE COURT: 32.

4 MR. WARD: Thank you.

5 MR. WARD: -- 32 into evidence.

6 THE COURT: Any objection?

7 MR. LOY: No, Your Honor.

8 THE COURT: State's 32 is in evidence without
9 objection.

10 (State's Exhibit No. 32, Sprint
11 phone records, were marked and entered.)

12 BY MR. WARD:

13 Q Were you able to find a subscriber for this phone
14 number?

15 A No.

16 Q And why is that?

17 A The subscriber actually belongs to TracFone, which is a
18 reseller of Sprint.

19 Q Okay.

20 A They keep their own subscriber records.

21 Q And is TracFone like a prepaid phone?

22 A Yes.

23 Q And in these records, there's just the first few
24 columns of records, but could you explain the heading and
25 what they pertain to in each column?

Q And what was the time frame of these phone records that were requested?

(State's Exhibit No. 40, records summary, was marked for ID.)

Q I'm showing you what's been marked as State's Exhibit
40 for identification purposes. Do you recognize that?

Q And is that a summary of the pulled record that you provided in this case?

Q And is it a fair and accurate summary?

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1 || A Yes. Yes, it is.

2 MR. WARD: At this time, Your Honor, the State
3 would move State's Exhibit 40 into evidence.

4 MR. LOY: No objection, Your Honor.

5 THE COURT: State's 40 is in evidence without
6 objection.

7 (State's Exhibit No. 40, records
8 summary, was marked and entered.)

9 MR. WARD: One moment, Your Honor.

10 THE COURT: Okay.

11 MR. WARD: No further questions.

12 Please answer any the Defense may have.

13 MR. LOY: I have no questions for this witness,
14 Your Honor.

15 THE COURT: All right. May Ms. Dilly be excused?

16 MR. WARD: Yes, Your Honor.

17 THE COURT: Thank you, ma'am. Appreciate it.

18 Mr. Ward, I don't know if you need to get the --

19 MR. WARD: I'll grab them.

20 THE COURT: Okay. All right.

21 All right. Is the State ready to call its next
22 witness?

23 MR. WARD: Yes, Your Honor. The State would call
24 George Floyd.

25 (WHEREUPON, George Floyd was duly

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1 sworn.)

2 THE COURT: All right. Mr. Floyd, you need to
3 speak up.

4 MR. FLOYD: Okay.

5 THE COURT: You need to do better than that?

6 MR. FLOYD: Yes, sir.

7 THE COURT: Okay. That's close. Okay. A little
8 louder.

9 MR. FLOYD: Yes, sir.

10 THE COURT: There you go. You got it. Okay.
11 Mr. Ward.

12 MR. WARD: Thank you, Your Honor. May it please
13 the Court?

14 THE COURT: Yes, sir.

15 GEORGE FLOYD - DIRECT EXAMINATION

16 BY MR. WARD:

17 Q Mr. Floyd, where are you currently employed?

18 A Verizon Wireless.

19 Q And how long have you been working with Verizon?

20 A Eight years.

21 Q And what are some of your current duties with Verizon?

22 A I travel throughout the United States and appear on
23 behalf of Verizon in civil or criminal cases and I provide
24 testimony.

25 Q Okay. And as part of those duties, have you been

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1 designated as a records custodian for Verizon?

2 A Yes, I have.

3 Q And were you requested through a court order to provide
4 records pertaining to a phone number in this case?

5 A Yes, I was.

6 Q And do you recall that phone number?

7 A I need to see the records to confirm it.

8 Q I'm showing you what's been marked as State's 31 for
9 identification purposes. I'll give you a moment to tell us
10 the phone number that you were requested to provide records
11 for?

12 A Yes. The target number is 843-371-2320.

13 Q Okay. And are these records kept in the regular course
14 of business by Verizon?

15 A Yes, they are.

16 Q And is it the regular practice of Verizon when
17 providing these services to make them keep these records,
18 these types of records?

19 A Yes. You are correct.

20 MR. WARD: At this time, Your Honor, the State
21 would move State's Exhibit 31 into evidence.

22 MR. LOY: No objection, Your Honor.

23 THE COURT: State's 31 is in evidence without
24 objection.

25 (State's Exhibit No. 31, Verizon

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1 phone records, were marked and entered.)

2 BY MR. WARD:

3 Q For the target phone number, were you able to find any
4 subscriber information?

5 A We do have subscriber information but a name is not
6 listed. It just says Verizon Wireless service. And it also
7 says that it was a TracFone or a prepaid phone.

8 Q And could you explain how a prepaid phone works or how
9 someone can use one or purchase the time on it?

10 A A prepaid phone is exactly what it says. It is a
11 prepaid phone meaning a person will buy a phone with prepaid
12 minutes. They don't have to have a contract. That's why
13 the name is not listed on a prepaid phone as it would be on
14 a post-pay account, which is a contract account.

15 Q And what records pertaining to this number are
16 contained within those records that you have?

17 A We have call logs and also text messages logs.

18 Q Was there cell tower information?

19 A Yes. I'm sorry. Yes, also cell tower information and
20 location of the cell sites in South Carolina.

21 Q And if you could just start from what you can see on
22 the screen, explain the headings on each column, please?

23 A Okay. Yes. The first column says network element.
24 That's pretty much the calling area where most of the cell
25 towers are located in. So this first column says

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1 Charleston. And then the next area is a mobile directed
2 number. That's the target number, the number for the
3 subpoena that we answered. It shows that that number 843-
4 371-2320 is listed there. Then you have the dialed number.
5 That's the number that was dialed by the target number. Or
6 if the target number appears in the same column that we're
7 in that that's an incoming call to the target number. Call
8 direction, just speaking on what I just stated. In regards
9 to the call direction the different numbers are indication,
10 whether they would be a outbound or inbound call. The
11 seizure date and time, that's the exact date and time that
12 the call was processed. The seizure duration, that's the
13 length of the call in seconds. The first serving cell site,
14 that's the cell tower where the call -- in the cell industry
15 we say where the call was hit. That basically means the
16 first tower that picked up the cellphone when it first
17 initially connected. And then the first serving cell base.
18 With certain technology we can actually determine where the
19 person was facing, the direction they were facing when
20 making the call. So that shows you, shows where the person
21 was facing when he made that call. Last serving cell site,
22 that's the last serving cell tower when the call ended.
23 Because if you make a call and you travel, you can actually
24 pick up a different cell tower while traveling. And then
25 the last serving cell face is going to indicate where the

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1 call ended and the direction of the person who processed the
2 call was facing as well. And then the last column, the
3 calling party number. Again, that's just the number of the
4 person who called the target number or as stated earlier if
5 the same number appears as the target number, that means
6 that that person -- it was an inbound call coming in.

7 Q And in those records you stated there were cell tower
8 information?

9 A Correct.

10 Q And what type of information is provided with that?

11 A With the cell tower information it's right here. And
12 basically it's going to give you the cell number, which you
13 can use to determine the exact location of the cell site.
14 And then it gives you the longitude and latitude of the cell
15 tower. And then we have another package where we can
16 actually cross-reference to get the exact address to where
17 the cell tower was located at. And from there we can
18 determine where the call was processed and whether the
19 person who processed the called, where they were located at
20 as well.

21 Q Was cell tower 405 provided in those records?

22 A Yes, it was.

23 Q And what was the address in those records for cell
24 tower 405?

25 A Bear with me one moment. It was 10870 Dorchester Road,

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1 Summerville, South Carolina, 29483.

2 Q And was cell tower 421 provided in those records?

3 A Yes, it was as well.

4 Q And what was the address pertaining to that cell tower?

5 A It was 132 Trailing Alley, Summerville, South Carolina
6 29485.

7 Q And are you aware how far someone can be for a cell
8 tower to pick up that information or pick up the phone call?

9 A Yes. In most rural areas -- this is known as a
10 confidence factor. In most rural areas cell towers are
11 located just about three to five miles apart. Whereas, in
12 major cities, cell towers are roughly just about one mile
13 apart. So in this area being that it's a rural area, it's
14 pretty more than likely that that call was being processed
15 on that listed cell tower, being that it's not as many
16 people here and as many cell towers as well.

17 MR. LOY: Your Honor, can we approach for a
18 moment?

19 THE COURT: Sure.

20 (Off the record bench conference with counsel and the
21 Court.)

22 THE COURT: All right. So subject to my
23 conversation, it's in without objection.

24 MR. LOY: Thank you, Your Honor.

25 THE COURT: Okay. Thanks.

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1 MR. WARD: And that'll be State's Exhibit 41, Your
2 Honor.

3 THE COURT: 41, okay.

4 (State's Exhibit No. 41, records
5 summary, was marked and entered.)

6 BY MR. WARD:

7 Q And is State's 41 a summary of those records that you
8 provided for the target phone number?

9 A Yes, it is.

10 MR. WARD: I beg the Court's indulgence, Your
11 Honor.

12 THE COURT: Take your time.

13 MR. WARD: Nothing further.

14 Please answer any questions the Defense may have.

15 THE COURT: Mr. Loy.

16 GEORGE FLOYD - CROSS-EXAMINATION

17 BY MR. LOY:

18 Q I'm always -- did I hear you say correctly you said
19 this number references which we call a TracFone?

20 A A TracFone, yes.

21 Q And a TracFone, if I understood correctly, is a phone
22 that you go in and basically just buy it off the shelf?

23 A You are correct.

24 Q You could get it at Walmart or Target or something like
25 that?

1 A Yes.

2 Q Then I would contact a provider. Is it always the same
3 provider, a TracFone?

4 A Typically, they are sold with the set provider in mind.
5 And after a certain period of time you can take the phone to
6 different carriers -- the technology in the phone is created
7 with that particular cellphone carrier.

8 Q So they program their phone so you have to by the
9 minutes from them?

10 A Correct.

11 Q And in this case TracFone is the company that you buy
12 the minutes from?

13 A Well, Verizon Wireless. That particular phone is a
14 Verizon Wireless prepaid phone.

15 Q Okay. So then they deal directly with Verizon?

16 A Yes.

17 Q Now, the phone itself, I mean, it's not in any way
18 registered or locked into one person or anything like. It's
19 a strange question. I'm asking if I had one of these phones
20 and I leave town, can I give it to somebody else and they
21 can charge it up too?

22 A You could give it to someone else. As far as the
23 registration, every phone has what is known as an A-key,
24 which is something that locks the phone. And then you can
25 put a chip or a Sim card in the phone and all phones have

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1 that -- it's locked with that Sim card or that chip for that
2 number. And that's how you can tell which company is
3 processing the calls and where the calls are being processed
4 to forward to your phone.

5 Q What I'm asking though is if I have a TracFone and my
6 number is whatever it is. I have one. And I decide I want
7 to upgrade. I want a smart phone. Can I burn up the
8 minutes I have on my TracFone and then just give it to you?

9 A Yes, you can.

10 Q Do whatever you want with it. I'm upgrading?

11 A Yes.

12 Q And you could pass it to someone else, also?

13 A Yes.

14 Q And there are not going to be any limits on it. Like
15 you can't buy the minutes on my TracFone. I don't have some
16 account that you can't access or anything. Just if you've
17 got the phone you can put the minutes on it.

18 A With Verizon Wireless we do have a secured account but
19 you have to contact, provide security, answer a security
20 question before adding on minutes. But you can -- anybody
21 can potentially make a payment on that phone.

22 Q To buy minutes?

23 A Correct.

24 Q All right. Thank you.

25 MR. LOY: I don't have any more questions.

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1 THE COURT: Anything on redirect?

2 MR. WARD: Nothing, Your Honor.

3 THE COURT: All right. Thank you, Mr. Floyd.

4 MR. FLOYD: Thank you, Your Honor.

5 THE COURT: May he be excused?

6 MR. WARD: Yes, Your Honor.

7 THE COURT: Okay. Thank you, sir.

8 Is the State ready to call its next witness?

9 MR. JUSTIS: We are, Your Honor.

10 THE COURT: All right. Mr. Justis.

11 MR. JUSTIS: At this time, State calls Detective
12 Michael Weaver.

13 (WHEREUPON, Michael Weaver was duly
14 sworn.)

15 THE COURT: All right. Detective Weaver, I'm
16 reminding everybody to speak up.

17 MR. WEAVER: Yes, sir.

18 THE COURT: Okay. I know you can do a good job.

19 All right.

20 MR. JUSTIS: May it please the Court, Your Honor?

21 THE COURT: Yes, sir.

22 MICHAEL WEAVER - DIRECT EXAMINATION

23 BY MR. JUSTIS:

24 Q Detective Weaver, where do you work?

25 A Summerville Police Department.

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1 Q And how long have you worked there?

2 A Approximately, six years now.

3 Q And what's your job title there?

4 A Detective.

5 Q And how long have you been a detective?

6 A Approximately, three and a half to four years.

7 Q And what are some of your basic duties as a detective?

8 A Mainly investigating violent crime. I'm on call once
9 every six weeks.

10 Q And how did you become involved in this case?

11 A I was the on-call detective during the week of April
12 23rd, 2014.

13 Q And at what point in time did you first, were you first
14 made aware of the case?

15 A That morning when I got into the office my supervisor
16 informed me what happened the previous night. I immediately
17 started following up with the leads.

18 Q And you say you started following up. What are some of
19 the things you did?

20 A I obtained all the officer's reports contained in the
21 case file. Basically got a synopsis of everything that had
22 happened.

23 Q At that point in time had you watched the video?

24 A Not at that point. No, sir.

25 Q And after going through the reports, what else did you

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1 do?

2 A I looked at the South Carolina Department of Motor
3 Vehicles. We can run names and addresses and we can
4 actually see all the customers that are listed at that
5 address.

6 Q And did you do that in this case?

7 A Yes, sir. I did.

8 MR. JUSTIS: I beg the Court's indulgence.

9 BY MR. JUSTIS:

10 Q Detective, I'm showing you what's been marked as
11 State's 38. Can you take a look at this and tell me if you
12 recognize that?

13 A I do. That's the South Carolina Department of Motor
14 Vehicle printout of customers at address G-4 Boone Hill
15 Road.

16 Q And who are the customers at that residence?

17 A Tashima Jones, Traquan Hurell and Tashon Hurell.

18 Q And what date and time did you run that report?

19 A That was that morning, actually April 23rd, 2014 at
20 9:46 a.m. in the morning.

21 MR. JUSTIS: The State would offer State's 38 into
22 evidence.

23 MR. LOY: No objection, Your Honor.

24 THE COURT: State's 38 is in without objection.

25 (State's Exhibit No. 38, DMV

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1 occupancy G-4 report, was marked and entered.)

2 BY MR. JUSTIS:

3 Q Now, why did you run that report that morning?

4 A Just to see all the customers at that address. We had
5 a suspect description. It was a black male, 5'10", 5'11",
6 medium build. From there I went ahead and I think I
7 obtained photo lineups that morning of Tashon and Traquan
8 Hurell. Photo lineups are from the South Carolina Law
9 Enforcement Division. You send them a photograph of a
10 person they'll send you a six-pack photographic lineup that
11 you can show witnesses or victims, things of that nature.

12 Q So after running this address and after attempting to
13 get some potential lineups set up, what did you do next?

14 A I called MUSC to check on the victim. She was still in
15 surgery. After that point we decided to go to the incident
16 location and also the Somerset apartments, Apartment G-4,
17 where they found the dollar bill.

18 Q And why did you want to go back to that apartment?

19 A Go see if we could speak with any of the witnesses and
20 actually speak with the occupants that lived in G-4 one more
21 time.

22 Q And when you arrived at apartment G-4, was anyone home?

23 A Nobody was home.

24 Q And what did you do at that point?

25 A At that point I went ahead and made a determination

1 that I had to get a search warrant based on the statement a
2 suspect actually went in and out of the apartment two times.
3 I found that odd. I went ahead and got a search warrant for
4 the apartment. I called back to one of the other detectives
5 in the office. He completed the search warrant, got it
6 signed by a judge. He showed up approximately an hour to
7 two hours later with that search warrant.

8 Q Okay. And what did you do during the time while you
9 were waiting on that search warrant?

10 A We went to the manager's office for the apartment
11 complex, just to kind of speak with them about vehicles out
12 in front of that apartment, things of that nature and also
13 informed her that we were getting a search warrant and to
14 see if we can get a key for the apartment instead of kicking
15 down the door, something like that. Just get a key.

16 Q Okay. And at some point did the search warrant arrive?

17 A It did.

18 Q And when the search warrant arrived, what did you do?

19 A Went to the apartment. We knocked three times. Nobody
20 was home still. We went inside the apartment. We searched
21 inside the apartment. We removed a few items that were
22 later returned to the owner because they were found not to
23 have any evidentiary value. What were the items you removed
24 from the house?

25 A We took -- we had a bat, a bandana and two pairs of, I

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1 think, of red shoes.

2 Q Okay. And you testified that those were later returned
3 to the homeowner?

4 A Yes, sir.

5 Q And why were they returned to the homeowner?

6 A After watching the surveillance video the suspect in
7 the video, those items did not match the description of the
8 suspect in the video.

9 Q After completing your search warrant, what did you do
10 next?

11 A We went back to the manager's office to return the key.

12 Q And then afer returning the key, did you go any where
13 else?

14 A We were going to leave but as we were leaving, we
15 noticed a white Pontiac Grand Am in front of apartment G-4.

16 Q And why did that strike you as interesting?

17 A Because in the officer's reports a vehicle was listed
18 as a white Mustang, but one officer actually had in his
19 report it was a white vehicle, possibly a mustang. And it
20 was a white car. To me, it was a similar make, similar body
21 size.

22 Q And what did you do? You noticed this car. What did
23 you do as a result of seeing this car?

24 A We went to G-4 to see if anybody was home now.

25 Q Okay. And was there anyone home?

1 A There was. We knocked on the door. Ms. Jana Hurell
2 answered the door.

3 Q And during the course of your investigation did you
4 discover who Ms. Jana Hurell was?

5 A Ms. Jana Hurell is the mother to Tashima Jones, who
6 resides at apartment G-4 and the mother to Tashon Hurell and
7 Traquan.

8 Q Okay. And during the course of your investigation did
9 you locate or discover any other siblings in the family?

10 A There is another sibling, Tramaine Hurell who actually
11 lives at [REDACTED] Lane with his mother.

12 Q And where is [REDACTED] Lane in relation to Somerset
13 Apartments?

14 A Approximately two or three miles down the road towards
15 Summerville.

16 Q So there's actually three brothers?

17 A Yes, sir.

18 Q Did you have an opportunity to speak with Ms. Hurell?

19 A I did.

20 Q And was there -- did your receive some contact
21 information from her?

22 A Yes. She provided her contact information and her
23 address were she lives.

24 Q Did she provide a phone number?

25 A I believe she provided a phone number. She provided

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1 her home address and her apartment that she lived in. I
2 can't find a phone number here.

3 Q Was anyone else with her in the apartment at that time?

4 A There was.

5 Q And who was that individual?

6 A He was later identified at Tashon Hurell. He was
7 actually on the couch, laying down.

8 Q Did you have the opportunity to show either Ms. Hurell
9 or Mr. Hurell that was there any photographs?

10 A I did.

11 THE COURT: Yes, sir, Mr. Loy.

12 MR. LOY: I have a matter of law to take up with
13 the Court.

14 THE COURT: Okay. All right.

15 Ladies and gentlemen we'll take a short break. Again,
16 you know, you've heard some of the testimony. You can't
17 talk about any of it. And we should be back, get you back
18 out here in a few minutes, okay? All right. And it might
19 be warmer back in there too. Again, it might be warmer when
20 you get back out.

21 (Jury out at 2:16 p.m.)

22 THE COURT: Yes, sir.

23 MR. LOY: Your Honor, since I'm objecting, what I
24 anticipate the State is going to do is they're going to have
25 to try to unring the bell.

1 THE COURT: Okay.

2 MR. LOY: Perhaps the Solicitor would ask his next
3 couple of questions and then I'll place my objection --

4 THE COURT: Sure.

5 MICHAEL WEAVER - PROFFER DIRECT EXAMINATION

6 BY MR. JUSTIS:

7 Q My next question would be and I think I asked did you
8 show him any photographs?

9 A Yes.

10 Q And what photograph did you show him or could you
11 describe the photograph that was showed?

12 A It was a photograph from behind the cash register when
13 the incident was going on. You could see a brief
14 description of the sweatshirt. It was a bright green
15 sweatshirt that the suspect was wearing. I wanted to see if
16 he recognized as anybody wearing a shirt similar to that in
17 the area.

18 Q Okay. And this was a screen shot from the video?

19 A Yes, sir.

20 Q And what was Mr. Hurell's response?

21 A He laughed and said who would wear something like that
22 during this?

23 Q Is that the extent of your conversation with him?

24 A No. I asked him some other questions, you know, basic
25 information about him but he declined to give any

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1 information about himself, saying that he's not -- he's not
2 giving me anything are his exact words.

3 MR. LOY: Your Honor, I have the officer's report.
4 What it says is I observed Tashon Hurell lying on the couch
5 -- it described his dress, he was sleeping. It says, I
6 asked Tashon if he lives at this apartment and he says I'm
7 not giving you anything. Effectively attempting to end this
8 conversation with law enforcement that's taking place up in
9 his sister's house. He then -- law enforcement rather than
10 just say, okay, thank you, sir. Says, I asked Tashon if he
11 normally hangs out at this apartment. And Tashon, again, in
12 an effort to end this, walked away from me and went into the
13 back bedroom. Then there's some conversation with mom.
14 Tashon comes out and the officer re-approaches him with a
15 picture and says well, what about this picture, which he
16 purports to have laughed and says why would someone wear
17 something like this. And then I asked Tashon for his
18 information. He again, he said no. I've got nothing for
19 you. I think at this point it's essentially an involuntary
20 conversation on behalf of this officer. When the gentleman
21 has told him on three or four occasions I don't want to
22 answer your questions. I'm turning my back on you. I'm
23 walking away from you. No, I've got nothing for you and
24 they continue to push him. Coupled with the fact I don't
25 think it's probative of anything and it's prejudicial. He

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1 doesn't say I wear that shirt. I've seen that shirt. My
2 brother, my friend, my family members have a shirt like
3 that. It simply attempts to show that if, in fact, he
4 laughed in the face of this bloody pictures and stuff,
5 attempts to paint him as cold-hearted or villainous. I mean
6 it doesn't make any way more or less likely, any fact more
7 or less likely, a fact that's in dispute to say I showed him
8 a green tee shirt or a green sweatshirt and he laughed.
9 What does it prove?

10 THE COURT: I don't know. Tell me what your
11 objection is.

12 MR. LOY: Well, my objection is first I think the
13 -- I think it's coerced and it's essentially a product of a
14 involuntary interrogation. The man has told police I don't
15 want to answer questions. I don't have anything else. I
16 don't -- he's a suspect. I don't want to answer your
17 questions. I want you to leave me alone. I've got nothing
18 for you. They continue to push the envelope shortly pre-
19 arrest. But even separate and apart from that, my argument
20 is on the grounds of relevance. If he laughed and said
21 that's a great looking sweatshirt. I wish I had a
22 sweatshirt like that. That's the dumbest sweatshirt I've
23 ever seen, none of that tends to show that he either did the
24 crime --

25 THE COURT: Uh-huh. (Affirmative response)

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1 MR. LOY: -- or didn't do the crime. And I
2 believe it's prejudicial to paint him in that light.

3 THE COURT: Okay. All right. So you don't want
4 him to ask any of those questions, don't go into that?

5 MR. LOY: No. It almost becomes a comment on the
6 his silence, too. When they're talking to mom and he was
7 there. And now we're going to have some -- no, I don't want
8 any of it going in. I think he's done everything he could
9 to curtail his contact with law enforcement. I don't think
10 any of this should come in to his detriment.

11 THE COURT: Okay. All right.

12 Mr. Justis, anything?

13 MR. JUSTIS: I would just say, Your Honor, you
14 know, I agree with him partly. He does say -- you know, I'm
15 not giving you anything. And they say well, you know, do
16 you stay here? Do you visit here? Then he walks out. You
17 know, but then he comes back. He could have stayed out in
18 the other room. They weren't chasing after him. They
19 didn't go back after him while he's in this back bedroom,
20 wherever he went. He comes back out. They got the picture
21 out. So when he walks by they say, do you recognize this
22 sweatshirt? I mean, that's what they asked him. At that
23 point in time, he can say nothing. It's -- if it's not his
24 house -- we would allege it's his house. It's at least his
25 sister's house. He's not at the police station. He's not

1 in custody. He can go back to the bedroom like he did
2 earlier. He could have stayed back in the bedroom but he
3 chooses to re-engage the police at that point and say --
4 anyway, that's when he says, you know, who wears something
5 like that to something like this or whatever the words were
6 that he used.

7 THE COURT: Okay.

8 MR. LOY: I would just dispute the part about him
9 re-engaging the police officer. That's not anywhere
10 reflected in his report.

11 MR. JUSTIS: And, Your Honor, I would say --

12 THE COURT: Hold on one second. And -- and Mr.
13 Loy, I know you were reading from the report?

14 MR. LOY: Yes, sir.

15 THE COURT: That's not quite exactly the questions
16 that Mr. Justis asked Detective Weaver. Now he asked him,
17 you know, did you show him the photos? Asked him if he
18 recognized -- if anybody wore anything like that. Mr.
19 Hurell made apparently, I thought, a humorous comment
20 myself. Who would wear something like that to do something
21 like that, you know, or something to that inclination. And
22 then he said he declined to give him any other information.
23 That's where he stopped it, okay?

24 MR. LOY: Yes.

25 THE COURT: Which -- if he went into it the way

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1 the report reads it, but the report's not in evidence. And
2 he didn't ask any questions about that.

3 MR. LOY: There was no comment upon his -- there
4 was no direct comment upon his Fifth Amendment.

5 THE COURT: Right.

6 MR. LOY: And I understand that. I think you've
7 skirted that. But there's not a comment on it. I
8 understand.

9 THE COURT: Yeah.

10 MR. LOY: Mr. Justis's argument certainly offered
11 a somewhat different factual pattern but it didn't address
12 the relevance part. I still don't know whether it's --
13 number one is, if it's not relevant it doesn't come in. I
14 think it's prejudicial to us despite Your Honor finding it
15 humorous. I think it's prejudicial and if there is no
16 relevance to it, I think it should be suppressed.

17 THE COURT: Okay. I mean, to me it's sort of like
18 the question you asked earlier when Detective Nelson was on
19 the stand. We're just going through the investigative
20 procedure.

21 MR. LOY: I understand that. But no one else in
22 the investigative procedure is in jeopardy and Mr. Hurell
23 is. I mean, he's in a lot of jeopardy.

24 THE COURT: Yes, he is.

25 MR. LOY: And so when we say we're going to -- the

1 guy on the balcony said this or the lady at the apartment
2 complex manager she said that, none of those folks are at
3 risk. And also the things that they're saying are relevant
4 to the investigation itself. I mean, if this made some sort
5 of derogatory comment the police officer said when I went in
6 Mr. Hurell was dirty and obviously, you know, hadn't
7 showered it days. I mean, it would be prejudicial and
8 irrelevant. I don't think he should be allowed to say that.

9 THE COURT: But he's simply asking him about the
10 sweatshirt, if he's seen anybody with the sweatshirt. Isn't
11 that just the same kind of just question?

12 MR. LOY: I don't see the relevance that when it
13 is directed to my client when it says he laughed, I don't
14 know what strikes a cord with this jury. If they go back
15 and say well the police came to the house and asked him
16 about it, that son of a gun laughed. I think that could be
17 detrimental to our case. I think the probative value is far
18 outweighed by the prejudicial value particular because I
19 don't think there's any probative value.

20 THE COURT: Okay. All right.

21 MR. JUSTIS: And, Your Honor, if it'll make it
22 easier we will limit it to the photo comment. You know, did
23 you have an opportunity to show him any photographs? Yes, I
24 did. A screen shot of the robbery. What did that photo
25 depict? It showed the person wearing this white and lime

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1 green sweatshirt with a design on it. I showed it to him.
2 What was his response? He laughed and said who would wear
3 that. And end it at that point.

4 MR. LOY: That that is demonstrative. What fact
5 in dispute does this make more -- this made more or less
6 likely.

7 MR. JUSTIS: Well, more or less likely because at
8 this point in time the detective has run the list of
9 residents that live there. His name's on that list. There
10 was a bloody dollar bill that later we find out has the
11 victim's blood on it, is found at that home. He wasn't
12 there the night before. All right? And there is, according
13 to the witness who has already testified, a person with a
14 bat left that night before police got there. So they arrive
15 at this house again the next day and there's a new male
16 there. So I think it's very probative because if he lives
17 there has he seen this sweatshirt? I mean, does it belong
18 to anybody that lives in the house? Is it somebody that
19 they know that visits them that has a sweatshirt like this?
20 I mean, I think it's very probative.

21 MR. LOY: And him to laugh and say who would do
22 this proves -- it tends to prove nothing.

23 THE COURT: I understand you're concerned about
24 him laughing -- the laugh and like that. I'll be honest
25 with you. My take on that is not the same take that you're

1 taking out from it. I understand if I were in your
2 position, I'd probably be concerned about that. But to me,
3 it seems to me someone who doesn't have to worry about it.
4 Not someone who's being callously indifferent. That's my
5 take on it, you know.

6 All right. I'm going to let him ask the question just
7 about have you seen it? Has he seen the -- you know,
8 essentially has he seen the sweatshirt. We're not going to
9 get into any of the other stuff that Mr. Loy read about
10 other things in the report about he didn't want to talk to
11 him. He declined to speak and anything like that.

12 MR. LOY: He walked away. That kind of stuff.

13 THE COURT: Yeah. Because that, I think has a
14 tendency to kind of get into the argument about whether or
15 not he, you know, needs to remain silent. But if he ask him
16 have you seen the sweatshirt and like that and his response,
17 I'm fine with that.

18 And, of course, I'm going to note your objection so
19 that's preserved on the record.

20 MR. LOY: Thank you, Your Honor.

21 THE COURT: Okay. Thank you, sir.

22 Okay. And finally we're at a break. We might as well
23 go ahead and take a short break. Just five minutes and we
24 will be back, okay?

25 MR. JUSTIS: Yes, Your Honor.

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1 THE COURT: And Detective, you can stand up and
2 walk around. You just can't talk to anybody, as you know?

3 MR. WEAVER: Can I use the restroom?

4 THE COURT: Yeah, you can. That's the most
5 crucial thing.

6 MR. WEAVER: Yes, sir.

7 THE COURT: Okay. All right. Back in five
8 minutes.

9 (Court in recess for short break)

10 (Court in session after short
11 break)

12 THE COURT: Y'all can be seated. Thank you.
13 Appreciate it.

14 (Detective Weaver returns to the
15 stand)

16 THE COURT: All right. Is the State ready to
17 proceed?

18 MR. JUSTIS: The State's ready, Your Honor.

19 THE COURT: Okay.

20 (Off the record bench conference with counsel and the
21 Court.)

22 THE COURT: Are we ready?

23 MR. LOY: Yes, sir.

24 THE COURT: Okay. Bring the jury back in.

25 (Jury in at 2:36 p.m.)

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1 THE COURT: All right. Ladies and gentlemen,
2 we'll continue with the direct testimony of the Detective.

3 Mr. Justis.

4 MR. JUSTIS: Thank you, Your Honor, may it please
5 the Court.

6 THE COURT: Yes, sir.

7 MICHAEL WEAVER - DIRECT EXAMINATION CONTINUED

8 BY MR. JUSTIS:

9 Q So Detective Weaver you had testified you went to the
10 apartment and you made contact with Ms. Hurell. You also
11 say that Tashon Hurell was there. Were you able to show him
12 any photographs?

13 A I did.

14 Q And what did the photograph depict that you showed him?

15 A It was a still photo from the incident behind the cash
16 register of the suspect, standing there holding the victim.
17 It was a side picture of the sweatshirt. It was unique,
18 just the colors of it.

19 Q And when you showed that photograph to Mr. Hurell, did
20 he make any comments?

21 A He began laughing and asked why someone would wear a
22 white and green sweatshirt during something like this.

23 Q And that was the extent of your conversation with your
24 conversation with Mr. Hurell?

25 A Yes, sir.

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1 Q And so after speaking with them there at the apartment,
2 did you have an opportunity to visit the witness in the
3 apartment above them?

4 A I did. The same day the afternoon, mid-afternoon time
5 I went up to Apartment G-8 and spoke with Mr. Hartman.

6 Q And had you read his statement that he had given the
7 previous, I guess, early morning?

8 A I did.

9 Q And did he change his statement any at that point in
10 time?

11 A No, he said he believed it was a white Mustang is what
12 he thought he saw.

13 Q And after meeting with him and kind of corroborating
14 his statement, make sure that the statement was the same,
15 did you have an opportunity to ever speak with a Traquan
16 Hurell?

17 A I did. That was in the afternoon. Again, all of this
18 stuff was happening in the afternoon, the day after -- the
19 same day as the incident happened. It was at Bi-Lo.

20 Q Okay. Is that where Mr. Traquan worked?

21 A Yes, that's correct. Traquan was employed at the time
22 at Bi-Lo.

23 Q And approximately how old was Traquan?

24 A I believe he was seventeen or eighteen years old.

25 Q And when you went to talk to Traquan, were you by

1 yourself?

2 A No, I was not. I was with Detective Santana also.

3 MR. LOY: May we approach, Your Honor?

4 THE COURT: Sure.

5 (Off the record bench conference with counsel and the
6 Court.)

7 THE COURT: All right. Mr. Justis, you can
8 continue, please, sir.

9 MR. JUSTIS: Thank you, Your Honor.

10 BY MR. JUSTIS:

11 Q So Detective, so you met with Traquan Hurell at the Bi-
12 Lo; is that correct?

13 A That's correct.

14 Q And where did you meet?

15 A We actually met with his manager and his manager called
16 him up. I think he was stocking shelves at that time. We
17 met him at the front of the store and the manager later
18 escorted us into the office and let us talk with him in
19 private.

20 Q Okay. Were you able to talk to Traquan?

21 A I was.

22 Q And you asked him some questions?

23 A That's correct.

24 Q And you showed him a photograph?

25 A Yes.

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1 Q After you asked him those questions, showed him the
2 photograph, at some point your conversation ended with him?

3 A Yes.

4 Q You mentioned earlier that you had requested some photo
5 lineups?

6 A That's correct.

7 Q How many photo lineups did you request?

8 A Overall we ended up with three photo lineups. One with
9 Traquan, Tramaine, and Tashon, all three brothers.

10 Q And explain for the jury kind of how those photo
11 lineups work again?

12 A It's on one sheet of paper, a standard sheet, you know,
13 the size. There are six pictures. Three on top, three on
14 the bottom. It's a photograph array. We send the South
15 Carolina Driver's License Number to SLED. They program it
16 into their system. I'm not positive on the logistics of it,
17 but they give us a six-pack array line-up and it's used,
18 like I said, to show victims, witnesses. Sometimes people
19 can identify people, sometimes they can't.

20 Q And so you have three individuals Tashon, Tramaine, and
21 Traquan; correct?

22 A Correct.

23 Q And how many do you put in each lineup?

24 A There's only one brother in each lineup.

25 Q And did you have an opportunity to show those three

1 lineups to Ms. Mary?

2 A I did.

3 Q Was she able to pick out any of the three brothers?

4 A She picked out Tramaine just as being at the gas
5 station at some point, at some point that night. She said
6 he's a regular customer. But the other two she wasn't
7 familiar with, Tashon or Traquan.

8 Q At some point during your investigation were you able
9 to collect any kind of DNA evidence?

10 A I was.

11 Q And what was that?

12 A I met with -- well, the dollar bill that was found on
13 the porch to apartment G-4 had evidence that they thought
14 was blood at the time so they collected it. That was sent
15 to SLED. But we wanted to collect DNA from the victim. So
16 I met with Ms. Mary and collected two swabs. I wore rubber
17 gloves. It's just like TV. You swab the inside of the
18 cheek, the inside of somebody's mouth and you put that in a
19 separate vial. And then you package it and it gets sent to
20 SLED for comparison to the blood on the dollar bill.

21 Q I'm showing you what's been marked as State's Exhibit
22 29. Do you recognize this?

23 A Yes.

24 Q And what is that?

25 A Those appear to be the swabs. The two buccal swabs

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1 that I took.

2 Q Okay. They're in this plastic bag. Could you explain
3 a little bit, are you pretty familiar with why they're in a
4 plastic bag.

5 A The packaging of it?

6 Q Correct. Like when you collect something, kind of go
7 through that process, what you do with it.

8 A Okay. We collect it using rubber gloves. We don't
9 want cross-contamination. We put it into a vial. At the
10 time when it's taken it's put into a paper bag. It's
11 sealed. It's taken back to Summerville Police Department
12 and logged into our evidence locker as DNA. And then our
13 evidence personnel they handle all that -- the DNA and
14 things of that nature, they handle all that and they take it
15 up to SLED usually once a week for comparison.

16 Q And that's what happened in this case with the buccal
17 swabs that you took from Ms. Mary?

18 A Yes, sir.

19 Q At some point during your investigation were you able
20 to do any investigation on the internet?

21 A I was.

22 Q And what did that entail?

23 A I found -- Facebook's a common thing that we look at in
24 investigations, looking for clothing, witnesses, cars,
25 things like that. I found -- I discovered a picture of the

1 Defendant, Tashon Hurell wearing some clothing that was
2 interesting to us.

3 Q And where did you find on Facebook this photograph?

4 A It was on his Facebook page.

5 Q I'm showing you what's been marked as State's Exhibit
6 30. Do you recognize that?

7 A Yes. That's the pictures of the shoes that we were
8 curious about.

9 MR. LOY: No objection, Your Honor.

10 THE COURT: Okay. State's 30 is in without
11 objection.

12 (State's Exhibit No. 30, Facebook
13 photo, shoes, was marked and entered.)

14 BY MR. JUSTIS:

15 Q And you mentioned the shoes.

16 A Yes.

17 Q And what about the shoes drew your attention?

18 A They looked very similar to the ones from the incident.

19 Q I'm showing you what's been marked as State's 22. Can
20 you describe what this is?

21 A It's a picture from the incident when the suspect first
22 walks into the convenience store, the Kangaroo.

23 Q And where did you get this picture from?

24 A That was from the Kangaroo Gas Station from Ms. Sonja,
25 the manager.

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1 Q Like a screen shot?

2 A Yes, sir.

3 MR. JUSTIS: The State would offer State's 22 into
4 evidence.

5 MR. LOY: No objection, Your Honor.

6 THE COURT: State's 22 is in evidence without
7 objection.

8 (State's Exhibit No. 22, photo,
9 screenshot of suspect, was marked and entered.)

10 BY MR. JUSTIS:

11 Q And could you tell us what's interesting about this
12 photo?

13 A The shoes, the red outline and then it turned into a
14 black, a solid black with red laces and looks consistent
15 with the photograph from Facebook.

16 Q And during the course of your investigation, Detective,
17 did you have the opportunity to request any phone records in
18 this case?

19 A I did. I requested phone records for Traquan, Tashon,
20 Tashima. And which Tramaine's records, I don't think we
21 ever received anything back.

22 Q Okay. So did you receive records back on Traquan?

23 A Yes.

24 Q And what about Tashon?

25 A Yes, I did.

1 MR. JUSTIS: I beg the Court's indulgence.

2 THE COURT: Okay.

3 BY MR. JUSTIS:

4 Q I'm showing you what's been marked as State's Exhibit
5 40. That's been entered into evidence. Do you recognize
6 what that is, what it appears to be?

7 A Yes, sir. That's Traquan's phone records.

8 Q Okay. And when you received these phone records, did
9 you notice anything interesting about these phone records?

10 A I did. Around the time of the -- well, during the
11 incident, it shows he was on the phone from 12:21 a.m. until
12 approximately 2:11 a.m. Sixty-six hundred seconds. There's
13 a period of time where he hangs up and then he gets back on
14 the phone again for a significant amount of time.

15 Q And could you -- looking at your screen -- you could
16 actually touch on the screen, could you kind of highlight,
17 just put a little dot or something?

18 A Yeah. This record right here. That's the first one.
19 The incident happened at some point during that time when he
20 was on the phone or that phone was being used. And then
21 around -- he again, when he gets on at 2:12 for a
22 significant amount of time again. At some point between
23 there, police are at his house.

24 Q So according to that record at, I'm assuming, 12:21
25 a.m. --

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1 A Yes, sir.

2 Q -- until 2:11 a.m., that phone is in use?

3 A Correct.

4 Q And then it appears that he's off the phone for about
5 forty-four seconds?

6 A Correct.

7 Q And then attempts to recall that number? And nine
8 seconds, obviously it doesn't go through, it doesn't
9 reconnect. But then immediately calls back and then is on
10 the phone for another eleven thousand five hundred and
11 seventy-four seconds?

12 A Correct.

13 Q Which is from --

14 MR. LOY: Your Honor, I object to the continued
15 testimony of the Solicitor.

16 THE COURT: If you'd just let him give you the
17 time, okay?

18 MR. JUSTIS: Yes, sir.

19 THE COURT: Okay.

20 BY MR. JUSTIS:

21 Q Okay. And why did that strike you as unusual?

22 A That's during the time of the incident. And as
23 officers put in their report and there's a photograph of ,
24 Traquan's phone when a witness saw the suspect leave. So
25 Traquan, I felt relatively okay with not listing him as a

1 suspect at that point after seeing that.

2 Q Now at some point during your investigation did you
3 have the opportunity to speak to a Tramaine Hurell?

4 A I did.

5 Q And without telling us anything he said, did anything
6 strike you interesting about Tramaine?

7 A It did. When we first made contact with Tramaine, he's
8 tall and skinny and his voice sounded nothing like the
9 person in the video. It was more of a high pitched, high-
10 pitched voice.

11 Q And did you factor that into your investigation?

12 A I did.

13 Q Now, at some point during your investigation were you
14 able to associate a phone number with Tashon Hurell?

15 A I did.

16 Q And what was the phone number you were able to
17 associate with Tashon Hurell?

18 A It was 843-371-2320.

19 Q Okay. I'm showing you what's been offered into
20 evidence as State's 41. Can you read up there that phone
21 number?

22 A It's 843-371-2320.

23 Q Is that a match of the phone number that your
24 investigation revealed was liked to Mr. Tashon Hurell?

25 A That's correct.

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1 Q When you look at those phone records, is there anything
2 that struck you as interesting in those phone records?

3 A There is a few things. The incident happened, looking
4 at surveillance, between like 12:55 to 1:10 in the morning.
5 Around that time there is no activity on that phone number
6 for Tashon. It picks back up almost immediately after the
7 incident happened at 1:10 a.m.

8 Q And is that noted on there?

9 A It is.

10 Q Is that activity on there. Could you kind of put a
11 mark?

12 A You can see it right there.

13 Q What else is interesting about those phone records.

14 A When we use cellphone records it shows the cell tower
15 sites where that phone was pinged off of. The cell tower
16 site that that phone number was pinged off around the time
17 of the incident.

18 MR. LOY: Your Honor, I would object to this. I
19 don't think he's qualified to offer this testimony.

20 THE COURT: Okay. Okay your objection is --

21 MR. LOY: Your Honor, we've had folks from the
22 phone company come in.

23 THE COURT: Right.

24 MR. LOY: And I know that there are other
25 subpoenas out there. I know that there are folks who are

1 capable of determining or interpreting the records as
2 opposed to simply reading them. If he just wants to read
3 from them, that's fine. But I mean, if he wants to
4 interpret them and explain them, say why it's interesting to
5 him what tower hits on what -- you know, what phone hits on
6 what tower, I think he needs to be qualified as an expert to
7 do that.

8 THE COURT: Okay. Mr. Justis, anything in
9 response?

10 MR. JUSTIS: Yes, Your Honor. The Verizon rep
11 basically went over each column, what it shows. And he
12 stated that, you know, which column shows the tower that the
13 call started on and the tower the call ended on. All he's
14 doing is reading across. I mean, there's already been
15 testimony on what those records mean. He's just
16 highlighting a particular call.

17 THE COURT: And -- and --

18 MR. JUSTIS: He's reading essentially.

19 MR. LOY: The records are in evidence. I think he
20 can publish them if he likes. I mean, the question is is
21 there anything interesting about you and what is it? And he
22 says well this is what it means, etcetera as opposed to
23 simply reading across the lines. I think he needs to be an
24 expert.

25 THE COURT: Okay. Well, we've already had someone

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1 come in and give us the address of tower 405?

2 MR. LOY: Yes, sir.

3 THE COURT: Do you agree with that?

4 MR. LOY: Yes. That information has been
5 published.

6 THE COURT: Okay. And he can point out that those
7 were the lines?

8 MR. LOY: Yes, sir.

9 THE COURT: And the times. Okay.

10 MR. LOY: And I don't have an issue if he wants to
11 say that under lines -- the sixth line over it says 410. I
12 think he can do that. I mean, the documents are there. If
13 that's the extent of it, then I don't object to that.

14 THE COURT: Okay.

15 MR. LOY: It's to his interpretation is my
16 objection.

17 THE COURT: Well, what he's going to be
18 interpreting to has already happened. The addresses on
19 there are already testified to.

20 MR. LOY: Yes, sir.

21 THE COURT: Okay. So you're just going to ask him
22 to kind of read across the line?

23 MR. JUSTIS: Correct, Your Honor.

24 THE COURT: Okay. All right.

25 BY MR. JUSTIS:

1 Q So on that one you have marked, what's the date and
2 time?

3 A April 23rd, 2014 at 1:10 a.m.

4 Q And how many seconds was that phone call?

5 A It looks like it's thirty-four seconds.

6 Q And what tower did it start and stop on?

7 A It's tower 405.

8 Q You were given the address as part of your
9 investigation?

10 A Yes. The address is 10870 Dorchester Road.

11 Q And at some point in time during your investigation
12 what did you do with that information, the cell tower
13 addresses that you have received from Verizon?

14 A I looked at a map to kind of map them to see where
15 they're located in proximity to the incident location.

16 Q Now, I'm showing you what has been marked as State's
17 25.

18 MR. LOY: Your Honor, can we approach?

19 THE COURT: Sure.

20 (Off the record bench conference with counsel and the
21 Court.)

22 MR. LOY: Your Honor, I don't have an objection to
23 the introduction of the photograph itself. We do dispute
24 the accuracy of some of the labels on the photograph itself.

25 THE COURT: Okay. And I will let it in evidence

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1 and I will note that you do dispute some of the labeling and
2 you'll be able to cross-examine him concerning those labels.

3 MR. LOY: Thank you, Your Honor.

4 THE COURT: Thank you. All right.

5 (State's Exhibit No. 25, photo,
6 overhead map of incident location was marked and entered.)

7 BY MR. JUSTIS:

8 Q Detective, this is State's 25. Do you recognize this?

9 A I do.

10 Q And what is it?

11 A It's an overhead view of the incident location, cell
12 tower cites, and the Defendant's mother's house and his
13 sister.

14 Q Okay. If you could -- I'll let you kind of hold this.

15 MR. JUSTIS: And may the witness stand, Your
16 Honor.

17 THE COURT: He may.

18 A (Stands)

19 BY MR. JUSTIS:

20 Q Could you kind of explain what those labels are and why
21 they're labeled the way they are?

22 A This is the Kangaroo Gas Station at Orangeburg and
23 Boone Hill Road right here on the corner. This is Somerset
24 apartments, 1225 Boone Hill Road, Apartment G-4 is in there.
25 The Defendant's mother lives over here off of [REDACTED]

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1 Lane. It's a small apartment complex down that way. This
2 is cell tower 405 and that's cell tower 421 down there of
3 off Trolley Road.

4 Q And we can just kind of stick this over here for a
5 minute? So looking at those records you've already talked
6 about the one line. Could you kind of go through after that
7 and read those lines, when those calls were made?

8 A It seems to be cell tower site 405 is from 1:10 to 1:12
9 a.m. And then at 1:12, it switches to tower 421, which is
10 the tower off of Trolley Road. At some point at 1:18 the
11 tower switches to 405 back on Dorchester Road, site 405.
12 And then eventually, around 1:28 a.m. it ends up back on 421
13 over by Trolley Road.

14 Q So it's your testimony it starts -- those calls at 1:10
15 start at cell tower 405?

16 A That's correct.

17 Q And then eventually there's a call that hits on 421?

18 A Uh-huh. (Affirmative response)

19 Q And then back at 405?

20 A Correct.

21 Q And then back at 421?

22 A Yes.

23 Q And what's the time frame from the switches?

24 A Beginning at 1:10 -- approximately is an eighteen
25 minute, eighteen minute variation.

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1 Q And when we look forward in time on these phone
2 records, what's that top line? What's the reading across
3 there, the date, the time?

4 A It's April 23, 2014 at 7:08 a.m. Cellphone tower 421
5 on Trolley Road again.

6 Q And then I notice about three lines down there seems to
7 be a number repeated a bunch of times?

8 A That is correct.

9 Q At some point in time were you able to try to research
10 that number?

11 A I did.

12 Q And what did you discover when you researched that
13 number?

14 A That's actually the line for Greyhound Bus Lines and
15 that number goes to Texas. And that was at 8:41 a.m. the
16 same morning as the incident.

17 MR. JUSTIS: I beg the Court's indulgence.

18 THE COURT: Take your time.

19 BY MR. JUSTIS:

20 Q Detective Weaver, you mentioned making a note of the
21 white Grand Am that was parked outside the apartment. At
22 some point during your investigation were you able to get a
23 photograph of that vehicle?

24 A Yes, I did.

25 Q I'm showing you what's been marked as State's 20. Do

1 your recognize this?

2 A Yes, that's the Grand Am. I took a picture of that.

3 Q And how do you know it's the picture you took?

4 A It's at Ms. Hurell's apartment. I jotted down the tag
5 on top of the car and it's the same license plate.

6 Q Was this taken the day you talked to Ms. Hurell and
7 Tashon or some other day?

8 A No. It was taken it was June or July, later on in the
9 investigation.

10 Q And how do you know it's the same vehicle?

11 A It's the same license plate.

12 MR. JUSTIS: The State would offer State's 20 into
13 evidence.

14 MR. LOY: No objection, Your Honor.

15 THE COURT: State's 20 is in without objection.

16 (State's Exhibit No. 20, photo,
17 Grand Am, was marked and entered.)

18 BY MR. JUSTIS:

19 Q You had testified earlier Detective that you had gone
20 on the Facebook of Tashon Hurell?

21 A Uh-huh. (Affirmative response) Yes.

22 Q I'm showing you what's been marked as State's 39. Do
23 you recognize this photograph?

24 A I do.

25 Q And what is that a photograph of?

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1 A It looks like the Hurell family, Traquan, Tramaine,
2 Tashon, Tashima. I'm not familiar with who the other guy
3 is.

4 Q And is it a fair and accurate representation of what
5 you saw on Facebook?

6 A Yes.

7 MR. JUSTIS: The State would offer State's 39 into
8 evidence.

9 MR. LOY: Again, I have no objection, Your Honor.

10 THE COURT: All right. Thank you, sir.

11 State's 39 is in without objection.

12 (State's Exhibit No. 39, photo,
13 Facebook family photo, was marked and entered.)

14 BY MR. JUSTIS:

15 Q And could you -- since you've met with these
16 individuals could you identify who's who in that picture?

17 A Okay. This is the Defendant, Tashon. This is Traquan
18 and this is Tramaine in the back.

19 Q Detective, one last question. Why, when looking at
20 those phone records we were just looking at for the number
21 associated with Mr. Tashon Hurell, why did the cellphone
22 back and forth series interest you?

23 A Well, the witness provided in a statement that suspects
24 came. He assumed he went inside the apartment because he
25 heard the door open and close. He observe the suspect leave

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1 shortly thereafter and the suspect came back again. And the
2 suspect left again. Those cell tower sites at 405 on the
3 Dorchester Road and cell tower sites on Trolley Road could
4 have corroborated the witness's statement.

5 Q Thank you. No further questions. Please answer any
6 questions Mr. Loy might have for you.

7 THE COURT: Mr. Loy.

8 MR. LOY: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MICHAEL WEAVER - CROSS-EXAMINATION

11 BY MR. LOY:

12 Q Now, the fact that -- it's certainly not your testimony
13 here today, you're coming in to say that the fact that
14 cellphone hit on this particular tower or this particular
15 tower means that the phone is moved?

16 A No, sir. I'm not going to say that.

17 Q Well, you're aware that the towers overlap. I mean,
18 the coverage overlaps so we don't have dead spaces in the
19 middle. And that you could hit one tower and another tower,
20 shift in the middle of a call etcetera?

21 A Yes, sir.

22 MR. JUSTIS: Objection, Your Honor. He's not an
23 expert in cellphone --

24 MR. LOY: He's already answered the question, Your
25 Honor.

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1 THE COURT: I overrule the objection. Go ahead.

2 MR. LOY: Thank you.

3 BY MR. LOY:

4 Q Now, you talked about these phones. You said you had a
5 phone that was associated with Mr. Tashon Hurell at some
6 point in time; is that correct?

7 A Yes, sir.

8 Q And you heard the gentleman from either Verizon or
9 Sprint say that this was a TracFone and essentially you buy
10 them off the shelf, you charge the minutes up. Put more
11 minutes on it. If you don't, let it lie dead if you don't,
12 etcetera; is that correct?

13 A Yes, sir. That's correct.

14 Q You don't -- did you ever recover this phone?

15 A No, sir. We did not.

16 Q And you don't know who was in possession of it that
17 evening?

18 A No, we do not know who was in possession of it that
19 evening.

20 Q With the other phone, you said the gentlemen was on the
21 phone when law enforcement responded to Apartment G-4. You
22 corrected yourself. At one time you said he was on the
23 phone. And then later you said well, the phone was in use
24 during these times?

25 A That's correct.

1 Q And this is just the number he gave you or he gave law
2 enforcement and said I can be reached at this number if you
3 need me or whatever. This is the number to use; is that
4 right?

5 A The number there. Yes, sir.

6 Q So when this case was originally reported it goes to
7 law enforcement who responds that night, uniform officers.
8 And then you get a call. Did you come in that evening or
9 did you pick this file up the next day?

10 A It was approximately 8:30 that morning, the following
11 day, over the same evening. Eight hours later.

12 Q In the morning?

13 A Yes, sir.

14 Q You can in and said here's what we've got so far. And
15 you essentially commenced your investigation from there; is
16 that correct?

17 A That's correct.

18 Q And you knew what law enforcement had gleaned from the
19 evening before, did you not?

20 A Yes, sir.

21 Q That is that there were audio and video tapes? That
22 there was an eyewitness who said I've seen the person who
23 certainly looks like may have been involved in this. The
24 guy who was upstairs, Mr. Hartman?

25 A Yes, sir.

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1 Q And the dollar bill had been recovered?

2 A Uh-huh. (Affirmative response) That's correct.

3 Q And that was essentially what you had to go on at that
4 point; is that right?

5 A At that point. Yes, sir.

6 Q And what's the first thing you do in the course of your
7 investigation?

8 A That morning I looked at the report. I checked DMV to
9 see people who were registered to live at that address.

10 Q And as far as -- that morning you went to the crime
11 scene, did you not?

12 A Yes, sir. At some point that day I did.

13 Q And you went out and you sort of walked the, look
14 around at the Kangaroo, get a feel for things, walk the
15 trail and see what, you know, you could surmise; that sort
16 of thing?

17 A Yes, sir.

18 Q And you went to the apartment that had been visited the
19 night before by police officers and no one was home; is that
20 right?

21 A That is correct.

22 Q And at that point you called for a search warrant or
23 you called and asked the detective and they got another
24 detective to make out the case for a search warrant; yes?

25 A Yes, that's correct.

1 Q And you went and you talked to the office manager; is
2 that right?

3 A That's correct.

4 Q And you asked her because you had this report, Mr.
5 Hartman saying a white Mustang. At least that was what the
6 report you had indicated from the night before; is that
7 right?

8 A That's correct.

9 Q So you asked her, you said what kind of cars are parked
10 out in front of this apartment complex; is that right?

11 A Yes.

12 Q And she said well, there's --

13 MR. JUSTIS: Objection. Hearsay.

14 THE COURT: Okay.

15 MR. LOY: Your Honor, it goes to the absolute
16 credibility of the investigation. If you want a record I
17 can just lay it out there.

18 THE COURT: You are asking what the lady, the
19 apartment manager said to him?

20 MR. LOY: About the cars that were parked out
21 front. What he did with that information and whether he
22 factored it into his investigation or discarded it because
23 it didn't fit the theory he was forwarding. Where he went
24 with it.

25 THE COURT: Okay.

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1 MR. LOY: There was testimony from the witness Mr.
2 Hartman reading back from his earlier testimony that he told
3 this officer it was a white Mustang. And this officer came
4 and then look, could it have been a Pontiac. I mean, if the
5 investigation was framed in a manner --

6 MR. JUSTIS: Objection, Your Honor. I think we
7 need to discuss this.

8 THE COURT: Okay. All right.

9 All right. Ladies and gentlemen, you're not going to
10 hear us talking for a while. I'm going to let y'all go back
11 into your jury room for a second while we talk about this
12 without y'all being here. Remember, you can't talk about
13 any testimony you've heard. And it is getting warmer in
14 here.

15 (Jury out at 3:17 p.m.)

16 THE COURT: Okay.

17 MR. JUSTIS: Your Honor, if I might, first --

18 THE COURT: Yes. Okay.

19 MR. JUSTIS: Because I would object to two things.
20 Number one, hearsay. Number two, the fact that he's
21 basically allowed to make a speaking objection in front of
22 the jury and say that this is the absolute truth with the
23 jury sitting there listening to all of that. So I would ask
24 that a curative instruction be given to the jury as it
25 relates to that.

1 THE COURT: Okay. I missed the absolute truth
2 part of that, but --

3 MR. JUSTIS: I mean, he essentially testified in
4 front of the jury to what he wants things -- you know, he
5 said that the officer said this and this. I mean, and
6 that's totally improper in front of a jury.

7 THE COURT: Okay. We'll talk about how I'm going
8 to correct that since I'm going to remind everybody that you
9 can't testify. And you said his testimony, but we'll talk
10 about how you want me to phrase that so we can get that
11 straight. But your question he's going through the
12 investigation that he did, okay? And he meets with the
13 apartment manager. And he asks the apartment manager what
14 kind of cars are out there. Or something -- wasn't that
15 where we were?

16 MR. LOY: Yes, sir. What kind of cars are
17 generally parked outside of apartment G-4.

18 THE COURT: Okay. Okay. And so -- and the
19 objection is hearsay. He can't answer it at all.

20 MR. JUSTIS: Right. I mean, I think that's clear
21 hearsay offered, you know, I mean, it's the definition of
22 hearsay. I mean, if he just wants to know did she give you
23 an answer, did she tell you what kind are parked out there,
24 then that is not offered for the truth of the matter
25 asserted. But to say what kind of cars, that's clearly

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1 offered for the truth of the matter asserted. It's hearsay
2 and it's forbidden by the rules.

3 MR. LOY: He's already introduced a picture of the
4 Pontiac Grand Am. Said it belongs to my client's mom. Said
5 it was parked in front of the apartment complex that day.
6 Here it is. That's pretty harmless. Second, it's not
7 offered to introduce the -- excuse me -- for the truth of
8 the matter asserted. It's offered to show the bias of this
9 witness. That this witness gets information -- excuse me.
10 This witness. The officer gets information from another
11 witness who says I saw a white Mustang leave that night.
12 Later he puts in his statement in three different places, I
13 saw a white Mustang. Law enforcement writes down a white
14 Mustang. That witness also, although he was hesitate to do
15 it, confirmed at a prior trial he had said a white Mustang
16 all along until this detective approached him with well,
17 could it have been a Pontiac Grand Am? And he said, yeah,
18 that's what I heard. And that was read out of the record
19 from the earlier proceeding. So when the Detective
20 responds, he has the information it's a white Mustang. If
21 they'd found a white Mustang, he'd have been all over that.
22 Instead what he does is he attempts to wrap the facts that
23 he does have into a scenario that doesn't fit. He plants
24 the idea rather than asking what kind of car it was. He
25 wants to know, could it have been a white -- further, the

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1 witness also stated to the police officer that night, I've
2 never seen that car before. I've never seen that car before
3 he's asked. And then the landlord also says ---

4 THE COURT: Now, what you've already asked Mr.
5 Hartman about that.

6 MR. LOY: Right. And I want to ask this witness
7 why if they say -- you know, what he did with this
8 information. He said it was a white Mustang. You talked
9 him into it was a Pontiac Grand Am maybe. He said the car's
10 never parked -- I've never seen the vehicle. I've been
11 living here for several months. And the landlord says
12 they're parked out there all the time. I want to ask him
13 why he just discarded that information.

14 MR. JUSTIS: Your Honor, he did not testify to
15 that in this trial. In a previous trial he did. But Mr.
16 Loy did not ask him that on cross-examination at this trial.
17 So he did not testify to I've never seen the vehicle before
18 or any of that in this trial. That was the previous trial.

19 MR. LOY: No, it is in. The police officer
20 testified that that's what he said when I went through the
21 original responding officer. He told you he'd never seen
22 this car before.

23 THE COURT: Officer Nelson?

24 MR. LOY: Yes.

25 MR. JUSTIS: Officer Williams. In other words

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1 when he first got hearsay into the trial or actually the
2 second time he got hearsay introduced when I objected.

3 THE COURT: Okay.

4 MR. LOY: But the fact is he discards the
5 information.

6 THE COURT: Let me ask you a question. Let me ask
7 the question. Just a second. What's the name of the
8 apartment manager? Does anybody know?

9 MR. JUSTIS: My investigator knows. Your Honor, I
10 can't remember her name.

11 THE COURT: Is the apartment manager's name on
12 this, on the witness list?

13 MR. JUSTIS: No, Your Honor.

14 MR. LOY: No.

15 THE COURT: Okay. And she's not here to testify?

16 MR. LOY: No.

17 THE COURT: Well, you could call her as a witness.

18 MR. LOY: I could.

19 THE COURT: Okay.

20 MR. LOY: What I want to do though is talk about
21 the bias and the prejudice his guy brings to the case.
22 Because he gets information that tends to disprove his case
23 and he disregards it and goes nowhere with it. He gets
24 information directly contra to the car he wants to tie it to
25 and he suggests to a witness maybe it was a Pontiac Grand

1 Am.

2 THE COURT: Okay.

3 MR. LOY: And this is as to his credibility.

4 THE COURT: Well, here's the way I look at it. Is
5 if you go into what she said or -- is the apartment manager
6 a female?

7 MR. JUSTIS: Yes, Your Honor.

8 THE COURT: Okay. All right.

9 MR. JUSTIS: If it's the apartment manager now, and
10 I don't know if it's the same one. The one we've talked to
11 is.

12 THE COURT: Well, I don't know. She's not here or
13 he's not here, okay. He's objecting because it's hearsay.
14 I think it is hearsay, okay. So I'm going to sustain the
15 objection. And you can ask him if they did -- you know,
16 you're good enough to work your way around that as much as
17 you can, okay? You've already gotten the testimony that
18 there was another car that they suggested, okay? You can
19 make all your arguments that you want to.

20 MR. LOY: I understand. I believe that I do.

21 THE COURT: Okay. But you can't ask him what she
22 said about that. You can bring her in.

23 MR. LOY: No, I'm not doing that, Your Honor.

24 THE COURT: Okay.

25 MR. LOY: I haven't subpoenaed her. I'm not going

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1 out to find her this evening.

2 THE COURT: Okay. And I'll give you a chance to --
3 I'm won't bring them out right now so you can think about
4 it.

5 MR. LOY: No, I think I'm okay.

6 THE COURT: Okay. So you ready?

7 MR. LOY: Yes, sir.

8 THE COURT: Okay. Bring them back in.

9 MR. JUSTIS: And, Your Honor, I'll object on the
10 record so you can not his --

11 THE COURT: I thought you'd already objected.

12 MR. JUSTIS: I did.

13 THE COURT: Well, we've got it on the record.

14 MR. JUSTIS: You hadn't ruled on whether or not it
15 was overruled or sustained.

16 THE COURT: Okay.

17 MR. JUSTIS: Just to protect the record.

18 THE COURT: Okay.

19 MR. LOY: I got it.

20 THE COURT: Okay. I think he just wants to hear
21 me sustain an objection on his behalf. That'll be fine.
22 That's all he wants. Have we got that on the -- okay.

23 (Jury in at 3:24 p.m.)

24 THE COURT: All right. Ladies and gentlemen, as
25 you know right before you left out, Mr. Justis objected to a

1 piece of testimony. I sustain the objection and now we're
2 going to continue with the questions.

3 All right.

4 MR. LOY: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 MICHAEL WEAVER - CROSS-EXAMINATION CONTINUED

7 BY MR. LOY:

8 Q So on that first day after the case had been assigned
9 to you and you were out at the apartment complex, you
10 knocked at the door. No one was home. Then you went and
11 spoke with the apartment manager; is that correct?

12 A That's correct.

13 Q And what was the purpose of that conversation?

14 A To find out more about the residents at apartment G-4
15 and also to see if we can get a key.

16 Q To attempt to gain any information that might have been
17 relevant to your investigation?

18 A That's correct.

19 Q As well as to get a key in the event that a search
20 warrant was forthcoming; is that right?

21 A That's correct.

22 Q The conversations that you had with the officer manager
23 whoever she was, you didn't discover anything particularly
24 germane to your investigation. You didn't note anything in
25 your file with great important; is that right?

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1 A Could you repeat the question?

2 Q Okay. The Solicitor would ask you earlier, look at
3 this record. What was interesting about it to you. Look at
4 that record. What was interesting about it to you?

5 A Uh-huh. (Affirmative response)

6 Q The conversation that you had with the landlord or to
7 the office manager wasn't terribly interesting as it relates
8 to your investigation?

9 A No.

10 Q Okay. But it was productive because you got a key to
11 Ms. Tashima's home so you all didn't need to break the door
12 down and that sort of thing. Is that right?

13 A Yes, sir. That's correct.

14 Q And you, as well as Detective Gephardt, served that
15 warrant; is that right?

16 A Yes, sir. There were several of us there but Detective
17 Gephardt was actually the one who obtained the warrant. He
18 was there also.

19 Q And what specifically were you looking for? I know on
20 a search warrant you're required to list what it is you're
21 looking for and it can be fairly general. What was it you
22 were looking for?

23 A I think a bat, red shoes, clothing consistent with what
24 the subject was wearing during the incident.

25 Q And y'all searched the home -- was someone home when

1 you were there?

2 A No, sir. Nobody was home.

3 Q And no one showed up and attempted to interfere with
4 your search or anything of that stripe; is that correct?

5 A That's correct.

6 Q Okay. So y'all searched the apartment and you searched
7 it thoroughly?

8 A Yes, sir.

9 Q And you did find items that at least initially you
10 thought might be important to your investigation; is that
11 right?

12 A Yes, sir. That's correct.

13 Q Okay. And so you seized some tennis shoes that looked
14 like similar tennis shoes to you at the time; is that right?

15 A There were two pairs of red shoes.

16 Q Well, you took them because you thought they might be
17 relevant to the crime itself; is that right?

18 A That's correct. That's correct.

19 Q And a baseball bat because you knew a baseball bat had
20 been involved?

21 A Yes, sir.

22 Q And a bandana; is that right?

23 A That is correct.

24 Q So at that point you left and you were hoping to gather
25 evidence that would be productive in the course of the

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1 prosecution of the case at some point down the road; is that
2 right?

3 A Yes, sir.

4 Q And you were able to determine visually, by matching
5 these things up, that in fact the stuff didn't mean
6 anything?

7 A Yes, sir.

8 Q Okay. And as a matter of fact within two or three days
9 these items were returned to Ms. Jones; is that right?

10 A Yes, that's correct.

11 Q Next in your investigation you interviewed the
12 gentleman who had been upstairs that we talked to earlier;
13 is that right?

14 A Yes, sir. Mr. Hartman.

15 Q And you heard him read by from his file that you had
16 made the suggestion to him -- or the read-back from that
17 transcript, you had made the suggestion to him that perhaps
18 this wasn't a Mustang he ID'ed but a Pontiac. Is that
19 correct?

20 A No, sir. I don't recall ever saying anything about the
21 Pontiac.

22 Q At that point in time you were aware, however, that
23 Tashon's mother drove a Pontiac; is that right?

24 A I think at that time we were aware, yes.

25 Q Then you talked to Traquan and I think you talked about

1 that, at place of employment, at the grocery store?

2 A Yes, sir.

3 Q You got your photo lineups; is that right?

4 A Yes, sir.

5 Q And SLED put those together for you?

6 A That's correct.

7 Q And you visited Ms. Pecorora at the hospital and you
8 presented her with those photo lineups and said something to
9 the effect, I know there was a mask. You know, I know it
10 might be hard, but we want to touch all the bases. Is there
11 any chance you can ID the guy. Do you see the person who
12 did this? Something to that effect?

13 A We met with her in the emergency room. We had a photo
14 disclaimer form to anybody we show a photo lineup to. And
15 which we showed her the photo lineup and she was not able to
16 identify anyone as being the suspect.

17 Q Right. And what she basically said was I can't say
18 it's them. I can't say it's not them. I just don't know?

19 A That's correct.

20 Q Thank you. At that point, separate and apart from
21 these phone records that you got subsequent to the
22 affidavit, I believe -- excuse me -- subsequent to the
23 arrest warrant, your investigation is sort of petering out.
24 I mean, you've talked to all the witnesses. The physical
25 evidence has been gathered. The search warrant has been

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1 executed. You're still looking for something else, though.
2 Some way to tie it all together If you could find it; are
3 you not?

4 A Yes, sir. I can explain further. Still waiting for
5 DNA records to come back. Still -- investigations are
6 fluid. They take a lot of time. You pursue as many avenues
7 as you can to get any type, any kind of leads. The Facebook
8 stuff wasn't gathered until later on in the investigation.
9 The DNA didn't come about until later. And it takes time
10 for the phone records to get in as well.

11 Q And also during the course of your investigation, it
12 occurred to you that --

13 MR. LOY: You know, I don't have any more
14 questions right now. Thank you, Your Honor.

15 THE COURT: All right. Anything on redirect?

16 MR. JUSTIS: Yes, Your Honor.

17 MICHAEL WEAVER - REDIRECT EXAMINATION

18 BY MR. JUSTIS:

19 Q Detective, Mr. Loy asked you about the distance, I
20 guess, to the house, to the mama's house, where it was in
21 relation to where Somerset is. Could you kind of show on
22 this map, describe on this map a little bit more?

23 THE COURT: Hold on one second. Let him see it.

24 MR. JUSTIS: Yeah. I guess that's --

25 BY MR. JUSTIS:

1 Q Well, one question I have for you is where was the
2 incident location; could you point that out?

3 A The incident location happened right here.

4 Q And the label that you have that says Defendant lives.
5 I think you testified that's Somerset Apartments?

6 A That's Somerset Apartments.

7 Q And how long does it take to go from the Kangaroo to
8 Somerset Apartments by foot?

9 A I mean, we walked that in -- thirty seconds to a minute
10 and a half. It's a short walk. We've got numerous foot
11 pursuits in that area before when I was on patrol.

12 Q Okay. And I think you testified that it's about two or
13 three miles maybe to the mother's home?

14 A Approximately, I would say.

15 Q Thank you. At anytime during your investigation did
16 you have an opportunity to do any research on Mustangs?

17 A I looked at the general body styles.

18 MR. JUSTIS: Can I get this marked.

19 THE COURT: Hold on one second.

20 (State's Exhibit No. 42, photo of
21 Mustang, was marked for ID.)

22 BY MR. JUSTIS:

23 Q I'm showing you what's been marked as State's 42. Do
24 you recognize what that is a photograph of?

25 A A photograph of a Mustang.

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1 Q Is that a fair and accurate representation of the
2 photograph you found in your research on Mustangs?

3 A One of many. Yes, sir.

4 MR. JUSTIS: The State would offer State's 42 into
5 evidence.

6 MR. LOY: No objection.

7 THE COURT: Okay. In evidence without objection.

8 (State's Exhibit No. 42, photo of
9 Mustang, was marked and entered.)

10 BY MR. JUSTIS:

11 Q This is the photograph of a Mustang you pulled up?

12 A One of the ones. I think so.

13 Q And just to recap, this was State's 20. This was
14 actually Ms. Hurell's car, a photograph you identified
15 earlier?

16 A That's correct.

17 Q And what's that thing on the back, above the trunk?

18 A That looks like a spoiler.

19 Q And one last question. I think Mr. Loy asked you about
20 the photo lineups. And you testified that she recognized
21 Tramaine in one of the photo lineups?

22 A That's correct.

23 Q And I think you testified that she recognized him as
24 someone she knew from the store, coming in the store?

25 A Yes, sir. A regular customer.

1 Q Did she say anything in regards to him being the person
2 or not being the person?

3 A She said it didn't match with the physical description
4 and it didn't sound like him. And I know from personally
5 speaking with him, he's tall and lanky. Has a very high --
6 a higher voice. It didn't sound anything like the subject
7 in this incident.

8 Q Okay. Thank you.

9 MR. JUSTIS: No further questions.

10 THE COURT: Anything on recross?

11 MR. LOY: Yes, sir. Just briefly, Your Honor.

12 MICHAEL WEAVER -- RECROSS EXAMINATION

13 BY MR. LOY:

14 Q Your testimony earlier when I was asking you questions
15 about the photo lineup that the Solicitor just followed-up
16 with, I asked you -- she looked at them. She said I can't
17 say it's him. I can't say it's not him. Like I just can't
18 say from here; is that correct?

19 A That's correct.

20 Q Okay. So when the Solicitor just now asked you it
21 seems it was a difference answer. She was able to say well,
22 it's not him. It's not one of these?

23 A Well, as far as Tashon. Tramaine, she identified as
24 being at the gas station earlier that night.

25 Q Right. My question for you is, when you showed her --

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1 not what you heard today but when you showed her the photo
2 lineup, did she say I can rule any of them out? I can rule
3 any of them in or did she just say I just can't say?

4 A No, she couldn't identify a suspect out of them.

5 Q And she couldn't discount any of them either?

6 A Right. Correct.

7 Q Thank you.

8 MR. LOY: And I have no more questions.

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

11 Is the State ready to call it's next witness?

12 MR. JUSTIS: May we approach, Your Honor.

13 THE COURT: Sure.

14 (Off the record bench conference with counsel and the
15 Court.)

16 THE COURT: All right. Ladies and gentlemen, I
17 realize it's early in the day but because of just trying to
18 get the right witnesses in at the right time and things like
19 that. And we've actually -- the attorneys have done a great
20 job of moving the case along. So we're a little ahead of
21 schedule. And so what we're going to do is we're going to
22 take a break for today. I'll get you back tomorrow morning
23 at 9:30. I have been told by the attorneys I think we will
24 be able to get all of the testimony in at least through the
25 morning. And so we should be able to -- after lunch today

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1 the hope is we will be able to charge -- let them do closing
2 arguments and I'll charge you with the law. And some time
3 tomorrow afternoon you hopefully will be able to begin your
4 deliberations.

5 Now, having said that. Let me remind you just a couple
6 of things. You can't talk among yourselves or anybody else
7 about this case. You can't do any kind of research on line,
8 read anything about this case, anything like that. And so
9 y'all get to go home early today. It's a short work day.
10 And I'll see y'all back at 9:30 and hopefully it's not going
11 to snow or do anything like that and postpone anything, but
12 that's what all our hopes are. Okay. Y'all did a good job.
13 And I notice y'all got the TVs down. Y'all got the TVs down
14 good. As soon as they move toward that monitor y'all are
15 ready. Y'all go home and get a good nights sleep and I'll
16 see y'all tomorrow morning at 9:30, okay? Thank y'all.

17 (Jury out at 3:44 p.m.)

18 THE COURT: All right. Gentlemen, before we
19 break, just so we'll be ready to go, Judge Murphy was kind
20 enough to give me her charge, correct?

21 LAW CLERK: Uh-huh. (Affirmative response)

22 THE COURT: We got it?

23 LAW CLERK: Uh-huh. (Affirmative response)

24 THE COURT: So I'll just change it the way I like
25 it. You know, unless there's something new that's going to

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1 be added or detracted. So just need to think about that. I
2 think y'all have got the charge in your transcript.

3 MR. LOY: I think the charge would probably be the
4 same.

5 THE COURT: Okay. But if there's something
6 different, y'all need to think about it so I will know ahead
7 of time, okay? Sir?

8 MR. JUSTIS: That's fine, Your Honor.

9 THE COURT: Okay. All right.

10 All right. We'll see y'all tomorrow morning at 9:30.

11 MR. LOY: Thank you, Your Honor.

12 THE COURT: Okay. All right. Thank y'all.

13 (Court in recess 2/9/16 at 3:45

14 p.m.)
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1 (Court in session 2/10/16 at 10:00
2 a.m.

3 THE COURT: All right. Now, we're back on the
4 record. Mr. Justis, would you mind standing. You're
5 getting ready to call -- your next witness that you're going
6 to call is who?

7 MR. JUSTIS: Is Shelby Bradt.

8 THE COURT: Okay. And it's my understanding Ms.
9 Bradt's testimony is something to the effect she reviewed
10 the video and that she is going to exclude -- is it
11 Tramaine?

12 MR. JUSTIS: Yes, Your Honor. She actually dated
13 -- at the time of this incident and for a period of time, a
14 short period of time after this time, prior to -- she was
15 dating Tramaine Hurell.

16 THE COURT: Okay.

17 MR. JUSTIS: They were boyfriend and girlfriend
18 and she viewed the -- she's going to video and in her
19 opinion the physical statute does not match Tramaine and
20 also the voice does not match Tramaine.

21 THE COURT: Okay. All right. And Mr. Loy, you
22 object to her testimony is my understanding?

23 MR. LOY: Yes, sir.

24 THE COURT: Okay. And I want you to put your
25 objection on the record, please, sir?

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1 MR. LOY: Thank you. Prior to doing that, Your
2 Honor, can I inquire of the State as to whether -- because I
3 want to make my objection complete.

4 THE COURT: Oh, yeah. That's fine. No, please.

5 MR. LOY: Will that be the entirety of her
6 testimony?

7 MR. JUSTIS: Let me -- make sure.

8 THE COURT: That's a good point.

9 MR. LOY: Well, I just don't want to get midway
10 through it and --

11 THE COURT: And then come up with something else.

12 MR. JUSTIS: Obviously, I was going to establish,
13 you know, some foundation. How she knows, essentially knows
14 the family. It would be -- it would probably be her
15 testimony from what I understand that she had met Tashon a
16 couple of times but did not know him, but had not spent much
17 time around Tashon. She's no longer dating Mr. Tramaine
18 Hurell. She'll watch the video. She'll say that. And she
19 would also testify that family picture that was entered into
20 evidence yesterday by the detective. She was actually
21 present when that happened. So she's just going to
22 establish when and where that picture was taken.

23 THE COURT: And that's it?

24 MR. JUSTIS: And she believes she might even have
25 been the person that took the picture. She said I think I

1 might have took it she said, but I know I was there.

2 THE COURT: Okay.

3 MR. LOY: To the balance of that, if Your Honor's
4 allowing the testimony and I understand the Court's
5 preemptive ruling, I don't have a -- the other stuff, I
6 mean, I took the photograph or whatever, I don't have
7 objections to that. As far as her coming in, watching the
8 videotape and saying I know one of these brothers, Tramaine.
9 I've watched this videotape. And in my opinion, that's not
10 him. I think it's incorrect. I think it's improper. It's
11 just opinion testimony, not an expert person offering their
12 expert opinion or a lay person offering the opinion, the
13 person was happy, the person was sad, something that they
14 certainly are entitled to do in my understanding. I know
15 the Court is looking -- I think it's the Fripp case ---

16 THE COURT: Yes, sir.

17 MR. LOY: And we've discussed that at bar. And
18 Fripp, and I don't have a copy of it. And, again, I'm a
19 little surprised by the testimony. As the Court's aware,
20 it's a retrial and this wasn't offered in the first trial.
21 But it appears to me, I believe, it's the case, that in
22 Fripp there was a videotape. The videotape was somewhat
23 blurry. And it would be hard for a jury to watch the
24 videotape and identify the person who was on the videotape
25 because of the poor quality. That's what they're saying.

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1 It's not really a first class video. At which pont some
2 friends or family members were allowed to come in and say I
3 recognize that person. I know that person. This is a
4 person that I am familiar with. In this case it's not an
5 issue with the videotape. The videotape is fine. I don't
6 think anyone is more qualified than the jury to watch the
7 videotape and see whether or not they can match that
8 videotape up to either the Defendant, the Defendant's
9 brother, his family members, anybody else in the community
10 or otherwise. The fact is with this videotape, and the
11 pictures are into evidence, nobody can look at it. It's not
12 that the quality of the video is bad and someone needs to
13 come in and explain it away and say well, I know these
14 people. And this is my brother. I know a photo of my
15 brother. Even if it's blurry, I can spot it. This is
16 somebody coming in and saying I once dated this guy. Just a
17 person well, I once dated a guy and the person who has
18 robbed the store and that's not him. But it's not a
19 question of the video itself being court quality. It's just
20 a question of somebody coming in and saying in my opinion
21 the masked man was not Tramaine. I also don't know that the
22 State is entitled to -- by way of attempting to prove the
23 guilt of the Defendant, to simultaneously attempt to
24 disprove the guilt of other folks. Mr. Tramaine Hurell is
25 not on trial here today. He's not at jeopardy here today.

1 I think it confuses the issue for the jury. And I don't
2 think whether this lady says I don't think that's Tramaine
3 is relevant to whether or not the State can produce evidence
4 of the guilty -- the Defendant is, in fact, guilty.

5 So I would also ask to suppress the evidence based on
6 my argument that the evidence itself is more prejudicial
7 than probative and not relevant to show the guilt of the
8 Defendant. They can line people up for days to come in and
9 say well, I know somebody else who lived in Somerset
10 Apartments and it's not him. And I know somebody else who
11 used to be over at the house a lot and I don't think that's
12 him. I don't think that's a proper trial procedure so I'd
13 ask the Court to keep it out.

14 THE COURT: Okay. Thank you, sir. And just for
15 the record on the State versus Fripp case, it was 2012 Court
16 of Appeals case 396 S.C. 434. And in that case the reason
17 they allowed -- in my reading of it is that they allowed the
18 testimony of a lay witness to help identify people on the
19 video. And this was the Defendant they were trying. Not
20 the non-suspect. But it was the fact that the video was not
21 crystal clear and that the suspect sought to obscure his
22 identity by wearing a hood and his jacket up. So I feel
23 like that kind of falls in line with this one. And
24 regarding your argument concerning the fact that they can --
25 the State needed to -- doesn't need to prove that Tramaine

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1 did it. I believe since the apartment is -- as I recall,
2 it's an apartment where all three of the young men could be
3 living. And since it's a circumstantial evidence case, I
4 think the State almost has to try and prove who else in the
5 house would not be a victim. And we've already had
6 testimony that somebody it wasn't Tramaine because Tramaine
7 is taller and his voice is different according to the
8 testimony I heard.

9 So for those reasons I'm going to let them testify but
10 I'm going to note your objection so that'll be preserved on
11 the record because it is a Court of Appeals case from 2012.

12 MR. LOY: Thank you, Your Honor.

13 THE COURT: Yes, sir. Thank you.

14 All right. You ready to call your -- I mean is
15 everybody ready to go?

16 MR. JUSTIS: Yes. And let me add one other thing
17 that I have on here. I am going to actually show her a
18 still shot and ask her if she had ever seen Tramaine wearing
19 that Tasmanian Devil sweatshirt or a sweatshirt that looked
20 like that. So that's one other question I will ask, too.

21 MR. LOY: If she's on the stand I think you can
22 ask --

23 MR. JUSTIS: I didn't want to ask something that I
24 didn't say I was going to ask.

25 THE COURT: Okay. All right. Bring the jury in.

MS. BRADT: Okay.

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1 THE COURT: Very good. All right. Mr. Justis.

2 MR. JUSTIS: Thank you, Your Honor, may it please
3 the Court?

4 THE COURT: Yes, sir.

5 SHELBY BRADT - DIRECT EXAMINATION

6 BY MR. JUSTIS:

7 Q Good morning, Ms. Bradt?

8 A Good morning.

9 Q How do you know the Defendant Tashon Hurell?

10 A I used to date his brother, Tramaine.

11 Q And how many times would you say you met Tashon?

12 A Four or five.

13 Q And were you dating back in April of 2004 [sic] dating
14 Tramaine? April of 2014. I'm sorry.

15 A Yes, I believe so.

16 Q Are you still dating?

17 A No.

18 Q Do you know approximately how long you dated for?

19 A Three or four months.

20 Q And where did you work back then?

21 A Captain D's.

22 Q And do you know if Tramaine worked back then?

23 A Yes, he did.

24 Q And where did he work?

25 A Captain D's.

1 Q I'm showing you what's been entered into evidence as
2 State's Exhibit No. 39. Do you recognize that?

3 A Yes, I do.

4 Q And what is that a photograph of?

5 A The family. It's Tashon, his mom, Traquan, Tramaine,
6 Tashima and their other sister.

7 Q Were you present for that photograph?

8 A Yes, I was.

9 Q And when was that photograph taken?

10 A At Traquan's graduation.

11 Q Okay. And do you remember when he graduated?

12 A The summer of 2014, I believe.

13 Q And do you know the physical location where that is?

14 A That was at a hotel next to the coliseum. I don't
15 remember the name of it.

16 Q I'm showing you what's been marked as State's 22. Take
17 a look at that photograph, paying particular attention to
18 the shirt or the sweatshirt that that individual is wearing.
19 Do you recognize that sweatshirt from anywhere?

20 A No, sir.

21 Q Have you ever seen Tramaine with that sweatshirt?

22 A No, sir.

23 Q Thank you. At this time I'm going to show you a video
24 clip, State's 24. And I'm going to ask you to watch this
25 videotape. Don't make any comments. Just watch and listen

(Portion of State's Exhibit No. 24
was published for the witness and the jury)

Q Shelby, do you recognize the individual in that video?

Q Do you recognize the voice in that video?

Q In your opinion, does that individual sound like Tramaine?

Q What about a physical description?

Q Thank you.

THE COURT: Mr. Loy, anything on cross?

THE COURT: You may step down Ms. Bradt.

MR. JUSTIS: The State is, Your Honor.

MR. JUSTIS: At this time the State would call

(WHEREUPON, Tashima Jones was duly

1 sworn)

2 THE COURT: Ms. Jones, you're already speaking
3 loudly enough. You keep talking that way, okay?

4 MS. JONES: Okay.

5 THE COURT: Thank you, ma'am.

6 All right. Mr. Justis.

7 MR. JUSTIS: Thank you, Your Honor and may it
8 please the Court?

9 THE COURT: Yes, sir.

10 TASHIMA JONES - DIRECT EXAMINATION

11 BY MR. JUSTIS:

12 Q Ms. Jones, do you know the Defendant, Tashon Hurell?

13 A Yes, I do.

14 Q And how do you know Tashon?

15 A He is my brother.

16 Q And where did you live back in April of 2014?

17 A 1225 Boone Hill Road, Apartment G-4, Summerville.

18 Q And who lived with you?

19 A At that time my brother Traquan and my son.

20 Q In April of 2014 did you have an opportunity to meet
21 with the police one evening?

22 A Yes.

23 Q Could you tell us about what happened that evening,
24 what you remember?

25 A I remember being woken up to a bang on a door. And I

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1 look out the window and seen lights and I was asked if they
2 could come in. They said a robbery had just taken place at
3 the Kangaroo. And the dogs pointed down to that direction
4 and that it was told that someone was on my porch.

5 Q And what did they do next?

6 A They said, they stated they found a dollar and they
7 asked if they could -- if anybody have came there or who
8 else was home. And I told them my son and my brother. They
9 asked if anybody had came in or was it possible that I
10 opened my door. And I stated, no. We were both sleeping.
11 Others are sleeping. And they asked if they could come in.
12 And I gave them a chance to come in and told them they could
13 search if they would like.

14 Q Okay. And they did search?

15 A Yes, they did.

16 Q And you told them that no one had been there that
17 night?

18 A Yes.

19 Q Had anybody been there earlier in the day?

20 A I don't recall. I don't even remember if I worked that
21 day or not.

22 Q Normally -- do you have like a set work schedule?

23 A At that time I did, yes.

24 Q Okay. And what was your work schedule back then?

25 A 5:00 a.m. to 6:30, 6:00 p.m.

1 Q Where did you work?

2 A For the Department of Juvenile Justice.

3 Q Are you still working there?

4 A Yes, I am.

5 Q How long have you worked for DJJ?

6 A August will be three years.

7 Q All right. Let me turn your attention back to that
8 night. Did you call anyone on the phone that evening while
9 the police were there?

10 A I called my mom and let her know what was going on.

11 Q And where does your mom live?

12 A [REDACTED] Lane.

13 Q Where was your brother Tashon living at that time?

14 A He was staying with a girlfriend but he was at my
15 mom's, in between the girlfriend and my mom's.

16 Q Okay. And what was the girlfriend's name?

17 A I don't know none of my brother friend's name, sorry.

18 Q And you said he was staying with the girlfriend and
19 your mom?

20 A At the time he was at both. I don't know. He was at
21 my mom's. He was technically staying at my mom's, but he
22 wasn't there at the girlfriend's, so --

23 Q Did he ever stay at your house?

24 A No.

25 Q Did he ever come to your house?

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1 A Of course.

2 Q Do you know what city this girlfriend lived in?

3 A Summerville, I guess.

4 Q Prior to this incident happening that night, the
5 incident happens that night, when is the last time you had
6 seen your brother prior to that?

7 A Probably earlier that day, before -- after I got off
8 work or the day before. I do not remember.

9 Q How often would you see your brother back then?

10 A Probably once a day or every other day.

11 Q Would he come see you or would you go to see him?

12 A It depends on the schedule, what was going on.

13 Q Did he have a key to your apartment?

14 A No.

15 Q Who had a key to your apartment?

16 A Just those that lived there and my mom.

17 Q So your mom, Traquan and yourself?

18 A Yes.

19 Q There were three keys. How many keys were you issued
20 when you moved in the apartment?

21 A I was issued two.

22 Q Did you make another copy. Is that where you got the
23 third key from?

24 A For my sitter, which is my mom. Yes.

25 Q Did Tashon own a car?

1 A No.

2 Q And did you have an opportunity to go to the police
3 station several days after this incident?

4 A Yes.

5 Q And for what purpose did you go to the police station?

6 A Obviously, they came -- after I gave them permission to
7 search my apartment they came -- they took belongings from
8 my apartment.

9 Q Okay. And did you get those belongings back?

10 A Yes.

11 Q Did you have an opportunity to write a statement as far
12 as what you told police that night?

13 A No.

14 Q You didn't have an opportunity or you didn't write a
15 statement?

16 A It wasn't a statement needed. I don't remember them
17 asking me if I wanted to write a statement that night.

18 Q And where did Tashon work back in April of 2014?

19 A I don't recall him working.

20 Q I show you what's been marked as State's 22. Have you
21 ever seen that shirt before?

22 A No, sir.

23 Q You've never see anybody with that shirt?

24 A No.

25 Q I'm showing you State's 39. Do you recognize this

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1 picture?

2 A Yes.

3 Q And what is that a picture of?

4 A A family picture.

5 Q Okay. Do you know when that was taken?

6 A May or June of 2014, my brother graduation.

7 Q Okay. And which brother?

8 A Traquan.

9 Q Is that him in the middle with the --

10 A Yes, with the cap.

11 Q Cap and gown?

12 A Yes.

13 Q This was the brother that lived with you?

14 A Yes.

15 MR. JUSTIS: I beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 BY MR. JUSTIS:

18 Q Ms. Jones, were you aware that Tashon had listed your
19 address as his address with the department of motor
20 vehicles?

21 A Prior to him getting out from serving some time, yes, I
22 am. Because at that time my mom was still there.

23 Q So this was a while back he had used your address?

24 A Yes.

25 MR. LOY: Your Honor, I think we have a matter of

1 law we need to address.

2 THE COURT: Okay. All right. Ladies and
3 gentlemen, you know, that's the signal for y'all to go back
4 into the jury room. And y'all can't talk about testimony
5 you've heard so far. We'll take a short break and be right
6 back.

7 (Jury out at 10:27 a.m.)

8 THE COURT: Mr. Loy.

9 MR. LOY: Your Honor, at this point in time I've
10 got to move the Court for a mistrial. The State's witness
11 is on the stand undergoing some pretty extensive direct
12 examination. On direct, he keeps asking about an address
13 for the Defendant. Her response in the presence of the jury
14 was yes, he had used that address once he got back and got
15 out from having doing some time or words to that effect and
16 we can have those read back.

17 Your Honor, I think commenting a prior conviction, not
18 to mention a prior period of imprisonment on the part of the
19 Defendant is clearly prejudicial and I'd ask the Court to
20 mistry the case.

21 THE COURT: Mr. Justis.

22 MR. JUSTIS: And, Your Honor, my question simply
23 was -- to her was were you aware that he used your address.

24 THE COURT: Yeah. I understand what your question
25 was.

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1 MR. JUSTIS: In no way did that elicit the
2 response that she gave.

3 THE COURT: No, I understand you didn't do it.
4 You didn't do that. But I -- I'm afraid she said -- she did
5 respond that way. Is that correct?

6 MR. JUSTIS: She did.

7 THE COURT: Is that correct?

8 MR. JUSTIS: That's correct, Your Honor.

9 THE COURT: Okay. All right.

10 MR. LOY: I think her actual response can be read
11 from the court reporter.

12 THE COURT: Can you pull that back up?

13 COURT REPORTER: After serving time.

14 THE COURT: After serving time?

15 COURT REPORTER: Yes, sir.

16 THE COURT: Okay. All right.

17 COURT REPORTER: Exactly, she said, after serving
18 time and that her mom was still there.

19 THE COURT: Okay. Yes, sir.

20 MR. LOY: If Your Honor would indulge me, I have
21 made this motion and before you rule on it or if you're
22 going to study the matter for a moment, I would like to
23 refer with my client. I know he's waited a long time. He's
24 in jail. And I'd like to get his input in this and explain
25 to him what it is I'm doing here. I haven't had the chance

to confer with him and I think it's a pretty major point in our trial.

THE COURT: Yeah. It is. It is. And, you know, talk to him and y'all come back. We'll take about a -- I'll give you about ten minutes, okay. I don't think it will but I'm going to go to send him downstairs and actually get together. I'll be back up shortly.

THE COURT: Okay. And you let me know whether you want to continue with that motion or not.

MR. LOY: I will, Your Honor.

THE COURT: Okay. All right. Thank you, sir.

(Mr. Loy and his client, Tashon Hurrell exit the courtroom.)

THE COURT: All right. Ms. Jones --

MS. JONES: Yes, sir.

THE COURT: -- okay, we're going to take a break.

MS. JONES: Uh-huh. (Affirmative response.)

THE COURT: You can get up and walk around but you cannot talk to anybody about your testimony. You just need to understand that.

MS. JONES: Yes, sir.

THE COURT: Okay.

MS. JONES: Okay.

THE COURT: All right. Thank you, ma'am.

MS. JONES: Thank you.

(Court in recess at 10:29 a.m.)

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1 I made a motion for a mistrial. And did you understand
2 what was going on in the courtroom? What I was doing?

3 TASHON HURELL: Yes, sir.

4 MR. LOY: Subsequent to that, you heard me have an
5 exchange with the Judge and request time to come down and
6 talk with you about this, which I consider to be a pretty
7 major point in your trial. And do you recall that also?

8 TASHON HURELL: Yes.

9 MR. LOY: And you and I then went downstairs where
10 we were allowed to meet unescorted, unaccompanied by anyone
11 else in private and discuss this recent development. Is
12 that your recollection also?

13 TASHON HURELL: Correct.

14 MR. LOY: And during the course of that
15 conversation I tried to answer questions that you had. I
16 had to address any concerns that you had and we had the
17 opportunity to discuss both the perils or the problems that
18 we might face with a retrial as well as the problems we
19 might face going forward. Is that your understanding also?

20 TASHON HURELL: Yes, sir.

21 MR. LOY: And I told you in our conversations that
22 really under the circumstances both were strategically
23 defensible but ultimately it would be you who remained in
24 jail waiting on your next trial at least, unless your bond
25 situation changed dramatically. As well as other

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1 circumstances, other strategic things that we discussed as
2 it related to your case. Is all of this correct?

3 TASHON HURELL: Correct.

4 MR. LOY: And I'm standing here now telling the
5 Judge that we want to withdraw that motion for a mistrial
6 and go forward with the trial. And it's a decision that's
7 been reached by yourself?

8 TASHON HURELL: Right.

9 MR. LOY: Is all of this correct?

10 TASHON HURELL: Yes.

11 MR. LOY: Once we put it back and the jury starts
12 going, it gets waived, it's over. We don't get to renew it
13 down the road. I mean, this is our case for a mistrial or
14 at least to request a mistrial. Do you understand that?

15 TASHON HURELL: Yes, sir.

16 MR. LOY: All right. The Judge has been
17 accommodating to us so far and have ever reason to think he
18 would be further. Do you have more questions for me? Do we
19 need to sit down and talk about this any further, that is
20 the motion for a mistrial?

21 TASHON HURELL: No.

22 MR. LOY: Have you understood all of this? Don't
23 say you have if you don't.

24 TASHON HURELL: No, I understand.

25 MR. LOY: Thank you, Your Honor.

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THE COURT: Okay. And Mr. Hurell, Mr. Hurell it is your request that counsel, that Mr. Loy withdraw his motion; is that correct?

TASHON HURELL: Yes, sir.

THE COURT: And he's doing what you want him to do?

TASHON HURELL: Yes, sir.

THE COURT: And you understand all the implications from that?

TASHON HURELL: Yes, sir.

THE COURT: Okay. All right. Thank you, sir.

All right. I would call -- Ms. Jones, you can come on back, get back on the stand.

(Tashima Jones comes forward)

THE COURT: Okay. Thank you, ma'am. If you would just get back -- I was going to get you back on the stand.

(Tashima Jones takes the stand)

THE COURT: And I'll go ahead and bring the jury back out. Is that okay, Mr. Justis? Is the State ready?

MR. JUSTIS: Yes, sir.

THE COURT: Is the Defense ready?

MR. LOY: Yes, sir.

THE COURT: Okay. You can bring the jury back out.

MR. LOY: Your Honor.

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1 THE COURT: Yes, sir.

2 MR. LOY: Can we hang on.

3 THE COURT: Wait, whoa, whoa, whoa.

4 THE BAILIFF: Wait, whoa, whoa.

5 MR. LOY: My client's asked, me out of an
6 abundance of caution, if someone could caution the sister as
7 to what the problem was and not to pursue that line.

8 THE COURT: Oh, good point. Thank you. I will do
9 that.

10 Is the door still closed?

11 THE CLERK: Uh-huh. (Affirmative response)

12 THE COURT: Okay.

13 Ms. Jones, the issue that came up is when you mentioned
14 that Tashon had served time before?

15 MS. JONES: Uh-huh. (Affirmative response)

16 THE COURT: You can't make any comments or
17 anything about his prior time service or like that. That's
18 prejudicial to your brother.

19 MS. JONES: All right.

20 THE COURT: Okay. And so I want you to avoid
21 interjecting anything about -- I don't know about the prior
22 service. The jury doesn't need to know about anything
23 prior.

24 MS. JONES: All right.

25 THE COURT: Okay?

1 MS. JONES: Yes, sir.

2 THE COURT: Or if there were any charges or
3 anything like that. Just don't mention any criminal
4 activity or punishments, okay?

5 MS. JONES: Yes.

6 THE COURT: Any questions about that?

7 MS. JONES: No, sir.

8 THE COURT: Okay. All right. Thank you, ma'am.

9 Okay. Bring the jury --

10 MR. WARD: Your Honor, I'm sorry. One more.

11 THE COURT: Hang on. We got --

12 MR. WARD: Just out of an abundance if Your Honor
13 would be agreeable to, if we could bring both brothers
14 Traquan and Tramaine in and have you give them the same
15 instruction about not talking about any prior record.

16 THE COURT: I will be happy to, if they're --
17 because you're going to call them next?

18 MR. WARD: Yes, sir.

19 THE COURT: Okay. And that way we don't have to
20 send the jury out.

21 (Traquan Hurell and Tramaine Hurell
22 enter courtroom)

23 THE COURT: Oh, I'm sorry. I didn't see you --

24 MR. WARD: I didn't want to interrupt you, Judge.

25 THE COURT: Gentlemen, can y'all come up just step

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1 that correct?

2 TRAQUAN HURELL: Yes, sir.

3 TRAMAINÉ HURELL: Yes, sir.

4 THE COURT: Okay. So I just wanted to caution
5 y'all, remind y'all when y'all come back in here and start
6 testifying, don't make any comments at all about whether or
7 not he was ever charged with a crime or whether or not he
8 ever served any time. Do y'all both understand?

9 TRAQUAN HURELL: Yes, sir.

10 TRAMAINÉ HURELL: Yes, sir.

11 THE COURT: Okay. I'm going to let y'all go back
12 out now and wait until you get called.

13 TRAQUAN HURELL: All right.

14 THE COURT: Okay. Thank y'all.

15 TRAQUAN HURELL: No, problem.

16 (Traquan Hurell and Tramaine Hurell
17 exit the courtroom)

18 THE COURT: Okay. Let's see. Detective Weaver,
19 you are the only one that hadn't stood up to remind me to do
20 something else? You got anything?

21 MR. WEAVER: No, Your Honor.

22 THE COURT: Okay. Good. So we've -- We're ready?

23 MR. LOY: Yes, sir.

24 MR. JUSTIS: Yes, sir.

25 THE COURT: All right. Making sure on that count.

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1 All right.

2 (Jury in at 11:13 a.m.)

3 THE COURT: All right, ladies and gentlemen, y'all
4 will notice that now there's no glare, I hope. It may still
5 be a problem but we'll -- if we have to, we can close those
6 other two blinds. And actually having those things down
7 might actually keep a little warmer over there. I don't
8 know we'll find out about that, too.

9 All right. We are going to continue with the
10 examination of Ms. Jones.

11 Mr. Justis.

12 MR. JUSTIS: The State has no further questions.

13 THE COURT: All right. Mr. Loy, anything on
14 cross?

15 MR. LOY: One moment, Your Honor.

16 THE COURT: Okay.

17 TASHIMA JONES - CROSS-EXAMINATION

18 BY MR. LOY:

19 Q On the occasion that law enforcement came to your home
20 when they found that dollar bill or said they'd found a
21 dollar bill nearby?

22 A Yes, sir.

23 Q You were at home. Your brother was at home with you
24 also?

25 A You're asking where we or was we home?

1 Q I'm asking you -- well, you were at home obviously?

2 A Yes. We were asleep. Yes, sir.

3 Q Okay. One of your brothers was home; is that right?

4 A Yes.

5 Q Who was that?

6 A Traquan.

7 Q Traquan?

8 A Yes.

9 Q And I believe you said your son was present also?

10 A Yes.

11 Q How old was he at that point in time?

12 A Three.

13 Q About three years old?

14 A Yes.

15 Q Okay. Thank you. And he was asleep also?

16 A Yes, sir.

17 Q All right. Thank you.

18 MR. LOY: I have no more questions.

19 MS. JONES: Your Honor, may I answer to one thing?

20 THE COURT: No. If he didn't ask it.

21 MS. JONES: All right.

22 THE COURT: Okay. All right.

23 Anything on redirect?

24 MR. JUSTIS: No, Your Honor.

25 THE COURT: Okay. Thank you, ma'am.

State v Hurell	Traguan Hurell - Direct	2/10/16	231

MS. JONES: May I just stay in the courtroom? You
mind if I just stay in the courtroom?

THE COURT: Now you can.

MR. JUSTIS: Yes, sir.

THE COURT: Okay. Thank you, Ms. Jones.

All right. Is the State prepared to call it's witness.

MR. JUSTIS: The State calls Traquan Hurell.

THE COURT: Okay.

(WHEREUPON, Traquan Hurell was duly sworn)

THE COURT: All right. Mr. Hurell, you will need to speak up while you're answering your questions, okay?

TRAQUAN HURELL: All right.

THE COURT: A little bit louder?

TRAQUAN HURELL: All right.

THE COURT: Very good. Now you got it. Okay.

All right. Mr. Justis, your witness.

MR. JUSTIS: Thank you, Your Honor, may it please
the Court.

TRAQUAN HURELL - DIRECT EXAMINATION

BY MR. JUSTIS:

Q Traquan, back in April of 2014, did you have an opportunity to talk to a couple of detectives at your work, Bi-Lo, where you work?

A I did.

State v Hurell Traquan Hurell - Direct 2/10/16 232

1 Q And what did you tell those detectives?

2 A What do you mean?

3 Q Did they ask you any questions? Did they show you
4 anything?

5 A Yes, sir, they did. They both showed me a picture of a
6 guy at the gas station. And they asked me if I knew who
7 this person. They asked me if I knew what kind of hoodie he
8 was wearing? They asked me questions concerning my
9 brothers. And they asked me questions about what type shoes
10 that I wear.

11 Q Okay. And what did you tell them?

12 A I told them -- at first they ask me did I recognize the
13 person in this picture? I told them no, I did not. They
14 asked me do I recognize the hoodie that they're wearing. I
15 said, yes. They said what type of hoodie he was wearing?
16 (inaudible) They said how do you know it's (inaudible). I
17 said because that's the Tasmanian Devil on the front of the
18 hoodie. And then they asked me who makes the hoodie. I
19 said Warner Brothers. They asked me if I owned a hoodie
20 like that? I told them no. And then they asked me if I had
21 any pairs of all red sneakers? I said no, I do not. They
22 said which one of your brothers own a red pair of sneakers?
23 I said I do not know. I don't go in their closets. And
24 they proceeded to try and ask me another question and I told
25 them I was not speaking to them. Have a good day.

3 A No, I do not. I never said that.

6 || A No, I do not. I never said that.

8 THE COURT: Anything on cross-examination?

10 THE COURT: Okay.

12 BY MR. LOY:

16 A No. I know don't know anyone who has one.

18 THE COURT: Anything on redirect?

20 THE COURT: Thank you, Mr. Hurell. You may step
21 down.

23 THE COURT: Okay. Is the State prepared to call
24 its next witness?

25 MR. JUSTIS: The State is, Your Honor.

State v Hurell Michael Weaver - Recall Direct 2/10/16 234

1 THE COURT: Okay.

2 MR. JUSTIS: The State would like to recall
3 Detective Michael Weaver.

4 (WHEREUPON, Michael Weaver was duly
5 sworn)

6 THE COURT: All right. He's on recall. His
7 testimony is just going to be about (inaudible) testimony?

8 MR. JUSTIS: That's correct, Your Honor.

9 THE COURT: I just wanted to make sure.

10 MICHAEL WEAVER - RECALL - DIRECT EXAMINATION

11 BY MR. JUSTIS:

12 Q Detective Weaver, you had testified initially that you
13 met with Traquan Hurell at Bi-Lo; is that correct?

14 A That is correct.

15 Q And did you make any notes regarding your conversation
16 with Mr. Hurell that day?

17 A I did.

18 Q And what was the content of the conversation and the
19 interaction that you had with Mr. Traquan Hurell that day?

20 A We met with him in the office. It was just himself,
21 Detective Santana and I and we showed him the side picture
22 of the subject behind the counter from the incident
23 location. Traquan stated that sweatshirt was given to him
24 in the eighth grade by a friend. And, also, he said that
25 that's the Tasmanian Devil on the sweatshirt. From the

State v Hurell Michael Weaver - Recall Cross 2/10/16 235

1 angle that was showed him, you could not see the Tasmanian
2 devil on the sweatshirt. I asked Traquan where his
3 sweatshirt was at now. Traquan stated it was in his closet
4 recently. During the search warrant we did not locate that
5 sweatshirt, at which point, Traquan ended the conversation.
6 And was that the extent of your communication with Traquan?

7 A It was.

8 Q Thank you. Please answer any questions Mr. Loy may
9 have.

10 THE COURT: Mr. Loy, anything on cross?

11 MR. LOY: Thank you.

12 MICHAEL WEAVER - RECALL - CROSS-EXAMINATION

13 BY MR. LOY:

14 Q The conversation that you described, did you record
15 that conversation?

16 A No, sir. It was not recorded.

17 Q Did you take a written statement? Did he write it out
18 for you and say here's my -- did he give you a written
19 statement at all?

20 A No, he did not provided us a chance to -- for a written
21 statement.

22 Q And what you're doing is referring back to the report
23 that you put together sometime later; is that right?

24 A Correct.

25 Q Thank you.

State v Hurell Nick Santana - Direct 2/10/16 236

1 MR. LOY: I don't have any questions.

2 THE COURT: Anything on redirect?

3 MR. JUSTIS: Not on redirect, Your Honor.

4 THE COURT: All right. Thank you. You may step
5 down.

6 The State's ready to call it's next witness?

7 MR. JUSTIS: The State is, Your Honor. The State
8 calls Detective Nick Santana.

9 (WHEREUPON, Nick Santana was duly
10 sworn)

11 THE COURT: All right. Detective Santana, you
12 need to speak up.

13 MR. SANTANA: Yes, sir.

14 THE COURT: That's good.

15 All right. Mr. Justis.

16 NICK SANTANA - DIRECT EXAMINATION

17 BY MR JUSTIS:

18 Q Detective Santana where do you work?

19 A I work at the Summerville Police Department.

20 Q And what's your job title there?

21 A I'm a Sergeant over general investigations.

22 Q And did you have an opportunity to assist in the
23 investigation of a case involving Tashon Hurell?

24 A Yes, sir. I did.

25 Q And during that investigation, did you have the

State v Hurell Nick Santana - Cross 2/10/16 237

1 opportunity to speak to a Tramaine Hurell?

2 A I did.

3 Q And who was with you when you went and spoke to -- did
4 I say Tramaine?

5 A You did.

6 Q -- Tramaine Hurell?

7 A Detective Weaver.

8 THE COURT: Is this supposed to be Traquan or this
9 is actually --

10 MR. JUSTIS: This is Tramaine also. He was there.

11 THE COURT: Okay. I just wanted to make sure. I
12 didn't mean to interrupt you, Mr. Justis.

13 BY MR. JUSTIS:

14 Q Were you also present when Detective Weaver met with
15 Traquan Hurell?

16 A Yes, sir.

17 Q And could you tell us about that conversation that you
18 and Detective Weaver had with Traquan Hurell?

19 A Yes, sir. Detective Weaver and I responded to his
20 place of employment. We met with Mr. Traquan, Traquan.
21 When Detective Weaver was interviewing hm, he asked him
22 about did he know what we were investigating? He said yes.
23 He asked about, you know, what did he know about it. He
24 advised in particular just what the officers had told him
25 that night. I believe he was there while the officers were

1 at his apartment the night of the incident. At that time,
2 Detective Weaver showed him a photograph of the -- the
3 photograph from, the in-store video surveillance from the
4 incident location, Kangaroo. He showed him a side picture
5 of the suspect and he asked if he recognized the clothing?
6 And at that time Traquan advised that he did. He said it
7 was a sweatshirt that was given to him in the eighth grade
8 by a friend. He was asked, you know, where should the
9 clothing be in his -- he advised that the clothing should be
10 in his closet. At that time we advised him that we
11 conducted a search warrant and we didn't find that
12 particular sweatshirt. At that time, Traquan wished to no
13 longer speak to us.

14 Q Okay. And did he provide any kind of written
15 statement?

16 A No, sir. He did not.

17 Q Did you record this conversation with him?

18 A No, there wasn't a recording.

19 MR. JUSTIS: I beg the Court's indulgence.

20 THE COURT: Okay.

21 BY MR. JUSTIS:

22 Q No further questions. Please answer any questions Mr.
23 Loy might have for you.

24 THE COURT: Mr. Loy, anything on cross?

25 NICK SANTANA - CROSS-EXAMINATION

State v Hurell Nick Santana - Cross

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1 BY MR. LOY:

2 Q Detective Santana, did you generate a report or --

3 A I didn't, no, sir.

4 Q Did you take notes or anything along those lines?

5 A No, sir.

6 Q Do you have paperwork with you?

7 A I do.

8 Q Which paperwork do you have?

9 A It's Detective Weaver's report.

10 Q So basically you're reading to us from Detective
11 Weaver's report? You've had a chance to review it prior to
12 coming in. And that's what you're here to tell us?

13 A Correct. I remember it as well. I was there.

14 Q Well, you brought his report up there with you to
15 remind you if you needed; is that right?

16 A Yes, sir.

17 Q Thank you.

18 MR. LOY: No more questions.

19 THE COURT: Anything on redirect?

20 MR. JUSTIS: Nothing, Your Honor.

21 THE COURT: Thank you, Sergeant. You may step
22 down.

23 MR. SANTANA: Thank you, sir.

24 THE COURT: Thank you, sir.

25 Is the State ready to call its next witness?

State v Hurell Derek Cheek - Direct 2/10/16 240

1 MR. WARD: The State calls Derek Cheek.

2 (WHEREUPON, Derek Cheek was duly
3 sworn)

4 THE COURT: I think you're going to be loud
5 enough, but you need to keep talking just the way you did
6 it.

7 MR. CHEEK: Yes, sir.

8 THE COURT: Very good.

9 All right. Mr. Ward.

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

12 THE COURT: Yes, sir.

13 DEREK CHEEK - DIRECT EXAMINATION

14 BY MR. WARD:

15 Q Mr. Cheek, where are you currently employed?

16 A I am the investigator with the First Circuit
17 Solicitor's Office.

18 Q All right. And do you have any prior law enforcement
19 experience?

20 A I do.

21 Q And what is that?

22 A I spent approximately eight years in the Dorchester
23 County Sheriff's Office as an investigator and a detective
24 in the detention center.

25 Q Okay. And did you have an opportunity to investigate,

State v Hurell Derek Cheek - Direct 2/10/16 241

1 assist in investigating this case prior to trial?

2 A I did.

3 Q And did you have access to all the photographs and
4 reports in this case?

5 A Correct. I had the same information that you all had.

6 Q And what did you do with that information?

7 A I followed up on some things that were in the case file
8 just as a matter of procedure.

9 Q Okay.

10 MR. WARD: One moment, Your Honor.

11 BY MR. WARD:

12 Q I'm showing you State's Exhibit 30. Did you have
13 access to this photograph?

14 A I did. This is a photograph that was on one of the
15 four Facebook pages that was Tashon Hurell. I'm not exactly
16 sure which Facebook page it was. It was one of the photos
17 that was on that page.

18 Q Okay. Now, did you utilize any other photographs in
19 your investigation?

20 A I did. In this particular photo you can see there's
21 red and black shoes that he's wearing. On this side right
22 here it almost appears to be a white mark, maybe a Nike
23 swoosh. In addition to those, the Facebook photos I believe
24 the surveillance photo also had a picture or a still shot
25 where the individual in that photo is wearing red and black

1 shoes.

2 Q And I would show you State's Exhibit 22?

3 A That appears to be a still shot from the surveillance
4 photo from the Kangaroo Gas Station.

5 Q And what did you observe in this photo?

6 A In this photo, being that it's a color photo it almost
7 appears that the shoe that he's wearing is a red and black
8 shoe or a red shoe with a black toe.

9 Q And showing you State's Exhibit 9, were you aware of
10 this photo?

11 A Yes, I was. That is a shoe print that was left behind
12 at the incident location in the victim's blood.

13 Q Okay. And with these photos that you had, what did you
14 then do?

15 A Being that the shoes were fairly distinct, red and
16 black or red with a black toe, I searched Google. Being
17 that they had the white mark on the side, I performed a
18 Google search for red and black Nike shoes. I found a link
19 to the Champs Sports website. That link had a photo of a
20 particular make and model of a shoe that was red and black
21 with a white Nike swosh on the side. In those photos from
22 the Champs Sports website, the tread pattern of one of the
23 photos was similar to the tread pattern that's in the blood.

24 Q I'm going to show you what's been marked as State's
25 Exhibit 37 -- all right. Let me go in a row. 36 -- 34, 35,

State v Hurell Derek Cheek - Direct 2/10/16 243

1 36, and 37. Do you recognize those photographs?

2 A I do. State's Exhibit 34 is one of the first photos
3 that comes up on the Champs Sports web page of the red and
4 black Nike -- I believe it's a Charles Barkley Air Max or
5 Air Force One. That's State's Exhibit 34 is one of the
6 first pictures that comes up. The second photo is just
7 another shot of that same particular shoe.

8 THE COURT: What's the number on that?

9 MR. CHEEK: 35.

10 THE COURT: 35?

11 MR. CHEEK: Yes, sir.

12 A State's Exhibit 36 is the top photo of that particular
13 shoe where you can clearly see that it's a red shoe with a
14 white swoosh on the side and a black toe.

15 BY MR. WARD:

16 Q And that's State Exhibit --

17 A State's Exhibit 36. State's Exhibit 37 is a picture
18 from the Champs Sports site, a screen shot. It's the bottom
19 of the shoe, the tread pattern of the shoe, which looks
20 similar to the tread pattern that was in the blood in the
21 store.

22 Q And are those photos all fair and accurate
23 representations of what you've found on the Champs Sports
24 website?

25 A They're what I would have obtained off the Champs

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1 Sports website.

2 MR. WARD: At this time, Your Honor, the State
3 would move Exhibits 34, 35, 36, and 37 into evidence.

4 MR. LOY: Objection, Your Honor.

5 THE COURT: Sir?

6 MR. LOY: Your Honor, there's no foundation laid
7 for this. It invites speculation. And there's no
8 relevance. There have been no shoes recovered, no shoes
9 attributed. It's just this witness who says I looked at
10 pair of red and black shoes. The I went on-line and found
11 some that, to me, look like it. Without anything to compare
12 them to, without anyway to hook them to the -- into evidence
13 in this case, I don't think they're admissible.

14 THE COURT: Okay. All right. He's indicated that
15 they're a fair and accurate representation. I will note
16 your objection. And I will overrule the objection.

17 MR. LOY: Thank you, Your Honor.

18 MR. WARD: Thank you, Your Honor.

19 THE COURT: So those are in over objection.

20 (State's Exhibit No. 34, photo, red
21 and black Nike shoe was marked and entered.)

22 (State's Exhibit No. 35, photo, red
23 and black Nike shoe was marked and entered.)

24 (State's Exhibit No. 36, photo, red
25 and black Nike shoe was marked and entered.)

3 BY MR. WARD:

24 A That would be the bottom of that particular make and
25 model shoe and to me --

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1 MR. LOY: Objection, Your Honor. As the
2 Solicitor's already pointed out, he's not an expert. He's
3 no attempting to elicit the opinion of this lay witness.

4 MR. WARD: Based on his perception.

5 THE COURT: Okay. I'm going to excuse y'all for a
6 second I want to talk to the attorneys for a second. So
7 I'll let y'all go back in the jury room for a second while I
8 talk about this, okay? Thank y'all.

9 (Jury out at 11:36 a.m.)

10 THE COURT: All right. Go ahead. Mr. Loy, you
11 don't want him to testify that it seemed to match?

12 MR. LOY: Right.

13 THE COURT: Okay. And anything else you want to
14 add to it.

15 MR. LOY: Your Honor, I also would ask the Court
16 to exclude this. Again, they put this picture up here that
17 has no connection to this case whatsoever. No one has said
18 my client owned a pair of Nike whatever's, that he was seen
19 in pair of Nike whatever's. This witness here said I can't
20 look at the photo and say these are Nike whatever's. I can't
21 connect these anyway whatsoever, but I found a pair of shoes
22 on line that's red and black that I think matches some of
23 this blood stuff. There's simply no connection between my -
24 - if they'd found shoes on my client and they'd found,
25 recovered them in a closet, if they had a pair somewhere,

2 THE COURT: And I think that those are all good
3 points that you can make on cross-examination. I mean,
4 that's just my take on that.

6 THE COURT: I want to see this picture with the
7 pattern and the blood pattern because --

25 THE COURT: I think 701 says rationally based on

State v Hurell Derek Cheek - Direct 2/10/16 248

1 the perception of the witness, while helpful to a clear
2 understanding of his testimony and determine a fact at issue
3 and does not require special knowledge, skill, experience or
4 training. I think it falls into that. He can testify about
5 it, okay? But I think you're going to have a field day.
6 But whatever you want to do, okay?

7 MR. LOY: Yes, sir.

8 THE COURT: Okay.

9 MR. WARD: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 All right. Bring the jury back out, please?

12 THE BAILIFF: Yes, sir.

13 THE COURT: Okay.

14 And Mr. Loy, after preserving your objection, I think
15 we've got it down. It think it falls under 701, but I'm
16 preserving your objection to my ruling, okay?

17 MR. LOY: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 Bring the jury back out.

20 (Jury in at 11:42 a.m.)

21 THE COURT: All right. Ladies and gentlemen, I
22 know y'all are impressed it didn't take that long, okay?
23 All right. We're going to continue with the examination of
24 Mr. Cheek

25 Mr. Ward.

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1 MR. WARD: Thank you, Your Honor. May it please
2 the Court?

3 THE COURT: Yes, sir.

4 DEREK CHEEK - DIRECT EXAMINATION CONTINUED

5 BY MR. WARD:

6 Q Mr. Cheek, after finding those photographs on line, did
7 you do anything else to investigate this case?

8 A I did several other things to investigate this case.
9 Those photographs in particular or the information I
10 obtained was forwarded to SLED.

11 MR. WARD: Nothing further, Your Honor.

12 THE COURT: Okay. Mr. Loy. Anything on cross?

13 MR. LOY: Yes, sir.

14 THE COURT: Okay.

15 DEREK CHEEK - CROSS-EXAMINATION

16 BY MR. LOY:

17 Q When you say forwarded to SLED, you're referring to the
18 photographs that you were looking at earlier?

19 A Correct. From the Champs Sports web page.

20 Q And that's for some sort of forensic testing or
21 something like --

22 A Yes, sir.

23 Q Now, is it -- and I'm sorry, what is the brand of shoe
24 that you're looking at here?

25 A In what?

1 Q The photographs that you took from Champs website?

2 A That would be a Nike brand.

3 Q And further -- I mean, they have like models don't
4 they? I mean, do you know --

5 A Yes, sir.

6 Q Okay.

7 A I believe it was a Nike Air Force Max Charles Barkley
8 or something similar to that. I'd have to look.

9 Q Okay. And it's not in your testimony here today that
10 you looked at State's Exhibit No. 30 and said those are Nike
11 Charles Barkley shoes, is there?

12 A I can't determine that from that picture, sir. No,
13 sir.

14 Q Or from this picture or any other. We really don't
15 have a picture from the store that evening?

16 A All I'm going by is that they're red and black shoes or
17 red shoes with a black toe.

18 Q Okay. So we don't have any -- just so we're clear on
19 that. You can't say what type of shoe the gentleman is
20 wearing in this picture?

21 A No, sir. I can't say.

22 Q Nike, Adidas, Puma,

23 A Couldn't tell you, sir.

24 Q Converse, no?

25 A I wasn't there. I didn't take a picture. I don't know

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1 what kind of shoes he was wearing in that photo.

2 Q And this one here? Certainly, you can't look at that
3 and say these are --

4 A No.

5 Q -- Nike Air Force Charles Barkley shoes, whatever,
6 right?

7 A No, sir. Again, just the fact that they were red and
8 black shoes. They're similar to the --

9 Q Okay. And Nike -- how many makes, models, etcetera of
10 red and black --

11 A I couldn't tell you. Nike is probably one of the
12 largest shoe manufacturing companies. I couldn't tell you.
13 I don't have the answer to that.

14 Q Well, let me finish my question if you would?

15 A Yes, sir.

16 Q How many of their models come in red and black?

17 A I'm assuming millions.

18 Q And Puma, Adidas, I mean --

19 A Probably the same.

20 Q Okay. How many other red and black shoes did you look
21 at?

22 A If you search Google by red and black shoes, several
23 images come up.

24 Q Okay. And you settled on investigating red and black -
25 - these Charles Barkley shoes based solely because they're

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1 red and black and you had a picture?

2 A To me they were similar.

3 Q Okay. And you say there are maybe millions?

4 A I can't speak for Nike. I'm not sure, sir.

5 Q Okay. The soles, the foot patterns that you were
6 looking at earlier, how many of the Nike shoes have similar
7 foot patterns?

8 A I can't tell you that either.

9 Q Do they vary from make to make, model to model?

10 A They may. I don't have the answer to that question.

11 MR. LOY: One moment, Your Honor.

12 Can I approach the witness, Your Honor.

13 THE COURT: You may.

14 BY MR. LOY:

15 Q I'm showing you State's Exhibit 80.

16 A Yes, sir.

17 Q Excuse me, 8. I think you identified that earlier.
18 Could you identify that for me again, please?

19 A It appears to be a shoe print left in blood at the
20 incident location.

21 Q And State's Exhibit 37, what is that?

22 A That would be the bottom of the shoe as the photo was
23 taken from the Champs Sports web page.

24 Q And this is the -- this is the ones that you're here
25 today to compare for the ladies and gentlemen of the jury;

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1 is that correct?

2 A To compare by what means? They look similar to me or
3 somewhat similar. There were several photos of the
4 footprint left at the incident location that I compared it
5 to.

6 Q Okay. Now, I'm not as good with the technology, but I
7 want you to look right here and here and here and here.

8 A Yes, sir.

9 Q Do you see those circular patterns that's I'm pointing
10 out?

11 A I do. Yes, sir.

12 Q And do you see that they're practically touching.
13 Would you agree with that?

14 A They were very close. Yes, sir.

15 Q They're very close. Thank you very much. And those
16 are the large circular dots that you're comparing to the
17 bottom of State's Exhibit 37 in your opinion; that's your
18 testimony?

19 A It looks similar. I'm not saying it's the same.

20 Q Remember that one that I just showed you. And look at
21 this one that the State has brought also. Now, do you
22 notice any distinction between the photograph I showed you a
23 moment ago and the one that's currently up on the projector?

24 A Yes, sir. They don't look exactly similar but the
25 circular pattern looks somewhat like the circular pattern of

1 those --

2 Q But they're different?

3 A They look similar, but, again, I'm comparing with
4 additional photos in addition to that photo.

5 Q Would you agree with me that in this photo it appears
6 as if these large dots are much more separated than the ones
7 in the photo that we were looking at a moment ago?

8 A They could be. It also depends on the field that the
9 photo, that the shoe print was taken at as well.

10 Q So you found a shoe that's red and black on line that
11 you think looks somewhat like some red and black shoes you
12 saw on Facebook and that has a sole which looks something
13 like these others shoes. Is that what you're here to
14 testify to?

15 A Yes, sir.

16 Q Okay. And so at this point then you would concede that
17 this basically shows there's some Nike Charles Barkley shoes
18 that have circular patterns on the sole and they're red and
19 black?

20 A Is that a question, sir?

21 Q Yes. I said at this point you would conceded that this
22 is what you're here --

23 A Yes, sir.

24 Q This is why you're here to show us that these things
25 look kind of like it but not exactly?

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1 A Yes, sir.

2 Q And you don't know what the ones from any other Puma,
3 Adidas, any other company, possibly what their shoe soles
4 look like?

5 A I couldn't tell you, sir.

6 Q Okay. All right. I have no more questions. Thank
7 you.

8 THE COURT: Anything on redirect?

9 MR. WARD: Briefly, Your Honor.

10 DEREK CHEEK - REDIRECT EXAMINATION

11 BY MR. WADE:

12 Q Mr. Cheek, I show you State's Exhibit 30. Do you know
13 what size shoe that is in that photograph?

14 A I couldn't tell you what size shoe that is. No, sir.

15 Q I'm showing you State's Exhibit 37. You don't know
16 what size shoe they're showing on this image?

17 A I couldn't tell. No, sir.

18 Q And State's Exhibit 8, do you know what size footprint
19 would have made this impression?

20 A I could not tell you, sir. It looks like there's a
21 ruler for a scale measurement that's a partial print.

22 MR. WARD: No further questions.

23 THE COURT: Anything on recross?

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

25 THE COURT: Okay. You may step down.

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1 MR. CHEEK: Thank you.

2 THE COURT: Thank you, sir.

3 Is the State ready to call its next witness?

4 MR. WARD: Yes, Your Honor.

5 THE COURT: All right.

6 MR. WARD: The State would call Samuel Stewart

7 (WHEREUPON, Samuel Stewart was duly
8 sworn)

9 THE COURT: All right. Mr. Stewart, you need to
10 speak up, please, sir?

11 MR. STEWART: Yes, sir.

12 THE COURT: All right. Good. Very good.

13 All right. Your witness, Mr. Ward.

14 MR. WARD: Thank you, Your Honor. May it please
15 the Court?

16 THE COURT: Yes, sir.

17 SAMUEL STEWART - DIRECT EXAMINATION

18 BY MR. WADE:

19 Q Mr. Stewart, where are you currently employed?

20 A I work for the South Carolina Law Enforcement Division,
21 commonly known as SLED.

22 Q And what is your job title there?

23 A I am a forensic scientist assigned to the DNA casework
24 department.

25 Q And how long have you worked with SLED?

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1 A Four years.

2 Q And what are some of your duties at SLED?

3 A As a DNA analyst at SLED I am responsible for
4 processing any known standards and evidence for DNA. My
5 purpose is to try to determine whether or not the DNA
6 profile developed from those known standards, which can come
7 from a victim or a subject, can be included or excluded as a
8 contributor to the DNA profile developed from the evidence.

9 Q Okay. And what education do you have?

10 A I received my Bachelor's in Science and Biology from
11 Francis Marion University. I also received in-house SLED
12 training under other court-qualified analyst for over a year
13 and a half where I have to successfully complete a written
14 exam and an oral exam and competency at a mock trial before
15 I was deemed competent as a DNA analyst.

16 Q Okay. And have you ever testified before?

17 A Yes, I have.

18 Q Have you ever been qualified as an expert before?

19 A Yes, I have.

20 Q How many times?

21 A Ten.

22 Q Okay.

23 MR. WARD: At this time, Your Honor, the State
24 would move to have Samuel Stewart qualified as an expert in
25 forensic DNA analysis.

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1 MR. LOY: I believe he's an expert, Your Honor.

2 THE COURT: All right. He is again qualified as
3 an expert. I believe we've already had one. And I mention
4 to y'all that just because he's an expert, it doesn't give
5 him any more credibility as a witness. It is up to you to
6 decide based on his knowledge and like that. And you give
7 it the weight and the credibility that you believe it
8 deserves, his testimony deserves, okay.

9 Go ahead.

10 MR. WARD: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. WARD:

13 Q Mr. Stewart, could you tell the jury what DNA is?

14 A DNA stands for deoxyribonucleic acid. It is the
15 genetic material that is found in every person and is
16 responsible for certain traits, such as our eye and our hair
17 color. DNA is contained on dense packets known as
18 chromosomes, which are found in every cell in the human
19 body, excluding our blood cells. We receive half of our
20 chromosomes from our mother and the other half from our
21 father. On those chromosomes we target certain locations
22 known as STRs, that stands for short tandem repeats. We
23 look at sixteen different of those STR locations that are
24 found in your chromosome to develop what is known as DNA
25 profile, which are used to identify a person, a known

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1 person, excluding known persons.

2 Q Okay. And did you have an opportunity to examine any
3 evidence in this case?

4 A Yes, I did.

5 Q I'm showing you what's been marked as State's Exhibit
6 29 for identification purposes. Do you recognize that?

7 A Yes, I do.

8 Q And how are you able to recognize it?

9 A This has the unique SLED number, also the unique SLED
10 item number as well. It also has my initials and dates when
11 I entered into these heat-sealed pouches.

12 Q Okay. And could you explain what the purpose of the
13 multiple bags are?

14 A These are heat-sealed pouches. These are what the
15 evidence is placed into when it is brought into SLED. This
16 is so we can track where the evidence is and who has
17 possession of the evidence at all times while it is being
18 housed at SLED.

19 Q Okay. And what was the evidence that you received in
20 this case.

21 A Item 1 was swabs from a dollar bill. And item 2 was a
22 buccal swab from Mary Pecorora.

23 Q Okay. And when you received those bags, were they
24 sealed at that time?

25 A Yes, they were.

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1 Q And how were you able to tell that they were sealed?

2 A They only had one seal in it. This would have been
3 done by the technician that was in evidence control
4 department and they also had his signature on there. So no
5 other seals were on there, we know that it wasn't broken and
6 it wasn't tampered with.

7 Q Okay. And what did you do with the evidence after you
8 received them?

9 A Once the evidence is taken into my custody, I then
10 perform the -- I proceed with a DNA analysis on those items
11 to develop a DNA profile.

12 Q And can you explain that testing process?

13 A Yes, I can. It's usually four big steps, extraction,
14 which means we're taking the DNA out from the swabs, which
15 that's how they usually come. Then we quant. the DNA. This
16 means that we try to find out exactly how much DNA we have.
17 This is because we want to have a certain amount of DNA to
18 run our instrument. Too much will overload the system and
19 too little will not give us a full representation of the
20 DNA. So once I have quantified how much DNA I have, then I
21 amplify it to make more copies. This is just to make sure
22 that we get a full representation within that range. And
23 then I put it on the instrument to develop a DNA profile.

24 Q And I'm sorry. I forgot to ask. What is a buccal
25 swab?

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1 A A buccal swab is a sterile cotton swab that is taken,
2 it is swabbed inside of the mouth to collect cheek cells.
3 This is to develop a DNA profile on that individual, which
4 we know, which we state is a known standard.

5 Q And I believe said item 1 was a buccal swab from Ms.
6 Pecorora?

7 A Item 2 was a buccal swab from Mary Pecorora.

8 Q Okay. Item number 2, were you able to develop anything
9 from that buccal swab?

10 A Yes, I was.

11 Q And what were you able to develop?

12 A I developed her DNA profile.

13 Q Okay. And what about the other item you received?

14 A The swab from the dollar bill, I was able to develop a
15 DNA profile on that. A DNA profile from that.

16 Q And I believe -- do you have your report in front of
17 you?

18 A Yes, I did.

19 Q Okay. I believe for that item from the dollar bill it
20 states that blood was indicated?

21 A That is correct. I also did a testing for, also the
22 presence of blood. And that testing came back positive.

23 Q Okay. And were you able to compare the two samples?

24 A Yes, I was.

25 Q And what was the results of that comparison?

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1 A The DNA profile developed from item 1 matches the DNA
2 profile of Mary Pecorora. The probability of randomly
3 selecting an unrelated individual having a DNA profile
4 matching this item is approximately one in nine hundred and
5 thirty trillion.

6 Q Okay. And what did you do with the evidence after you
7 completed the testing?

8 A Once the analysis was completed, the evidence was sent
9 back down to our evidence control department to be picked up
10 by the submitting agency.

11 Q And did you seal it after you were done testing it?

12 A Yes, I did.

13 Q Okay.

14 MR. WARD: At this time, Your Honor, the State
15 would move State's Exhibit 29 into evidence.

16 MR. LOY: No objection, Your Honor.

17 THE COURT: State's 29 is in evidence without
18 objection.

19 (State's Exhibit No 29, SLED kit
20 was marked and entered.)

21 BY MR. WARD:

22 Q Mr. Stewart, could you explain -- you stated a
23 probability?

24 A Yes. This is just to put weight to the evidence. The
25 standard I quoted was one in one hundred thirty trillion.

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1 What that stat means is if I took a random person's DNA
2 profile and I compared it to that DNA profile that I
3 developed from the evidence, that it would be a one in one
4 hundred thirty trillion -- a one hundred and thirty trillion
5 chance that that random person's DNA profile would match
6 that profile developed from the evidence.

7 Q Okay. And could you tell the jury, what is touch DNA?

8 A Touch DNA is DNA that is left behind whenever an
9 individual touches an object. Individuals shed skin
10 constantly. So it is possible to get skin cells off of an
11 object that has been touched by an individual.

12 Q And is it common in your profession to be able to
13 develop standards from just touch DNA?

14 A Yeah. It is possible to develop a DNA profile from
15 touch DNA.

16 Q But item number 1 from the dollar bill, you stated that
17 was from blood?

18 A Well, I did test for blood on that dollar bill and it
19 did come back positive for blood, but I cannot tell you
20 specifically of the DNA profile developed from blood.

21 Q Thank you.

22 MR. WARD: I beg the Court's indulgence.

23 Q Nothing further. Please anything the Defense may have.

24 THE COURT: Mr. Loy, anything on cross.

25 MR. LOY: Nothing. Thank you for coming.

1 THE COURT: You may step down. Thank you, sir.

2 MR. STEWART: Thank you.

3 THE COURT: Is the State prepared to call its next
4 witness?

5 MR. JUSTIS: At this time, the State rests, Your
6 Honor.

7 THE COURT: All right.

8 Ladies and gentlemen, you have now heard all the
9 testimony from the State. There are some matters that I
10 need to take up with counsel before we can go forward with
11 the case. We're going to -- I'm going to let y'all go back
12 into the jury room right now. And remember, you cannot
13 start talking about the case. And I'm going to find out
14 whether we take a break for lunch now or do some other
15 things. But y'all are going to be back there for about ten
16 or fifteen minutes before I make that decision, okay? All
17 right. Thank y'all.

18 (Jury out at 12:05 p.m.)

19 MR. LOY: Two points, Your Honor. First of all,
20 we will not be offering a defense. And if the Court wants
21 to have an exchange with Mr. Hurell on that point, he's
22 prepared for that. He and I have discussed it both in the
23 prior trial and we didn't offer a defense, as well as
24 preparation for the trial today.

25 Secondly, Your Honor, I mean, if I have my preference,

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1 I would make my argument for a directed verdict subsequent
2 to lunch rather than prior. If we left earlier and came
3 back a little bit earlier I could make the argument then.

4 THE COURT: Okay. We can do that. Why don't I
5 excuse the jury and let them come back at 2:00, would that
6 work? That'll give us time to make sure we've got
7 everything?

8 MR. LOY: Yes, sir.

9 THE COURT: Is that all right? Would that work
10 for the State?

11 MR. JUSTIS: Yes, Your Honor. As far as the
12 directed verdict, I do have a recent case from like two
13 months ago that came out related to this. I just want to
14 give a copy to the court and to Mr. Loy.

15 THE COURT: Okay.

16 MR. JUSTIS: I don't know if you've seen this or
17 not.

18 THE COURT: Would you tell the jury that they can
19 go to lunch and they need to be back at 2:00.

20 THE BAILIFF: Yes, sir.

21 THE COURT: That'll give us plenty of time
22 hopefully to do everything that we need to do.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Okay. Thank you.

25 Would you swear him?

1 THE CLERK: Would you please raise your right
2 hand?

3 (WHEREUPON, Tashon Hurell was duly
4 sworn)

5 THE COURT: All right. Mr. Hurell, at this time
6 -- and Mr. Hurell, I know you've been through this before.

7 TASHON HURELL: Yes, sir.

8 THE COURT: But I've got to ask these questions
9 just to make sure we've got everything straight on the
10 record. Do you understand that?

11 TASHON HURELL: Yes, sir.

12 THE COURT: Okay. Mr. Hurell, at this time I'm
13 going to explain to you certain of your rights. If you
14 don't understand anything I say, please let me know. If you
15 want me to explain anything in more detail, please let me
16 know. Do you understand that?

17 TASHON HURELL: Yes, sir.

18 THE COURT: All right, sir. We have now reached
19 the stage in the trial where you may testify. You have the
20 right to claim the protections given to you by the Fifth
21 Amendment of the Constitution of the United States. This
22 Amendment states in part that no person shall be compelled
23 in any criminal case to be a witness against himself. This
24 means that you cannot be required to testify in this case.
25 You have the right to testify on your own behalf. However,

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1 no one can make you testify. This is a personal right and
2 no one can waive this right except you. If you decide to
3 testify, you'll be subject to the same rules that govern
4 other witnesses and you may be examined and cross-examined
5 on any relevant issue in this case. In addition, if you
6 have any convictions involving dishonesty or false
7 statements or for crimes punishable by imprisonment for more
8 than one year and this Court determines that the probative
9 value of admitting this evidence outweighs its prejudicial
10 effect to you, the Solicitor will be able to introduce your
11 record to attack your credibility. If you decide to
12 testify, this decision on your part must be freely,
13 voluntarily and intelligently made with knowledge of the
14 protections given to you by the Fifth Amendment and the
15 consequences of your decision to testify. If you decide not
16 to testify, I will instruct the jurors that they cannot give
17 the fact that you did not testify any consideration
18 whatsoever and that there is to be absolutely no prejudice
19 to you because you did not testify. It is left entirely up
20 to you whether or not you testify. You may talk with your
21 attorney, as I know you've done, your family and friends or
22 anyone else, but the final decision will be left entirely up
23 to you. Do you understand what I've explained to you?

24 TASHON HURELL: Yes, sir.

25 THE COURT: Do you have any questions about what

1 I've explained to you?

2 TASHON HURELL: No, sir.

3 THE COURT: Have you discussed with your lawyer
4 whether or not you should testify?

5 TASHON HURELL: Yes, sir.

6 THE COURT: Do you wish to talk with your lawyer
7 any more at this time?

8 TASHON HURELL: No, sir.

9 THE COURT: Do you want to testify?

10 TASHON HURELL: No, sir.

11 THE COURT: All right. I will tell the jury they
12 can't consider that. That'll be one of my charges. Okay.

13 MR. LOY: Thank you very much, Your Honor.

14 THE COURT: All right. And so y'all want to be
15 back here at about twenty after one? Will that give y'all
16 enough time?

17 MR. LOY: Sure.

18 MR. JUSTIS: Sure.

19 THE COURT: And then you can come back and do the
20 motions and we can go over the charges and things like that?

21 MR. LOY: Yes, sir.

22 THE COURT: Okay.

23 MR. LOY: 1:20?

24 THE COURT: 1:20.

25 MR. LOY: Yes, sir.

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1 THE COURT: Okay. Thank y'all.

2 (Court in recess for lunch at 12:15

3 p.m.)

4 (Court in session after lunch at

5 1:25 p.m.)

6 THE COURT: Are you ready?

7 MR. LOY: Yes, sir.

8 THE COURT: Okay. All right. Mr. Loy, let me
9 hear from you, please, sir.

10 MR. LOY: Thank you, Your Honor. At this point in
11 time I make a motion for directed verdict on all three
12 charges the Defendant is at bar for. In my argument I would
13 rely on the Case of the State versus Roger Bostic, State of
14 South Carolina Supreme Court case. I know we discussed it
15 in chambers and I provided a copy to Your Honor earlier. I
16 think you probably got that copy.

17 THE COURT: Yes, sir. I did.

18 MR. LOY: I would note that in Bostic the holding
19 essentially is that -- the case was reversed and it was
20 reversed based on the trial court's denial of a motion for
21 directed verdict. That is, the Supreme Court said this case
22 should have been -- the lower court should have directed a
23 verdict of not guilty. And while I know that the case law
24 says that at this stage the Court is concerned with the
25 existence of evidence as opposed to the weight of the

1 evidence. They also seem to address it somewhat differently
2 in circumstantial cases. In circumstantial case where we've
3 told you not to consider the weight of the evidence, we are
4 requiring you to consider the weight of the evidence because
5 it's not the mere existence of that stage. It is the
6 existence of presentation of substantial circumstantial
7 evidence, such as would support a logical conviction, that
8 is, could lead a reasonable person believe the crime had
9 been proven beyond a reasonable doubt. So it's not just
10 whether or not there's any evidence on which a person could
11 surmise or be suspicious or have -- or suspect that a
12 Defendant was involved. It has to be substantial evidence,
13 which could convince a reasonable juror the guilt of the
14 Defendant beyond any and all reasonable doubt.

15 Your Honor, in the case of Bostic, it was a murder
16 case. Bostic was next door, lived next door to an elderly
17 woman named Ms. Polite. Ms. Polite lived next door to
18 Bostic with her son. Ms. Polite was discovered, her body,
19 in her home. Her home was on fire and she was deceased.
20 She'd suffered violent -- been struck in the head with a
21 blunt object and died subsequently from carbon monoxide
22 poisoning. Some time later Bostic was arrested. And the
23 grounds on which Bostic was arrested, at least what was
24 presented at court, was essentially that Bostic lived next
25 door to Ms. Polite. He was in close proximity to her. They

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1 could prove that. So at least he had an opportunity on this
2 occasion. He was close proximity to Ms. Polite. There was
3 a burn pit or trash pit, whatever they called it a burn pit
4 in the opinion, I believe, behind Bostic's home. During the
5 course of the investigation law enforcement searched that
6 home and they found various items that belonged to Ms.
7 Polite. That is they found her keys. They found her nail
8 clippers, various other belongings. I think hair brushes,
9 things like that. But according to the opinion, it's
10 undisputed these items belonged to Ms. Polite. They are in
11 the burn pit behind Bostic's house next door.

12 They talk with Bostic during the course of the
13 investigation. And during the course of the investigation
14 they determine that the burn pit has been lit or the
15 ignition was accelerated through the use of gasoline.
16 Someone has poured gasoline on the stuff back there. The
17 court noted that gasoline was also the accelerant in Ms.
18 Polite's house where she was found suffering from carbon
19 monoxide poisoning and subsequently deceased. They talked
20 to Bostic and they asked him, you know, can we get your
21 clothes? We'd like to get your clothes and your shoes. And
22 Bostic voluntarily gave up his clothes and shoes. They
23 talked to Bostic's mom who lived at the house with him also.
24 And they said we found accelerant. Somebody has poured
25 gasoline in your burn pile back there. And she said well, I

1 never would do that. I'm afraid of stuff like that. I
2 would not pour accelerates in there. It sounds dangerous to
3 me. I've never done anything like that.

4 They then did a forensic chemical analysis, if you
5 will, on Bostic's shoes. Bostic's shoes were to found to
6 have traces -- and I assume it's relatively volatile stuff -
7 - gasoline. So there's gasoline in Ms. Polite's house next
8 door, which has been intentionally set on fire. There's
9 gasoline in the burn pit, which appears as though Bostic and
10 his mom are the only ones with access to it. And mom says I
11 would never use any of those items. So they tied the shoes
12 in that way. Then they went on and they said well, there's
13 blood on these pants that you gave us, Mr. Bostic. And
14 there was a bloody briefcase found in Ms. Polite's home.
15 Maybe this is her blood. And they did an analysis. The DNA
16 was such that they couldn't match it up entirely, but they
17 were able to say we can exclude ninety-nine percent of the
18 population and I believe that would be ninety-nine percent
19 of the population of the world as having -- being the source
20 of the blood that we found on Bostic's pants. But we can't
21 exclude Ms. Polite. It could be her.

22 So at this point, Bostic was definitely in proximity to
23 where the crime had occurred. Items that were presumably
24 taken from the home were found in his yard, in a burn pile,
25 with a similar accelerant poured over them and burned to

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1 what was used to light Ms. Polite's home on fire. Her
2 belongings were out there. He had that accelerant on his
3 clothing also. He had blood on his jeans, which presumably,
4 at least could be argued, was from the victim. They said we
5 can exclude ninety-nine percent. There's a one percent
6 chance this came from someone other than -- one percent of
7 the population we can't exclude as well as the accelerant on
8 his shoes.

9 And when they went through the analysis what they said
10 was evidence must constitute positive proof of facts and
11 circumstances which reasonably tends to prove guilt.

12 And as I noted earlier that the case should be
13 submitted to the jury when the evidence is circumstantial,
14 if there is any substantial evidence which reasonably tends
15 to prove the guilt of the accused or from which his guilty
16 may be fairly and arguably deduced.

17 And before they did their analysis, before they gave
18 their ruling, they went through three other cases where they
19 had tried to lay out the law of the land, so to speak, as it
20 relates to directed verdicts. And all of those were cases
21 where they said the lower courts had erred for not entering
22 a directed verdict of a not guilty. There was the case of
23 Schrock. And I think the Court had that in the back. And
24 that's not that relevant, I don't think to the case here,
25 other than to say that Schrock at least -- there was some

1 physical evidence, which could arguably be tied into the
2 crime. At least there were footprints there that someone
3 thought might be tennis shoes. He smoked Marlboro
4 cigarettes and Marlboro cigarettes were found nearby. And
5 that was pretty much it.

6 At that point, they went into the State versus Arnold.
7 Arnold, the victim, James Cox was shot and killed in an
8 automobile. Apparently, there was a cup or a cane in the
9 car and it had Arnold's fingerprints on it. Apparently,
10 there weren't any reasons for Arnold to have the
11 fingerprints, other than having been there. And based on
12 that alone, he went to trial. The court noted:
13 Additionally, there was no evidence that Arnold was at the
14 scene of the crime, which presumably was in Colleton County.

15 Then there's the Mitchell case where a fingerprint was
16 found on a screen, which had been removed from the house and
17 had been burglarized. And the Supreme Court's position -- I
18 think it was a Supreme Court case was essentially well, that
19 proves he's touched the screen. That proves he's been
20 present at some point in time and he's touched the screen.
21 And while that's suspicious, there's no way that alone would
22 support a verdict of guilty. In this case, -- and so having
23 gone through that litany, eventually they came around and
24 they said well, the evidence presented by the State raised
25 at most a mere suspicion that Bostic committed this crime.

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1 And that's the evidence that I went through there. And that
2 was pretty strong evidence. They note that other things
3 were missing. They said that -- they seem to place some
4 degree of emphasis on the fact that the weapon used to beat
5 Polite in the head was never introduced into evidence. And
6 so they've got some other things they left out.

7 In this case, Bostic, at least, was proximately there.
8 I mean, he lives in proximity. No one has put Mr. Hurell at
9 Somerset Apartments or the Kangaroo on the day that this
10 crime occurred. And no one has said he was at his sister's
11 apartment. No one has said he was there that day. No one
12 has said -- his sister said he came and went but he'd been
13 staying with my mom and his girlfriend. So the evidence is
14 actually to the contrary, that he was actually staying there
15 and residing in the home. And regardless, whereas with
16 Bostic, he was there. There's no evidence whatsoever to
17 support it so I would submit to you that at least on that
18 point Bostic is stronger yet, the case against Bostic.

19 Secondly, there is no physical evidence, which I'm
20 aware of or at least reasonably, substantially, any physical
21 evidence which tends to show the guilt of the Defendant.
22 And what I mean by that is nothing that was taken from the
23 store was later recovered and tied to Mr. Hurell. There was
24 nothing that was used in the implementation of the crime was
25 later recovered and tied to -- they didn't get a bat. They

1 didn't get a money bag. They didn't get a sweatshirt with a
2 green hood on it. None of those things. Bostic was much
3 stronger on that point also because in that case items
4 stolen from the victim, the deceased, were recovered in his
5 yard. I mean, her keys, her clippers, her nail -- her
6 various belongings were recovered in her yard. And in this
7 case there was certainly nothing like that.

8 The fact that there was an accelerant used in the house
9 to ignite the house on fire where Ms. Polite died was
10 certainly something that the investigators looked at and
11 thought it was important. And when they determined that
12 there was gasoline on his shoes, they presented that to the
13 jury to try to tie him, both to the burning fire pit, as
14 well as to the burning of Ms. Polite's home. In this case
15 there's absolutely nothing like that. There's no DNA from
16 Mr. Hurell. There is no physical evidence to show that Mr.
17 Hurell has ever been in that store. There is no accelerant,
18 no tie-ins. He doesn't have a beef jerky or soda that was
19 taken from the store. There's simply nothing physical to
20 put him there whatsoever.

21 Additionally, in Bostic where he had blood on his pants
22 and they said we can exclude ninety-nine percent of the
23 population but not this one percent, it certainly appeared
24 at least to be fairly strong circumstantial evidence,
25 something a jury could consider in conjunction with the rest

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1 of the evidence that was produced. And the Court said, no.
2 These things are suspicious. What do you have to show us he
3 killed this woman? And remanded the case for the entry of a
4 directed verdict.

5 For the reasons I've just described, Your Honor, I
6 think it's clear that the case against Mr. Bostic was much
7 stronger than the case against Mr. Hurell. The things that
8 they had against him are things that they don't have in this
9 case. There's really no evidence to support a verdict of
10 guilt. It does not mean a jury might not enter a verdict of
11 guilt. But as far as from our perspective on this side of
12 the bar, applying the law as I understand it exists, there's
13 simply not substantial evidence of his guilt.

14 There's some evidence that he and his family use
15 TracFones. That someone apparently either was at his
16 sister's apartment or near his sister's apartment on the
17 night of this crime that that person was apparently involved
18 or arguably apparently involved. And that's pretty much it.
19 I mean, this tennis shoe stuff. I mean, the witness himself
20 came in and said well, no, I can't say that's the same. For
21 some reason I wanted to tell you that I found a red and
22 black shoe that is kind of similar. There's no DNA.
23 There's no eyewitness. There's no circumstantial evidence
24 against -- there's nothing here. There's nothing that
25 should legally support a verdict of guilt. And I would ask

1 the Court to seriously consider not submitting this case to
2 the jury. Thank you.

3 THE COURT: Thank you, Mr. Loy.

4 Mr. Justis, anything in reply?

5 MR. JUSTIS: Briefly, Your Honor. The State's
6 relying on the more recent case that was just filed last
7 month. The Bennett case, which I believe you have a copy of
8 -- I gave a copy to the Defense -- where the court
9 essentially says that the court must submit the case to the
10 jury if there is any substantial evidence, which reasonably
11 tends to prove the guilty of the accused or from which his
12 guilt may be fairly and logically deduced. The court must
13 concern itself solely with the existence or non-existence of
14 evidence from which a jury could reasonably infer guilt.

15 In this case we do have -- first of all, you know, he
16 meets the physical description that's given by the victim.
17 He also either lives at the apartment -- according to
18 records he lives there. According to his sister, he doesn't
19 live there but he lives with the mom, but he does visit. So
20 he has access to the apartment, which thereby means he has
21 access to the shirt, because there was some testimony that
22 potentially Traquan did not tell the truth when he said that
23 he did not -- had never seen that shirt before. He told
24 police officers and they testified that that was actually
25 his shirt and it should have been in his closet. Also, he

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1 has access to a white car that's similar to the car that's
2 described by the eyewitness Lucas, Lucas Hartman. And he
3 has access to that car because it's his mom's car. And
4 according to a sister, he lives with his mom. There's the
5 cellphone back and forth. You know, his cellphone is
6 pinging off towers in that area and you have the
7 corroboration with the eyewitness that says that person with
8 the bat, that they saw with the bat, went inside the
9 apartment, not by the apartment. Went inside the apartment
10 not once but twice. And did this back and forth, leaving
11 from the back and leaving again. And that matches the
12 cellphone tower records. There are red shoes that look
13 similar to the ones that are in that photo. And then not
14 only are they similar but the tread patterns are similar.
15 So based on that there is some evidence. And according to
16 the Bennett case that it's -- you know the court is supposed
17 to concern itself solely with the existence or non-existence
18 of evidence and can't make a determination on the strength
19 of that evidence. That's for the jury to decide. So we
20 would say there is enough evidence for this case to go to
21 the jury.

22 THE COURT: Okay.

23 MR. LOY: Your Honor, if I could?

24 THE COURT: Briefly, yes, sir.

25 MR. LOY: First I would note that I was, you know,

1 I was remiss in not citing Bennett because I think it
2 actually supports my argument. I mean, in Bennett there was
3 evidence. I mean, there was blood. They tied it to right
4 underneath the TV that was taken off the wall. Clearly, the
5 TV was taken off the wall. It was moved. Bennett's blood
6 is underneath here. People who work here say Bennett's
7 never in this room. Furthermore, there was a fingerprint,
8 either on the TV or nearby. In this case there's no blood.
9 Again, there's nothing to tie Tashon. There is no blood
10 there. There's no fingerprint there. There's none of those
11 things. And lastly, the court is -- the Solicitor can sort
12 of tell you that it's solely a matter of is there any
13 evidence whatsoever. And in this case I would submit that
14 there's not. However, it's clear that the Court has to
15 define such -- it has to consider whether or not there is
16 substantial circumstantial evidence such as would support a
17 conviction. And not merely to say is there one thing that
18 raises suspicion. There is evidence -- I'm sorry. They
19 specifically say where the evidence submitted merely raises
20 a mere suspicion that the accused is guilty, a direct
21 verdict should be granted. Solicitor wants to tell you that
22 any time any evidence is submitted which raises a suspicion,
23 it has to go to the jury because you're not concerned with
24 the weight, you're concerned with the existence. And that
25 is contra to what the law actually is. It's not a matter of

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1 is there anything for any reason anybody might think this is
2 suspicious. It's whether or not there is actually
3 substantial circumstantial evidence that could support the
4 conviction. And without arguing further, I would submit to
5 the Court that there's not.

6 THE COURT: Now, in the Bennett case, the line in
7 the Bennett case that gives me most concern is, the court
8 must determine whether the evidence presented is sufficient
9 to allow a reasonable juror to find the defendant guilty
10 beyond a reasonable doubt. I don't think -- I think it has
11 to be sufficient, not just some evidence, even though when
12 I'm looking back over the Bostic case where they're talking
13 about proof. The line in there is unless there's a total
14 failure of competent evidence as to the charges alleged,
15 refusal by the trial judge to direct a verdict of acquittal
16 is not in error.

17 Here's the way I'm looking at the evidence. When I
18 view the video, arguably it meets the elements of the crimes
19 that were charged. In addition to the things that were
20 mentioned by the State as elements of the crime -- do I have
21 an independent witness that says the person matching the
22 description, the person who robbed and attacked the victim
23 went into the apartment and you did have a dollar bill with
24 the victim's blood on it outside the apartment. The victim
25 -- I mean, the third-party witness identifies the suspect as

1 coming and going. There are phone records of a phone that
2 are arguably the Defendant's records if you believe that
3 that tee shirt was in the house, even though you've got the
4 conflicting testimony, I think the State -- a reasonable
5 juror could believe every step in the chain and for purposes
6 of a directed verdict motion, I'm going to deny your motion.
7 I'm going to note your objection to my ruling and I'm going
8 to deny your directed verdict motion. I think there is the
9 existence of evidence that a reasonable juror could believe
10 if they believe every step in the chain of circumstantial
11 evidence that the State has presented. So, for that reason,
12 I'm denying your directed verdict motion.

13 MR. LOY: Thank you, Your Honor.

14 THE COURT: Thank you.

15 All right. Now, we need to address the charge issues.
16 Do you want me to go ahead and address that before I bring
17 the jury out?

18 MR. WARD: Yes, sir.

19 MR. LOY: Having so successfully relied on Bennett
20 in my prior argument, my prior argument or my preceding
21 argument, I'll --

22 THE COURT: Well, since the State relied on
23 Bennett, I think Bennett's a good case to argue.

24 MR. LOY: Well, we all relied on Bennett. I just
25 relied on it unsuccessfully. Regardless, in Bennett -- I'm

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1 sorry.

2 THE COURT: No, it is in Bennett that you were
3 talking about the necessary circumstance relied on by the -
4 - page nineteen?

5 MR. LOY: Yes, sir.

6 THE COURT: Okay.

7 MR. LOY: In the case of Bennett what we were
8 discussing in Chambers, the Supreme Court notes that the
9 lense through which the court considers circumstantial
10 evidence when ruling on a directed verdict motion is
11 distinct from the analysis performed by the jury. Within
12 the jury's inquiry -- and here it's in quotes and I know
13 Your Honor has it.

14 THE COURT: Uh-huh. (Affirmative response)

15 MR. LOY: But for purposes of our record it's in
16 quotes. It is necessary that every circumstance relied upon
17 by the State be proven beyond a reasonable doubt. And that
18 all of the circumstances so proven be consistent with each
19 other and taken together point conclusively to the guilt of
20 the excused [sic] to the exclusion of every other reasonable
21 hypothesis. And it closed quotes and it includes the cite.
22 Later, Your Honor, they affirm this, that this language and
23 this requirement. It's a jury instruction. I mean, it's
24 part of the jury's duty. This is what the jury has to do,
25 then they need to be instructed. They need to be instructed

1 as to what their duties are. So later they say -- and this
2 is in the same paragraph. Therefore, although the jury must
3 consider alternative hypothesis, the Court is not necessary
4 -- it's not necessary that the court do that for the
5 purposes of a directed verdict motion. So twice in here
6 they use the language. They quote the language. They
7 indicated again, the jury must consider alternative
8 hypothesis. It's as strong as it can get. And all I'm
9 asking for is the language out of the -- filed January 6,
10 2016 Supreme Court opinion. Just quote it and lift it to
11 tell the jury this is your duty. I mean, the Supreme Court
12 ha said the jury must do this. I think it compels the Court
13 to inform that this is what they must do. So I'd ask you to
14 include that language, Your Honor.

15 THE COURT: Okay. Mr. Ward?

16 MR. WARD: Thank you, Your Honor. We would --
17 both the State and the Defense had an opportunity to look at
18 the charge that you were going to present to the jury. And
19 it was the charge that was instructed in the case of State
20 v. Logan, which was affirmed in 2013. And we would argue
21 that that would be the correct charge. There is cases
22 starting back in 1997, State v. Grippon, G-R-I-P-P-O-N, that
23 gives a new jury charge on circumstantial evidence. Since
24 that case there was State v. Cherry, which was in 2004. And
25 in that case the Supreme Court stated South Carolina courts

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1 must use the jury charge recommended in Grippon. And it
2 also states that Cherry eliminated the reasonable hypothesis
3 language found in the Edwards instruction. Then in State v.
4 Logan, which was in 2013, they basically state that they
5 have modified the Edwards charge with the reasonable
6 hypothesis. It would be a the State's position that there
7 are multiple cases by the Supreme Court that have changed or
8 modified the reasonable hypothesis definition of
9 circumstantial evidence and that should be the charge used.

10 THE COURT: Okay. Mr. Ward, let me ask you a
11 question?

12 MR. WARD: Yes, sir.

13 THE COURT: I'm looking at the Logan charge and
14 you've got a copy of that order as well; is that correct?

15 MR. WARD: State v. Logan?

16 THE COURT: Uh-huh. (Affirmative response)

17 MR. WARD: Yes, sir.

18 THE COURT: Tell me what it means on the last page
19 of that order where it says -- the last line -- Grippon and
20 Cherry to allow the additional language provided above if
21 requested by the defendant. What does that mean?

22 MR. WARD: I'm sorry. I'm trying to find it, Your
23 Honor.

24 THE COURT: Oh, I'm sorry. It would be page four
25 fifty-three of the copy that I think you have the same copy.

1 Maybe you don't have the same copy. It's right above
2 conclusion, on the last page of --

3 MR. WARD: Yes. There it is. I'm sorry. That
4 last paragraph?

5 THE COURT: Uh-huh. (Affirmative response)

6 MR. WARD: Okay. So the additional language
7 provided if requested I think would be the new Logan
8 definition that is all of the circumstances must be
9 consistent with each other and when taken together point
10 conclusively to the guilt of the accused beyond a reasonable
11 doubt. If these circumstances merely portray the
12 defendant's behavior as suspicious, the proof has failed. I
13 think that would be the extra charge you can give at this
14 point, that they're saying you can add on from the Cherry or
15 Grippon charge, which is a little less encompassing.

16 MR. LOY: It's what I tried to argue in chambers,
17 Your Honor, that they didn't supplant the reasonable doubt
18 charge with a new reasonable doubt charge years ago. They
19 simply said there's two. And the common practice for many
20 courts to give both charges. So when they said they have to
21 use this language, as I argued in chambers, it doesn't mean
22 to the exclusion of anything else. It just means that that
23 language is to clarify the outstanding law. I know in my
24 experience and my research it's been -- if we request it we
25 get it, exclusion of any other reasonable hypothesis.

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1 MR. WARD: Again, the State would argue that the
2 reasonable hypothesis was slightly modified or reaffirmed in
3 Logan to what I've read just moments ago.

4 MR. LOY: Or explained and expanded. It didn't
5 kill it.

6 MR. WARD: I mean, then there is State v. Cherry
7 that says eliminating the reasonable hypothesis language
8 found in Edwards.

9 THE COURT: I'm going to step down. I'm going to
10 go back and read this one more time. And I'm going to call
11 y'all back there. We can talk about that a little bit more,
12 okay?

13 MR. LOY: Thank you, Your Honor.

14 THE COURT: Thank y'all. We'll stand down for a
15 second. Okay.

16 (Court in recess for short break)

17 (Court in session after short
18 break)

19 THE COURT: Okay. All right. Mr. Loy, it does
20 concern me that in a 2016 case, the Bennett case, even
21 though it's not withholding, it does mention that the jury
22 must, as part of their inquiry, must consider an alternative
23 hypothesis. Clearly what that says the jury must do.
24 However, when looking at the cases that are actually dealing
25 directly with the charges, okay? I looked at the Grippon

1 case, 1997, it gives the charge. It leaves out the
2 reasonable hypothesis charge and in that case the Supreme
3 Court says that they recommend instructing the jury as to
4 circumstantial evidence and they give the charge where they
5 leave out reasonable hypothesis. Then we move to the Logan
6 case from 2013. They give the charge that I have shown
7 y'all that I'm planning to give. And it says in that charge
8 that we hold that the trial court should provide the
9 following language as to circumstantial evidence in addition
10 to the proper reasonable doubt instruction, which you've
11 also ????. And it notes in there that the Grippon case found
12 that the circumstantial evidence jury instruction including
13 the reasonable hypothesis language is unnecessary. And then
14 finally, I've got a State versus case from 2015 and in that
15 case it mentioned that our Supreme Court had excluded the
16 reasonable hypothesis language from the circumstantial
17 evidence instruction now required by Logan, recognizing that
18 this language is unnecessary. As a result of those cases,
19 Mr. Loy, I believe that I am required to charge the Logan
20 charge or I can go back and I can charge the Grippon charge.
21 But I think the Logan charge suits this case better and is
22 better for your client, okay? So I'm not going to charge
23 the reasonable hypothesis. However, I think that is
24 something that you are well within your rights to argue to
25 the jury, since that's something that the jury must

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1 consider, okay? But I'm just not charging it, okay?

2 MR. LOY: I understand. Thank you.

3 THE COURT: Okay. All right. And I'll note your
4 objection to my ruling so that can be preserved because I
5 think it's -- to me, I think it's unfortunate that we have a
6 case in 2016 that uses that same language, even though we've
7 got instructions otherwise, okay?

8 All right. Anything else?

9 MR. JUSTIS: No, Your Honor.

10 THE COURT: Okay. Now, when the jury went out,
11 had the Defense rested?

12 MR. JUSTIS: No, Your Honor.

13 MR. LOY: No, we have not. I'm sorry.

14 THE COURT: Okay. So I'm going to bring the jury
15 back in here. I'll have you rest in their presence, and
16 then are y'all prepared to do your closings?

17 MR. JUSTIS: We are, Your Honor. We'll just need
18 the little TVs put up. We can do that real quick.

19 THE COURT: Okay. And Mr. Loy, you get to go
20 last?

21 MR. LOY: Yes, sir.

22 THE COURT: Okay.

23 MR. LOY: And, Your Honor, subsequent to resting,
24 just for purposes of our record, I'll make my motion that I
25 renew my earlier motions. And I understand the Court's

1 rulings.

2 THE COURT: Okay. Okay. And I'll go along with
3 however you want me to.

4 MR. LOY: I understand.

5 THE COURT: Okay. But just make sure. That we
6 don't have to bring them in and out. Okay. I think that
7 should still preserve anything for the record, by us getting
8 it or saying it this way.

9 MR. LOY: I think that it will, Your Honor. I
10 just know sometimes it can get a little tight on whether
11 it's preserved or not.

12 THE COURT: Oh, yeah, I know. Our goal here is to
13 preserve that.

14 MR. LOY: I think we've done that.

15 THE COURT: Okay.

16 MR. LOY: As I understand.

17 THE COURT: All right. So the State's ready?
18 Defense ready?

19 MR. LOY: Ready, Your Honor.

20 THE COURT: All right. Bring the jury on out.

21 THE BAILIFF: Yes, sir.

22 THE COURT: Thank you.

23 (Jury in at 2:51 p.m.)

24 THE COURT: All right. Ladies and gentlemen. I
25 appreciate y'all's patience while we took care of a good

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1 many things so that we wouldn't be going back and forth like
2 we did a little bit today. We're now ready to proceed with
3 the trial.

4 Mr. Loy.

5 MR. LOY: Thank you, Your Honor. The Defense
6 rests.

7 THE COURT: All right. Thank you, sir.

8 All right. Ladies and gentlemen, you have now heard
9 all of the testimony that you're going to hear in this case.
10 Now we're moving into the closing arguments of the counsel.
11 And after the closing arguments of counsel, I've got to
12 charge you with the law. That's what this is, okay? Then,
13 after that, if I have properly charged y'all with the law,
14 you'll be told you can begin your deliberations, okay? And
15 what's going to happen is Mr. Justis is going to do his
16 closing argument. Mr. Loy is going to do his closing
17 arguments. I'm going to charge you on the law and then
18 review the verdict form with you. I'm going to come down
19 there and review the verdict form with you. You will then
20 be excused to go back into the jury room, but you still
21 can't begin your deliberations at that time. I've got to go
22 over my charge, whatever I charge on the record. If I
23 misspoke or I need to clarify something, the attorneys will
24 remind me of that and I'll have to bring you out to clarify
25 any points of law that I might have overlooked or misspoke.

1 If I didn't do anything wrong in charging you on the law,
2 the bailiffs will bring the verdict form and the exhibits
3 and tell you to begin your deliberations. At that point you
4 can begin talking about the case. Understand?

5 All right. Mr. Justis.

6 MR. JUSTIS: Thank you, Your Honor, may it please
7 the Court?

8 THE COURT: Yes, sir.

9 STATE'S CLOSE

10 (Video of the incident was played for the jury)

11 BY MR. JUSTIS:

12 Good afternoon, ladies and gentlemen. Normally, at the
13 start of my closing, I usually talk about the law, the
14 charges that the Defendant's charged with, kind of go
15 through the elements of those crimes. I can't think of a
16 better explanation of what an armed robbery, a kidnaping, an
17 attempted murder looks like than that video. So I'm going
18 to forego going over that. The Judge will instruct you on
19 that when he does his charge on the law.

20 But I do want to cover a little bit on the law.

21 As Mr. Ward told you at the beginning of this case, he
22 said this is a circumstantial case. There's no direct
23 evidence. It's all circumstantial. So I want to go over
24 briefly the charge that the Judge is going to give you on
25 circumstantial evidence. And first of all, the Judge is

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1 going to tell you that the law makes no distinction between
2 the weight or value to be given to either direct or
3 circumstantial evidence, okay? That's your job as the jury
4 to give it the weight and the value you decide it deserves.
5 Next, the Judge will tell you, however, to the extent that
6 the State relies on circumstantial evidence as in this case,
7 all of the circumstances must be consistent with each other
8 and when taken together would point conclusively to the
9 guilt of the accused beyond a reasonable doubt. So when you
10 look at all these pieces, they must be consistent. They
11 must not contradict each other. And then when you put them
12 together, they must point conclusively to the Defendant's
13 guilty. If these circumstances merely portray the
14 Defendant's behavior as suspicious, nothing more than
15 suspicious, then the proof's failed. And finally, the State
16 has the burden of proving the Defendant guilty beyond a
17 reasonable doubt. No difference. Then it goes on to say
18 the burden rests with the State regardless of whether the
19 State relies on direct evidence, they rely on circumstantial
20 evidence or a combination. It really doesn't matter what we
21 rely on. We still have to prove his guilt beyond a
22 reasonable doubt. Any and all reasonable doubt. And that's
23 a key word, reasonable. Not beyond all doubt, because
24 there's a lot things we all doubt. I might doubt that the
25 earth revolves around the sun, but is that a reasonable

1 doubt. So it must be a reasonable doubt.

2 Now, ladies and gentlemen, let's get to the issue.
3 We've already talked about -- you know, the fact that these
4 crimes occurred, I don't think there's going to be any
5 argument that these crimes did not occur. You saw them.
6 The question is did he do them? That's the issue. All
7 right. It's simple.

8 And I would submit to you that a bloody dollar bill
9 that has Ms. Mary's blood on it, appears on the porch,
10 inside the little fence on the porch balcony, whatever you
11 want to call it, of Apartment G-4. And you have an
12 eyewitness, Lucas Hartman, who says I saw a man with a bag,
13 jump over that little railing and I heard him right below me
14 go in that apartment. Not once, but twice, okay? So what
15 does that do? Well, that makes G-4 the epicenter of this
16 case. In other words, all signs point to apartment G-4. So
17 the police, as they're investigating, obviously they're very
18 interested in apartment G-4 and thus the people that live at
19 apartment G-4. Because this person goes inside. He doesn't
20 stop on the balcony, hide, you know, accidentally drop
21 something and leave. He goes inside. So that would tend to
22 make a person believe that they either belong there, they
23 live there or they have a reason to be there. They know
24 people there. All right? So that's why the dollar bill,
25 the apartment and that eyewitness, that kind of starts

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1 focusing the investigation that Detective Weaver and the
2 Summerville Police Department start conducting. And what we
3 find out through the testimony we heard that essentially you
4 have Tashima Jones lives there. And there's at least one
5 brother, Traquan, whom you've heard from, that lives there.
6 There's also some evidence according to DMV records, which
7 are in evidence, you'll see, that Tashon Hurell listed that
8 as his address. Whether he lived there or not -- his sister
9 says he didn't live there. She says he lived with mama.
10 Well, that's even more interesting and I'll get to that
11 later.

12 But look at the people there. So you have Traquan,
13 who's the youngest brother, Tramaine the middle brother, and
14 the oldest brother Tashon. Three brothers. Well, Traquan,
15 police eliminate Traquan, why? Why do they eliminate
16 Traquan? Well, they say first of all he's home when police
17 arrive that night. Remember what Lucas Hartman said. You
18 know, Lucas Hartman, he doesn't have a dog in this fight.
19 He doesn't know anybody. He's standing there minding his
20 own business. And he says the person that comes they go in
21 and then leave, come back and leave again. Well, if it's
22 Traquan, he's still in the apartment. It couldn't have been
23 him. And we also know, and you'll have these back there,
24 his phone records. When you look at his phone records
25 you'll see that he is on a sixty-six hundred second call

1 starting at 12:21 a.m until 2:11 a.m. And we know this
2 incident happens at 12:50 a.m., because the 9-1-1 call is at
3 12:51 a.m., that was presented to you earlier. So he's on
4 his phone, right? He gets off at 2:11, and I would submit
5 to talk to police because the police are there by now, okay?
6 And his sister says he's home all night. She says she
7 thinks he's asleep. Whether he's asleep, he's on the phone,
8 she's not in the bedroom with him. He might have fell
9 asleep on the phone. Who knows. Either way, he's there.
10 So it's not him. So police, despite what he says later --
11 and I'll get to that later -- they eliminate him as a
12 potential suspect.

13 So let's talk about Tramaine, which is the middle
14 brother. Well, you've heard Ms. Mary testify. She knows
15 him. He comes in the store a couple of times a day. She
16 works there three nights a week. All right. He's in there
17 all the time. She said he's tall, taller than the person,
18 has a higher pitched voice. You see the photograph of the
19 family and you can look, okay? There's Tashon, there's
20 Tramaine. Now, Tashon's got his head cocked a little bit,
21 but you can see he's taller, noticeably taller in that
22 photograph. And you'll have this back there. And you heard
23 Detective Weaver, also. When he first met with him, like he
24 didn't meet the description, you know, according to
25 Detective Weaver. He works at Captain D's. You heard from

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1 his girlfriend or ex-girlfriend, Shelby. She came and
2 testified. She watched the video. She said that doesn't
3 sound like Tramaine. She had met Tashon a few times before
4 but Tramaine she dated for several months. One could assume
5 -- I think it would be reasonable to assume she would know
6 what he sounds like. And she would have some idea what his
7 body type was like if she dated him. Is that reasonable to
8 expect? So, you know, the police at this time, you know,
9 they've kind of eliminated those two.

10 So we ask him well, why Tashon? Why do they blame
11 Tashon? According to his sister, he doesn't live there but
12 he has access. He ha access to that apartment, comes over
13 there every once in a while. She stated that she saw him
14 earlier that day. Or when I asked her, she said I think it
15 was earlier that day he was over there, okay? And he meets
16 the description by Ms. Mary. And she says medium build,
17 5'10", 5'11" medium build. We've got a picture of him. He
18 looks pretty athletic and so does that individual that
19 hopped over that counter without his feet ever hitting the
20 counter. He puts one hand down and he's over it. Athletic.
21 He also has access if he's staying with mom -- we know that
22 mom has a Pontiac Grand Am. This is it. That's the Pontiac
23 Grand Am. This is the actual Pontiac Grand Am that she has.
24 And she lives a couple of miles away. And, of course, Lucas
25 it was a big -- you know, was it a Mustang? Was it a

1 Pontiac? Well, this is what a Mustang, the same year
2 Mustang looks like. Remember, when Lucas is making this
3 identification, this is what the parking lot looks like.
4 This is a picture taken that night. It's an apartment
5 complex. There's some lighting. It's kind of dark.
6 Remember, he's just there smoking or whatever he was doing
7 up on the balcony without paying a whole lot of attention.
8 I think came with bag and he didn't think much of it until
9 police start arriving. Then he starts -- the wheels start
10 turning at that point. The other interesting thing about
11 living with mom and the car, where's the car? If it's mom's
12 car, one could reasonably assume it's at mom's house. Then
13 he'd have access to the car because his sister said he
14 doesn't own a car. All right. He has access to the car and
15 she also testified there are three keys to the apartment.
16 Her, Traquan and mom. Wouldn't it be reasonable to expect
17 that maybe the car keys are on the same key ring that the
18 apartment key is on? Because I don't know how many people
19 leave their door unlocked at 1:00 in the morning. In an
20 apartment complex most people lock their doors. Would it be
21 reasonable to expect that he takes the car, and he's got
22 access to the house. All right. Because the State would
23 offer that he gets his brother's sweatshirt, this
24 sweatshirt, the one in the pictures, Tasmanian Devil
25 sweatshirt. That's a very unique sweatshirt. Now, Traquan

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1 testified that when police talked to him the next day, you
2 know, they showed him -- not this exact picture but one
3 where the Defendant's turned kind of sideways so you can't
4 really see the Tasmanian Devil. And he says he recognizes
5 it as a Looney Tunes sweatshirt, but he has no idea. He
6 doesn't have one. All right. Nobody he knows has it but he
7 recognizes it from a side view of it. That's what he says.
8 And, of course, when the police -- I called Detective Weaver
9 back, Detective Santana, and they say well when we showed
10 him that picture he said that's my sweatshirt. It has a
11 Tasmanian Devil on the front. And, of course, when you look
12 at it -- you can see in this picture the Tasmanian Devil.
13 This one it just looks kind of colorful. You can't really
14 tell what it is. This one you can see it's Tasmanian. So
15 you know that this is the Tasmanian Devil. He says it's my
16 sweatshirt. I got it in the eighth grade from a friend.
17 Two different stories. The story the police tell, the story
18 he tells.

19 You could say well maybe the police made up a story.
20 If they're going to make up a story, I would think they'd
21 say yeah he told us this is him and that's his sweatshirt.
22 Or this is my sweatshirt, that's my brother. Or that's my
23 sweatshirt and that's, you know, a buddy of mine that came
24 by that I gave it to last week or something like that. I
25 mean, they're not just going to say that's my sweatshirt.

1 They're going to say that's my sweatshirt and that's me or
2 so and so doing the robbery. I mean, if they're going to
3 lie, make it a good lie. You know, don't make it half a
4 lie. So I submit to you he was lying on the stand. His
5 his brother's on trial. Most people wouldn't want to have
6 to testify against their brother. It's a tough thing for a
7 family to have to testify against family members.

8 I think what happened -- I would submit to you what
9 happened he sees it. Oh, yeah, that's my sweat -- that's my
10 Tasmanian Devil sweatshirt. Well, where is it now? Well, I
11 don't know. It was in my closet. Well, we just did a
12 search warrant. It isn't there. Then all of a sudden he's
13 like, oh. He's putting two and two together. He probably
14 didn't see his brother when he came in the house the other
15 night because he was on the phone. And now he's put two and
16 two together and he's realized, oops. My brother must have
17 got it. I don't want to talk to you anymore. That's what
18 he tell the police. He even told you at some point he just
19 doesn't want to talk to them anymore. Well, if he has
20 nothing to hide? And he also said when he took the stand he
21 had no red shoes. You remember in the search warrant they
22 get two pairs of red shoes and they turn out not to match
23 the shoes on the video, but they got two red shoes. Whose
24 shoes were those because he's the only male or grown male,
25 according to his sister that lives there. So the

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1 sweatshirt.

2 And then, you know, finally -- I'm keeping it brief.
3 Because there's testimony we can go over but that's your
4 job. You listened to the testimony. You know what you
5 heard. You can make your own decision. I just want to
6 highlight a few things. And the last thing I want to go
7 over is -- or two things. The red shoes. All right.
8 Obviously, Facebook picture, he's got these red shoes, okay?
9 And you can compare them to the multiple pictures of these
10 red shoes that were found on the Champs website. You can
11 also compare them to -- you see right here and it's a little
12 bit easier. It's hard to see on the screen -- the picture.
13 You can see red and black pretty clear. And granted, this
14 ain't the best video. The quality of it isn't the best but
15 that's a screen shot from the video, okay? But the key
16 thing is look at the -- that's the tread pattern, okay? And
17 there's four pictures in here of the bloody footprints that
18 are found on the scene in Ms. Mary's blood, okay? And there
19 was one that was shown and said the circles are too far
20 apart or whatever. Well, if you look at No.11, remember
21 that number, No. 11. Because when you look at these --
22 because it's a bigger -- it's got more of a print. It's
23 actually got the heel and everything. I mean, just look at
24 it back there. And you'll have these. There are more than
25 one I'm not going to waste your time now. But No. 11. Then

1 you have to ask is it reasonable to believe that somebody
2 else -- you know, obviously, there's lots of pairs of these
3 shoes. But just so happens he's got a Facebook picture
4 wearing shoes like this. The tread patterns, I'll let you
5 make your own mind up whether they match or not. And then
6 finally, access to the white car. He's connected to
7 apartment G-4 where the dollar bill is found with her blood
8 on it. And, finally, the phone records. Okay? You'll have
9 his phone records back there and there's a couple of things
10 that are interesting. As I mentioned to you, you look at
11 21:57, that's 9:57 p.m., there's a phone call that he makes.
12 And he's pinging at that time off tower 405, which is right
13 here, okay? This is Somerset Apartments where either he
14 lives or his sister lives. It's where the dollar bill is
15 found, okay? There's the gas station. He's pinging off
16 that tower at nearly 10:00 that night. Then nothing until
17 1:10 a.m. Remember, this happens at about 12:50. At 1:10
18 a.m. he's still pinging off this tower. 1:11 same tower,
19 1:12 same tower, and later on, 1:12; 421. So now he's
20 pinging off the tower over here. Well, if he lives with mom
21 and has mama's car. But the interesting thing is that's at
22 1:12 and then 1:18 six minutes later, he's back, pinging off
23 this one. All right? And then 1:18 -- I'm sorry 1:19, he's
24 back on this one. 1:27, still on this one. 1:28, back on
25 421. And he stays on 421. 1:34, 2:32, all the way to the

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1 next morning, early the next morning. Okay. What did Lucas
2 Hartman tell you? He went inside, came out, got in the car,
3 left. A few moments later, came back, left again. Is it
4 reasonable to believe that the reason why these towers are
5 going back and forth is because that's him going back and
6 forth, just like Lucas Hartman told you. Is that
7 reasonable? Then, of course, finally with the phone records
8 you see the next morning at 7:08, starts dialing some 800
9 numbers and then this 214 -- the 1-214 number multiple
10 times. And you heard Detective Weaver testify that when he
11 contacted those numbers, they're for Greyhound Bus Lines,
12 customer service, Greyhound Bus Lines. Hoping to get out of
13 Dodge. Is it reasonable to believe that maybe he's checking
14 so he can get out? Because remember, you know, he knows
15 somebody saw him. He knows Lucas Hartman saw him. You
16 know, but for our K-9 officer walking back there, you know,
17 after he put his dog up because they couldn't do a perimeter
18 because they didn't have enough officers or whatever. So he
19 said we just had to go beat the street. You know, look for
20 evidence. Just happened to be walking right there and who
21 does he come across, Lucas Hartman, who connects him to the
22 dollar bill. If not for that and if not for running into
23 Lucas Hartman, we wouldn't be here today. That's the
24 linchpin right there. And you heard from SLED, the blood
25 came back. It's Ms. Mary's blood on that dollar bill that's

1 just laying there inside their patio.

2 You know, you heard from -- in this case you heard from
3 sixteen witnesses. The State called sixteen witnesses and
4 after the first two, the other fourteen were just witnesses
5 that gave you pieces of the puzzle, small pieces. Just like
6 Mr. Ward told you. He said, listen, it's going to be kind
7 of monotonous, a little piece here, a little piece there.
8 You know, he talked about a chain, you know, links in a
9 chain, okay? That's what you got from that circumstantial
10 evidence, because the chain will connect everything. All
11 right. And so for the last fourteen witnesses that's what
12 you get. But I don't want you to forget the first two
13 witnesses, who was Ms. Mary and was Dr. Lecholop. And they
14 talked about what happened to Ms. Mary that day. And I
15 don't want you to forget that. I don't want you to forget
16 her pain, her suffering, her fear.

17 MR. LOY: Objection, Your Honor. I just think
18 that's inflammatory and improper argument.

19 THE COURT: If you would rephrase your argument,
20 I'd appreciate it.

21 STATE'S CLOSING CONTINUED

22 BY MR. JUSTIS:

23 I don't want you to forget her testimony, Ms. Mary's
24 testimony because everything she's been through is a result
25 of one man and one man only, that's Tashon Hurell.

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1 Now, here's the thing, neither Glenn Justis, Kyle Ward,
2 John Loy, Detective Weaver, none of us are the jury in the
3 matter of the State of South Carolina versus Tashon Hurell.
4 So what we say doesn't really matter. We don't decide on a
5 verdict. So the only question is, what do you say?

6 Thank you.

7 THE COURT: Thank you, Mr. Justis.

8 Mr. Loy.

9 MR. LOY: Thank you, Your Honor.

10 DEFENSE'S CLOSE

11 BY MR. LOY:

12 Good afternoon. When we started out this trial -- the
13 Judge told you, Mr. Ward told -- with the presumption of
14 innocence. That is, you look at the Defendant, you actively
15 presume that person innocent of any crime whatsoever. Then
16 you look at the State and you say, prove it.

17 We have charged this person, this citizen who says he's
18 not guilty of what you've accused him of. He's been held.
19 He's been held. And now we're going to put it to the test.
20 Now we're going to put it to twelve of my fellow citizens
21 and you prove it to them that I did this because I say I
22 didn't. The evidence is not there.

23 So we have a presumption of innocence, burden of proof
24 on the State. And the burden of proof is proof beyond any
25 and every reasonable doubt. They attempt to prove their

1 case by calling witnesses one after the other. With each
2 one of them they think will contribute one item or two items
3 or more that will help you decide or help you reach the
4 conclusion that, in fact, they've won. They've proved the
5 guilt of the Defendant. You don't decide the case, any
6 criminal case, on solely on the evidence that you hear. You
7 also have to consider what you don't hear. It's not just
8 the evidence, it's also the lack of the evidence. And in
9 this case there's a vacuum of evidence.

10 First, consider the things that we have, what we call
11 direct evidence. And it's simply not in this case. Before
12 I go any further, I'd like to say nothing I say in my
13 closing argument should be considered as anyway belittling
14 of the injuries that Ms. Pecorora suffered or the magnitude
15 of what was done. It was real bad and it shouldn't have
16 happened. And I wish that it didn't happen. I'm glad
17 things weren't worse. That's not the issue. The issue is
18 y'all look at the evidence, you weigh the evidence, you
19 apply the law as the Judge gives it to you and you reach a
20 verdict as to whether or not guilt has been proven beyond a
21 reasonable doubt.

22 Now, the Judge is going to tell you shortly beyond a
23 reasonable doubt means beyond the kind of doubt that would
24 cause a person to hesitate to act. That's a reasonable
25 doubt. So after considering the evidence, if after hearing

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1 from the Judge, you have the kind of doubt that would make
2 you say, Oh, wait. that's a reasonable doubt and that is
3 what your oath would you require you -- when your oath would
4 require you to return a verdict of not guilty. Now, there's
5 direct evidence. Direct evidence when someone comes to
6 court and says -- in a different trial and a different case
7 -- I saw the Defendant and he had cocaine. That's direct
8 evidence. I told the person to leave my yard and instead he
9 shot at me with a gun. Direct evidence. I don't know what
10 happened in the house, but I saw the Defendant go into the
11 house with someone else and there was a problem or a crime
12 occurred and I saw them go in there. Direct evidence. All
13 of that is direct evidence. There is none. There's not
14 anybody to say that Mr. Hurell was at that apartment that
15 evening. As a matter of fact, the State's own witnesses
16 will tell you he was not. There's not anyone to say that I
17 saw him commit this crime. There's not anyone to say it was
18 Tashon Hurell who came out of the wood line over there.
19 There is no direct evidence.

20 The State conceded at the outset of the trial their
21 case would be based solely on circumstantial evidence.
22 Circumstantial evidence. To the extent that the State
23 chooses to rely on circumstantial evidence, all of the
24 circumstances must be entirely consistent, one with the
25 other. And they must point conclusively to the guilt of the

1 Defendant, which means there's no other possible
2 explanation. We take these circumstances. We weigh them
3 together. We think of other ways it could have happened.
4 And if there are other reasonable explanations, then guilt
5 has not been conclusively proven by circumstantial evidence
6 and your oath requires you to return a verdict of not
7 guilty. Now, as to most of what's been introduced here, so
8 what? It's a big so what? So what? Where's the part that
9 proves Tashon Hurell was some kind of an armed robber?
10 Where's the part that proves he had the bag? Where is this
11 bag they talk about? Where is this sweatshirt? Where is
12 the money bags? Where are these jeans that they're so
13 fixated on? Where is any of it? None of it is there. What
14 did they prove? Well, his mama's got a white car. Nobody
15 ever said he drives it, he has access to it. He got a
16 driver's license. We saw him in the car. He tools around
17 in the car. No. They proved over and over mom's got a
18 white car. Now, it's not the same kind of car that Mr.
19 Hartman said he saw that night. It was a white car. Okay.
20 So what? How about this. Ms. Tashima Jones testified, mom
21 is my babysitter. She keeps my child. She's got a key to
22 the apartment. She's over here all the time. Mr. Hartman,
23 have you ever seen that car before? As Officer Nelson told
24 you the report reflected -- Nope, I've never seen that car
25 here before. So it's grasping at straws.

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1 They say somebody who we think committed this crime,
2 who committed this crime, we think they had on red and black
3 shoes. And then in an attempt to manufacture something to
4 put before you, an investigator, if you will, goes on line
5 Googles red and black shoes, finds some pairs and prints
6 them out and brings them here to court with them. How in
7 the world does that advance their case. I mean, he says, I
8 think these shoes are red and black. Guess what, I have
9 some pictures of some red and black shoes. Then he says on
10 direct examination he says, that's when I examined the red
11 and black shoes in my position as an investigator with the
12 Solicitor's office, I made a determination that, in fact,
13 these patterns in the blood and the pattern on the bottom of
14 the shoe are, in fact, similar and that's what I see. On
15 further examination what he says is essentially well, okay,
16 you got me. They don't really look exactly the same. And
17 he also says well, those are the type shoes I got from the
18 Champs -- I've got no idea if they're the ones on his feet
19 in that Facebook picture. He says I don't know how many
20 shoes have a similar foot pattern to that. I don't know if
21 the Defendant has ever had a pair of shoes such as these.
22 There's no connection. There's no tie-in. There's nothing
23 that goes into that evidence whatsoever. And, again, it's
24 just -- it's basically trying to run a hustle passed you, I
25 feel, because it's completely irrelevant. Look at the

1 patterns yourselves. You'll see them. They don't match up.
2 And even if they did, there's nothing to indicate that those
3 are the type shoes Mr. Hurell has. As a matter of fact, the
4 investigator told you, oh, I don't know. No, I can't say.
5 They could have been Pumas or they could have been Adidas,
6 or it could have been this or it could have been that. I
7 asked him how many models there were. He said millions.
8 That might be an exaggeration as far as number of different
9 models of shoes got out. But it was just him backing up
10 with okay, the shoes don't mean anything. They don't match.
11 They've got holes in the bottom. And somebody had holes in
12 the bottom of their shoes in the store that night. And
13 that's the sum total and the extent of it.

14 Now, they want to say we eliminated Tramaine as a
15 suspect in this case. And how did they do that? Well, they
16 went and got his ex-girlfriend. Everybody in the jury box
17 is an adult. Relationships are complicated. They're hard
18 to second guess. These folks were in a relationship for
19 months. How about this for another explanation when you're
20 considering whether or not there's any other reasonably
21 possibility of what could have happened. How about this.
22 Girlfriend, watch this video and look at this tape. Does
23 this look like anybody you know? Oh my God, it's Tramaine.
24 Nope. Don't know who that is. Nope, that doesn't look like
25 him to me. There's absolutely no grounds whatsoever to

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1 look, listen to her and then say that's unreasonable, that
2 couldn't have happened because everybody in the box knows
3 that could have happened.

4 What else, while she was on the witness stand did she
5 say? I know the Defendant. I took this picture of him.
6 I've hung around with him four or five times. We've been at
7 family functions together. They had a pretty good chance
8 right then. Does it look like him to you? That voice, does
9 it sound like him? Why do you think they didn't ask that
10 question?

11 Now, the State says a TracFone. People have got
12 TracFones. You can buy them off the rack, put minutes on
13 them. You can hand them around, you can sell them. You can
14 buy them on Craigslist. You know, anybody who wants to can
15 call in, charge them up and use them. And so here's a phone
16 that at some point in time was attributed with someone
17 associated with Mr. Hurell. And they say, look here it's
18 pinging on one tower and here it's pinging on the other
19 tower. You heard their own witness testify. No, I'm not
20 saying the phone's moving. That's not what I'm saying.
21 Yeah, they overlap. They can ping on one, ping on another
22 and lay on the end of the table for the rest of the night
23 without ever having moved at all. So it's a little
24 disingenuous to come in and try to present that somehow
25 establishes this phone is rolling around when their own

1 witness indicates that's not the case.

2 When you're considering whether or not there's any
3 other way that you can explain what happened on this
4 evening, other than that Tashon Hurell charge in there, hit
5 that lady and stole that money. Think about this, there's a
6 three-year-old child at Tashima's house, Tashima Jones. Is
7 this a completely unreasonable hypothesis this couldn't have
8 happened. Well, there'd better be child support or we're
9 going to court for it then. You know how that goes and how
10 that works. Somebody goes and robs this store and shows up,
11 bangs on the door, fine. Here's the money and leaves.
12 Somebody fathered this child. How can you exclude him. How
13 can you exclude everybody else these folks might know. How
14 can you exclude every cousin, every family member, every
15 friend of any one of these people? And the simple fact is
16 you can't. You can't say there's only three possible people
17 in the world who could have done this. We've decided
18 because an interested party, girlfriend, says that she don't
19 think it's him. And because somebody was on the phone that
20 this boy gave the other number for, it has to be this one.

21 There's an entire world full of folks that it could
22 have been. And there's nothing to disprove that could have
23 been any of them. How about this. I think there's a
24 photograph of the apartment complex here. And you'll have
25 that in the back. It's here somewhere. It shows the front

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1 of the apartment. The guy upstairs, Mr. Hartman, he did say
2 I never saw anybody go in the apartment. I just heard them
3 down beneath me. I think he hopped the balcony underneath
4 where I was and must have gone in. How about this --

5 MR. JUSTIS: Objection.

6 THE COURT: State your objection.

7 MR. JUSTIS: He's misrepresenting the facts.

8 MR. LOY: This is for the jury. They heard the
9 evidence.

10 THE COURT: Well, and if you'd just -- if you'd
11 say that was your take on it and it's up to them to
12 determine what they heard, what they remember, if you would
13 just clarify that, Mr. Loy.

14 MR. LOY: Your Honor, what I heard was the
15 Defendant -- the witness say I was on the balcony. I saw a
16 person come up. I saw them go underneath me. I couldn't
17 see the door. I didn't see them go in. I didn't see them
18 go out. I could not see that. If that's not how you
19 recollect it, you can come back in and listen to the
20 testimony because that's what happened. And how about this.
21 Suppose Ms. Jones is telling the truth. Y'all had a chance
22 to observe her, to listen to her, to hear the things that
23 she said. And the Judge is going to tell you it's up to
24 y'all to judge her credibility or her believability. How
25 much credit you give to the testimony that she gave.

1 Suppose she's telling the truth. Suppose somebody came up,
2 jumped underneath that balcony, did whatever it is they did.
3 And Mr. Hartman who was upstairs thought someone went in the
4 apartment but they didn't. He said I wasn't really paying
5 attention. I didn't think that much about it. I don't know
6 if he was drinking, smoking or anything else. But he said I
7 wasn't paying attention, I think somebody went in. Suppose
8 they didn't. Suppose they hid out there for a while,
9 counted their money, did whatever it was, and left. Y'all
10 have a chance to listen to it. Did she look like she was
11 lying. Did he look like she was hiding? Did she look like
12 she was trying to cover things up? Or did she look like she
13 was trying to answer the Solicitor's questions as
14 straightforward and honestly as she could. Credibility of
15 the witnesses is for you.

16 Suppose, and it looks like there's four apartments,
17 there are several apartments down underneath there. Suppose
18 he hopped one balcony but went in a different door, hid out
19 over there. People we've never heard of completely involved
20 in this. Ms. Jones is telling the truth. No one came in
21 the house that night. If we had been involved in a robbery,
22 if people had been showing up bloody, robbery -- Do you
23 think I'd open the door and let them in? You think I'd tell
24 them to come in and search the place? She's been
25 cooperative from the very beginning every step of the way.

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1 All of these are other explanations for what the State has
2 given you. And you don't need all of them in order to
3 return a verdict of not guilty. You just need one. And if
4 you don't like any of mine, then y'all need to go back in
5 the back and each individually think, is there any other
6 explanation, other than the one that the State gave us,
7 other than the ones that Mr. Loy's given us. Is there
8 anything else that could have possibly happened that night?
9 Because if there is, according to the oath that you've
10 taken, you must return a verdict of not guilty.

11 So somebody had some red shoes or red and black shoes.
12 They will tell you they believe that Tashon had some red and
13 black shoes. Folks got TracFones and they talk on them a
14 lot. Tashon's mama's got a white car. His brother either
15 said I did have a sweatshirt like that or had some exchange
16 and he remembers it differently than how the police remember
17 it. There is no sweatshirt here and nobody's ever said they
18 saw him with it. Remember their witness, Sonja, [sic] who
19 said, oh, no, that's not Tramaine. What else did she say?
20 Dated him four or five months. Never saw anything like
21 that. Asked the other witnesses, did you ever see -- no,
22 never saw a sweatshirt like that. And there's absolutely
23 nothing to tie it to Tashon Hurell.

24 And so, ladies and gentlemen, I'd ask you to consider
25 all of this. And consider that when Mr. Ward told you early

1 on that the State must prove two things, that is that a
2 crime was committed. We concede they've proved that. And
3 then the reason you've got all this other stuff is to try to
4 distract you from the fact that none of it adds up to proof.
5 It's just not there.

6 Ladies and gentlemen, I'd ask you to consider these
7 things and return a verdict of not guilty.

8 THE COURT: Thank you, Mr. Loy.

9 COURT'S CHARGE

10 All right. Ladies and Gentlemen, you and I have
11 different duties to perform. As the trial Judge it's my
12 responsibility to preside over the trial in this case.
13 You're to consider only the testimony that has been
14 presented from the witness stand and the exhibits, which
15 were introduced into evidence. I have the duty to charge
16 you the law that is applicable in this case. As the
17 presiding Judge, I am the sole judge of the law in this
18 case, and it is your duty as jurors to accept and apply the
19 law as I now state it to you. If you already have any idea
20 as to what the law is or what the law ought to be and it
21 does not agree with what I now tell you the law is, you must
22 abandon this idea because you're sworn to accept and apply
23 the law exactly as I state it to you.

24 In every case the jury is the sole and exclusive judge
25 of the facts. A trial judge cannot suggest, state, comment

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1 on or make any statement to a trial jury about the facts.
2 Since you, the jury, are the sole judges of the facts, you
3 are not to infer from what I have said during the progress
4 of this trial, in ruling upon the admissibility of evidence
5 or otherwise, or anything that I say now during the course
6 of this instruction to you, that I have an opinion about the
7 facts. The law does not allow me to have an opinion about
8 the facts of this case. This is a matter solely for you,
9 the jury to determine. As jurors, it is your duty to
10 determine the effect, value, weight and truth of the
11 evidence presented during this trial.

12 Each indictment charges a separate and distinct
13 offense. You must decide each indictment separately on the
14 evidence and the law applicable to it, uninfluenced by your
15 decision as to any other indictment. The Defendant may be
16 convicted or acquitted on any or all of the offenses
17 charged. You will be asked to write a separate verdict of
18 guilty or not guilty for each indictment. The indictments
19 charge the Defendant with attempted murder, armed robbery
20 and kidnapping. I remind you that the fact the Defendant
21 was arrested, charged and indicted is not evidence in this
22 case and cannot be considered by you as evidence of guilt in
23 this case. Nor does it create any presumption or inference
24 of guilt. These documents are simply the formal written
25 instruments, which contain the charges made against the

1 Defendant. They are the formal documents by which this case
2 is brought into this court.

3 The Defendant has pled not guilty to these indictments.
4 And that plea puts the burden on the State to prove the
5 Defendant guilty beyond a reasonable doubt. A person
6 charged with committing a criminal offense in South Carolina
7 is never required to prove himself innocent. I charge you
8 that the Defendant in a criminal trial, no matter how
9 serious charge, is always presumed to be innocent of the
10 crime for which the indictment was issued unless guilt has
11 been proven by evidence satisfying you of that guilt beyond
12 a reasonable doubt. This presumption of innocence does not
13 end when you begin your deliberation. But it accompanies a
14 Defendant throughout the trial until you reach a verdict of
15 guilt based on evidence satisfying you of that guilt beyond
16 a reasonable doubt.

17 The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the Defendant,
19 which remains with the Defendant until it has been stripped
20 from him by evidence satisfying you of the Defendant's guilt
21 beyond a reasonable doubt. The presumption of innocence is
22 not mere legal theory. It is not just a legal phrase. It
23 is a real and substantial right to which every Defendant is
24 entitled unless you, the jury, are satisfied from the
25 evidence of the Defendant's guilt beyond a reasonable doubt.

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1 What is reasonable doubt in the law? A reasonable
2 doubt is the kind of doubt that would cause a reasonable
3 person to hesitate to act. The State has the burden of
4 proving the Defendant guilty beyond a reasonable doubt.
5 Some of you may have served as jurors in civil cases where
6 you were told it is only necessary to prove that a fact is
7 more likely true than not true, such as by the greater
8 weight or preponderance of the evidence. In criminal cases,
9 the State's Proof must be more powerful than that. It must
10 be beyond a reasonable doubt. Proof beyond a reasonable
11 doubt is proof that leaves you firmly convinced of the
12 Defendant's guilt. There are very few things in this world
13 that we know with absolute certainty. And in criminal cases
14 the law does not require proof that overcomes every possible
15 doubt. If, based on your consideration of the evidence you
16 are firmly convinced that the Defendant is guilty of the
17 crimes charged, you must find the Defendant guilty. If, on
18 the other hand you think there is a real possibility that
19 the Defendant is not guilty, you must give the Defendant the
20 benefit of the doubt and find him not guilty.

21 There are two types of evidence which are generally
22 presented during a trial, direct evidence and circumstantial
23 evidence. Direct evidence is the testimony of a person who
24 claims to have actual knowledge of a fact, such as an
25 eyewitness. Direct evidence directly proves the existence

1 of a fact and does not require deduction. Circumstantial
2 evidence is proof of a chain of facts and circumstances
3 indicating the existence of a fact. Crimes may be proven by
4 circumstantial evidence. The law makes no distinction
5 between the weight or value to be given to either direct or
6 circumstantial evidence nor is a greater degree of certainty
7 required of circumstantial evidence than direct evidence.
8 However, to the extent the State relies on circumstantial
9 evidence, all of the circumstances must be consistent with
10 each other and when taken together point conclusively to the
11 guilt of the accused beyond a reasonable doubt. If these
12 circumstances merely portray the Defendant's behavior as
13 suspicious, the proof has failed. The State has the burden
14 of proving the Defendant guilty beyond a reasonable doubt.
15 This burden rests with the State regardless of whether the
16 State relies on direct evidence, circumstantial evidence or
17 some combination of the two. After weighing all of the
18 evidence, if you are not convinced of the guilt of the
19 Defendant beyond a reasonable doubt, you must find the
20 Defendant not guilty. Necessarily, you must determine the
21 credibility of witnesses who have testified. Credibility
22 simply means believability. It becomes your duty as jurors
23 to analyze and to evaluate the evidence and determine which
24 evidence convinces you of its truth.

25 In determining the believability of witnesses who have

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1 testified in this case, you may believe one witness over
2 several witnesses or several witnesses over one witness.
3 You may believe a part of the testimony of the witness and
4 reject the remaining part of the testimony of that same
5 witness. You may believe the testimony of a witness in its
6 entirety or reject the testimony of a witness in its
7 entirety. You may consider whether any witness has
8 exhibited to you any interest, bias, prejudice or other
9 motive in this case. You may also consider the appearance
10 and manner of a witness while on the witness stand.

11 The rules of evidence ordinarily do not permit
12 witnesses to testify to opinions or conclusions. An
13 exception to this rule exists for witnesses we call expert
14 witnesses, a witness who, by education and experience, have
15 become expert in some art, science, profession or calling
16 may state an opinion as to relevant and materia matter in
17 which the witness claims to be an expert. And may also
18 state the reasons for the opinion. You should consider any
19 expert opinion received in evidence in this case and like
20 any other evidence give it the weight you think it deserves.
21 If you decide that the opinion of an expert witness is not
22 based on sufficient education and experience or if you
23 conclude that the reasons given in support of the opinion
24 are not sound, or if you believe that the opinion is
25 outweighed by other evidence, you may disregard the opinion

1 entirely. An expert witness' testimony is to be given no
2 greater weight than that of other witnesses simply because
3 the witness is an expert. Further, you're not required to
4 accept an expert's opinion, even though it is not
5 contradicted.

6 I instruct you and emphasize that the fact that the
7 Defendant did not testify is not a factor to be considered
8 by you in any way in your deliberation and in your
9 consideration or the question of the guilt or innocence of
10 the Defendant. It must not be considered by you in any
11 manner whatsoever. A Defendant has a constitutional right
12 to remain silent. And the assertion of this right must not
13 be considered by you in your deliberations. I repeat.
14 Under your oath, you are to draw no conclusion whatsoever
15 from the fact that the Defendant in this case did not
16 testify. The fact that this Defendant did not testify
17 should not even be discussed in the jury room. The burden
18 of proof as I have stated to you is on the State. The
19 Defendant is not required to prove his innocence. The
20 burden of proof remains on the State to prove guilt beyond a
21 reasonable doubt.

22 In order to establish criminal liability, criminal
23 intent is required. For example, the mental state required
24 to be proven by the State for a particular crime might be
25 purpose, intent, knowledge, recklessness or criminal

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1 negligence. Criminal intent must be proven by the State by
2 a reasonable doubt. Criminal intent is always a matter that
3 must be determined by the jury from the circumstances
4 surrounding the situation. There's no way to prove intent
5 to a mathematical certainty. There's no way medical science
6 can dissect a person's brain and determine what the person
7 had in mind. So the law says that criminal intent may be
8 inferred from the circumstances shown to have existed. You
9 must make a determination of whether or not the element
10 requiring intent was present. It is not necessary to
11 establish intent by direct and positive evidence, but intent
12 may be established by inference in the same way as any other
13 fact, by taking into consideration the acts of the parties
14 and all the facts and circumstances of the case. Criminal
15 intent is a mental state, a conscious wrongdoing. It is up
16 to you to determine what the Defendant intended to do based
17 on the circumstances shown to have existed. Criminal intent
18 can arise from an action or failure to act. It may arise
19 from negligence, recklessness or an indifference to duty or
20 to consequences that are considered by the law to be the
21 equivalent of a criminal intent.

22 The Defendant is charged with attempted murder. In
23 order to prove this crime, the State must prove the
24 Defendant attempted to kill another person with malice
25 aforethought either expressed or implied. Malice is hatred,

1 ill will or hostility toward another person. It is the
2 intentional doing of a wrongful act without just cause or
3 excuse and with an intent to inflict an injury or under
4 circumstances that the law would infer an evil intent.
5 Malice aforethought does not require that the malice exist
6 for any particular time before the act is committed. But
7 malice must exist in the mind of the Defendant just before
8 and at the time the act is committed. Therefore, there must
9 be a combination of a previous evil intent and the act.
10 Malice aforethought may be expressed or inferred. These
11 terms expressed and inferred do not mean different kinds of
12 malice, but merely the manner in which malice may be shown
13 to exist. That is either by direct evidence or by inference
14 of the facts and circumstances, which are proved. Expressed
15 malice is shown when a person speaks words which express
16 hatred or ill will for another. Or when a person prepared
17 beforehand to do the act, which was later accomplished. For
18 example, lying in wait for a person or any other acts of
19 preparation going to show that the deed was within the
20 Defendant's mind would be expressed malice. Malice may be
21 inferred from conduct showing a total disregard for human
22 life. Inferred malice may also arise when the deed is done
23 with a deadly weapon.

24 A deadly weapon is any article, instrument or substance
25 which is likely to cause death or great bodily harm.

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1 Whether an instrument has been used as a deadly weapon
2 depends on the facts and circumstances of each case. The
3 following are examples of instruments which may be deadly
4 weapons: a pistol; a shotgun; a rifle; a dirk; a dagger; a
5 knife; a slingshot; metal knuckles; a razor; gasoline; a
6 fire bomb or Molotov cocktail; and, lighter fluid. Ordinary
7 objects may become deadly weapons when the facts show that
8 they have been used to inflict serious bodily harm or death.
9 If facts are proved beyond a reasonable doubt sufficient to
10 raise an inference of malice to your satisfaction, this
11 inference would be simply an evidentiary fact to be
12 considered by you, the jury, along with other evidence in
13 this case. And you may give it the weight you decide it
14 should receive.

15 A specific intent to kill is not an element of
16 attempted murder, but there must be a general intent to
17 commit serious bodily harm. Intent means intending the
18 result which actually occurs, not accidentally or
19 involuntarily. Intent may be shown by acts and conducts of
20 the Defendant and other circumstances from which you may
21 naturally and reasonably infer intent. Evidence of the
22 character of the act, the character of the instrument used,
23 the manner in which it was used, the purpose to be
24 accomplished, the resulting wounds or injuries, may be
25 considered in determining the intent, an intent with which

1 the act was committed. Intent may also be inferred when it
2 is demonstrated that the Defendant voluntarily and willfully
3 commits an act. The natural tendency of which is to destroy
4 another's life.

5 The Defendant is charged with armed robbery. In order
6 to prove this offense, the State must first prove beyond a
7 reasonable doubt that the Defendant took personal property
8 from the person or presence of another person. Property is
9 in the presence of a person if it is within the person's
10 reach, inspection, observation or control so that the person
11 could, if not overcome with violence or prevented by fear,
12 keep possession of the property. The State must also prove
13 beyond a reasonable doubt that the Defendant carried the
14 property away intending to permanently deprive the owner of
15 the property and to keep the property for the Defendant's
16 own use. The slightest removal of the property or the
17 complete possession of the property, even for an instant by
18 the Defendant, is sufficient to show a taking and carrying
19 away of the property. The taking and carrying away of the
20 property must have been done with violence or by putting the
21 owner of the property in fear of violence.

22 Finally, the State must prove beyond a reasonable doubt
23 that the Defendant was armed with a deadly weapon during he
24 robbery. A deadly weapon is any article, instrument or
25 substance which is likely to cause death or great bodily

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1 harm. Whether an instrument has been used as a deadly
2 weapon depends on the facts and circumstances of each case.
3 Again, the following examples of instruments which may be
4 deadly weapons are: a pistol; a shotgun; a rifle; a dirk; a
5 dagger; a knife; a slingshot; metal knuckles; razor;
6 gasoline; fire bomb or Molotov cocktail; and, lighter fluid.
7 A gun may be a deadly weapon even if it is not operating.
8 Ordinary objects may become deadly weapons when the facts
9 show that they have been used to inflict serious bodily harm
10 or death.

11 The Defendant has also been charged with kidnapping.
12 The State must prove beyond a reasonable doubt that the
13 Defendant knowingly and unlawfully seized, confined,
14 inveigled, decoyed, kidnaped, abducted, or carried away
15 another person without authority of law. To do a thing
16 unlawfully is to do it willfully against the law. Knowingly
17 means with knowledge, consciously, not accidentally. Seize
18 means to take hold of suddenly or forcibly. Confine means
19 to limit, restrict or enclose within bounds, imprison or to
20 shut or keep in. Inveigle means to lure, entice, or lead
21 astray by false representations promises or other deceitful
22 needs. Decoy means to lure by or as if by decoy. A decoy
23 is something to entice a person into a trap. Kidnap is to
24 remove a person against his will by unlawful force or by
25 fraud. Abduct means to carry off secretly or by force for

1 an illegal purpose. Carry away means to remove. The State
2 does not have to prove that the Defendant did all of these
3 things. Instead, if you find beyond a reasonable doubt that
4 the Defendant did any of these things you may find the
5 Defendant guilty of kidnapping. Something done without
6 authority of law is something which the law does not
7 sanction, permit, allow, condone or provide justification
8 for. The kidnapping does not have to be for any personal or
9 monetary gain or for any illegal purpose. But it may be for
10 any reason whatsoever.

11 I have declared the law to you through the instructions
12 to help guide you to a just and lawful verdict. Whether
13 some of these instructions will apply will depend upon what
14 you find to be the facts. The fact that I have instructed
15 you on various subjects in this case must not be taken as
16 indicating an opinion of this court as to what you should
17 find to be the facts or as to which party is entitled to
18 your verdict. Your verdict must represent the considered
19 judgment of each juror. In order to return a verdict, it is
20 necessary that each juror agree. Your verdict must be
21 unanimous. All twelve of you must agree on the verdict.
22 Your verdict cannot be based on sympathy, passion,
23 prejudice, emotion or any other consideration not in
24 evidence in this case. Remember, at all times you are not
25 partisans favoring one party over another. You are the

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1 judges of the facts and your sole interest is to seek the
2 truth from the evidence that has been presented in this
3 case.

4 All right. I'm going to come down there with the
5 verdict form and go over it with you.

6 All right. This just tells you where we are. State of
7 South Carolina, County of -- we are in General sessions.
8 And this lists the indictment numbers for these three
9 charges, okay? The case is styled the State of South
10 Carolina versus Tashon Earl Hurell. He is the Defendant.
11 This is the verdict form. The directions say please circle
12 the appropriate verdict below and follow the accompanying
13 instructions carefully.

14 Question number one. We, the jury, unanimously find
15 the Defendant as to the charge of attempted murder. You
16 will circle either guilty or not guilty.

17 Question number two. We, the jury, unanimously find
18 the Defendant as to the charge of armed robbery, guilty or
19 not guilty.

20 Question number three. We, the jury, unanimously find
21 the Defendant as to the charge of kidnapping, guilty or not
22 guilty.

23 And you're going to have to answer each charge. There
24 are three different charges. You have got to answer all
25 three of these questions, okay? It doesn't matter the order

1 that we put them on there. But you've got to answer all
2 three of them. Once you have answered these, once y'all
3 have come to a unanimous decision regarding these three
4 questions, you will stop your deliberations. You sign here
5 and then you date it. And we left the date, we left today's
6 date blank. We take as long as it takes, okay?

7 FOREMAN: Yes, sir.

8 THE COURT: All right. Now, I told y'all earlier
9 that after I charge you on the law and go over the verdict
10 with you, I'm going to excuse y'all to go back into the jury
11 room. And the reason y'all are going back there is I had to
12 read that charge to you. If I misspoke or left something
13 out or like that, these attorneys are going to remind me
14 that I left something out or I misspoke and they're going to
15 want me to correct the charge because that's very important.
16 If I have to do that, I'll bring you back out here. I'll
17 correct the charge and correct how I misspoke. So that is
18 my charge on the law. If they don't have any corrections,
19 the bailiff will bring this verdict form and all of this
20 evidence, will bring it back into the jury room and then you
21 can begin your deliberations at that time.

22 Remember, as the foreman of the jury, it is your duty
23 to preside over the discussions in the jury room. If you
24 end up with any questions, just like y'all have been filling
25 out some of those notes to me. But if y'all have any

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1 questions, you will send out the questions to me so that we
2 can answer those questions. Once you have completed the
3 verdict form, once y'all have come to a unanimous verdict in
4 this case, you'll knock on the door and let the bailiff know
5 and then I'll bring you back out here, okay? All right.
6 Now, I'm going to excuse y'all, let y'all go back into the
7 jury room and we'll be back with y'all in just a second, I
8 hope.

9 (Jury out at 4:01 p.m.)

10 THE COURT: I always feel like those old RCA
11 commercials where the dog is, you know.

12 Anything from the State regarding the charges?

13 MR. JUSTIS: Nothing from the State.

14 THE COURT: Anything from the Defendants, other
15 than the exception that we took at the very first.

16 MR. LOY: No, Your Honor. I would respectfully
17 request that you bring them back out and tell them that in
18 circumstantial case, the evidence must be to the exclusion
19 of every other reasonable hypothesis.

20 THE COURT: Okay. And we've already argued that.

21 MR. LOY: Yes, sir.

22 THE COURT: But that should preserve your
23 objection on the record.

24 MR. LOY: Yes, sir.

25 THE COURT: Okay. All right. Gentlemen, what I

1 would ask you to do is if y'all would look and get with
2 Hilda and make sure we've got all the exhibits together.
3 And I'll give you the verdict form.

4 (Evidence to the jury at 4:07 p.m.)

5 (Alternate release by the Court.)

6 THE COURT: All right. We'll be down until we
7 hear from you, okay?

8 (Court in recess at 4:09 p.m.)

9 (Court in session for jury note.)

10 THE COURT: All right. Back on the record.

11 MR. LOY: Your Honor, there's a couple of -- I'm
12 sorry. There were a couple of Court's Exhibit's when we
13 were in chambers, Your Honor.

14 THE COURT: You've got them right there you can
15 refer to them. There should be 5 and 6.

16 (Court's Exhibit No. 5 was marked
17 for ID)

18 (Court's Exhibit No. 6 was marked
19 for ID)

20 MR. LOY: Your Honor, I do. I have 5 and 6 in
21 front of me. And there are two notes from the jury, which
22 we received moments ago in chambers Your Honor shared with
23 us about it as we were coming back into the courtroom. Note
24 number 5 says the jury would like to review the sister's
25 testimony. Did she say when he got out he sometimes stayed

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1 with her? And, Your Honor, I think it's telling, that's the
2 part they want to know about. Because they've got when he
3 got out in parenthesis. The jury would like -- and it --
4 just that way until it -- and when he got out, did he stay
5 with her. Clearly, this is a topic of conversation within
6 the jury room. We tried to gloss it over earlier and we
7 were unsuccessful. At this point in time I'm going to renew
8 my motion and I'll ask the Court to grant a directed
9 verdict. I think that the circumstances are somewhat
10 different now than --

11 THE COURT: You mean a mistrial?

12 MR. LOY: Excuse me. I'm sorry. Yes, a mistrial.

13 THE COURT: Okay.

14 MR. LOY: I think the circumstances are somewhat
15 different now than they were in the proceeding where we
16 declined to request a mistrial. I now have affirmative
17 information that this is what they're deliberating. I think
18 its manifestly unfair. I'd ask the Court for a mistrial.

19 THE COURT: Okay. Mr. Justis would you like to
20 respond or Mr. Ward? Either one of y'all, it doesn't
21 matter.

22 MR. JUSTIS: Well, Your Honor, I would say -- and
23 there's actually a note that came out after that. I think
24 Court's Exhibit No. --

25 THE COURT: 6.

1 MR. JUSTIS: -- 6 that said please disregard the
2 last request. And in looking at this -- you know, I just
3 think it's improper for us to try to guess what the jury is
4 deliberating back there. I mean, they sent this note but
5 then they said please disregard it. So I mean for us to --
6 I mean, we're not allow to be in there. We're not allowed
7 to know what they're deliberating about. They've gotten the
8 case. I just think it's improper at that point in time.
9 You know, especially since they sent this -- immediately
10 they sent another note that said please disregard the last
11 request with an exclamation point on it. So I would say it
12 doesn't justify and, you know, as you know, I mean it's in
13 your discretion. And very rarely is something overturned
14 when it comes to mistrials or not declaring a mistrial.

15 THE COURT: You haven't been reading all of those
16 orders about me. No, go ahead. I'm sorry. Go ahead.
17 Yeah. Yeah, I do understand that. It's in my discretion.

18 MR. JUSTIS: Correct.

19 THE COURT: Okay.

20 MR. JUSTIS: And I mean there's case law and stuff
21 if you need me to, you know, recite some of that case law
22 related to it.

23 THE COURT: Probably won't be case law on a
24 situation like this.

25 MR. JUSTIS: Well, maybe. I find lots of

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1 different cases that say lots of different things.

2 THE COURT: All right. I'm going to mull it over
3 for a little while. And I'll get back to y'all in a minute
4 with my decision.

5 MR. LOY: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (Court in recess)

8 (Court in session at 5:59 p.m.)

9 THE COURT: Okay. Y'all be seated.

10 Mr. Loy when you, I think, very timely, in a very
11 timely manner made your motion for a mistrial when the
12 sister's testimony was actually -- when she actually made
13 it. And I then gave you an opportunity to talk with your
14 client. And I know you've had -- I think we brought him
15 back out here at that time. Knowing the testimony that she
16 had given he knowingly and intelligently waived that motion
17 for mistrial, okay?

18 Now, they then sent Court's Exhibit No. 5 that
19 questioned -- that wanted some more information about
20 sister's testimony. And that was a concern to the Court
21 and had that been a question the Court was going to have to
22 resolve, I would have reconsidered your motion for a
23 mistrial. But since they immediately came back and said,
24 please disregard it, I am taking the position that they are
25 disregarding that question as well, as we had originally

1 hoped. Based upon that interpretation of the questions by
2 the jury, I am going to deny your motion for mistrial. I'm
3 going to note your objection to my ruling at this time
4 because I think that -- I think you've made a compelling
5 argument.

6 MR. LOY: Don't stop there, Your Honor.

7 THE COURT: You made a compelling argument that
8 the situation has changed. And as I mentioned before, I
9 think if we hadn't gotten Court's Exhibit No. 6 to say to
10 disregard it, I might have a different take on your motion.
11 But as it stands now, I'm going to deny it.

12 MR. LOY: Thank you, Your Honor.

13 THE COURT: Now, we may have three more questions,
14 okay?

15 (Court's Exhibit No. 7 was marked
16 for ID.)

17 No. 7, Court's No. 7 is not really a question. I'm
18 going to allow one of the jurors to make a phone call so the
19 family will not wait on her for the Ash Wednesday services.
20 So she's going to be allowed to -- she or he or whatever is
21 going to be allowed to go and make a phone call, okay?

22 Now, which brings us to Court's Exhibit No. 8.

23 (Court's Exhibit No. 8 was marked
24 for ID.)

25 THE COURT: The jury is divided. Please advise me

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1 as to how long we may deliberate and how long we may proceed
2 without a dinner break?

3 I'll leave the dinner break. I'll question -- about
4 how long we're going to deliberate for that.

5 (Court's Exhibit No. 9 was marked
6 for ID.)

7 THE COURT: And then what will now be Court's No.
8 9 is we need additional instruction about the definition of
9 beyond reasonable doubt. Beyond reasonable doubt in quotes.
10 And then they have written and then scratched it out, but I
11 will read what they wrote and scratched out. Does it mean
12 that if you have a reasonable doubt you must acquit or does
13 it mean that -- and then it stops. So, I need to mark that.
14 I think I'm going to have to recharge them just completely
15 on reasonable doubt.

16 COURT REPORTER: That would be 9.

17 MR. LOY: That would be our request, Your Honor.

18 THE COURT: Okay. I think I'm going to have to do
19 that. Now, regarding -- I think this is too early about
20 them to have reached an impasse. It's too early for me to
21 give them an Allen Charge, I think, you know. At least I'm
22 not inclined to at this point unless y'all want me to.

23 MR. JUSTIS: No, Your Honor, I agree. I mean,
24 they're in there. I mean, they're probably hungry.

25 MR. LOY: Your Honor, I don't interpret their note

1 as saying we're deadlocked.

2 THE COURT: No, it just says divided. Please
3 advise me as to how long we may deliberate.

4 MR. LOY: Which I take to mean they are still
5 deliberating they're just not close to a verdict at this
6 point.

7 THE COURT: Yeah.

8 MR. LOY: So I also would think an Allen Charge
9 would not be appropriate. Until they come out and say we're
10 hug, I don't think the Allen Charge is appropriate.

11 THE COURT: And I think my answer as far as
12 deliberation is deliberate until you reach a decision.

13 MR. LOY: Right.

14 MR. JUSTIS: If they want we can get you food.

15 THE COURT: And I can tell them if they want to
16 order -- I'll just bring them out and tell them that -- and
17 if they're ready to eat we can go ahead and order it.

18 MR. LOY: I'm sorry, Your Honor, how do you intend
19 to answer the how long can you deliberate?

20 THE COURT: As long as it takes is what I was
21 going to say.

22 MR. LOY: Okay. I understand that.

23 THE COURT: I don't want to say as long as it
24 takes until y'all --

25 MR. LOY: Oh, I didn't want you to say until you

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1 reach a verdict because it's just within their providence
2 not to -- you can tell them you have all the time you need.

3 THE COURT: Yeah. Yeah.

4 MR. LOY: Then I think that would be a correct
5 statement.

6 THE COURT: Yeah. You have all the time you need
7 to make a decision, you know. And then -- but I was going
8 to also suggest that if they are hungry we can get them
9 pizza. I think that's what the County always does.

10 MR. LOY: Yes, sir.

11 THE COURT: Okay. Let me bring them on out so I
12 can address --

13 COURT REPORTER: You should have 7 and 8.

14 THE COURT: Did I give you 9?

15 COURT REPORTER: I've got 9.

16 THE COURT: Okay. I'm going to bring the jury on
17 back out.

18 Is the State ready? Is the State ready, Mr. Ward,
19 since I can't seem to get the attention of the older
20 attorney?

21 MR. WARD: Yes, sir.

22 MR. LOY: That would be me, Your Honor. And you
23 have my undivided attention. And the Defense is ready,
24 also.

25 THE COURT: Okay. If you can bring the jury on

1 out.

2 Court's Exhibit No. 9 was marked
3 for ID.)

4 THE COURT: Is that 9?

5 COURT REPORTER: I have 9.

6 THE COURT: Okay. Can I -- do you mind passing
7 that up. Thank you.

8 (Jury in at 5:59 p.m.)

9 THE COURT: All right. All right, ladies and
10 gentlemen. All right. Whoever needed to make the phone
11 call has already made the phone call I guess, or going to.
12 Okay. All right.

13 The note: Please advise how long we may deliberate and
14 how long we may proceed without a dinner break.

15 Well, we can deliberate as long as it's going to take
16 y'all to make a decision. We can deliberate however that
17 long. And as far as the dinner break, if y'all tell me
18 y'all ready to order supper now, the county generally orders
19 pizza and things like. So if y'all go back there and tell
20 us you want to order this stuff now, we'll go ahead and get
21 on the phone and start ordering it now. So y'all can go
22 back and let me know about that, okay?

23 The next question was the question, which I have marked
24 as Court's 9 was we need additional instruction about the
25 definition of beyond reasonable doubt. And so what I'm

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1 going to do is I'm just going to read y'all the reasonable
2 doubt charge one more time, okay?

3 Reasonable doubt, what is a reasonable doubt in the
4 law? A reasonable doubt is the kind of doubt that would
5 cause a reasonable person to hesitate to act. The State has
6 the burden of proving the Defendant guilty beyond a
7 reasonable doubt. Some of you may have served as jurors in
8 civil cases where you were told that it is only necessary to
9 prove that a fact is more likely true than not true, such as
10 by the greater weight or preponderance of the evidence. In
11 criminal cases, the State's proof must be more powerful than
12 that. It must be beyond a reasonable doubt. Proof beyond a
13 reasonable doubt is proof that leaves you firmly convinced
14 of the Defendant's guilt. There are very few things in this
15 world that we know with absolute certainty. And in criminal
16 cases the law does not require proof that overcomes every
17 possible doubt. If, based on your consideration of the
18 evidence you are firmly convinced that the Defendant is
19 guilty of the crime charged, you must find the Defendant
20 guilty. If, on the other hand, you think there is a real
21 possibility that the Defendant is not guilty, you must give
22 the Defendant the benefit of the doubt and find him not
23 guilty.

24 That is the reasonable doubt charge. I'm going to let
25 y'all go back in there. If y'all want to tell me you want

1 to order pizza, if you'll just tell the bailiff or if y'all
2 want to wait and order it, if you'll tell her when, we'll go
3 there, okay? Okay. Thank y'all.

4 (Jury out at 6:24 p.m.)

5 THE COURT: All right. We will -- Mr. Loy, always
6 good to see you up close.

7 MR. LOY: Thank you, Your Honor.

8 THE COURT: Uh-huh. (Affirmative response)

9 MR. LOY: Your Honor, if I -- and I believe I
10 didn't miss anything, Your Honor neglected to charge the
11 alternate version of reasonable doubt, that is --

12 THE COURT: I charged both.

13 MR. LOY: Did you?

14 THE COURT: Yeah. Thank you for -- I did both.
15 I'll be happy to show it to you.

16 MR. LOY: Okay. I missed it.

17 THE COURT: No, that's okay. Here. Here. Step
18 up here.

19 MR. LOY: Well, I believe you. It's on the sheet,
20 Your Honor. I was listening. I just got -- I didn't hear
21 you say it.

22 THE COURT: I understand my tone is so much like a
23 radio announcer, I understand how you could just pass over
24 it.

25 MR. LOY: Thank you. If you did, then you did

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1 obviously. I just --

2 THE COURT: Well --

3 MR. LOY: I've got the silent nod. I think I'm in
4 the minority in my position. And I'd also like Your Honor,
5 I think since in this case you instructed them and the State
6 conceded that the evidence was entirely circumstantial, that
7 the charge for beyond a reasonable doubt when relying on
8 circumstantial evidence is, as you've noted, all the
9 evidence must be consistent one within the other -- I can't
10 say it.

11 THE COURT: Yeah. I know.

12 MR. LOY: All of the circumstantial evidence must
13 be consistent one with the other and point conclusively to
14 the guilt of the Defendant, that is beyond a reasonable
15 doubt. I believe that is also part of the reasonable doubt
16 charge in this case. I'd ask Your Honor to bring them back
17 out and charge them that.

18 THE COURT: Well, that was actually part of the
19 evidence charges, direct and circumstantial evidence.

20 MR. LOY: I understand, Your Honor. But it didn't
21 just define direct and circumstantial evidence. It also
22 said to the extent that you rely on them, the burden is
23 this. And it's different language. And since we've all
24 agreed there's nothing but circumstantial evidence in this
25 case, I think the Defendant's entitled to that language,

1 also.

2 THE COURT: Mr. Justis or Mr. Ward, any comment
3 you want to make about that?

4 MR. JUSTIS: Yes, Your Honor, I'd disagree. I
5 mean, they asked for the reasonable doubt charge. That's
6 what you gave them. I'd agree with Your Honor that that
7 other part was under the circumstantial/direct evidence
8 portion of the charge.

9 MR. LOY: Addressing the jury's burden in this
10 case with what they have to do.

11 COURT REPORTER: Judge.

12 THE CLERK: Judge, you have another one.

13 THE BAILIFF: (Hands Court jury question).

14 MR. LOY: It's probably the pizza, Judge.

15 THE COURT: I hope. Okay. It is. All right.
16 They have some special requests for what they would like.
17 If you would do that and allow that juror to make a phone
18 call as well, okay?

19 One of them is a juror who wanted to make a phone call.
20 And the other -- and a special request about vegetarian and
21 meat. Okay.

22 MR. WARD: And, Your Honor, if I might add there's
23 other parts like when you talk about armed robbery, I mean,
24 it mentions the word reasonable doubt. Surely, he doesn't
25 want all of those repeated also. I mean, you --

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1 THE COURT: Well, he probably does.

2 MR. LOY: No, I just want repeated what I've
3 requested. I think it was pretty succinct and clear --

4 THE COURT: No, no, no. And Mr. Justis one of my
5 concerns about this case is obviously we've already had some
6 questions. Some motions for mistrial, some things that had
7 me concerned about what the jury's thinking about back
8 there.

9 MR. JUSTIS: Right. Your Honor, I think that
10 exceeds -- you know, they asked we want to hear reasonable
11 doubt and you told them that. I don't think it's our
12 position to try to get in their heads and decide -- and try
13 to figure out what they're thinking. That's their job.
14 They're the judges of the facts.

15 THE COURT: I understand.

16 MR. JUSTIS: And they asked a specific question
17 about, you know, the law and that question is answered. You
18 know, no more no less. If they need further explanation,
19 I'm sure they'll send another note. They've been helpful
20 sending notes thus far.

21 THE COURT: Okay. All right. I'm going to think
22 about it. I'm not going to rule one way or the other right
23 now. Let me think about it. Let me see what I'm going to
24 do, okay?

25 MR. LOY: Okay.

1 THE COURT: I'll take it under advisement, okay?

2 MR. LOY: I understand, Your Honor. It's just
3 that they're back there still doing whatever they're doing.
4 They think they've gotten the full information and I --

5 THE COURT: Uh-huh. (Affirmative response)

6 MR. LOY: It seems harmless enough. I don't think
7 it jeopardizes anybody it makes the Defense believe we're
8 safer, I think it is an accurate statement of the law and it
9 addresses the burden of proof beyond a reasonable doubt
10 being the burden of proof. And in this case the burden of
11 proof is pointing conclusively to the guilt of the
12 Defendant. I don't know why anybody would feel compromised
13 by including that language.

14 THE COURT: No, I understand your point and the
15 only that concerns the Court, as I've mentioned earlier is
16 because some of the other questions had me concerned. But
17 let me just think about it. I know somebody's making a
18 phone call and I'm going to think about it. And I'll come
19 back.

20 MR. LOY: Can I inquire -- well, you've got
21 another note.

22 THE BAILIFF: (Passes jury note to the Court)

23 MR. LOY: Can I inquire whether or not the
24 bailiff's were advised that when one juror is out they're
25 not allowed to --

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1 THE COURT: Yeah. Yeah. They have already been
2 told whenever somebody's making a phone call they've got to
3 stop their deliberations. And that's what the bailiff has
4 -- has been doing.

5 Okay. This is the vegetarian and meat pizza orders.

6 COURT REPORTER: That would be No. 10.

7 THE COURT: 10, okay.

8 (Court's Exhibit No. 10 was marked
9 for ID.)

10 THE COURT: All right. What will now be Court's
11 No. 11.

12 The jury wishes to hear the testimony of Mr. Hartman
13 regarding what he saw the man with the bat do on the morning
14 of the crime. Okay. So --

15 COURT REPORTER: I just need to go back and find
16 it and pull it and set it up.

17 THE COURT: Okay.

18 COURT REPORTER: It'll take me a few minutes to do
19 that.

20 THE COURT: Okay.

21 COURT REPORTER: Because I'm not in the same file.

22 THE COURT: Okay.

23 MR. LOY: Your Honor.

24 THE COURT: Yes, sir.

25 MR. LOY: He was -- well, I know it doesn't matter

1 how long it was obviously the Court will give them what they
2 want.

3 THE COURT: Right.

4 MR. LOY: He was a relatively brief witness, as I
5 recall, relatively brief?

6 THE COURT: Uh-huh. (Affirmative response)

7 MR. LOY: I would ask the Court, if the Court's
8 inclination assuming you don't disavow the request to simply
9 play his testimony in its entirety, direct and cross.

10 THE COURT: Okay. That's what I'm inclined to do
11 to, just play his testimony.

12 MR. LOY: Thank you, Your Honor.

13 THE COURT: Mr. Justis, any problem with that?

14 MR. JUSTIS: That's fine, Your Honor.

15 THE COURT: Okay. It'll take them a minute to get
16 everything.

17 MR. LOY: In the meantime are you still
18 considering my --

19 THE COURT: I'm still considering it.

20 MR. LOY: They're coming back in anyway.

21 THE COURT: I don't think so.

22 MR. LOY: I didn't mean they're coming back in
23 now. I just meant they're coming back in anyway.

24 THE COURT: Okay. All right. We'll stand down
25 while we --

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1 COURT REPORTER: I'll come get you.

2 THE COURT: Okay. Thank you.

3 (Court's Exhibit No. 11, jury note,
4 was marked for ID)

5 (Court in recess)

6 (Court in session at 7:12 p.m.)

7 THE COURT: I'm not going back over the
8 circumstantial evidence charge because it mentions
9 reasonable doubt because this is a circumstantial case as
10 everybody said. The jury requested just the reasonable
11 doubt provision. I'm not going to presume that I should
12 give them more than that. When I go through on many of the
13 other charges, I have more wording about reasonable doubt
14 when I get to, you know, attempted murder and like that.
15 This jury has not been hesitant to ask questions and we have
16 now gone at least fifteen minutes without a question. So if
17 something comes up and we need to address it again or feel
18 that it might help in their decision process, I'll let you
19 mention it again. But right now I'm just going to charge
20 what they ask.

21 MR. LOY: Note my exception for the record.

22 THE COURT: Yes, sir.

23 MR. LOY: Note my exception for the record, Your
24 Honor.

25 THE COURT: Okay. Thank you, sir.

1 All right. Now we're getting ready to play the guy
2 that lived upstairs.

3 COURT REPORTER: Mr. Hartman. Lucas Hartman.

4 THE COURT: You have Mr. Hartman's testimony?

5 COURT REPORTER: Who was here from Kuwait.

6 THE COURT: Oh, yeah. That's right.

7 Can you bring the jury on back in please?

8 THE BAILIFF: Yes, sir.

9 THE COURT: Okay.

10 COURT REPORTER: It's going to be just a few
11 minutes of one witness leading in.

12 THE COURT: Okay.

13 (Jury in at 7:14 p.m.)

14 THE COURT: All right. Ladies and gentlemen we
15 have cued up the testimony of Mr. Hartman so we're going to
16 play all of his testimony for you.

17 (Testimony of Lucas Hartman played
18 for the jury.)

19 THE COURT: All right. Ladies and gentlemen
20 you've heard the testimony of Mr. Hartman. I'm going to let
21 you go back into the jury room. Your Pizzas have been
22 ordered. When the come here, when y'all get ready to start
23 eating you've got to stop your deliberations. Like my mama
24 said, you can't eat with your mouth closed, okay. I mean
25 you can't talk with your mouth closed. It's probably

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1 getting late for me, okay. But y'all can go on back and
2 continue deliberations until we get the pizzas, okay? Thank
3 you.

4 (Jury out at 7:34 p.m.)

5 THE COURT: All right. We'll stand down for a
6 little while, okay? Thank y'all.

7 (Court in recess at 7:34 p.m.)

8 (Court in session for jury note at
9 8:40 p.m.)

10 THE COURT: I'm just -- is it No. 12?

11 COURT REPORTER: Yes, sir.

12 THE COURT: The jury has indicated, the Foreman
13 has indicated that she'd not like to go to changing opinions
14 of the moves of the jury and each one has declared that no
15 additional argument will change their minds. So I think
16 we're at the point where I need to give them the Allen
17 charge unless -- Mr. Justis?

18 MR. JUSTIS: Your Honor, I think my position would
19 be, you know, at this time of night. They've been here all
20 day.

21 THE COURT: Uh-huh. (Affirmative response)

22 MR. JUSTIS: We spent several hours debating the
23 charge this afternoon. They've been deliberating four, four
24 and a half hours if you take out the food and all the
25 questions and stuff. I mean, my suggestion is send them

1 home and Allen charge them first thing in the morning and,
2 you know, give them a chance -- I mean, they've been here
3 all day. Give them a chance to get some rest.

4 THE COURT: Okay.

5 MR. LOY: Let's finish.

6 THE COURT: Huh?

7 MR. LOY: Let's finish.

8 MR. JUSTIS: Or ask the jury if that's what they
9 want to do?

10 THE COURT: Well --

11 MR. JUSTIS: I mean, if they say listen, we'd
12 rather get it over with tonight one way or the other, that's
13 fine. But, you know, I don't think it would be unreasonable
14 to ask them, you know, give them that option. These are the
15 two options.

16 THE COURT: I'm inclined to give them the Allen
17 charge, okay? And that's what I'm going to do, you know.
18 But I note your request, okay?

19 MR. JUSTIS: Yes, sir.

20 THE COURT: Thank you. Go ahead and bring the
21 jury on out.

22 (Jury in at 8:31 p.m)

23 THE COURT: Okay. All right. Ladies and
24 gentlemen you've stated that you've been unable to agree on
25 a verdict in this case. As I instructed you earlier, the

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1 verdict of the jury must be unanimous. When a matter is in
2 dispute isn't always easy for even two people to agree. So
3 when twelve people must agree, it becomes even more
4 difficult. In most cases, absolute certainty cannot be
5 reached or expected. However, you have a duty to make every
6 reasonable effort to reach a unanimous verdict. In doing
7 this, you should consult with one another, express your own
8 views and listen to the opinions of your fellow jurors.
9 Tell each other how you feel and why you feel that way.
10 Discuss your differences with open minds. Although the
11 verdict of a jury must be unanimous, every one of you has
12 the right to your own opinion. The verdict you agree to
13 must be your own verdict, the result of your own convictions
14 and you should not give up your firmly held beliefs merely
15 to be in agreement with your fellow jurors. The majority
16 should consider the minorities position and the minority
17 should consider the majorities position. You should
18 carefully consider and respect the opinions of each other
19 and reevaluate your position for reasonableness, correctness
20 and impartiality. You must lay aside all outside matters
21 and reexamine the questions before you based on the law and
22 the evidence in this case. If you do not agree on a verdict
23 in this case, I must declare a mistrial. In that case it
24 does not mean that anybody wins. It just means that at some
25 future time I will try this case with some other jury seated

1 where you now sit. The same participants will come and the
2 same lawyers will ask basically the same questions and get
3 basically the same answers and we will go through this whole
4 process again. You were selected in the same manner and
5 from the same source as any future jury will be. And there
6 is no reason for me to suppose that the case will ever be
7 submitted to twelve more intelligent, impartial,
8 conscientious, and competent jurors than you or that more or
9 clearer evidence will be produced on one side or the other.
10 I, therefore, ask you to return to your deliberations and
11 see what you can do, okay?

12 I'm going to let y'all go back in there and see -- I'd
13 ask you to hold on to the verdict form for a little while,
14 okay? Thank you.

15 (Jury out at 8:50 p.m.)

16 THE COURT: Hilda.

17 COURT REPORTER: Thank you.

18 THE COURT: All right. We'll see.

19 COURT REPORTER: Court's 12, Judge.

20 THE COURT: Huh?

21 COURT REPORTER: Court's 12.

22 THE COURT: Okay.

23 (Court's Exhibit No. 12 was marked
24 for ID.)

25 THE COURT: And, Mr. Justis, again, I appreciate

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1 your suggestion but I think as long as they're here -- and I
2 realize that they have been doing it for -- well, probably
3 about four hours in reality. So --

4 MR. JUSTIS: I understand. It's just that, you
5 know, it took us a long time to make a decision, just the
6 three of us and you have twelve people.

7 THE COURT: Well, I know. I know. I can't even
8 get three attorneys to agree. I mean, I know how tough this
9 is. Okay. All right.

10 (Off record discussion)

11 THE COURT: All right. Thank y'all. We'll stand
12 down for a little while.

13 (Court in recess at 8:53 p.m.)

14 (Court in session for jury note at
15 8:55 p.m.)

16 THE COURT: No, not a question. Just --

17 MR. JUSTIS: Court's 13?

18 THE COURT: Huh?

19 MR. JUSTIS: Court's 13.

20 COURT REPORTER: Yes.

21 THE COURT: Court's 13. Thank you. Just another
22 person wanted to leave to call home, which leads me to
23 believe they've agreed to be talking some more. And so I
24 reminded them that while the juror is out of the room, they
25 can't deliberate. So, No. 13.

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1 (Court's Exhibit No. 13, jury note
2 was marked for ID.)

3 (Court in recess at 9:05 p.m.)

4 (Court in session for verdict at
5 9:38 p.m.)

6 THE COURT: Thank you, sir. Y'all may be seated.
7 All right. Have you told them. You're going to go get the
8 Defendant?

9 COURT SECURITY: (Affirmative response)

10 THE COURT: Okay. Is the State ready?

11 MR. JUSTIS: The State's ready, Your Honor. We
12 understand we've got a verdict, Your Honor.

13 THE COURT: That's what I understand.

14 (Defendant Hurell enters the
15 courtroom)

16 THE COURT: All right. Is the Defense ready?

17 MR. LOY: Yes, sir.

18 THE COURT: Okay. You can bring the jury in.

19 (Jury in at 9:38 p.m)

20 THE COURT: All right. Mr. Foreman, has the jury
21 reached a verdict?

22 FOREMAN: Yes, Your Honor.

23 THE COURT: Is that verdict unanimous.

24 FOREMAN: Yes, it is.

25 THE COURT: Would you mind giving the bailiff the

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1 verdict.

2 FOREMAN: (Complies)

3 THE COURT: Thank you.

4 All right. Madam Clerk, would you mind publishing the
5 verdict.

6 THE CLERK: In the matter of State of South
7 Carolina versus Tashon Hurell, indictment numbers 2015-GS-
8 18-0085, 0086, and 0087.

9 We, the jury, unanimously find the Defendant, as to the
10 charge of attempted murder, guilty.

11 We, the jury, unanimously find the Defendant, as to the
12 charge of armed robbery, guilty.

13 We, the jury, unanimously find the Defendant, as to the
14 charge of kidnapping, guilty.

15 Signed by foreperson, Richard Hogue, February 10th,
16 2016.

17 THE COURT: All right. Anything from the State
18 before I release the jury?

19 MR. JUSTIS: Nothing, Your Honor.

20 THE COURT: Anything from the Defense?

21 MR. LOY: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen of
23 the jury, I appreciate your service. I appreciate the fact
24 that y'all were conscientious and listening during the
25 course of the trial. And I really honestly appreciate your

1 service. What I would ask you to do if you don't mind, if
2 you don't mind just going back into the jury room just for a
3 minute, and then you're going to be released, okay?

4 THE JURY: (Unanimous affirmative response)

5 THE COURT: All right. Thank y'all so much. Have
6 a wonderful evening.

7 (Jury out at 9:41 p.m.)

8 THE COURT: All right.

9 MR. JUSTIS: We're getting the sentencing sheets,
10 Your Honor.

11 THE COURT: Okay.

12 MR. LOY: Your Honor, I neglected to ask that the
13 jury be polled. I know that they've gone out. I don't know
14 if the Court is inclined --

15 THE COURT: Well, if they haven't gone, I can
16 bring them back in.

17 THE BAILIFF: They haven't gone.

18 THE COURT: Okay. Bring them back in for one
19 second, okay?

20 (Jury in at 9:42 p.m.)

21 THE COURT: All right. Ladies and gentlemen, I
22 apologize for having to bring you back in here. One of the
23 attorneys asked me if I would poll the jury. What that
24 means is that I'm going to call out your names, ask you if
25 this your verdict and if it is still your verdict. So if

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1 y'all would just bear with me for just one second while I
2 call out your names.

3 Keri Sandifer. Ms. Sandifer, was that your verdict?

4 JUROR NO. 110: Yes, sir.

5 THE COURT: Is it still your verdict?

6 JUROR NO. 110: Yes, sir.

7 THE COURT: Thank you, ma'am.

8 Cody Ward.

9 Excused. That was the one that got excused.

10 THE COURT: Oh, yeah. Thank you. I appreciate
11 that. Thank you. I forgot to scratch him off when I did
12 that. Okay.

13 Edward Manuel. Mr. Manuel, was that your verdict?

14 JUROR NO. 102: Yes.

15 THE COURT: Is it still your verdict?

16 JUROR NO. 102: Yes.

17 THE COURT: Thank you, sir.

18 Richard, Hogue.

19 JUROR NO. 80: Yes.

20 THE COURT: Is that your verdict?

21 JUROR NO. 80: It is.

22 THE COURT: Is it still your verdict?

23 JUROR NO. 80: Yes, sir.

24 THE COURT: Okay.

25 Christopher Felder. Is that your verdict?

1 JUROR NO. 52: Yes, sir.

2 THE COURT: Is it still your verdict?

3 JUROR NO. 52: Yes, sir.

4 THE COURT: Thank you, sir.

5 Michael Knotts. Is that your verdict?

6 JUROR NO. 92: Yes, Your Honor.

7 THE COURT: Is it still your verdict?

8 JUROR NO. 92: Yes, Your Honor.

9 THE COURT: Thank you, sir.

10 Leanne Brewer. Is that your verdict?

11 JUROR NO. 20: Yes, sir.

12 THE COURT: Is it still your verdict?

13 JUROR NO. 20: Yes, sir.

14 THE COURT: Thank you, ma'am.

15 Laverda James. Ms. James, is that your verdict?

16 JUROR NO. 85: Yes, sir.

17 THE COURT: Is it still your verdict?

18 JUROR NO. 85: Yes, sir.

19 THE COURT: Thank you, ma'am.

20 Susan Frampton.

21 JUROR NO. 56: Yes, sir.

22 THE COURT: Is that your verdict?

23 JUROR NO. 56: Yes, sir.

24 THE COURT: Is it still your verdict?

25 JUROR NO. 56: Yes, sir.

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1 THE COURT: Okay.

2 Gloria Rios Brown. Is that your verdict?

3 JUROR NO. 122: Yes, sir.

4 THE COURT: Is it still your verdict?

5 JUROR NO. 122: Yes, sir.

6 THE COURT: Thank you, ma'am.

7 Karen Goeckel. Is that your verdict?

8 JUROR NO. 60: Yes, sir.

9 THE COURT: Is it still your verdict?

10 JUROR NO. 60: Yes, sir.

11 THE COURT: Maria Johnson? Is that your verdict?

12 JUROR NO. 86: Yes, sir.

13 THE COURT: Is it still your verdict?

14 JUROR NO. 86: Yes, sir.

15 THE COURT: Howard Primus. Is that your verdict?

16 JUROR NO. 120: Yes, sir.

17 THE COURT: Is it still your verdict?

18 JUROR NO. 120: Yes, sir.

19 THE COURT: Okay. Thank y'all. I apologize for
20 having to bring y'all back in here. I apologize for keeping

21 y'all late. But, again, I appreciate y'all doing that.

22 Thank you. Thank you. Y'all have a wonderful weekend.

23 (Jury out at 9:51 p.m.)

24 THE COURT: Anything else, Mr. Loy?

25 MR. LOY: Your Honor, I would renew all of my

1 earlier motions and I'd ask the Court to set aside the
2 verdict and grant my earlier motion for a mistrial. I also
3 renew my motion for a directed verdict. On those grounds,
4 I'd ask the Court to set aside the conviction.

5 THE COURT: Set aside the?

6 MR. LOY: The conviction.

7 THE COURT: Okay. Well, and I appreciate your
8 request. I am going to deny your motions and stay with
9 where I was on all the previous decisions.

10 MR. LOY: Thank you.

11 THE COURT: All right.

12 MR. JUSTIS: May I approach, Your Honor.

13 THE COURT: You may.

14 (Solicitor hands up sentencing
15 sheets)

16 THE COURT: Does that contain the sentencing range
17 on it?

18 MR. JUSTIS: Yes, Your Honor.

19 THE COURT: Ready whenever you are.

20 MR. JUSTIS: I'm ready, Your Honor. Your Honor,
21 may it please the Court?

22 THE COURT: Yes, sir.

23 MR. JUSTIS: First, the prior record for Mr.
24 Hurell. He does have in 2000 and -- he had a juvenile
25 conviction for some petit larcenies. But in 2006 he had a

State v Hurell

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1 simple assault and battery. Also in 2006 assault and
2 battery high and aggravated nature. He received a
3 probationary sentence for that. 2007 he received assault
4 and battery high and aggravated nature. That's the same
5 one.

6 MR. LOY: I think that's the same charge.

7 MR. JUSTIS: It is. He had an assault and battery
8 high and aggravated nature and assault on a police officer.
9 He had received, it looks like a ten-year sentence on that.
10 And the facts are that I believe he tased a police officer
11 in the face from what I understand. He has a petit larceny
12 in 2014. And then in June of 2014, almost two months after
13 this incident date, he was arrested with three other
14 individuals for attempted armed robbery in Richland County.
15 It was thwarted by a security officer. He was arrested in
16 June and pled in December of 2014 to a conspiracy charge.
17 It was at that time there was a hold bond on these charges
18 and that's when he was transferred down here.

19 THE COURT: Okay. Anything else you want to tell
20 me?

21 MR. JUSTIS: Briefly, Your Honor. Obviously, you
22 heard the facts in the case. You heard the testimony.
23 Obviously this was a, you know, just a senseless act as far
24 as the assault of Ms. Pecorora. You know, she's got some
25 permanent damage as a result of it. She's lost partial

1 hearing in her one ear. She has a steel plate in her head.
2 Her sinus cavities essentially had to be reconstructed. You
3 know, she's had all kinds of problems with vertigo and
4 everything since this incident. And based on the severity
5 of, not only the injuries, but just the nature of the crime,
6 what happened, the State would ask for the maximum sentence
7 in this case.

8 THE COURT: All right. Mr. Loy.

9 MR. LOY: Thank you, Your Honor. First, I'd note
10 for the Court and I certainly don't believe Your Honor is
11 the type of judge who would impose what we call the trial
12 tax or anything like that. I can assure you that the --
13 this case was not frivolously defended and I don't think it
14 was in any way, shape or form a waste of the court's time,
15 so to speak. I think it was a defensible case. We tried it
16 once before. The split was a different way but we did not
17 obviously get a verdict. But, again, I don't think this is
18 just a matter of being obstinate or refusing to accept
19 reality. I think it's a defensible case. I don't blame Mr.
20 Hurell for the decisions that he made. He's twenty-six
21 years of age. He's from the Summerville area. He has a
22 close family, Your Honor. He's got a mother and brother who
23 are here in Court. I think his mother would like to speak
24 on his behalf if the Court --

25 THE COURT: I'd be glad to hear from her if she

State v Hurell

2/10/16

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1 wants to.

2 MR. LOY: -- if the Court chooses to recognize her
3 shortly. He, again, has got two brothers, at least one of
4 whom you've met on the stand and one who's been present in
5 court. His sister is employed with the Department of
6 Juvenile Justice Correctional Officer. Tashon has three
7 children, Your Honor. He's closely involved with his
8 children and in their life. He works and he was working at
9 the time of his arrest. He was working at Atlanta Recording
10 Studio. He was preparing to go to college at that point in
11 time. In the studio, he was basically working at the
12 janitorial service, but he was also working with the
13 engineers, the sound engineers there, learning to work the
14 sound boards, etcetera. And it was certainly his plan to
15 make his career, you know, in that area. He didn't graduate
16 high school but it was because of a lack of potential. He
17 got his GED in 2005, a year prior to the time that he
18 actually would have been graduating high school. And,
19 again, he's got support from friends. He's got support from
20 family. I can speak from my experience with him. He has
21 been as helpful, as appreciative and as straightforward a
22 client as I have dealt with. The folks from the jail told
23 me the same thing. Said John he's been as good a guy that
24 we've had to work with, transport, and deal with. He has
25 given us not an ounce of trouble in the entire amount of

1 time that we've had him. I recognize the heinous nature of
2 the crime, Your Honor. If I can frame this in the light
3 most favorable to Mr. Hurell. I'd ask --

4 (Defense counsel confers with
5 Defendant's mother)

6 -- she's declined to address the Court, Your Honor.

7 THE COURT: Okay.

8 All right. Mr. Hurell, the jury has heard the evidence
9 in this case and they have found you guilty of kidnapping,
10 attempted murder and armed robbery. The nature of the crime
11 itself unnecessary and was a brutal attack. And the
12 sentence of this Court on each one of these charges is that
13 you are committed to the State Department of Corrections for
14 a period of thirty years on each charge. The sentences are
15 concurrent. And I will give you credit for the time you've
16 served.

17 MR. JUSTIS: Thank you very much, Your Honor.

18 MR. LOY: Thank you, Your Honor.

19 (Court adjourned at 10:20 p.m.)

20 (This proceeding was concluded)
21
22
23
24
25

State v Hurell

2/10/16

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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, 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 THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 8, 9, 10 of FEBRUARY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

September 9, 2016

WITNESSES

Michael Weaver

Summerville Police Department
14-032496

ARREST WARRANT NUMBER
2014A1820500382

Arrested: December 19, 2014

ACTION OF GRAND JURY

TRUE BILL

Damian L. Riley
Foreperson of Grand Jury
Date: March 12, 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS18-0085

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

March 16, 2015 TERM

THE STATE
vs.

Tashon Earl Hurell

Indictment for
Attempted Murder

SC Code: 16-3-29

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.

2015 MAR 12 PM 1:23
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2015GS18-0085

As a Court of General Sessions, convened on March 12, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Tashon Earl Hurell, did in Dorchester County on or about April 23, 2014 did with the intent to kill, attempt to kill one Mary Pecorara with malice aforethought by striking the victim in the head with a baseball bat. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in cursive script, reading "Glenn P. Justis", is written over a horizontal line.

Glenn P. Justis, Solicitor

WITNESSES

Michael Weaver

Summerville Police Department
14-032496

ARREST WARRANT NUMBER
2014A1820500383

Arrested: December 19, 2014

ACTION OF GRAND JURY

TRUE BILL

Damon T. Riley
Foreperson of Grand Jury
Date: March 12, 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS18-0086

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS
March 16, 2015 TERM

THE STATE
vs.

Tashon Earl Hurell

Indictment for
Kidnapping

SC Code: 16-3-910

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.

RECORDED
INDEXED
MAR 12 PM 1:23
CLERK OF DISTRICT COURT
DORCHESTER COUNTY

370

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2015GS18-0086

As a Court of General Sessions, convened on March 12, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about April 23, 2014, the Defendant, Tashon Earl Hurell, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Mary Pecorara, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in black ink, reading "Glenn P. Justis", is written over a horizontal line.

Glenn P. Justis, Solicitor

WITNESSES

Michael Weaver

Summerville Police Department
14-032496

ARREST WARRANT NUMBER
2014A1820500384

Arrested: December 19, 2014

ACTION OF GRAND JURY

TRUE BILL

Darwin L. Riley
Foreperson of Grand Jury
Date: March 12, 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS18-0087

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

March 16, 2015 TERM

THE STATE
vs.

Tashon Earl Hurell

Indictment for

Armed Robbery

SC Code: 16-11-330(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.

2015 MAR 12 PM 1:23
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

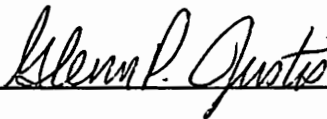
INDICTMENT
2015GS18-0087

As a Court of General Sessions, convened on March 12, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

ARMED ROBBERY

That on or about April 23, 2014, in Dorchester County, the defendant, Tashon Earl Hurell did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Mary Pecorara, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a baseball bat. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Glenn P. Justis, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

0-304

COUNTY OF
STATE

Dorchester

VS.

Tashon Earl Hurell

AKA:

Race: BLACK Sex: M Age: 27

DOB: SS#:

Address:

City, State, Zip: Summerville, SC 29483-2415

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Attempted Murder

INDICTMENT/CASE#: 2015GS18-0085

A/W#: 2014A1820500382

Date of Offense: 4/23/2014

S.C. Code § : 16-3-29

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Justis, Glenn P.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2/10/16☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Hilda Jordan

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2153Sentence Date: 2/10/16

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
STATE VS.

Tashon Earl Hurell

AKA:

Race: BLACK Sex: M Age: 27DOB: [REDACTED] SS#: [REDACTED]Address: 1225 Boone Hill Rd Apt G4City, State, Zip: Summerville, SC 29483-2415DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

IN THE COURT OF GENERAL SESSIONS

0-209
3759INDICTMENT/CASE#: 2015GS18-0086A/W#: 2014A1820500383Date of Offense: 4/23/2014S.C. Code § : 16-3-910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Glenn P. Justis
Justis, Glenn P.76606
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2/10/16☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: The Defendant shall not be placed on the sex offender registry.☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Cheryl Graham
Hilda Jordan

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2153Sentence Date: 2/10/16

COUNTY OF
STATE

Dorchester

VS.

Tashon Earl Hurell

AKA:

Race: BLACK Sex: M Age: 27

DOB: [REDACTED] SS#: [REDACTED]

Address: 1225 Boone Hill Rd Apt G4

City, State, Zip: Summerville, SC 29483-2415

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery

INDICTMENT/CASE#: 2015GS18-0087

A/W#: 2014A1820500384

Date of Offense: 4/23/2014

S.C. Code §: 16-11-330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Justis, Glenn P. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2/10/16
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2153Sentence Date: 2/10/16

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TASHON EARL HURELL,

APPELLANT

APPELLATE CASE NO. 2016-000275

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1.

Whether the court erred by refusing to direct a verdict on all three counts where the state did not present substantial circumstantial evidence placing appellant at the scene of the convenience store robbery, the state's circumstantial evidence only raised a suspicion of appellant's guilt, and the judge incorrectly reasoned the directed verdict standard had changed?

2.

Whether the court erred by allowing Shelby Bradt, the former girlfriend of appellant's brother, to testify appellant's brother was not the masked robber in the convenience store video, since appellant's brother was not on trial, and this evidence was consequently confusing and irrelevant?

3.

Whether the court erred by refusing to declare a mistrial when it was clear the jury was discussing the fact that appellant's sister had inadvertently told the jury that appellant had been in prison as a result of a prior conviction, since appellant's prior record being the subject of jury deliberations constituted conclusive evidence the jury was impermissibly considering it as far as his guilt or innocence in this case?

4.

Whether the court erred by allowing Detective Weaver to testify that appellant started laughing when Detective Weaver showed him a photograph of the sweatshirt the robber wore during the robbery while "holding the victim" in this attempted murder case, since it was irrelevant, and any probative value it had was substantially outweighed by its unduly prejudicial effect?

5.

Whether the court erred by admitting photographs and testimony about red and black shoes, since there was no foundation for this evidence, it therefore was not relevance since the internet “shoes evidence” was not linked to the crime, and it therefore only invited confusing speculation?

STATEMENT OF THE CASE

Appellant was indicted by the Dorchester County Grand Jury for the offenses of attempted murder, armed robbery, and kidnapping. R. 313 – 318. All three charges arose from the June 22, 2014, robbery of the Kangaroo convenience store in Summerville, South Carolina. R. 313 – 318.

Appellant's case was called to trial on February 8, 2016, before the Honorable Edgar W. Dickson, and a jury. John Loy represented appellant. Glenn Justis and Kyle Ward were the Assistant Solicitors. R. 1.

On February 10, 2016, the jury found appellant guilty on all three counts. R. 306, ll. 9-14. Judge Dickson sentenced appellant to thirty-year concurrent sentences on each count. R. 312, ll. 8-16.

This appeal follows.

STATEMENT OF FACTS

Mary Pecorora was the night clerk at the Kangaroo convenience store in Summerville, South Carolina on April 23, 2014. She was working the 11 to 7 pm shift. R. 9, l. 10 – 10, l. 7.

Mary was in the back room gathering supplies when she heard the “buzzer on the door.” Mary started walking back into the regular part of the store when she “saw someone coming around the corner [who] had on a mask, had a bat that was raised and he came straight to the door and started yelling at me and [he] hit me in the head.” R. 10, ll. 8-17. Mary remembered this man was also cursing at her, and he threatened to “cut my throat.” R. 10, ll. 18-22.

Mary said she was forcibly taken to the cash register, she opened it, and the robber grabbed the money. Mary described the robber as “about 5’10”, 5’11”; he had on a ski mask and a bandanna, and he had on a jacket with a hood on it. He had on gloves and red shoes . . . he was kind of slender. He wasn’t fat . . . he was Afro-American.” R. 11, l. 14 – 12, l. 2.

Mary was later shown a lineup, but she was unable to identify the robber. She did identify “a frequent customer,” appellant’s brother Tramaine, that she saw outside the Kangaroo before her shift started. “He was taller and a little huskier” than the robber. R. 15, ll. 3-18. Mary had reconstructive surgery to her face as a result of getting hit with the bat. R. 17, l. 10 – 19, l. 13.

Bernard Nelson was a Summerville Police Department officer. Nelson was dispatched to the Kangaroo that night. He found Mary lying on the floor, “and rendered aid to her.” R. 20, l. 19 – 21, l. 12. Officer Nelson testified that he received information, and he documented it in his report -- that he was told by a man in a nearby apartment complex, Somerset -- that a suspect had driven away in a white Ford Mustang. R. 39, l. 13 – 40, l. 1.

Summerville Police Officer Hobie Williams was the K-9 dog handler. He also responded to the scene of the Kangaroo robbery. R. 48, l. 21 – 50, l. 2. His hound dog picked up a scent, and he went on a trail behind the Kangaroo which led to the Flower Town Baptist Church, which was right next to the Somerset Apartments. R. 50, l. 19 – 51, l. 23.

Officer Williams testified that since there were not sufficient police officers available to set up a perimeter early that morning he abandoned his efforts with the dog. R. 52, l. 2-19. Williams continued to the G-Building of Somerset Apartments, where he came in contact with Lucas Hartman, who was on the second level about downstairs Apartment. G-4. Hartman told Williams that he had seen a black male “with a baseball bat running from the fence line around the F-building to the apartment below him, G-4. Hartman advised Williams that this black male was wearing “a dark tee shirt, baseball cap, and dark shorts.” R. 53, l. 16 – 54, l. 8. Williams also confiscated “a dollar bill” that was laying on the ground inside the breezeway of the apartment complex. R. 54, ll. 2-8.

Williams said he knocked on the apartment door at G-4, and appellant’s sister Tashima Jones, answered the door. R. 52, l. 22 – 56, l. 8. Williams said he told her there was a robbery in the area, and she allowed him to do a “protective sweep” of her apartment, search it, but nothing of evidentiary value was found. R. 55, l. 22 – 60, l. 14.

Lucas Hartman remembered it was about 1:30 or 2:00 in the morning on April 23, 2014, when he observed this black man with the baseball bat and a backpack. After seeing Hartman, and acknowledging his presence, the man jumped over the balcony in the apartment below Hartman. This man came back out of the downstairs apartment and got into a white vehicle “possibly a Mustang,” and he drove away. R. 70, l. 9 – 71, l. 23.

Hartman admitted he told the police that the vehicle the suspect got into was a white Mustang. R. 74, l. 2-4. The state put in much effort throughout the trial to try and establish that Hartman was wrong about the white Mustang. It claimed the vehicle was really a Pontiac Grand Am, which was a car linked to a relative of appellant. R. 74, l. 21 – 76, l. 23.

Detective Michael Weaver also testified he learned from the Department of Motor Vehicles that appellant listed his address as “G-4 Boone Hill Road.” R. 96, ll. 10-15. Weaver said appellant’s sister, Tashima Jones, and appellant’s brother, Traquan Hurell, were the other residents listed for that apartment. Appellant’s other brother, Tremaine, the regular customer of the Kangaroo, did not live there. R. 96, ll. 10-17.

Weaver acknowledged that a bat, a bandanna, and red shoes seized from this apartment as a result of a search warrant that was later executed. These items were returned to Jones since they were determined *not to be of any evidentiary value in this case*. R. 98, l. 6 – 99, l. 8.

The Sweatshirt

Detective Weaver said as they were leaving the apartment complex, they noticed a white Pontiac Grand Am in the parking lot. Weaver said the police returned to apartment G-4 to see if anyone was home. The mother of appellant and Tashima Jones answered the door. R. 99, l. 22 – 100, l. 15.

Appellant was on the couch lying down. Defense counsel Loy correctly sensed the state was going to attempt to elicit inadmissible evidence. He asked the jury to be excused. R. 101, l. 3 – 102, l. 17. Out of the presence of the jury, Weaver said that a photograph taken from the videotape of the scene depicted the robber wearing a bright green sweatshirt. Weaver said when he showed the photograph to appellant, appellant “laughed and said who would wear something like that during this [an attempted murder and armed robbery].” R. 102, ll. 7-22. Weaver said he

tried to elicit further information from appellant, but appellant refused to talk to him. R. 102, l. 23 – 103, l. 2.

Defense counsel Loy argued that he did not think this incident was probative “of anything and it’s prejudicial.” He also said that the fact appellant apparently laughed in the face of bloody pictures when talking about a horrible crime painted him as “cold-hearted or villainous.” Defense counsel repeated that it was not relevant evidence, and it was extremely prejudicial. R. 103, l. 3 – 110, l. 17.

The judge said he disagreed with appellant that this incident was going to make appellant look “callously indifferent” to the plight of the injured victim. He allowed Weaver to testify in the presence that he showed appellant the photograph of the sweatshirt from the videotape, and appellant began laughing about the sweatshirt and the incident. R. 109, l. 21 – 112, l. 25.

Other Evidence

Without introducing expert testimony, the state would attempt to raise speculation about appellant’s guilt based on shoes he was wearing on his Facebook page, and the use of his prepaid cell phone. Both of these areas of speculation drew defense objections. R. 117, l. 19 – 118, l. 22. From his internet research, Detective Weaver said the shoes on the Facebook “look consistent” with those on the videotape. R. 118, l. 15 – 119, l. 15.

Weaver also said he found it “interesting” that appellant’s brother’s phone records, showed he was on the phone from 12:21 am until approximately 2:11 am at the time of the early morning robbery. R. 120, l. 4 – 122, l. 10. Weaver said he did not suspect appellant’s other brother, Tramaine, was the robber because he was tall and skinny and had a high-pitched voice. “His voice sounded nothing like the person in the video.” R. 122, l. 5-10.

Weaver would also speculate about what appellant's cell phone that evening may have shown. Defense counsel objected that Weaver was not an expert in cell towers but the judge said he would allow the cell tower evidence. R. 122, l. 16 – 125, l. 16. Defense counsel said he did not object to the location of the cell tower, but he did object to any lay interpretation of the cell tower evidence because the witness was not qualified. R. 123, l. 18 – 125, l. 20.

Weaver said that appellant's phone was in use at 1:10 am on the day of the robbery. He insinuated the calls were made near appellant's mother's house and the Kangaroo convenience store. R. 126, l. 1 – 129, l. 18. Weaver also said he noticed one call was to a telephone line for the Greyhound Bus line, and that number was in Texas. R. 129, ll. 1-16.

Weaver testified that Mary, the store clerk, could not identify anyone as a suspect from the photo lineup. Weaver denied that his investigation was going nowhere at the time, and he said the police were pursuing other leads. R. 148, l. 7 – 150, l. 17.

Weaver acknowledged that Mary was able to identify appellant's brother, Tramaine, as a "regular customer" at the Kangaroo, but Weaver maintained Tramaine had a much higher voice than the suspect on the videotape of the robbery. R. 151, l. 19 – 152, l. 7.

The following day, the state said it wanted to call Shelby Bradt as a witness to testify she watched the convenience store robbery, and for her to maintain before the jury that appellant's brother, Tramaine, her former boyfriend, was not the robber depicted in the video. R. 154, l. 3 – 156, l. 1. Defense counsel strongly objected to this opinion being offered. Defense counsel noted that this proposed evidence was not offered during the first trial, and that the videotape involved in State v. Fripp involved a bad video tape, and an identification of the suspect. The videotape here was clear, and defense counsel noted that the state here strangely wanted to attempt to "disprove the guilt of other folks. Defense counsel noted Tramaine Hurell was not on

trial in this proceeding and this evidence would only confuse the jury. R. 156, l. 3 – 158, l. 13. Appellant did not put forth any third-party guilt defense, and he simply put the state to its burden of proof. The judge said he was going to allow this evidence over the defense objection. R. 158, l. 14 – 160, l. 6.

Shelby Bradt

Bradt then testified in the presence of the jury that she dated appellant's brother, Tramaine, in April, 2014, at the time of the robbery, and they dated for about three or four months. They both worked together at Captain D's. R. 161, ll. 7-25.

Bradt testified that she had never seen Tramaine wearing the sweatshirt at issue. When a portion of the Kangaroo video tape was played for her, she opined that the person on the tape did not sound "like Tramaine." She also maintained "it doesn't look like him." R. 163, ll. 2-15.

Tashima Jones

Jones identified appellant as her brother. She said appellant was not living with her in April of 2014. R. 164, ll. 12-19. Appellant also did not have a key to her apartment, but she said she saw him "every other day" or sometimes every day. R. 167, ll. 4-18.

The following occurred between the solicitor and Jones.

Q. Ms. Jones, were you aware that Tashon had listed your address as his address with the department of motor vehicles?

A. *Prior to him getting out from serving some time, yes, I am. Because at that time my mom was still there.*

Q. So this was a while back he had used your address?

A. Yes.

Mr. Loy: Your honor, I think we have a matter of law we need to address.

R. 169, l. 18 – 170, l. 1.

Defense counsel Loy then moved for a mistrial. Counsel noted that the testimony Jones gave told the jury that appellant had a prior conviction, and that he had been incarcerated for a period of time. Counsel argued that was clearly prejudicial, and that a mistrial should be granted. Defense counsel then asked the judge to defer ruling on his mistrial motion while he asked appellant if he wanted a mistrial. R. 171, l. 20 – 176, l. 10. Appellant waived any claim to having a right to a mistrial at that time. R. 175, l. 11- 176, l. 25.

On cross-examination, Jones said law enforcement apparently found a dollar bill near her apartment. She said she was asleep at the time, appellant was not living there, and only her brother, Traquan, and her three year old son were present inside her apartment. R. 182, l. 1-16.

The Sweatshirt

Traquan Hurell was working Bi-Lo in April, 2014 when a couple of detectives came by to talk to him. Traquan remembered that they showed him “a picture of the guy at the gas station.” They asked him questions about his brothers, and the type shoes that he wore.

Traquan told the detectives he did not recognize the hoodie the man was wearing in the photograph, and he said the Tasmanian devil on the front of the hoodie was made by Warner Brothers. Traquan told them he did not own a similar hoodie, and he did not own red tennis shoes. Traquan said when the detectives continued to try and question him, he told them “I was not speaking to them. Have a good day.” R. 184, ll. 11-25. Traquan then told the jurors he did not know anyone who had a hoodie or jacket similar to the one shown him by the detectives. R. 185, ll. 13-16.

The state then called Detective Mike Weaver and Detective Nick Santana to attempt to impeach Traquan’s testimony about the sweatshirt. Weaver said that Traquan told him he was given the sweatshirt by a friend of his in the eighth grade. R. 186, l. 15 – 187, l. 1. This

statement was not recorded, and Weaver said Traquan did not give them an opportunity to write a written statement. R. 187, ll. 14-21.

Santana said that Traquan told them he had been given a similar sweatshirt by a friend in the eighth grade. R. 189, l. 18 – 190, l. 13.

The Shoes and the Internet Testimony

Derek Cheek was an investigator with the solicitor's office that was prosecuting appellant. R. 192, l. 15 – 193, l. 9. Cheek identified a person wearing red and black shoes, which he claimed came from one of four Facebook pages belonging to appellant. R. 193, l. 12 – 194, l. 8. Cheek said he then searched Google and found red and black shoes were being sold from "Champs Sports website." R. 194, l. 13 – 195, l. 7.

Cheek next identified three photographs from the Champs Sports website. R. 194, l. 13 – 196, l. 3. When the prosecutor went to admit exhibits 34-37, defense counsel objected, stating they had no relevance, that there had been no shoes recovered, and that this only invited speculation. The judge overruled the objection. R. 196, ll. 6-16.

Defense counsel also objected to the state's desire to have Cheek testify that the shoes were similar. The judge also overruled this objection, stating that defense counsel could cross-examine the investigator about the shoes. R. 197, l. 4 – 199, l. 5. Cheek said he forwarded these photographs to SLED.

On cross-examination, Cheek admitted the photographs came from the Champs Sports webpage, and that they could have come from any of a number of different shoe companies. Cheek acknowledged he thought that there were probably "millions" of models of shoes that came in red and black. R. 202, l. 1 – 207, l. 21.

Samuel Stewart was a SLED DNA worker. He received his Bachelor's degree in biology from Francis Marion University. He had testified ten times before this trial. R. 208, l. 19 – 209, l. 9. Stewart maintained that the blood on the one dollar bill found near the apartment occupied by Ms. Jones was a DNA match of one in one hundred thirty trillion to the victim. R. 213, l. 11 – 215, l. 10.

Directed Verdict Motion

Defense counsel Loy made a very extended directed verdict motion. R. 218, l. 10 – 231, l. 12. Defense counsel argued there was much more evidence against the defendant in State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), where the Supreme Court held the defendant was entitled to a directed verdict. R. 218, l. 10 – 222, l. 16.

In Bostick, the victim lived right next door to the defendant. She was murdered and her house was set on fire. The defendant had a nearby burn pile on his property, and the victim's keys and other effects were found in the burn pile. Gasoline was used as an accelerant to destroy the victim's personal property, and the defendant's mother said she never used gasoline in the burn pile. R. 218, l. 10 – 222, l. 16.

In addition, Bostick had gasoline on his shoes, and the blood on his clothes could not eliminate the victim. In the face of all this evidence, the Supreme Court said it was not "substantial circumstantial evidence." R. 218, l. 10 – 222, l. 16.

Defense counsel correctly argued the Supreme Court in Bostick cited other cases where a directed verdict was granted because the evidence did not rise to the level of "substantial circumstantial evidence", even though there was an abundance of evidence of the defendant's guilt. These cases were State v. Schrock, 283 S.C. 129, 322, S.E.2d. 450 (1984); State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), and State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126

(2000). In each of these three cases, the circumstantial evidence was stronger than the circumstantial evidence against appellant in this case. Yet, the Supreme Court in each of the three cases ruled a directed verdict should have been issued. R. 222, l. 12 – 226, l. 13.

Defense counsel correctly argued that the state's evidence here only raised a suspicion that appellant committed the armed robbery, attempted murder, and kidnapping at the Kangaroo that early morning. R. 218, l. 18 – 229, l. 13. Further, defense counsel correctly argued this was not "substantial circumstantial evidence." R. 229, l. 14 – 231, l. 12.

The judge and the attorneys also discussed State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). In Bennett, the defendant's fingerprint was taken from a television set in the community room in that burglary case, and his blood was found at the scene also. However, the director of the center testified she would monitor Bennett whenever he came to the center, and he spent his time in the computer room, and he did not use other rooms, including the community room. The Supreme Court found that the directed verdict motion was properly denied because forensic evidence placed Bennett at the scene, and specifically, in the room where the crime occurred. R. 227, l. 5 – 232, l. 1.

Defense counsel noted that Bennett was actually a helpful case to the defense here since there was no forensic or other evidence at the scene of the crime which linked appellant to the Kangaroo robbery. As stated, the judge denied the directed verdict motion.

However, the judge rejected the defense argument on the correct directed verdict standard, stating he found there was the "existence of evidence that a reasonable juror could believe if they believed every step in the chain of circumstantial evidence that the state has presented." The judge stated his belief that Bennett apparently changed the underlying standard from the other cases, including State v. Bostick, cited by defense counsel. R. 230, l. 6 – 231, l.

12. In addition to their not being substantial circumstantial evidence of appellant's guilt in this case, the judge made an error of law by applying the wrong standard at the directed verdict stage.

ARGUMENT

1.

The court erred by refusing to direct a verdict on all three counts where the state did not present substantial circumstantial evidence placing appellant at the scene of the convenience store robbery, the state's circumstantial evidence only raised a suspicion of appellant's guilt, and the judge incorrectly reasoned the directed verdict standard had changed.

If ever there was a case where the state sought a verdict based on speculation and suspicion, it was this case. The first trial ended in a hung jury, apparently one in appellant's favor. Therefore, the state had the former girlfriend of appellant's brother testify that the man in the Kangaroo video was not her former boyfriend.

Without the use of an expert, the state offered cell tower lay testimony allegedly placing appellant and his brother near the Kangaroo convenience store that evening, even though the state went to length to show appellant's brother was not the robber, but at the same time insinuating he may have "been in" on the robbery.

The state also offered testimony that appellant laughed when shown the shirt worn by the robber who beat the helpless store clerk. This was calculated to show appellant was a cold hearted person of bad character. In addition, the state offered further speculation about the shoes of appellant on Facebook, and shoes found from a Google search. Defense counsel correctly argued there was no foundation for this irrelevant evidence.

The state also attempted to make much of the fact that a one dollar bill with the alleged match by DNA to the victim was found in a courtyard somewhere near the apartment occupied by appellant's sister.

This evidence did not rise to the level of “substantial circumstantial evidence” under the cases cited by defense counsel Loy during his extended directed verdict motion. Further, it appears that the trial judge thought that State v. Bennett changed the directed verdict standard to determining whether the evidence presented “is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.”

The judge cited the “phone records,” the tee shirt, which the judge acknowledged involved conflicting evidence, and he denied the motion because he thought there was “*the existence of evidence that a reasonable juror could believe if they believe every step in the chain of circumstantial evidence that the state has presented.*” R. 230, l. 6 – 231, l. 11. (emphasis added). The correct standard was whether the state presented “substantial circumstantial evidence” under State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Schrock, 283 S.C. 129, 322, S.E.2d. 450 (1984), and State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

Applying the correct “substantial circumstantial evidence” standard, the state failed to meet that standard in this case, and the judge should have directed the verdict. The state offered evidence that could raise a suspicion of appellant’s guilt in this case, but that is all. Given applicable precedent, the state failed to meet its “substantial circumstantial evidence” burden to overcome a directed verdict motion, and this court should now issue an order of acquittal given the lack of substantial circumstantial evidence. In addition, the judge committed an error of law by applying the wrong directed verdict standard despite defense counsel’s extremely long directed verdict motion to the contrary.

2.

The court erred by allowing Shelby Bradt, the former girlfriend of appellant's brother, to testify appellant's brother was not the masked robber in the convenience store videotape, since appellant's brother was not on trial, and this evidence was consequently confusing and irrelevant.

As seen, the solicitor sought to have Tramaine Hurell's former girlfriend, Shelby Bradt, testify that she reviewed the videotape of the Kangaroo robbery and the aggravated battery. She would then give her opinion that the man on the videotape was *not* Tramaine. She was dating Tramaine at the time of the robbery, had dated him for three or four months before it ended. The solicitor said Bradt would testify that she had reviewed a family picture, she knew the family, she watched the videotape, and that she could opine the masked man in the video was not Tramaine. R. 154, l. 7 – 159, l. 12.

Defense counsel objected to this procedure, arguing it would be improper for Bradt to give her opinion as a layperson that the man in the video was not Tramaine. Defense counsel also argued he did not think it was proper for the state to attempt to prove the guilt of appellant, and simultaneously attempt *to disprove the guilt of others*. R. 154, l. 7 – 159, l. 12.

Tramaine Hurell was not on trial, and this evidence would confuse the jury from its real function of deciding whether or not the state had produced sufficient evidence to prove appellant's guilt beyond a reasonable doubt. Defense counsel asked where this procedure logically ended -- meaning whether the state could attempt to disprove the guilt of others who lived in Somerset Apartments, where the dollar bill was found with the victim's DNA on it was found in the Apartment breezeway. R. 156, l. 3 – 158, l. 13.

The judge said that the videotape involved in State v. Fripp, 396 S.C. 434, 721 S.E.2d 465 (2012), which the solicitor relied on, concerned the defendant on trial. In Fripp, the

videotape was not clear, and the suspect sought to obscure his identity by wearing a hood and his jacket up high on his face.

The judge here apparently reasoned, since this was a circumstantial evidence case, “I think the state almost has to try and prove who else in the house would not be a victim [defendant?] And we’ve already had testimony that somebody it wasn’t Tramaine because Tramaine is taller and his voice is different according to the testimony I heard.” The judge said he would therefore allow this testimony and opinion from Bradt that it was not Tramaine, appellant’s brother, on the videotape, and he cited State v. Fripp as the authority. R. 158, l. 14 – 159, l. 8.

Discussion

In State v. Fripp, this Court held it was not error for the judge to allow two witnesses, Brown and Young, to testify that Defendant Fripp was the person depicted on the surveillance videotape. They knew Fripp from other occasions.

This Court reasoned the identifications were proper pursuant to Rule 701, SCRE, which allowed a layperson’s testimony in the form of an opinion or inference which was (a) rationally related based on a perception of the witness, (b) or helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

Defense counsel here correctly argued that seeking to disprove that appellant’s brother, Tramaine, was not the robber was going to be confusing to the jury. Tramaine was not on trial. It was not a fact in issue under subsection (b) of Rule 701, SCRE. It was not relevant, and consequently confusing.

This was a distraction, as defense counsel correctly argued, from the jury's only function, which was to determine whether appellant's guilt had been proved beyond a reasonable doubt. This testimony was especially confusing, given the other evidence in this case. It seemed the state was strongly insinuating that one of the brothers may have been conversing with appellant by telephone, and letting him know what was happening at the Kangaroo on the night of the murder. Yet the brother was not charged. Appellant was not putting forth a defense of third-party guilt, and this attempt to "disprove third-party guilt" was therefore in response to nothing raised by the defense. It was improper because it was not relevant as a starting point.

Further, Rule 403, SCRE, also excludes evidence that is likely to cause confusion, as was the attempt to disprove Tramaine's guilt evidence from the videotape by Brandt in this case. Appellant realizes the state was "pulling out all of the stops," given the hung jury in the first trial. This confusing evidence regarding about a third party -- who was not on trial, and not the target of third-party guilt evidence -- was highly improper. The judge's reason for allowing it was, most respectfully, rather odd. Appellant should be granted a new trial.

3.

The court erred by refusing to declare a mistrial when it was clear the jury was discussing the fact that appellant's sister had inadvertently told the jury that appellant had been in prison as a result of a prior conviction, since appellant's prior record being the subject of jury deliberations constituted conclusive evidence the jury was impermissibly considering it as far as his guilt or innocence in this case.

As seen, appellant's sister, Tashima Jones, testified that appellant did not live with her. She testified that the police returned the items seized from her apartment because they did not have any evidentiary value. That was undisputed. She also testified that appellant lived in their mother's house. R. 164, l. 12 – 168, l. 10.

The solicitor asked Ms. Jones if she was aware that appellant listed her apartment as his address with the Department of Motor Vehicles. The sister responded that “*prior to him getting out from serving some time, yes, I am.*” Because at that time my mom was still there.” Defense counsel immediately told the judge he had a matter of law. R. 169, l. 18 – 170, l. 6. (emphasis added). Defense counsel moved for a mistrial, since the jury now knew appellant had a prior conviction and that he had spent time incarcerated as a result of that conviction. The solicitor responded he did not elicit that answer, and defense counsel then asked permission to talk to appellant about whether he wished to have a mistrial at that point. As will be seen *infra*, this testimony made quite an impression on the jury. R. 170, l. 9 – 171, l. 7.

Defense counsel Loy then told the judge that appellant wished to waive a ruling granting a mistrial at that time. R. 173, l. 11 – 177, l. 24.

As also seen above, during jury deliberation, the jury sent its note, number five, stating it would “like to review the sister's testimony. Did she say when he got out he sometimes stayed

with her?” Defense counsel told the judge that the jury put “when he got out in parentheses,” which showed the jury had focused its attention on appellant’s prior record, and his prior incarceration. Circumstances had now changed from the prior mistrial motion and defense counsel Loy asked for a mistrial. Defense counsel argued it was manifestly unfair for the jury to be deliberating about appellant’s prior incarceration and his prior record. R. 281, l. 20 – 282, l. 18.

The solicitor argued that the jury subsequently sent another note asking the judge to disregard its last note. It would seem apparent the jury realized in the interim the problem. The judge denied the motion for a mistrial but he stated: “I think you’ve made a compelling argument.” R. 284, l. 10 – 285, l. 11.

Discussion

If appellant had testified, and been impeached with his prior record, it is elementary that the court would have given a limiting instruction that the jury could only consider the prior conviction as it went to his credibility. It had no relevance to whether or not he committed the crime in this case. Any such speculation would be totally improper.

Yet, appellant had the worst of all worlds in this case, since he did not testify. Therefore, there was no curative instruction. One obvious advantage of not testifying is that the jury does not learn of your prior record. It was clear here the jury was deliberating about appellant’s prior record.

This was a very close case to say the least. It is not too much to state that the improper use by the jury of appellant’s prior record and his prior incarceration likely tipped the scales in favor of conviction. That was fundamentally unfair.

In Green v. State, 338 S.C. 428, 527 S.E.2d 98 (2000), the Court noted that at times even a limiting instruction cannot cure the prejudice from the admission of improper prior criminal offenses evidence. In this case, appellant's sister clearly conveyed to the jury that appellant had a prior criminal offense, and that he had been incarcerated. It was so clearly conveyed that the jury felt emboldened to want to listen to the sister's testimony again and inquire some more about appellant's criminal record.

In the context of a prior similar offense, the Court has noted "the jury, despite limiting instructions, can hardly avoid drawing the inference that the past conviction suggests some probability that the defendant committed the similar offense for which he is currently being charged." United States v. Beahm, 664 Fed.2d 414, 418-19 (4th Cir. 1981).

It is common sense that if a person committed a prior criminal offense, or a prior similar offense, that he or she was more likely to be guilty of the crime charged than a person with no criminal record. It is that very human reaction to prior offenses that the rules of evidence must guard against if a defendant is to have a fair trial for the offense for which he is on trial. Our rules of evidence carefully control when a prior criminal conviction may come before the jury. See, Rule 609(a)(1) & (2). The same is true regarding the admission of "other bad acts" that are not the subject of a conviction. See, State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923); Illinois v. Somerville, 410 U.S. 458 (1973); Rule 404(b), SCRE.

Appellant did not seek a mistrial when his sister informed the jury that he had a prior criminal conviction and that he had been incarcerated. As defense counsel argued, once it was clear the jury was considering his prior criminal record during deliberation, the matter had gone beyond any limit of reason at that point, and the judge respectfully erred by refusing to declare a

mistrial. See Illinois v. Somerville, 410 U.S. 458 (1973). Appellant should be granted a new trial.

4.

The court erred by allowing Detective Weaver to testify that appellant started laughing when Detective Weaver showed him a photograph of the sweatshirt the robber wore during the robbery while he was “holding the victim” in this attempted murder case, since it was irrelevant, and any probative value it had was substantially outweighed by its unduly prejudicial effect.

As seen, Summerville Detective Mike Weaver testified the police learned from the DMV that appellant listed his address as G-4 Boone Hill Road. R. 96, ll. 10-17. Weaver testified the police obtained a search warrant “based on the statement a suspect actually went in and out of the apartment two times, I found that odd.” A police officer “showed up approximately an hour to two hours later with that search warrant.” No one was home and the apartment was searched in their absence. As earlier stated, nothing of evidentiary value was found.

Weaver said after the police returned the key to the manager, they noticed a white Pontiac Grand Am in front of apartment G-4. R. 99, ll. 5-21. Weaver knocked on the door, and appellant’s mother, Jana Hurell, answered the door. R. 100, ll. 1-2. Weaver testified appellant was laying on the couch at the time. R. 101, ll. 5-7. At this point, defense counsel Loy took up a matter of law.

During the proffer, Weaver testified he had a photograph “from behind the cash register when the incident was going on. You could see a brief description of the sweatshirt. It was a bright green sweatshirt that the suspect was wearing. I wanted to see if he [appellant] recognized it as anyone wearing a shirt similar to that in the area.” R. 102, ll. 10-17. Weaver said appellant laughed and said “who would wear something like that during this [violent crime]?” R. 102, ll. 20-22.

Defense counsel argued that the proffered evidence that appellant laughed when shown the photograph of the crime scene video was an attempt by the solicitor to paint appellant as “cold-hearted and villainous.” It was not relevant to any issue in the case and it was unduly prejudicial to paint appellant out as a cold-hearted villain. R. 103, l. 3 – 105, l. 2.

The judge told defense counsel: “If I were in your position, I’d probably be worried about that.” Nonetheless, the judge stated he did not think the exchange with Weaver made appellant look callously “indifferent.” The judge ruled he would admit the part of the proffer concerning appellant laughing at the crime scene photograph. R. 109, l. 23 – 110, l. 19.

In the presence of the jury, Weaver said he showed the photograph which depicted a still photograph of the incident with the suspect standing “there holding the victim. It was a side picture of the sweatshirt. It was unique, just the colors on it.” R. 112, ll. 8-18. Weaver testified appellant laughed when shown the photograph and asked why someone would wear “a green and white sweatshirt during something like this [a violent crime].”¹ R. 112, ll. 19-22.

Discussion

“Character may be interjected into the case intentionally or accidentally, and it may be introduced in a number of ways.” Collins, South Carolina Evidence, §10.1 at p. 276 (2d ed. 2000). Here, defense counsel correctly objected that evidence appellant laughed when shown the crime scene photograph painted him out to be a cold-hearted person and a villain. Someone who would laugh at another person’s misfortune, where the solicitor knew the jury would learn the victim was badly hurt during the incident, and required reconstructive surgery, was surely going to cast the defendant in a negative light in the eyes of the jury.

¹ Undersigned counsel could not determine from the transcript nor from the index the exact exhibit number that was assigned to this still photograph. Unfortunately, counsel therefore had to designate all photographs, the video tape, and all still shots to ensure the correct exhibit was before this court.

Bad character evidence can be interjected into the case in subtle and not so subtle ways. For example, evidence of the type of people a person associates with can interject his character into the case. State v. Gilstrap, 149 S.C. 445, 147 S.E. 600 (1929); State v. Marlowe, 120 S.C. 205, 112 S.E. 921 (1922).

Other types of character evidence include evidence of a person's unrelated sexual activity. South Carolina Department of Social Services v. Brown, 272 S.C. 568, 253 S.E.2d 100 (1979). Evidence of a person's general reputation for solvency or insolvency. Garrett v. Weinberg, 59 S.C. 162, 37 S.E. 51 (1900). Evidence a person has been previously jailed on unspecified charges is also evidence of bad character. Jeter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991).

This evidence was not relevant under Rule 401, SCRE, because it did not make any matter at issue more or less likely. It was gratuitous bad character evidence, as defense counsel described, to point appellant out as a cold-hearted, mean person.

If the state wanted the jury to draw any conclusion from this evidence it was that appellant was a cold-hearted person who would laugh at a crime scene photograph, which made it more likely he was the "type of person" who would commit such a crime. That is why such evidence is inadmissible in a criminal trial, because it is extraordinarily prejudicial and may be used for the wrong purpose. See Rule 403, SCRE; Rule 404(a), SCRE.

5.

The court erred by admitting photographs and testimony about red and black shoes, since there was no foundation for this evidence, it therefore was not relevance since the internet “shoes evidence” was not linked to the crime, and it therefore only invited confusing speculation.

As seen, the solicitor used his investigator, Derek Cheek, to introduce the strange internet red and black shoes evidence. R. 192, l. 15 – 193, l. 9. Cheek identified a person wearing such shoes which came from one of four Facebook pages belonging to appellant. Cheek searched Google and found such shoes being sold from “Champs Sports website.” R. 194, l. 13 – 195, l. 7.

When the solicitor went to introduce State’s Exhibits 34 – 37, defense counsel objected, arguing they had no relevance, that there had been no shoes recovered, and this evidence only invited speculation. Those objections were overruled. R. 196, ll. 6-16.

Defense counsel also objected to the state’s desire to have Cheek testify the shoes were similar. That objection was also overruled. The judge ruled these were all proper matters for cross-examination. R. 197, l. 5 – 199, l. 5. Cheek offered that the photographs were forwarded to SLED

Cheek admitted on cross-examination there were likely “millions” of models of similar shoes in red and black. He acknowledged the photographs came off the website -- the Champs Sports webpage -- that he Googled. R. 202, l. 1 – 207, l. 21.

Discussion

The shoes evidence was not linked to the crime, and there was no foundation for this evidence. Once again, the state was asking the jury to engage in speculation and it successfully hoped that a sufficient amount of such speculation would lead to a conviction.

What the solicitor's investigator found on Google from Champs Sports site did not make any matter at issue more or less probable. The evidence was simply not relevant under Rule 401, SCRE. Since it would only confuse the jury and invite speculation, it should have been excluded under Rule 403, SCRE, even if it was relevant. "Evidence which assists the jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent." State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). Evidence is incompetent if it creates dangers such as confusion of the issues, tendency to mislead the jury, waste of time, prejudice, undue delay, or cumulative presentation. See State v. Pipkin, 359 S.C. 322, 326, 597 S.E.2d 831, 833 (Ct. App. 2004). See also, Rule 403, SCRE.

At a minimum, the evidence here about the shoes and the internet was going to be confusing to the jury. The admitted shoes internet evidence in this case should not have been admitted because it was not properly connected with the robbery, it was irrelevant, incompetent, and confusing. There was an insufficient connection between the evidence and the crime with which appellant was charged, and the cumulative prejudicial effect of such speculative evidence far outweighed its probative value.

In State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986), the shooting occurred at a Christmas party at a nightclub on December 14, 1963. The deceased was fatally shot with a .357 caliber bullet while outside an apartment. McConnell's defense was that the shooting was accidental.

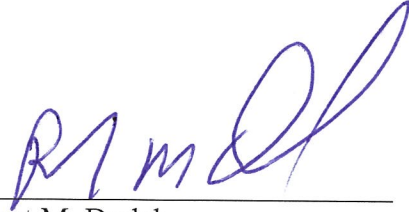
Approximately a month after the shooting, police recovered a .22 caliber slug lodged in a wall behind a closet. No testimony established when the closet was built. The other .22 caliber bullet was removed from the ceiling. It was undisputed the .22 caliber pistol introduced into evidence was not in McConnell's possession at the time of the shooting incident. The two .25

caliber bullets were found in an air conditioning unit. No evidence was introduced showing McConnell ever owned or used a .25 caliber weapon, and no such weapon was found. The Supreme Court found that there was no sufficient foundation linking this evidence to the shooting and that it was incompetent, inadmissible, and highly prejudicial. State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986)

With the exception of the evidence in McConnell *also* suggesting prior bad acts, there was not any meaningful difference between the speculation this internet shoes evidence invited, and the evidence in McConnell. Appellant should be granted a new trial.

CONCLUSION

By reason of argument one, a verdict of acquittal should be issued. In the alternative, appellant's convictions should be reversed based on issues two through five, and this case remanded to the Dorchester County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

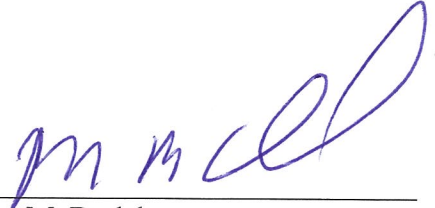
ATTORNEY FOR APPELLANT

This 16th day of October, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 16, 2017



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TASHON EARL HURELL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of October, 2017.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of October, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2016-000275

THE STATE,

Respondent,

v.

TASHON EARL HURELL,

Appellant.

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STATEMENT OF ISSUES ON APPEAL**I.**

The trial court properly denied Appellant's directed verdict motion because the State presented substantial circumstantial evidence to allow a reasonable juror to find him guilty beyond a reasonable doubt.

II.

The trial court properly allowed the following evidence: testimony by Shelby Bradt that Tramaine Hurell was not the suspect in the video, testimony by Detective Weaver regarding his showing Appellant a photograph of the suspect in a particular sweatshirt, and photographs and testimony about red and black shoes, because it was relevant and its probative value was not substantially outweighed by the danger of unfair prejudice. (This combines Appellant's Issues II, IV, and V.)

III.

The trial court did not abuse its discretion by declining to grant a mistrial under the circumstances of Appellant's case because the challenged testimony by Appellant's sister did not render Appellant's trial fundamentally unfair when considered in the context of the record as a whole.

STATEMENT OF THE CASE

A Dorchester County Grand Jury indicted Appellant for attempted murder, armed robbery, and kidnapping. (R. 313-18). On February 8–10, 2016, Appellant proceeded to a trial before the Honorable Edgar W. Dickson and a jury. John Loy, Esquire, represented Appellant, and Assistant Solicitors Glenn Justis and Kyle Ward represented the State. The jury found Appellant guilty of all charges, and Judge Dickson sentenced him to thirty years' imprisonment for each charge, to be served concurrently. (R. 312).

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On April 23, 2014, Mary Pecorora (Victim) was working at the Kangaroo gas station in the early morning hours when someone entered the store wearing a mask and carrying a bat. (R. 9, line 10–R. 10, line 17). He threatened to cut her throat and then he hit her in the head with the bat before grabbing her by the neck and dragging her to the cash register. (R. 10, line 20–R. 11, line 5). She opened the register upon his command, and he grabbed the money, hopped over the counter, and took off out the door. (R. 11, lines 9–15). Victim described the assailant as Afro-American, slender, five feet, ten inches to five feet, eleven inches tall, and wearing a ski mask, bandana, hooded jacket, gloves, and red shoes. (R. 11, line 16–R. 12, line 2). Following the attack, she called 911 and EMS and the police came to the scene. (R. 12, lines 3–25). She did not have much of an opportunity to speak to the police because EMS was attending to her medical needs and she was subsequently transported to MUSC for several days of treatment, including surgery. (R. 13, lines 1–16).

Officer Bernard Nelson of the Summerville Police Department responded to the crime scene, gathered information from Victim, and relayed a description of the suspect to all units. (R. 20, line 17–R. 22, line 10). He took photos at the scene and viewed the surveillance video to gather a better description of the suspect. (R. 22, lines 11–12; R. 24, lines 13–21). The description he provided to the other units was: “black male subject wearing a light hoodie with the multi-colored graphic designs on the front. Bright lime green hoodie, black pants, red shoes, black gloves, dark colored bandana over his face. He was a medium build and had a husky voice carrying a baseball bat.” (R. 25, line 22–R. 26, line 1). The solicitor showed Officer Nelson State’s Exhibit #18, a screenshot from the video of the suspect jumping over the counter, and Nelson verified that he described the shoes as red. (R. 25, lines 3–4; R. 26, lines 2–4).

Officer Hobie Williams, also of the Summerville Police Department, responded with his K-9 to the scene of the crime and his K-9 was able to track from the Kangaroo to the Somerset Apartments. (R. 48, line 19–R. 51, line 23). Officers were unable to continue the track at that point because they did not have available officers to set up a perimeter. (R. 52, lines 2–7). Instead, he and another officer searched for evidence on the path between the Kangaroo and the Somerset Apartments. (R. 52, lines 8–15). At Building G, they saw a white male smoking on the upper level and decided to talk to him. (R. 52, lines 15–19). He reported to the officers that he had seen a black male with a bat running to the apartment below his, G-4. (R. 53, line 18–R. 54, line 1). Officer Williams saw a dollar bill lying on the ground inside the breezeway of the balcony. (R. 54, lines 5–6; R. 55, lines 1–8). He noted the bill was dry even though the area all around was wet, and the bill also had blood on it. (R. 55, lines 9–14). He collected the dollar bill with gloves and secured it in an evidence bag. (R. 59, lines 6–22). Officer Williams then talked to Tashima Jones, Appellant’s sister and the occupant of the apartment, who allowed him to come in and search. (R. 56, lines 4–21). Traquan Hurell, one of Appellant’s brothers, was also in the apartment. (R. 56, lines 22–25).

Lucas Hartman, the man who lived above apartment G-4, testified he was sitting on his balcony on April 23, 2014, around 1:30 to 2:00 a.m. when he saw a man wearing black clothes and carrying a baseball bat and a backpack jump over the balcony below and heard the door open. (R. 69, line 3–R. 70, line 20). He then witnessed the man come back out, jump over the balcony, and drive off in a white vehicle, possibly a Mustang, and then come back and do the same thing again. (R. 70, line 19–R. 71, line 1).

Detective Michael Weaver of the Summerville Police Department got involved in the case on April 23, 2014, and obtained the officers’ reports. (R. 94, line 22–R. 95, line 22). He

used DMV records to find out who lived at apartment G-4 and found that in addition to Jones, Traquan Hurell and Appellant were listed in the records. (R. 96, lines 2–17). He then obtained photo lineups from SLED of Traquan and Appellant. (R. 97, lines 6–11). Based on Hartman’s statement that he heard someone going in and out of the apartment below, Det. Weaver obtained a search warrant for apartment G-4, obtained a key from the apartment manager, and searched the apartment while no one was home, finding nothing of evidentiary value. (R. 98, lines 1–23). His findings included two pairs of red shoes, but when he discovered they did not match the ones in the surveillance video, he returned them. (R. 98, line 23–R. 99, line 8). After returning the key to the apartment manager, he noticed a car was parked in front of G-4, so he knocked on the door and found Jana Hurell, Appellant’s mother, there. Appellant was also at the apartment at the time. (R. 101, lines 3–7). When the solicitor asked Det. Weaver whether he showed either Ms. Hurell or Appellant any photographs, and he said that he did, defense counsel told the trial court he had a matter of law to take up. (R. 101, lines 8–13). The solicitor proffered what he was going to ask, which was what photograph he showed Appellant, and Det. Weaver described the photograph as one taken from behind the cash register during the incident, which shows the bright green sweatshirt the suspect was wearing. (R. 102, lines 2–15). He showed it to Appellant to see if he recognized the shirt and testified that Appellant “laughed and said who would wear something like that during this?” (R. 102, lines 20–22). Defense counsel objected that the above comment “simply attempts to show that if, in fact, he laughed in the face of this bloody picture[] and stuff, attempts to paints him as cold-hearted or villainous.” (R. 104, lines 3–5). Specifically, his objection was based on relevance and prejudice. (R. 104, line 19–R. 106, line 2). The trial judge stated that he thought Appellant’s comment was humorous and seemed to show he was not worried about it, not that he was being callously indifferent. (R. 106, lines 18–

20; R. 110, lines 2–5). He ruled that he would allow the State to ask the question. (R. 110, lines 6–8).

Det. Weaver testified he showed Victim each of the three lineups that contained photos of the three Hurell brothers. She identified Tramaine as someone who had been at the gas station that night and said he was a regular customer. (R. 115, line 4–R. 116, line 7). Det. Weaver testified that he spoke to Tramaine during the investigation and that he was tall and skinny and had a high-pitched voice that did not sound like the suspect in the video. (R. 122, lines 2–12). He testified part of his investigation involved looking on Facebook, where he discovered a photo of Appellant wearing shoes that looked similar to the ones pictured in the video of the crime. (R. 117, line 19–R. 118, line 25).

Next, the State proposed calling Shelby Bradt to the stand, to which defense counsel objected. (R. 154, line 3–R. 155, line 3). Specifically, he objected to her giving her opinion after watching the video that it was not Tramaine, the Hurell brother she dated, in the video. (R. 156, line 3–R. 157, line 25). He argued it would confuse the jury, was not relevant, and was more prejudicial than probative. (R. 158, line 1–13). The trial judge noted that because the apartment was a place where any of the three brothers could have been living, and because it was a circumstantial evidence case, the State could show evidence to try to prove who in the apartment would not be the suspect. (R. 159, lines 1–5). For those reasons, and because testimony had already been provided that Tramaine was taller and had a higher voice than the suspect, the trial judge allowed Bradt to testify. (R. 159, lines 5–11).

Bradt then testified that she dated Tramaine for three or four months, including during April 2014, and had met Appellant four or five times. (R. 161, lines 5–19). She identified a family photo taken at Traquan's graduation that included all three brothers. (R. 162, lines 1–10).

The solicitor showed her a video clip and asked if she recognized the individual in the video; she did not and said it did not look or sound like Tramaine. (R. 163, lines 6–14).

Next, Tashima Jones, Appellant's sister who lived in apartment G-4, testified. (R. 164, lines 10–17). She recalled being awoken by a bang on the door by police, who reported to her that a robbery had just taken place at the nearby Kangaroo and asked if they could come in. (R. 164, line 20–R. 165, line 3). They asked her who else was home and she answered that her son and brother (Traquan) were home, and she allowed the officers to come in and search. (R. 165, lines 6–15). When asked where Appellant was living at the time, she reported that he stayed at both his girlfriend's and his mother's house and often came to Jones's house but did not stay there. (R. 166, line 13–R. 167, line 1). When the State asked whether she was aware Appellant listed her address as his with the DMV, she answered, "Prior to him getting out from serving some time, yes, I am." (R. 169, lines 17–22). Defense counsel told the trial judge he had a matter of law to discuss and the judge excused the jury. (R. 169, line 25–R. 170, line 7). Defense counsel moved for a mistrial due to Jones's response being a comment on a prior conviction that was clearly prejudicial to Appellant. (R. 170, lines 9–20). The solicitor was quick to point out he simply asked if she was aware he was using her address and in no way intended to elicit that response. (R. 170, line 22–R. 170, line 2). Before defense counsel argued his motion, he asked for time to confer with Appellant, and after a discussion that lasted over thirty minutes, defense counsel reported to the court that he would be withdrawing the motion for mistrial while reserving his right to renew later if it became necessary. (R. 171, line 20–R. 173, line 17). Defense counsel then went over everything he and Appellant talked about, clarifying with Appellant along the way, and concluded by saying, "Once we put it back and the jury starts

going, it gets waived, it's over. We don't get to renew it down the road." (R. 173, line 17–R. 175, line 15).

Traquan then testified that police visited him at his workplace in April 2014 to ask him questions about a picture of a man in a hoodie. (R. 183, line 22–R. 184, line 8). He claims he told them he did not recognize the person but did recognize the hoodie as having a picture of the Tasmanian Devil on the front and being made by Warner Brothers. (R. 184, lines 11–19). He testified he told police he did not own a hoodie like that. (R. 184, lines 19–20). He specifically denied telling police that was his hoodie and that he got it in the eighth grade and that it was in his closet recently. (R. 185, lines 1–6). At that point, the State recalled Det. Weaver, who testified that Traquan told him the sweatshirt was given to him by a friend when he was in the eighth grade. (R. 186, lines 2–24). He also pointed out that one could not tell from the side angle of the photo that the Tasmanian Devil was on the front of the sweatshirt. (R. 186, line 24–R. 187, line 2).

Sergeant Nick Santana then testified that he was with Det. Weaver when they spoke to Traquan and that he saw Weaver show him a side photograph of the suspect and ask if he recognized the clothing. (R. 189, line 14–R. 190, line 5). He testified that Traquan told them he did recognize the sweatshirt as one that was given to him in the eighth grade by a friend and reported that it should be in his closet. (R. 190, lines 6–10). Derek Cheek, an investigator with the solicitor's office, then identified a photograph from Appellant's Facebook page showing Appellant wearing red and black shoes with a white mark, possibly a Nike swoosh. (R. 192, line 13–R. 193, line 23). He testified the suspect in the surveillance photo was wearing red and black shoes and identified those shoes in a still shot from the video. (R. 193, line 23–R. 194, line 8). He then identified a photograph of a shoe print left behind at the incident location in the victim's

blood. (R. 194, lines 9–12). He then began searching on the internet for those shoes and found some that were red and black with a white Nike swoosh and that had a similar tread pattern to the print. (R. 194, lines 13–23). When the State tried to move the photos from the internet into evidence, defense counsel objected claiming no foundation had been laid and that it was not relevant because no shoes had been recovered. (R. 196, lines 2–13). The trial court overruled the objection because the witness indicated the photos were a fair and accurate representation. (R. 196, lines 14–16).

Samuel Stewart, a forensic scientist for SLED, was then qualified as an expert in DNA analysis. (R. 198, line 17–R. 210, line 8). He testified he received a swab from the dollar bill officers found at the apartment and a buccal swab from the victim, both in sealed bags. (R. 211, lines 19–25). He analyzed and compared the two samples, and the results of the comparison showed that Item 1, the swab from the dollar bill, matched Item 2, the DNA profile of Victim. (R. 213, line 7–R. 214, line 5).

The State rested, and defense counsel moved for a directed verdict, relying on *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011). (R. 218–26). He argued all the evidence had shown was that Appellant’s family used Tracphones and someone at or near his sister’s apartment was arguably involved in the crime. (R. 226, lines 14–18). He claimed there was no DNA and no circumstantial evidence to support a verdict of guilt. (R. 226, lines 19–25). The State relied on the more recent *State v. Bennett*¹ case, in which the Supreme Court clarified the proper standard of review for a directed verdict circumstantial evidence case: whether substantial evidence exists from which a jury could reasonably infer guilt. (R. 227, lines 5–14). The solicitor listed the evidence that existed: a physical description of the suspect given by the

¹ 415 S.C. 232, 781 S.E.2d 352 (2016).

victim; the testimony that Appellant has access to the apartment, which would give him access to the sweatshirt based on Traquan's statement to police that it was in his closet; he had access to a white car similar to the one described by Hartman; his cellphone was pinging off towers in that area, which matches the eyewitness's account that a man with a bat went in and out of apartment G-4; he had red shoes similar to the ones in the surveillance footage and with a similar tread pattern to the bloody print. (R. 227, line 15–R. 228, line 21). Defense counsel then argued that the evidence the State listed merely raised a suspicion and that a directed verdict should have been granted. (R. 229, lines 18–21). The trial judge noted that the line in *Bennett* that gave him the most concern was that the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. (R. 230, lines 6–10). The trial judge then went through the evidence again and determined “there is the existence of evidence that a reasonable juror could believe if they believe every[y] step in the chain of circumstantial evidence that the State has presented” and denied the motion. (R. 230, line 6–231, line 12).

After the defense rested, each side made closing arguments, and the trial judge charged the jury on the presumption of innocence, reasonable doubt, the types of evidence, believability of witnesses, experts, and the element of the crimes. (R. 240–280). After the jury began deliberations, it sent a note to the trial judge saying it would like to review the sister's testimony, specifically asking, “Did she say when he got out he sometimes stayed with her?” (R. 281, line 9–R. 282, line 1). Defense counsel attempted to renew his motion for a mistrial due to the note indicating to him that the jury was deliberating about this topic. (R. 282, lines 1–18). Another note came out after that one that said to please disregard the last request. (R. 282, line 22–R. 283, line 2). The State argued it was improper to try to guess what the jury is deliberating,

especially because the second note came immediately following the first. (R. 283, lines 1–14). The trial judge took a recess to consider the issue. (R. 284, lines 2–7). The trial judge came back and reminded defense counsel he had spoken to Appellant and Appellant knowingly and intelligently waived his mistrial motion after hearing the sister's testimony. (R. 284, lines 10–17). He then stated that he was initially concerned when the jury sent the first note wanting more information about the sister's testimony and would have reconsidered a motion for mistrial if that had been a question the court had to resolve. (R. 284, lines 18–23). However, because the jury immediately asked the court to disregard the question, he was taking the position that the jury was also disregarding the question and denied the motion. (R. 284, line 23–R. 285, line 11).

Ultimately the jury found Appellant guilty of all charges, and the trial judge sentenced him to thirty years' imprisonment for each charge, to be served concurrently. (R. 312).

ARGUMENT

I.

The trial court properly denied Appellant's directed verdict motion because the State presented substantial circumstantial evidence to allow a reasonable juror to find him guilty beyond a reasonable doubt.

Appellant argues the trial court erred in denying Appellant's directed verdict motion, claiming the State did not present substantial circumstantial evidence placing him at the scene of the crime. Additionally, he argues the evidence only raised a suspicion of his guilt and that the trial judge incorrectly reasoned that the directed verdict standard had changed. On the contrary, the State did present substantial circumstantial evidence, which established more than merely a suspicion of guilt, to submit the case to the jury. Additionally, the trial judge did not opine that the directed verdict standard had changed, nor did he use an incorrect standard. Thus, this Court should affirm the trial court's denial of Appellant's directed verdict motion.

It is axiomatic that in ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. *Id.* "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury." *Id.* at 292–93, 625 S.E.2d at 648. Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing *Jackson v. Virginia*, 443 U.S. 307

(1979)). The task of the trial court is to simply determine “whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, “the evidence could induce a reasonable juror to find [the defendant] guilty.” *State v. Pearson*, 415 S.C. 463, 474, 783 S.E.2d 802, 807 (2016).

Appellant argues that the trial judge acknowledged conflicting evidence existed in regard to the shirt worn by the suspect in the surveillance video. However, because the evidence and all reasonable inferences are looked at in the light most favorable to the State, the fact that there was conflicting testimony is of no moment.

Inexplicably, Appellant argues the trial judge thought *Bennett* changed the standard of review for a directed verdict. Thus, he argues the trial judge used an incorrect standard and should have instead considered the “substantial circumstantial evidence” standard from *Bostick*, *Schrock*,² and *Mitchell*³. On the contrary, the standard in *Bostick*, *Shrock*, and *Mitchell* is not incompatible with the Supreme Court’s holding in *Bennett*, and all three cases are still good law. As the Supreme Court pointed out in *State v. Pearson*⁴, which came out after *Bennett*, the holdings in cases such as *Bostick* and *Mitchell* are “limited to their peculiar facts” because each inquiry is necessarily fact-intensive. In any case, *Bennett* did nothing to change the “substantial circumstantial evidence” standard. It simply clarified what has been the law in South Carolina going all the way back to *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955), which is “when ruling on a directed verdict motion, the trial court views the evidence in the light most favorable

² *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984).

³ *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000).

⁴ 415 S.C. 463, 474 n.5, 783 S.E.2d 802, 808 n.5 (2016).

to the State and must submit the case to the jury if there is “any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.” *Bennett*, 415 S.C. at 236–37, 781 S.E.2d at 354 (citing *Littlejohn*, 228 S.C. at 329, 89 S.E.2d at 926). It then furthered clarified, “This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” *Id.* at 237, 781 S.E.2d at 354. Thus, Appellant’s argument that the trial judge “committed an error of law by applying the wrong directed verdict standard” is preposterous, as is his insinuation that if the trial judge had used the correct “substantial circumstantial evidence” standard, the State would have failed to meet it. Because the trial judge did use the correct standard, and because the State presented substantial circumstantial evidence from which a reasonable juror could find Appellant guilty beyond a reasonable doubt, this Court should affirm the denial of the directed verdict motion.

The substantial circumstantial evidence presented by the State in this case includes (1) the video which shows the suspect committing the crimes; (2) a physical description given by the victim; (3) an independent witness who saw a person matching the description given by the victim, including carrying a bat, going in and out of the apartment rented by Appellant’s sister and visited on a regular basis by him (which was also listed as his address with the DMV); (4) the fact that Appellant had access to a white car owned by his mother that resembled the car described by witness Hartman; (5) a dollar bill with blood on it that matched the victim’s DNA, which was found in the area where the man was seen; (6) phone records of Appellant’s phone that shows pinging from towers that support leaving and coming back to the apartment; (7)

testimony that the sweatshirt seen on the suspect was in the apartment; and (8) red shoes in Appellant's Facebook photo that are similar to the ones in the surveillance video with similar tread pattern to the photo officers had of the bloody print. The trial judge correctly found this was substantial circumstantial evidence that was sufficient to survive the directed verdict stage and submit the case to the jury for its resolution. That finding should be affirmed.

II.

The trial court properly allowed the following evidence: testimony by Shelby Bradt that Tramaine Hurell was not the suspect in the video, testimony by Detective Weaver regarding his showing Appellant a photograph of the suspect in a particular sweatshirt, and photographs and testimony about red and black shoes, because it was relevant and its probative value was not substantially outweighed by the danger of unfair prejudice.

Admission of evidence in sound discretion of trial judge

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *State v. Brown*, 401 S.C. 82, 736 S.E.2d 263 (2012). The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion. *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997).

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina.” Rule 402, SCRE. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; *State v. Aleksey*, 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000). The determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case. *State v. Brooks*, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000). Evidence is unfairly prejudicial if it has an undue

tendency to suggest a decision made on an improper basis, such as an emotional one. *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001). “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. We review a trial court’s decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court’s judgment.” *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (citations and internal quotation marks omitted).

Shelby Bradt testimony was properly admitted

Appellant argues the trial court erred by allowing Shelby Bradt, the former girlfriend of Appellant’s brother Tramaine, to testify it was not Tramaine in the surveillance video, claiming such testimony was confusing and irrelevant. On the contrary, the police collected evidence that showed that the suspect went into the apartment where Tramaine’s sister lived and that the suspect was a black male, so it was logical to believe that any black male who had a connection to that apartment could have been the suspect. Therefore, it was relevant to the State’s case to eliminate alternative suspects in order to prove Appellant committed the crime. Whether Appellant was pursuing a defense of third party guilt is of no moment. The State still had the right to introduce relevant evidence to show Appellant’s guilt. Thus, the trial court properly allowed this testimony and this Court should affirm.

When the State proposed calling Shelby Bradt to the stand, defense counsel objected. (R. 154, line 3–R. 155, line 3). Specifically, he objected to her giving her opinion after watching the video that it was not Tramaine, the Hurell brother she dated, in the video. (R. 156, line 3–R. 157, line 25). He mentioned that this was a retrial and that this testimony was not offered in the first trial. (R. 156, lines 19–20). He argued it would confuse the jury, was not relevant, and was

more prejudicial than probative. (R. 158, line 1–13). The trial judge noted that because the apartment was a place where any of the three brothers could have been living, and because it was a circumstantial evidence case, the State could show evidence to try to prove who in the apartment would not be the suspect. (R. 159, lines 1–5). He also pointed out that testimony had already been provided that Tramaine was taller and had a higher voice than the suspect, which indicated he did not find the testimony more prejudicial than probative. (R. 159, lines 5–11).

This evidence would not have confused the jury or distracted from its function of deciding whether the State had produced sufficient evidence to prove Appellant’s guilt beyond a reasonable doubt. On the contrary, the jury had already heard Det. Weaver testify that he spoke to Tramaine during the investigation and that he was tall and skinny and had a high-pitched voice that did not sound like the suspect in the video. (R. 122, lines 2–12). It is not reasonable to think that hearing essentially the same type of testimony again would confuse the jury. Furthermore, the fact that Bradt testified she knew Appellant, yet also testified she did not know the person in the video, was actually beneficial to Appellant and further diminished any possible prejudice.

Additionally, even if this Court finds the evidence was admitted in error, the fact that unobjected-to testimony was already presented makes any error harmless. *See State v. Johnson*, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989) (any error in admission or denial of evidence cumulative to other unobjected-to evidence is harmless).

Detective Weaver’s testimony was properly admitted

Appellant argues the trial court erred in allowing Detective Weaver to testify that Appellant laughed when shown a photograph of the sweatshirt the suspect was wearing in the surveillance video still shot. Appellant claims the suspect was holding the victim in the photo and, thus, it painted Appellant as “cold-hearted and villainous.” On the contrary, Det. Weaver’s

testimony that Appellant “laughed and said who would wear something like that during this” when he was shown the photo and asked if he recognized the shirt did not indicate any bad traits of character. The trial court correctly allowed the testimony and this Court should affirm.

As soon as Det. Weaver was asked about photos he had shown Appellant, defense counsel objected and the jury was excused. The State then proffered its next questions, including what Appellant’s response was to the photo of the suspect wearing the sweatshirt in the still shot. Det. Weaver answered, “He laughed and said who would wear something like that during this?” (R. 102, lines 10–22). He then said he asked Appellant for basic information and Appellant declined to give any. Defense counsel then referred to the officer’s report, which stated Appellant told him he was not giving him anything but then the officer reapproached him with the photo and asked him about it, at which time he laughed and made the challenged comment. Defense counsel argued this was an involuntary conversation because Appellant had said he had nothing for the officer. He also argued the comment about the photo was not probative of anything because Appellant did not say he wore that shirt, he had seen the shirt, or that anyone he knew had a shirt like that, but instead was prejudicial because it “simply attempts to show that if, in fact, he laughed in the face of this bloody picture[] and stuff, attempts to paint him as cold-hearted or villainous.”⁵ (R. 103, line 3–R. 104, line 9). The trial judge noted that while he understood defense counsel’s take on the comment, he took it to mean Appellant seemed like someone who did not have to worry about it rather than someone who was being callously indifferent. This demonstrates that there were definitely other ways the comment could have been interpreted, so Appellant’s prejudice argument fails.

⁵ Notably, the still shot at issue does not show any blood.

Photographs and testimony about shoes were properly admitted

Appellant argues the trial court erred in admitting photographs and testimony regarding red and black shoes, claiming no foundation was established. Furthermore, he argued it was not relevant because no shoes were linked to the crime and, thus, invited confusing speculation. On the contrary, the evidence was relevant because surveillance video captured the red and black shoes the suspect wore, law enforcement discovered similar shoes on Appellant's Facebook page, and a bloody shoe print was found near the scene that was similar to the shoes found on an Internet website that seemed to match the ones Appellant wore in his Facebook photograph. Appellant's challenges to the evidence go to its weight and not its admissibility. Thus, the trial judge properly admitted the photographs and the testimony, and this Court should affirm.

III.

The trial court did not abuse its discretion by declining to grant a mistrial under the circumstances of Appellant's case because the challenged testimony by Appellant's sister was competent evidence that was admitted without objection after Appellant initially moved for a mistrial contemporaneous to the testimony and then withdrew that motion.

Appellant argues the trial court erred by refusing to declare a mistrial, claiming it was clear the jury was discussing the fact that his sister inadvertently told the jury he had been in prison, which meant the jury was impermissibly considering his prior record when trying to determine his guilt. On the contrary, there was nothing impermissible about the jury discussing what the sister testified to about his using her address "prior to him getting out from serving some time." That piece of testimony was admitted without objection after defense counsel initially moved for a mistrial and subsequently withdrew and waived that motion after conferring with his client. Thus, it was competent evidence and nothing unfair or impermissible occurred even if the jury considered it during deliberations. This Court should affirm the trial court's decision for this reason alone.

Even if this Court construes Appellant's motion for a mistrial as a valid challenge to the jury's deliberations, there are several other grounds on which the trial court should be affirmed. "The decision to grant or deny a mistrial is within the sound discretion of the trial court. The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010) (citation and internal quotation marks omitted). "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial." *Id.* at 585-86, 698 S.E.2d at 865. "Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." *Id.*

at 586, 698 S.E.2d at 865 (citation and internal quotation marks omitted). “The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case.” *Id.* at 586, 698 S.E.2d at 865–66 (citation and internal quotation marks omitted). The trial court is in the best position to ascertain the potential prejudicial effect of any offending testimony and the Supreme Court favors the exercise of wide discretion of the circuit court in ruling on a motion for mistrial in each individual case. *State v. Jones*, 325 S.C. 310, 324, 479 S.E.2d 517, 524 (Ct. App. 1996).

Appellant cites *Green v. State*, 338 S.C. 428, 527 S.E.2d 98 (2000), to support his argument that sometimes the prejudice from the admission of improper prior criminal offenses cannot be cured even with a limiting instruction. Initially, the State notes Appellant did not ask for a curative instruction of any kind, so *Green*’s applicability is questionable. Appellant argues the sister’s testimony conveyed to the jury that he had a prior criminal offense and had been incarcerated. He also argues the question from the jury indicated the jury wanted to listen to the sister’s testimony again and inquire into his criminal record. Appellant’s argument makes a number of unwarranted assumptions. First, although the sister’s comment undoubtedly indicated Appellant had served time, the jury had no idea what he was serving time for and, thus, what his prior criminal offense was. Therefore, any argument Appellant makes that knowledge of a prior similar offense can logically lead a jury to find someone guilty of a similar crime is misplaced. If the jury does not know whether he was serving time for child support arrearage, forgery, or murder, it cannot possibly have found him guilty based on the likelihood that he committed a similar crime this time—when it did not know what crime he committed before. Second, Appellant’s assumption that the jury’s question somehow indicated it wanted to inquire into his criminal record is a stretch at best and disingenuous at worst. The note simply said the jury

would like to review the sister's testimony and then asked, "Did she say when he got out he sometimes stayed with her?" (R. 281, line 23–R. 282, line 1). The most logical explanation of the note meant the jury was interested in whether he actually stayed with her or just used her address. The question in no way exhibits any interest in what crime he was serving time for or in his criminal history in general. So, even if the jury had not immediately sent a note telling the judge to disregard its question, no mistrial was warranted in this situation.

Furthermore, in his general charge to the jury, the trial judge properly instructed the jury on its role, telling it that the presumption of innocence remains with the defendant until it has been stripped from him by evidence satisfying you of his guilt beyond a reasonable doubt. (R. 267, lines 17–25). The trial judge also cautioned the jury that its verdict could not be based on sympathy, passion, prejudice, emotion or any other consideration not in evidence in this case. (R. 277, line 22–24). Jurors are presumed to follow the trial court's instructions. *State v. Queen*, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). The jury was permitted to consider any competent evidence during its deliberations, and it presumably based its decision on whether the State presented evidence satisfying it of Appellant's guilt beyond a reasonable doubt. For all these reasons, no mistrial was warranted under the circumstances of this case. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

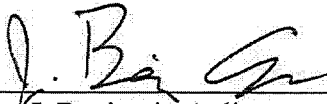
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 2, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2016-000275

THE STATE,

Respondent,

v.

TASHON EARL HURELL,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filing.”

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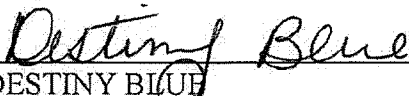
Appellant.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 2nd day of October, 2017.


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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tashon Hurell, Appellant.

Appellate Case No. 2016-000275

Appeal From Dorchester County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 5584
Heard May 22, 2018 – Filed August 1, 2018

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
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Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General J. Benjamin Aplin,
and Assistant Attorney General Jennifer Ellis Roberts, all
of Columbia, and Solicitor David Michael Pascoe, Jr., of
Summerville, all for Respondent.

SHORT, J.: Tashon Earl Hurell appeals his convictions of attempted murder, armed robbery, and kidnapping, arguing the trial court erred by 1) refusing to direct verdicts, 2) admitting irrelevant testimony regarding his brother, 3) admitting irrelevant evidence regarding shoes, 4) admitting evidence of his laughter when shown a photograph, and 5) refusing to declare a mistrial. We affirm.

BACKGROUND FACTS

Mary Pecorora (the victim) testified she was working the night shift at the Kangaroo convenience store in Summerville on April 23, 2014. While in the bathroom to get supplies, she heard the store buzzer, indicating someone had entered the store. As she approached the front door, someone came around a corner, yelled at her, and hit her in the head with a bat. The perpetrator wore a mask, told her, "You gonna get it[,] *itch," and threatened to cut her throat. The victim testified the perpetrator grabbed her by the neck, dragged her to the cash register, and forced her to open it. He grabbed the money, jumped over the counter, and left. The victim described the perpetrator as approximately 5' 10" or 5' 11", "kind of slender," and African American. She testified he was wearing a ski mask, a bandana, a hooded jacket, gloves, and red shoes. The victim called 911, and officers responded. The victim's injuries required facial and sinus surgeries.

Bernard Nelson of the Summerville Police Department testified he responded to the 911 call. Nelson took numerous photographs of the scene, including photos of a footprint on the counter. Nelson also viewed the store's video surveillance tape. Based on the victim's description and the videotape, Nelson passed a description to other police units of a "black male subject wearing a light hoodie with . . . multi-colored graphic designs on the front. Bright lime green hoodie, black pants, red shoes, black gloves, dark colored bandanna over his face." Nelson also testified the suspect was of medium build, had a husky voice, and was carrying a baseball bat.

Hobie Williams, then of the Summerville Police Department, testified he was a K-9 handler on the night of the robbery. He arrived at the scene and deployed his dog near the rear of the store to track the freshest human odor to be found. The canine tracked to apartments near the store. There is a footpath between the locations, and it takes between thirty and ninety seconds to walk the path. Williams and another officer walked around the first building of the apartment complex and spoke to a male, who was outside on his upper level balcony. The male reported seeing a black male running from around the building carrying a baseball bat and wearing a dark tee shirt, baseball cap, and dark shorts. He also reported the man jumped the balcony beneath his, drove away in a white Mustang, returned, jumped the balcony again, and left a second time in the Mustang. The witness had never before seen the car at the apartment complex.

Williams testified he saw a dollar bill laying on the ground in the balcony area¹ of the lower unit. Although the ground was wet, the bill was dry and appeared to have blood on it. Williams testified he went into the building and made contact with the occupant of the unit in question. Hurell's sister, Tashima Jones, answered the door. Jones permitted Williams to retrieve the dollar bill from her balcony. Hurell's brother, Traquan, was also in the apartment. Williams identified the dollar bill during the trial.

Lucas Hartman testified he was the man interviewed by Williams. Hartman testified he was on his balcony at approximately 1:30 a.m. when he saw a man wearing black shorts and carrying a baseball bat and backpack approaching from behind the building across from Hartman's building. The men nodded at each other. Hartman next witnessed the man jump over the balcony beneath his balcony. Hartman heard the door open and close before the man came back out, drove away in a white Mustang, returned, and did the "same exact thing." According to Hartman, he assumed the man entered the apartment for a few minutes on each return. Hartman testified that although he was unequivocal about the make of the vehicle in his initial statement, he was not an expert on vehicles and the vehicle may not have been a Mustang. During cross-examination, he admitted he first learned the vehicle could have been a Pontiac Grand Am from Officer Williams. On re-direct examination, Hartman insisted he was never positive the vehicle was a Ford Mustang.

Michael Weaver, a detective with the Summerville Police Department, testified he was the on-call detective on April 23, 2014. Later that day, Weaver obtained a search warrant for Jones's apartment. Because no one was home when he attempted to search, Weaver obtained a key to the apartment from the apartment manager. His search resulted in a bat, a bandanna, and two pairs of red shoes, all of which were found to be irrelevant and returned to Jones. After his search and visit to the manager's office to return the key, Weaver noticed a white Pontiac Grand Am in front of the apartment. Because one of the reports had listed a white vehicle rather than a white Mustang, Weaver went back to the apartment because he believed the two vehicle makes were similar. Hurell and his mother, Jana Hurell, were there. The white vehicle was a Pontiac owned by Mrs. Hurell.

¹ The balcony is also described in the record as a breezeway. The photographic exhibit depicts a porch area on the ground level apartment, enclosed with a waist-high railing.

Hurell objected to any testimony of his interactions with Weaver, arguing he attempted to end the conversation with law enforcement because Hurell told Weaver, "I'm not giving you anything." During a proffer of the evidence, Weaver's report indicated Hurell walked away from him, then came back and laughed when shown a photograph of the lime green sweatshirt, saying, "[W]hy would someone wear something like this?" The trial court admitted the evidence, and Weaver testified Hurell laughed when shown the photo of the suspect wearing the sweatshirt during the robbery. Weaver claimed Hurell then asked why anyone would wear a sweatshirt like that during something like this.

Travis Holdorf testified he knew Hurell at the time of the robbery and knew Hurell's cell phone number at the time as ***-2320. Marilyn Dilly, of Sprint as a reseller for TracFone,² testified as a records custodian of Hurell's cell phone records for the period April 22-24, 2014. George Floyd of Verizon Wireless also testified as a records custodian, and the records for Hurell's cell phone were introduced. Floyd testified there were cell towers at 10870 Dorchester Road and at 132 Trailing Alley, both in Summerville. According to Floyd, towers in rural areas such as the Summerville towers are between three and five miles apart.

Detective Weaver testified he obtained Traquan's phone records. At the time of the robbery, Traquan was on the phone from 12:21 a.m. until 2:11 a.m. He then hung up for a few moments and got back on the phone at 2:12 a.m. As to Hurell's phone, there was no activity during the time the robbery was commenced between 12:55 a.m. and 1:10 a.m. His phone was used beginning at 1:10 a.m. and pinged off the cell tower on Dorchester Road near the store. It switched to the cell tower near Hurell's mother's house, then back to the tower on Dorchester Road over an eighteen minute period. The phone was used again at 7:08 a.m. at the tower near the store. The phone then repeatedly called the telephone number for the Greyhound Bus Lines at 8:41 a.m.

The State called Shelby Bradt, the former girlfriend of Hurell's brother, Tremaine. Hurell objected, arguing her testimony would be to claim the perpetrator on the store videotape was not Tramaine, the evidence was inadmissible as lay opinion testimony, and it was irrelevant. The court overruled the objection, and Bradt testified she viewed the store videotape and the perpetrator did not look or sound like Tramaine. Bradt also testified she had never seen Tramaine wearing the green sweatshirt.

² Dilly testified TracFone is a reseller of Sprint, sells prepaid phones, and keeps its own records.

Weaver retrieved the South Carolina Department of Motor Vehicle (DMV) records for Jones's address, which indicated the residents were Jones, Hurell, and Traquan. Weaver created three six-pack photo lineups, each of which included one of the three Hurell brothers: Hurell, Traquan, and Tramaine. The victim identified Tramaine, whom she recognized as a regular customer, as having been outside the store when her shift began the night of the robbery, but she could not identify the perpetrator. Weaver also testified he reviewed the video of the robbery with the victim and neither he nor the victim thought the perpetrator sounded like Tramaine.

Tashima Jones, Hurell's sister, testified she lived in the apartment with Traquan and her son at the time of the robbery. According to Jones, Hurell alternately lived with their mother and his girlfriend. She testified she did not recognize the green sweatshirt. During direct testimony, Jones was asked about Hurell listing her address as his own with the DMV. She replied, "Prior to him getting out from serving some time, . . ." Hurell moved for a mistrial. After conferring with Hurell, his attorney withdrew the motion. Outside of the presence of the jury, the court questioned Hurell about the withdrawal of the motion and cautioned Jones, Tramaine, and Traquan about referring to Hurell's prior criminal activities while testifying.

Detectives Weaver and Nick Santana interviewed Hurell's brother, Traquan, at Bi-Lo, where Traquan worked. Traquan testified he was shown the video of the robbery, he did not recognize the perpetrator, and the green sweatshirt was not his. Detective Weaver was recalled and testified Traquan told him during an initial interview that the character on the sweatshirt was a Tasmanian Devil and the sweatshirt had been given to him by a friend. Santana testified he assisted during the investigation and was present when Traquan recognized the sweatshirt.

Weaver reviewed Hurell's Facebook page and saw photographs of shoes similar to those worn by the perpetrator. Derek Cheek, then of the Dorchester County Sheriff's Office, testified he reviewed the Facebook photographs in the investigatory file and noted Hurell wearing red and black shoes similar to those worn by the perpetrator in the surveillance videotape. Cheek also testified he reviewed websites of shoes, and a tread pattern in blood found at the site of the robbery was consistent with the tread pattern of red and black Nike shoes similar to those seen on the videotape. Hurell objected to the shoe evidence as irrelevant.

Samuel Stewart, a DNA analyst with the South Carolina Law Enforcement Division (SLED), testified as an expert that the blood on the dollar bill found outside Jones's apartment matched the victim's blood.

The State rested. Hurell moved for directed verdicts on all charges, which the court denied. Hurell moved for a mistrial when the jury requested to review his sister's testimony again, and asked, "Did she say when he got out he sometimes stayed with her?" The jury subsequently sent a note to disregard the previous note. The court denied the motion for a mistrial. After more than four hours of deliberation, the court gave an *Allen*³ charge. After the jury rendered its verdicts of guilty on all three charges, Hurell renewed his motion for a mistrial and moved to set aside the verdicts. The trial court denied the motions and sentenced Hurell to three concurrent thirty year terms of imprisonment.

STANDARD OF REVIEW

The appellate court sits to review criminal cases for errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Thus, on review, the appellate court is limited to determining whether the trial court abused its discretion. *Id.* at 6, 545 S.E.2d at 829. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002) (quoting *State v. Hughes*, 346 S.C. 339, 342, 552 S.E.2d 35, 36 (Ct. App. 2011)).

LAW/ANALYSIS

I. ADMISSION OF EVIDENCE

Hurell argues the trial court committed three errors in the admission of evidence. We disagree.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*

³ *Allen v. United States*, 164 U.S. 492, 501 (1896) (discussing the jury charge given by a trial judge to encourage a deadlocked jury to reach a verdict).

A. Bradt's Testimony

Hurell first argues the trial court erred by allowing Shelby Bradt, the former girlfriend of Hurell's brother Tramaine, to testify the man on the videotape was not Tramaine. Hurell argues the evidence was confusing to the jury. The State argues the evidence was relevant to eliminate alternative suspects because the evidence showed the suspect went into the apartment where Hurell's sister lived and anyone who also had a connection to Hurell's sister could have been a suspect.

Rule 701 of the South Carolina Rules of Evidence explains when lay witness testimony is admissible:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

Rule 701, SCRE. "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE.

In *State v. Fripp*, 396 S.C. 434, 437-38, 721 S.E.2d 465, 466 (Ct. App. 2012), the State elicited the testimony of a store manager and store employee who witnessed a robbery at their store. Although the perpetrator was wearing a jacket pulled over his head, the manager identified Fripp as the perpetrator depicted on the store videotape. *Id.* The store employee also testified Fripp was the man on the videotape. *Id.* at 438, 721 S.E.2d at 466. On appeal, Fripp argued the trial court erred in permitting the witnesses to identify him as the perpetrator depicted on the videotape. *Id.* at 438, 721 S.E.2d at 467.

This court affirmed, finding the "the criteria set forth in Rule 701 [were] met." *Id.* at 439, 721 S.E.2d at 467. The court first noted the testimony of the employees was based on their perceptions of Fripp "not only on the videotape, but during the time they had known and observed him in the [s]tore." *Id.* The manager testified she knew Fripp from seeing him in the store as often as twice a day. *Id.* The employee testified "she had worked at the [s]tore for several years and also knew

Fripp through his family." *Id.* The court found the testimony was "helpful in determining a key fact in issue—whether Fripp was the person depicted on the videotape." *Id.*

We likewise find Bradt's testimony was properly admitted. Bradt testified she had known Hurell's brother as a boyfriend; thus, her perceptions of the videotape and opinion that the perpetrator was not the brother were rationally based. In addition, her testimony was helpful in determining a key fact in issue—the identity of the perpetrator.

B. The Red and Black Shoes

Hurell next argues the trial court erred in admitting evidence regarding red and black shoes without a proper foundation and because the evidence was irrelevant. We disagree.

The perpetrator was initially described by the victims and portrayed in the videotape as wearing red shoes. Responding officer Nelson also took photographs of a footprint on the counter. Cheek testified he reviewed the case file and found a photograph from Facebook depicting Hurell wearing red and black shoes with a white mark, possibly a Nike swoosh. Because the videotape from the robbery also showed the perpetrator wearing red and black shoes, Cheek searched the internet in an attempt to match the tread pattern of the shoes allegedly worn by Hurell in the Facebook page with the tread pattern of the footprint left on the store's counter. Cheek testified the tread pattern from a red and black Nike sold on the Champs Sports website was similar to the tread pattern in the bloody footprint left at the scene. When the State attempted to introduce photographs from the website, Hurell objected, arguing no foundation had been laid and the shoes were not relevant because no shoes had been recovered. The trial court overruled the objections.

We find no error in the trial court's admission of the evidence. "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

First, we find the State laid a proper foundation for the photographic evidence.

Whenever counsel intends to admit photographic evidence into the record, it is necessary to lay proper

foundation testimony as to authentication, identification, and verification. The extent of foundation testimony required in each case is largely a function of the purpose for which the photograph is offered.

Normally, it is sufficient for the admission of photographs that a person familiar with the subject, such as a scene, testify that the photographs truly represent what they purport to depict.

Alex Sanders & John S. Nichols, *Trial Handbook for South Carolina Lawyers* § 19:12 (Sept. 2017). Here, Cheek testified he searched the internet for photographs of shoes matching those seen in the Facebook page. He also testified he made screenshots of the photographs he obtained from the Champs Sports website. We find the State laid an adequate foundation for the admissibility of the photographs.

Second, we find the evidence was relevant. "Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003); *see* Rule 401, SCRE ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice" Rule 403, SCRE. "The relevance, materiality, and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." *State v. Martucci*, 380 S.C. 232, 249, 669 S.E.2d 598, 607 (Ct. App. 2008).

We find the photographs were relevant to identifying Hurell as the perpetrator. The surveillance video portrayed red and black shoes, and Hurell was portrayed wearing similar red and black shoes in a Facebook photograph. Accordingly, the trial court did not err in permitting the State to attempt to match tread marks from similar looking shoes to those found in the bloody footprint at the scene using photographs.

C. Hurell's Laughter

Hurell argues the trial court erred by allowing Detective Weaver to testify Hurell laughed when shown a photograph of the bright green sweatshirt worn by the

perpetrator during the robbery because it was irrelevant and any probative value was substantially outweighed by its unduly prejudicial effect. We disagree.

Hurell argued during the proffer of the evidence that Hurell's laughter was not relevant and was extremely prejudicial because it "attempt[ed] to paint him as cold-hearted or villainous." The court stated, "Hurell made apparently, I thought, a humorous comment Who would wear something like that to do something like that . . . or something to that inclination." In ruling the testimony was admissible, the court found, "My take on that is not the same take that you're taking out from it. . . . [T]o me, it seems to me someone who doesn't have to worry about it. Not someone who's being callously indifferent."

Hurell argues the evidence was "gratuitous bad character evidence" that was not relevant and indicated he was the type of person who would commit such a crime. Propensity evidence is not admissible to prove a defendant has the inclination or propensity to commit the crime with which he is charged. *State v. Nelson*, 331 S.C. 1, 6, 501 S.E.2d 716, 719 (1998). We agree with the trial court that this evidence did not unfairly suggest Hurell had the propensity to commit the crimes charged. Thus, we find no error in its admission. *See State v. Oglesby*, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) ("The admission of evidence is within the sound discretion of the trial court.").

II. DIRECTED VERDICTS

Hurell argues the trial court erred by refusing to direct verdicts on all three counts where the State's circumstantial evidence raised only a suspicion of guilt, and the trial court incorrectly reasoned the directed verdict standard had changed. We disagree.

In deliberating on Hurell's motions for directed verdicts, the trial court stated it "must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." The court went on to review the circumstantial evidence of guilt and concluded, "a reasonable juror could believe ever[y] step in the chain." Thus, it denied the motions.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. Brannon*, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010). "[A] court is not

required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). "On appeal from the denial of a directed verdict, [the appellate court] must view the evidence in the light most favorable to the State." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "[I]f there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *Id.*

We find no error by the trial court in reviewing the motion for a directed verdict or in its application of the directed verdict standard. First, there was circumstantial evidence the perpetrator went from the store to the apartment and was the same person seen carrying a baseball bat and entering Hurell's sister's apartment. There was also evidence the perpetrator was known to Hurell's sister because the bloody dollar bill matching the victim's DNA was found on her porch. In addition, there was evidence Hurell's brother owned a sweatshirt similar to the distinctive one worn by the perpetrator. There was also circumstantial evidence the perpetrator used Hurell's mother's vehicle. Next, there was evidence Hurell's cell phone was used in the area near the time of the incident and was used to call the Greyhound Bus Lines numerous times later that morning. Finally, there was a Facebook photograph indicating Hurell owned shoes similar to those seen being worn by the perpetrator in the video. We find substantial circumstantial evidence existed.

We also find the trial court applied the correct standard in reviewing the motions. It is not the trial court's function to weigh the evidence; rather, it must view the evidence in the light most favorable to the State and submit the case to the jury if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused. *Bennett*, 415 S.C. at 236-37, 781 S.E.2d at 354. We find the evidence presented was sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. *See id.* at 237, 781 S.E.2d at 354 ("[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.").

III. MISTRIAL

Hurell argues the trial court erred by refusing to declare a mistrial after Hurell's sister inadvertently told the jury he had been in prison as the result of a prior conviction. We disagree.

At the time of the reference to Hurell's prior prison time, Hurell's counsel moved for a mistrial. After consultation with Hurell, the motion was withdrawn. Outside of the presence of the jury, the court cautioned all of Hurell's relatives not to comment on whether Hurell had ever served time in jail or been charged with any type of criminal offense.

During jury deliberations, the jury sent two notes to the trial court. The first note requested to review the sister's testimony, asking, "Did she say when he got out he sometimes stayed with her?" The second note stated, "[P]lease disregard the last request." Hurell's counsel argued, "I think it's telling, that's the part they want to know about. Because they've got when he got out in parenthes[e]s. . . . Clearly, this is a topic of conversation within the jury room." Hurell moved for a mistrial.

The trial court found the first note "was a concern to the [c]ourt and had that been a question the [c]ourt was going to have to resolve, I would have reconsidered your motion for a mistrial. But since [the jury] immediately came back and said, please disregard it, I am taking the position that [it was] disregarding that question as well Based upon that interpretation of the questions by the jury, I am going to deny your motion for [a] mistrial."

"The decision to grant or deny a motion for a mistrial is a matter within a trial court's sound discretion, and such a decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." *State v. Council*, 335 S.C. 1, 12, 515 S.E.2d 508, 514 (1999). "A mistrial should not be granted unless absolutely necessary." *Id.* at 13, 515 S.E.2d at 514. "In order to receive a mistrial, the defendant must show error and resulting prejudice." *Id.* We find no abuse of discretion by the trial court. Further, we find Hurell has not shown prejudice. *See State v. Thompson*, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ("[A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes."); *State v. Manning*, 400 S.C. 257, 270, 734 S.E.2d 314, 320 (Ct. App. 2012) (holding a single reference to a severed charge did not constitute sufficient prejudice to warrant a mistrial).

AFFIRMED.

THOMAS and HILL, JJ., concur.

RECEIVED
AUG 01 2018
APPELLATE DEFENSE

STATE OF SOUTH CAROLINA)

County of Dorchester)Tashon Hurrell 320499)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018-CP-18- 1709

APPLICATION FOR

POST-CONVICTION RELIEF

2018 SEP 25 AM 11:36

FILED-RECORDED

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 Dorchester County Jail, Lieber Correctional Institution
2. Name and location of Court which imposed sentence Judge Edgar W. Dickson, In the Court of General Sessions First Judicial Circuit, Dorchester County, Summerville, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-18-085 Armed Robbery
 - (b) 2015-GS-18-086 Attempted Murder

(c) 2015-GS-18-087 K9d napping

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Feb. 10, 2016 30 years(b) Feb. 10, 2016 30 years(c) Feb. 10, 2016 30 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Conviction Affirmedii. Conviction Affirmediii. Conviction Affirmed

(c) the date of each such result:

i. Aug. 1, 2018ii. Aug. 1, 2018iii. Aug. 1, 2018

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Opinion No. 5584ii. Opinion No. 5584iii. Opinion No. 5584

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel; Ineffective assistance of appellate counsel
- (b) Police committed perjury to obtain arrest warrant
- (c) Insufficient Indictment; Police Perjury and misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel failed to question DNA Expert on cross about vital testimony
- (b) Det. Weaver stated on the warrants that the subject was positively identified by a
- (c) recording from the video/audio & a phone conversation & articles of clothing worn during the
crime
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? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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. ~~Direct~~ Filed a direct appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Conviction was affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Aug. 1, 2018

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Opinion No. 5584

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

~~NO~~ ~~YES~~ NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

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) I was told they were PCR issues not appeal issues
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? no
 (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. Trial counsel - John Loy
~~Appellate counsel - Robert Dudek~~
 ii. Appellate counsel - Robert Dudek
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial counsel - John Loy
 ii. Appellate counsel - Robert Dudek
 iii. _____

19. State clearly the relief you seek in filing this application:

I am seeking to have this conviction vacated; or remanded
for a new trial

20. Are you now under sentence from any other court that you have not challenged?

NO

2018-CP-18- 1709

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Tashon Hurrell, 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.

Tashon Hurrell

SWORN to and subscribed before me this 18th
 day of September, 2018.

Luciean Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

CLERK OF COURT
 DORCHESTER COUNTY

2018 SEP 25 AM 11:30

FILED-RECORDED

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Tashon Hurrell, 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.

Tashon Hurrell
Applicant

SWORN or affirmed to and subscribed before me this

18th day of September, 2018.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED-RECORDED
2018 SEP 25 AM 11:36
CLERK OF COURT
JACKSON COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Tashon E. Hurell, #320499	)	Case No.: 2018-CP-18-1709
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for post-conviction relief filed on September 25, 2018, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. In May 2015, the Dorchester County Grand Jury indicted Applicant for attempted murder (2015-GS-18-0085), kidnapping (2015-GS-18-0086) and armed robbery (2015-GS-18-0087). John Loy, Esquire, of the Fourteenth Circuit Public Defender's Office, represented Applicant at trial. Assistant Solicitors Glenn Justis and Kyle ward prosecuted the case. On February 8-10, 2016, Applicant proceeded to trial before the Honorable Edgar W. Dickson and a jury. The jury found Applicant guilty as indicted. Judge Dickson sentenced Applicant to imprisonment for concurrent terms of 30 years for each charge.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Deputy Chief Appellate Defender Robert Dudek of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction on August 1, 2018. State v. Hurell, Op. No. 2016-UP-00275 (S.C. Ct. App. filed August 1, 2018). The remittitur was returned to the circuit court on August 27, 2018.

Attached to this Return and incorporated by reference are the records of the Dorchester

County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Factual History

On April 23, 2014, Mary Pecorora (Victim) was working at the Kangaroo gas station in the early morning hours when someone entered the store wearing a mask and carrying a bat. (R. 9, line 10-R. 10, line 17). He threatened to cut her throat and then he hit her in the head with the bat before grabbing her by the neck and dragging her to the cash register. (R. 10, line 20-R. 11, line 5). She opened the register upon his command, and he grabbed the money, hopped over the counter, and took off out the door. (R. 11, lines 9-15). Victim described the assailant as Afro-American, slender, five feet, ten inches to five feet, eleven inches tall, and wearing a ski mask, bandana, hooded jacket, gloves, and red shoes. (R. 11, line 16-R. 12, line 2). Following the attack, she called 911 and EMS and the police came to the scene. (R. 12, lines 3-25). She did not have much of an opportunity to speak to the police because EMS was attending to her medical needs and she was subsequently transported to MUSC for several days of treatment, including surgery. (R. 13, lines 1-16).

Officer Bernard Nelson of the Summerville Police Department responded to the crime scene, gathered information from Victim, and relayed a description of the suspect to all units. (R. 20, line 17-R. 22, line 10). He took photos at the scene and viewed the surveillance video to gather a better description of the suspect. (R. 22, lines 11-12; R. 24, lines 13-21). The description he provided to the other units was: "black male subject wearing a light hoodie with the multi-colored graphic designs on the front. Bright lime green hoodie, black pants, red shoes, black gloves, dark

colored bandana over his face. He was a medium build and had a husky voice carrying a baseball bat." (R. 25, line 22-R. 26, line 1). The solicitor showed Officer Nelson State's Exhibit #18, a screenshot from the video of the suspect jumping over the counter, and Nelson verified that he described the shoes as red. (R. 25, lines 3-4; R. 26, lines 2-4).

Officer Hobie Williams, also of the Summerville Police Department, responded with his K-9 to the scene of the crime and his K-9 was able to track from the Kangaroo to the Somerset Apartments. (R. 48, line 19-R. 51, line 23). Officers were unable to continue the track at that point because they did not have available officers to set up a perimeter. (R. 52, lines 2-7). Instead, he and another officer searched for evidence on the path between the Kangaroo and the Somerset Apartments. (R. 52, lines 8-15). At Building G, they saw a white male smoking on the upper level and decided to talk to him. (R. 52, lines 15-19). He reported to the officers that he had seen a black male with a bat running to the apartment below his, G-4. (R. 53, line 18-R. 54, line 1). Officer Williams saw a dollar bill lying on the ground inside the breezeway of the balcony. (R. 54, lines 5-6; R. 55, lines 1-8). He noted the bill was dry even though the area all around was wet, and the bill also had blood on it. (R. 55, lines 9-14). He collected the dollar bill with gloves and secured it in an evidence bag. (R. 59, lines 6-22). Officer Williams then talked to Tashima Jones, Appellant's sister and the occupant of the apartment, who allowed him to come in and search. (R. 56, lines 4-21). Traquan Hurell, one of Appellant's brothers, was also in the apartment. (R. 56, lines 22-25).

Lucas Hartman, the man who lived above apartment G-4, testified he was sitting on his balcony on April 23, 2014, around 1:30 to 2:00 a.m. when he saw a man wearing black clothes and carrying a baseball bat and a backpack jump over the balcony below and heard the door open. (R. 69, line 3-R. 70, line 20). He then witnessed the man come back out, jump over the balcony,

and drive off in a white vehicle, possibly a Mustang, and then come back and do the same thing again. (R. 70, line 19-R. 71, line 1).

Detective Michael Weaver of the Summerville Police Department got involved in the case on April 23, 2014, and obtained the officers' reports. (R. 94, line 22-R. 95, line 22). He used DMV records to find out who lived at apartment G-4 and found that in addition to Jones, Traquan Hurell and Appellant were listed in the records. (R. 96, lines 2-17). He then obtained photo lineups from SLED of Traquan and Appellant. (R. 97, lines 6-11). Based on Hartman's statement that he heard someone going in and out of the apartment below, Det. Weaver obtained a search warrant for apartment G-4, obtained a key from the apartment manager, and searched the apartment while no one was home, finding nothing of evidentiary value. (R. 98, lines 1-23). His findings included two pairs of red shoes, but when he discovered they did not match the ones in the surveillance video, he returned them. (R. 98, line 23-R. 99, line 8). After returning the key to the apartment manager, he noticed a car was parked in front of G-4, so he knocked on the door and found Jana Hurell, Appellant's mother, there. Appellant was also at the apartment at the time. (R. 101, lines 3-7). When the solicitor asked Det. Weaver whether he showed either Ms. Hurell or Appellant any photographs, and he said that he did, defense counsel told the trial court he had a matter of law to take up. (R. 101, lines 8-13). The solicitor proffered what he was going to ask, which was what photograph he showed Appellant, and Det. Weaver described the photograph as one taken from behind the cash register during the incident, which shows the bright green sweatshirt the suspect was wearing. (R. 102, lines 2-15). He showed it to Appellant to see if he recognized the shirt and testified that Appellant "laughed and said who would wear something like that during this?" (R. 102, lines 20-22). Defense counsel objected that the above comment "simply attempts to show that if, in fact, he laughed in the face of this bloody picture[] and stuff, attempts to paint him as cold-

hearted or villainous." (R. 104, lines 3-5). Specifically, his objection was based on relevance and prejudice. (R. 104, line 19-R. 106, line 2). The trial judge stated that he thought Appellant's comment was humorous and seemed to show he was not worried about it, not that he was being callously indifferent. (R. 106, lines 18- 20; R. 110, lines 2-5). He ruled that he would allow the State to ask the question. (R. 110, lines 6-8).

Det. Weaver testified he showed Victim each of the three lineups that contained photos of the three Hurell brothers. She identified Tramaine as someone who had been at the gas station that night and said he was a regular customer. (R. 115, line 4-R. 116, line 7). Det. Weaver testified that he spoke to Tramaine during the investigation and that he was tall and skinny and had a high-pitched voice that did not sound like the suspect in the video. (R. 122, lines 2-12). He testified part of his investigation involved looking on Facebook, where he discovered a photo of Appellant wearing shoes that looked similar to the ones pictured in the video of the crime. (R. 117, line 19-R. 118, line 25).

Next, the State proposed calling Shelby Bradt to the stand, to which defense counsel objected. (R. 154, line 3-R. 155, line 3). Specifically, he objected to her giving her opinion after watching the video that it was not Tramaine, the Hurell brother she dated, in the video. (R. 156, line 3-R. 157, line 25). He argued it would confuse the jury, was not relevant, and was more prejudicial than probative. (R. 158, line 1-13). The trial judge noted that because the apartment was a place where any of the three brothers could have been living, and because it was a circumstantial evidence case, the State could show evidence to try to prove who in the apartment would not be the suspect. (R. 159, lines 1-5). For those reasons, and because testimony had already been provided that Tramaine was taller and had a higher voice than the suspect, the trial judge allowed Bradt to testify. (R. 159, lines 5-11).

Bradt then testified that she dated Tramaine for three or four months, including during April 2014, and had met Appellant four or five times. (R. 161, lines 5-19). She identified a family photo taken at Traquan's graduation that included all three brothers. (R. 162, lines 1-10). The solicitor showed her a video clip and asked if she recognized the individual in the video; she did not and said it did not look or sound like Tramaine. (R. 163, lines 6-14).

Next, Tashima Jones, Appellant's sister who lived in apartment G-4, testified. (R. 164, lines 10-17). She recalled being awoken by a bang on the door by police, who reported to her that a robbery had just taken place at the nearby Kangaroo and asked if they could come in. (R. 164, line 20-R. 165, line 3). They asked her who else was home and she answered that her son and brother (Traquan) were home, and she allowed the officers to come in and search. (R. 165, lines 6-15). When asked where Appellant was living at the time, she reported that he stayed at both his girlfriend's and his mother's house and often came to Jones's house but did not stay there. (R. 166, line 13-R. 167, line 1). When the State asked whether she was aware Appellant listed her address as his with the DMV, she answered, "Prior to him getting out from serving some time, yes, I am." (R. 169, lines 17-22). Defense counsel told the trial judge he had a matter of law to discuss and the judge excused the jury. (R. 169, line 25-R. 170, line 7). Defense counsel moved for a mistrial due to Jones's response being a comment on a prior conviction that was clearly prejudicial to Appellant. (R. 170, lines 9-20). The solicitor was quick to point out he simply asked if she was aware he was using her address and in no way intended to elicit that response. (R. 170, line 22-R. 170, line 2). Before defense counsel argued his motion, he asked for time to confer with Appellant, and after a discussion that lasted over thirty minutes, defense counsel reported to the court that he would be withdrawing the motion for mistrial while reserving his right to renew later if it became necessary. (R. 171, line 20-R. 173, line 17). Defense counsel then went over everything he and Appellant

talked about, clarifying with Appellant along the way, and concluded by saying, "Once we put it back and the jury starts going, it gets waived, it's over. We don't get to renew it down the road." (R. 173, line 17-R. 175, line 15).

Traquan then testified that police visited him at his workplace in April 2014 to ask him questions about a picture of a man in a hoodie. (R. 183, line 22-R. 184, line 8). He claims he told them he did not recognize the person but did recognize the hoodie as having a picture of the Tasmanian Devil on the front and being made by Warner Brothers. (R. 184, lines 11-19). He testified he told police he did not own a hoodie like that. (R. 184, lines 19-20). He specifically denied telling police that was his hoodie and that he got it in the eighth grade and that it was in his closet recently. (R. 185, lines 1-6). At that point, the State recalled Det. Weaver, who testified that Traquan told him the sweatshirt was given to him by a friend when he was in the eighth grade. (R. 186, lines 2-24). He also pointed out that one could not tell from the side angle of the photo that the Tasmanian Devil was on the front of the sweatshirt. (R. 186, line 24- R. 187, line 2).

Sergeant Nick Santana then testified that he was with Det. Weaver when they spoke to Traquan and that he saw Weaver show him a side photograph of the suspect and ask if he recognized the clothing. (R. 189, line 14-R. 190, line 5). He testified that Traquan told them he did recognize the sweatshirt as one that was given to him in the eighth grade by a friend and reported that it should be in his closet. (R. 190, lines 6-10). Derek Cheek, an investigator with the solicitor's office, then identified a photograph from Appellant's Facebook page showing Appellant wearing red and black shoes with a white mark, possibly a Nike swoosh. (R. 192, line 13-R. 193, line 23). He testified the suspect in the surveillance photo was wearing red and black shoes and identified those shoes in a still shot from the video. (R. 193, line 23-R. 194, line 8). He then identified a photograph of a shoe print left behind at the incident location in the victim's blood. (R. 194, lines

9-12). He then began searching on the internet for those shoes and found some that were red and black with a white Nike swoosh and that had a similar tread pattern to the print. (R. 194, lines 13-23). When the State tried to move the photos from the internet into evidence, defense counsel objected claiming no foundation had been laid and that it was not relevant because no shoes had been recovered. (R. 196, lines 2-13). The trial court overruled the objection because the witness indicated the photos were a fair and accurate representation. (R. 196, lines 14-16).

Samuel Stewart, a forensic scientist for SLED, was then qualified as an expert in DNA analysis. (R. 198, line 17-R. 210, line 8). He testified he received a swab from the dollar bill officers found at the apartment and a buccal swab from the victim, both in sealed bags. (R. 211, lines 19-25). He analyzed and compared the two samples, and the results of the comparison showed that Item 1, the swab from the dollar bill, matched Item 2, the DNA profile of Victim. (R. 213, line 7-R. 214, line 5).

The State rested, and defense counsel moved for a directed verdict, relying on *State v. Bostick*¹, 392 S.C. 134, 708 S.E.2d 774 (2011). (R. 218-26). He argued all the evidence had shown was that Appellant's family used Tracphones and someone at or near his sister's apartment was arguably involved in the crime. (R. 226, lines 14-18). He claimed there was no DNA and no circumstantial evidence to support a verdict of guilt. (R. 226, lines 19-25). The State relied on the more recent *State v. Bennett*¹ case, in which the Supreme Court clarified the proper standard of review for a directed verdict circumstantial evidence case: whether substantial evidence exists from which a jury could reasonably infer guilt. (R. 227, lines 5-14). The solicitor listed the evidence that existed: a physical description of the suspect given by the victim; the testimony that Appellant has access to the apartment, which would give him access to the sweatshirt based on

¹ 415 S.C. 232, 781 S.E.2d 352 (2016).

Traquan's statement to police that it was in his closet; he had access to a white car similar to the one described by Hartman; his cellphone was pinging off towers in that area, which matches the eyewitness's account that a man with a bat went in and out of apartment G-4; he had red shoes similar to the ones in the surveillance footage and with a similar tread pattern to the bloody print. (R. 227, line 15-R. 228, line 21). Defense counsel then argued that the evidence the State listed merely raised a suspicion and that a directed verdict should have been granted. (R. 229, lines 1 8-21). The trial judge noted that the line in Bennett that gave him the most concern was that the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. (R. 230, lines 6-10). The trial judge then went through the evidence again and determined "there is the existence of evidence that a reasonable juror could believe if they believe every[y] step in the chain of circumstantial evidence that the State has presented" and denied the motion. (R. 230, line 6-231, line 12).

After the defense rested, each side made closing arguments, and the trial judge charged the jury on the presumption of innocence, reasonable doubt, the types of evidence, believability of witnesses, experts, and the element of the crimes. (R. 240-280). After the jury began deliberations, it sent a note to the trial judge saying it would like to review the sister's testimony, specifically asking, "Did she say when he got out he sometimes stayed with her?" (R. 281, line 9-R. 282, line 1). Defense counsel attempted to renew his motion for a mistrial due to the note indicating to him that the jury was deliberating about this topic. (R. 282, lines 1-18). Another note came out after that one that said to please disregard the last request. (R. 282, line 22-R. 283, line 2). The State argued it was improper to try to guess what the jury is deliberating, especially because the second note came immediately following the first. (R. 283, lines 1-14).

The trial judge took a recess to consider the issue. (R. 284, lines 2-7). The trial judge came back and reminded defense counsel he had spoken to Appellant and Appellant knowingly and intelligently waived his mistrial motion after hearing the sister's testimony. (R. 284, lines 10- 17). He then stated that he was initially concerned when the jury sent the first note wanting more information about the sister's testimony and would have reconsidered a motion for mistrial if that had been a question the court had to resolve. (R. 284, lines 18-23). However, because the jury immediately asked the court to disregard the question, he was taking the position that the jury was also disregarding the question and denied the motion. (R. 284, line 23-R. 285, line 1 1). Ultimately the jury found Appellant guilty of all charges, and the trial judge sentenced him to thirty years' imprisonment for each charge, to be served concurrently. (R. 312).

III. Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to question DNA Expert on cross about vital testimony"
2. Ineffective Assistance of Appellate Counsel
3. Police committed perjury to obtain arrest warrant
4. Insufficient Indictment
5. Police Perjury and Misconduct
 - a. "Det Weaver stated on the warrants that the subject was positively identified by a recording from the video/audio and a phone conversation and articles of clothing worn during the crime"

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response to Allegations of Ineffective Assistance of Appellate Counsel

Applicant also alleges ineffective assistance of his appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation.

VI. Response to Allegations of Insufficient Indictment

Applicant has claimed that indictment was insufficient. Defects in the indictment do not affect subject matter jurisdiction. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *U.S. v. Cotton*, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry, supra*; *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, essentially alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Applicant's allegation of ineffective assistance of counsel has been addressed above in this return.

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry, supra*, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Therefore, the circuit court had subject matter jurisdiction.

VII. Direct Appeal Issues

Applicant further alleges there was policy misconduct and perjury. This allegation raises a

direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal, and his failure to do so has waived this allegation as grounds for relief.

This allegation should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20. Further, section 17-27-20(B) expressly states PCR “*is not a substitute for . . . direct review of the sentence or conviction.*” (emphasis added). PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). “In a direct appeal, the focus generally is upon the

propriety of rulings made by the circuit court in response to a party's motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel." Id. at 363-64, 527 S.E.2d at 747.

Accordingly, Respondent hereby moves for summary dismissal of this allegation pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis these allegations should be dismissed as a matter of law as they are direct appellate review issues which are not cognizable in a PCR action.

VIII. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

IX. Request for Summary Dismissal

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that

there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

X. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

XI. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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2/20, 2019

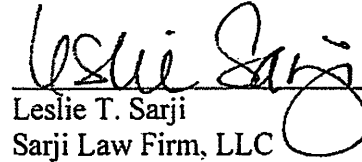
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2018-CP-18-1709
TASHON HURELL, #320499	)	
Applicant,	)	
	)	
vs.	)	AMENDED APPLICATION FOR
	)	POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	
	)	

The Applicant, TASHON HURELL, now having the benefit of appointed counsel alleges the following, in addition to the grounds previously stated:

1. Tashon Hurell is detained at Lieber Correctional Institution under Inmate Number: 320499.
2. Applicant, by and through undersigned counsel, submits this Amended Application for Post Conviction Relief, and alleges the following errors by trial counsel in addition to those already alleged, which rendered trial counsel's assistance ineffective and but for which, there is a reasonable probability that the result of the proceeding would have been different:
 - a. Trial counsel provided ineffective assistance of counsel in advising Applicant to waive his right to a mistrial;
 - b. Trial counsel failed to subject the prosecution's case to "meaningful adversarial testing";
 - c. Trial counsel failed to fully investigate the case prior to trial; and
 - d. Trial counsel failed to present alibi witness testimony.

Wherefore, based on this Amended Application as well as all grounds previously alleged, the Applicant requests that a hearing on the merits be scheduled.

Respectfully submitted,

A handwritten signature in cursive script, reading "Leslie Sarji", is written over a horizontal line.

Leslie T. Sarji
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Charleston, South Carolina 29413
(843)722-5354

Attorney for Applicant

Charleston, South Carolina
September 3, 2019

State of South Carolina)	In the Court of Common Pleas
)	First Judicial Circuit
County of Dorchester)	2018-CP-18-01709

Tashon Hurell,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
_____	)	

September 11, 2019
St. George, South Carolina

B E F O R E:

The Honorable Diane Shafer Goodstein, Judge

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

Leslie T. Sarji, Esquire
Attorney for Applicant

Benjamin H. Limbaugh, Assistant Attorney General
Attorney for Respondent

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Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter - Master

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

No exhibits marked during proceeding.

PROCEEDINGS

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:12 a.m.)

THE COURT: All right.

MR. LIMBAUGH: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. LIMBAUGH: This case is Tashon Hurell, Case No. 2018-CP-18-1709. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. In May of 2015, the Dorchester County Grand Jury indicted the applicant for attempted murder, kidnapping, and armed robbery. John Loy, Esq., of the 14th Circuit Public Defender's Office, represented applicant ---

THE COURT: First.

MR. LIMBAUGH: --- at trial. First. My apologies, Your Honor.

Assistant Solicitors Glenn Justis and Kyle Ward prosecuted the case. On February 8th through the 10th, 2016, applicant proceeded to trial before the Honorable Edgar W. Dixon and a jury. The jury found applicant guilty as indicted.

Judge Dixon sentenced the applicant to imprisonment for concurrent terms of 30 years for each charge.

1 Applicant filed a timely notice of appeal. And an appeal
2 was perfected on his behalf by Deputy Chief Appellate
3 Defender Rob Dudek of the South Carolina Commission on
4 Indigent -- Indigent Defense. The South Carolina Court of
5 Appeals affirmed applicant's conviction on August 1st --
6 1st, 2018. The remittitur was returned to the circuit
7 court on August 27th, 2018.

8 Applicant filed this postconviction-relief action.
9 And initially, his allegations were ineffective assistance
10 of counsel. Trial counsel failed to question DNA expert on
11 cross about vital testimony; ineffective assistance of
12 appellate counsel; police committed perjury to obtain
13 arrest warrant; insufficient indictment; police perjury and
14 misconduct; Detective Weaver stated on the warrants that
15 the subject was positively identified by recording from the
16 video/audio and a phone conversation and articles of
17 clothing worn during the crime.

18 Through counsel, applicant amended his allegations, to
19 include: was provided ineffective assistance of counsel in
20 advising applicant to waive his right to a mistrial; trial
21 counsel failed to subject the prosecution's case to
22 meaningful adversarial testing; trial counsel failed to
23 fully investigate the case prior to trial; and trial
24 counsel failed to present alibi-witness testimony; and
25 counsel included by reference all of applicant's previous

1 allegations ---

2 THE COURT: Uh-huh.

3 MR. LIMBAUGH: --- as well. I will now hand the case
4 over to applicant's counsel, Ms. Leslie Sarji.

5 THE COURT: Yes, ma'am.

6 MS. SARJI: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes.

9 MS. SARJI: At the outset I -- can Mr. Hurrell have at
10 least one of his hands unlocked so that he can take notes
11 if he wishes to once the other witnesses are testifying?

12 THE COURT: He -- I -- I don't know that I will free
13 it in its entirety. But certainly, loosen -- I will loosen
14 it up enough where he ---

15 MS. SARJI: So he ---

16 THE COURT: --- can make ---

17 MS. SARJI: --- can reach ---

18 THE COURT: --- some notes.

19 MS. SARJI: Okay. Thank ---

20 THE COURT: Okay.

21 MS. SARJI: --- you, Your Honor.

22 THE COURT: Is he left-handed or right-handed?

23 THE APPLICANT: Right.

24 MS. SARJI: Right-handed?

25 THE COURT: Right-handed?

1 THE APPLICANT: Yes.

2 THE COURT: Okay.

3 MS. SARJI: Okay.

4 THE COURT: All right.

5 MS. SARJI: And -- but he is my first witness, so I
6 will call Tashon Hurrell to the stand.

7 THE COURT: Okay. Very well. Well, we'll -- we'll --
8 we'll make those adjustments, then, after he has testified.

9 MS. SARJI: Thank you, Your Honor.

10 THE COURT: Uh-huh.

11 (Whereupon, the applicant came forward.)

12 DEPUTY CLERK OF COURT: Please stand right there for
13 me.

14 THE APPLICANT: Yes.

15 DEPUTY CLERK OF COURT: And please raise your right
16 hand.

17 THE APPLICANT: (Complied.)

18 DEPUTY CLERK OF COURT: State your full name for the
19 record.

20 THE APPLICANT: Tashon Earl Hurrell.

21 TASHON HURRELL, having been first duly sworn,
22 testified as follows:

23 DEPUTY CLERK OF COURT: Thank you. And have a seat,
24 please.

25 THE APPLICANT: (Complied.)

DIRECT EXAMINATION BY MS. SARJI - TASHON HURELL

9

1 DEPUTY CLERK OF COURT: Make sure you talk into the
2 microphone.

3 THE APPLICANT: All right.

4 THE COURT: All right. Your witness.

5 MS. SARJI: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. SARJI:

8 Q Mr. Hurell, could you please state your full name and
9 spell your last name for the record?

10 A Tashon Hurell, H-u-r-e-l-l.

11 Q And where you currently incarcerated?

12 A Lieber Correctional Facility.

13 Q And is that the result of a -- a verdict of guilty
14 after a trial that you had?

15 A Yes.

16 Q And who is your counsel at that trial? Who was ---

17 A John ---

18 Q --- your attorney?

19 A --- Loy.

20 Q Mr. John Loy?

21 A Yes.

22 Q And did -- did -- that was actually a second trial
23 that resulted in a guilty verdict; is ---

24 A Yes.

25 Q --- that right?

DIRECT EXAMINATION BY MS. SARJI - TASHON HURELL 10

1 Did Mr. Loy also represent you in your first trial?

2 A Yes.

3 Q And how did that first trial end?

4 A 10-2 not guilty.

5 Q And so they -- did they -- was it a mistrial?

6 A Yes.

7 Q And then -- but Mr. Loy was aware of the facts that
8 had developed in that first trial; is ---

9 A Yes.

10 Q --- that correct?

11 And if you can wait until I'm done asking my question
12 all the way before you answer, even if you know what I'm
13 going to ask you, just so the court reporter's record will
14 be more clear, that would very helpful.

15 So it -- tell me -- and -- and you've alleged that Mr.
16 Loy was -- gave you ineffective assistance of counsel; is
17 that correct?

18 A Yes.

19 Q And one of the first things that we had in our amended
20 application -- do you recall? -- was a failure to
21 investigate the case; is that right?

22 A Yes.

23 Q Can you tell me what it is that you think that Mr. Loy
24 should have done that he didn't do?

25 A I feel like he should've investigated thoroughly,

1 because I had alibi witnesses. I also had some evidence
2 that someone else could've committed the crime, basically.
3 He didn't investigate by, you know, questioning my mother
4 or my brother about my whereabouts. They had to chase him
5 down, kind of, sort of, in order to let the -- him know
6 about that.

7 Q Okay. So let me -- let me -- let's take it issue by
8 issue. So as far as the alibi witnesses go, who would your
9 alibi witnesses have been?

10 A My mother and my brother.

11 Q And what are their names?

12 A Janah Hurell and Tramaine Hurell.

13 Q And do you know whether or not Mr. Loy was aware that
14 you had alibi witnesses?

15 A Yes. I told him.

16 Q And did you tell him specifically that your mother
17 would be able to give you an alibi?

18 A Yes.

19 Q And did you tell him specifically that your brother
20 would also be able to verify your whereabouts on the night
21 of the crime?

22 A Yes.

23 Q Do you know whether or not Mr. Loy talked to your
24 mother at all?

25 A Yes, he did.

DIRECT EXAMINATION BY MS. SARJI - TASHON HURELL 12

1 Q Did you and Mr. Loy discuss what your mother told him?

2 A No.

3 Q And do you know whether or not Mr. Loy talked to your
4 brother?

5 A Yes.

6 Q He did talk ---

7 A Yes ---

8 Q --- to him?

9 A --- he did.

10 Q Did you and Mr. Loy discuss what the substance was
11 that your brother would say?

12 A No.

13 Q Did -- so tell me about how that came about. Did he
14 say, "Hey, man, I've talked to your mother and your
15 brother," and that was where it stopped or ---

16 A No. I asked him if he could contact them. He said he
17 would, but he didn't. So I asked my mom to contact him.

18 But she couldn't get in contact with him. They
19 actually caught him at the courthouse and spoke with him.
20 And they told me that he told them the same thing he told
21 me, which was the judge and the jury wouldn't believe them
22 because of they were family and they are expected to lie
23 for me.

24 Q Okay. Did you -- so did you tell Mr. Loy that -- I
25 mean, what was your response when he said that to you?

1 A Like, I didn't understand it, really. I was just,
2 like, why, basically. You know, like, I wanted them to
3 testify. I want to testify, but he didn't go with it.

4 Q Do you know whether or not your mother did, in fact, tell
5 Mr. Loy that you were not there on the night of the
6 incident?

7 A Yes.

8 Q Do you know whether or not your brother said that you
9 were not there on the night of ---

10 A Yes.

11 Q --- the incident?

12 Did that come from your conversations with Mr. Loy or
13 your conversations with your family?

14 A Both of them.

15 Q Okay. And so when it came time at the trial for you
16 guys to call in these alibi witnesses, did you ask Mr. Loy
17 to -- to put that testimony up?

18 A Yes.

19 Q And is that when he told you, "Nobody's going to
20 believe them, so we're not going to do it"?

21 A Yes, ma'am.

22 Q Okay. Do you know whether or not -- do you recall
23 whether the incident reports in the case also talked about
24 your mother and brother?

25 A Yes. They did.

DIRECT EXAMINATION BY MS. SARJI - TASHON HURELL

14

1 Q And so ---

2 A It's actually mentioned in there that my mom said me
3 and my brother was home with her that night.

4 Q And that was in the incident reports in your case?

5 A Yes.

6 Q Do you recall whether or not Mr. Loy brought that
7 testimony out during ---

8 A He ---

9 Q --- the trial?

10 A --- did not.

11 Q He did not?

12 A He did not.

13 Q Okay. And as to other investigation, you mentioned
14 that you felt like there was something that would have
15 proven that somebody else did this. Can you tell us what
16 you asked Mr. Loy to investigate in that regard?

17 A Yes. I asked him if -- if he could -- well,
18 basically, this was after the -- the first -- after the
19 first trial. He basically was saying that they needed to
20 put up their -- when I say, "they," I mean, like, the
21 solicitor and them -- said they needed to prove their case;
22 we didn't have to prove anything.

23 But, like, I told him that there was a tape-recording
24 from when I called the detective and spoke with him. And
25 there's a recording from the feed in the store during a

1 robbery. And they's trying to say that my voice was a
2 compatible match for the -- for the analysis.

3 But the FBI said that no analysis was done, you know.
4 And why can't you look into it. The guy said he never seen
5 the car before; he never seen the dude before; like, what's
6 going on. He just couldn't give me the right answers.

7 Q Okay. So let's -- let's -- again, let's try to take
8 one issue at a time. As far as the -- the tape-recordings
9 that you're talking about, can you tell the judge how that
10 -- how that would have been relevant in your case? What
11 was it about tape-recordings and voice recognition that was
12 pertinent in your case?

13 A Well, the investigator -- well, the detective,
14 Detective Michael Weaver, went in front of the grand jury
15 and got an indictment and, I guess, subsequent arrest
16 warrants to that by saying that my voice from a phone call
17 -- I called him and basically threatened him with a lawyer
18 and a restraining order for harassing my little brother,
19 who was 17 at the time. He harassed him at work; he
20 harassed him at his school. So I said: "I'm going to put
21 a restraining order and a lawyer on you."

22 He recorded the phone call. I told him who -- he was
23 going to let whoever committed this crime get away. I
24 would appreciate it, basically, if he left me and my family
25 alone.

DIRECT EXAMINATION BY MS. SARJI - TASHON HURELL 16

1 But he recorded that but -- and then he sent that and
2 the recorder from the FBI -- excuse me -- from the robbery
3 to the FBI for an analysis. But they said the feed was too
4 distorted for any type of analyzation to be done.

5 So they sent it back, saying, yes, we can't even do
6 anything with it. But he took this in front of the grand
7 jury, saying it was a match. Like, he just blatantly lied.
8 And ---

9 Q And ---

10 A --- even though I asked Mr. Loy about it, like, I
11 guess he felt like it wouldn't have done any good or
12 anything. But I feel like if the jury would've heard it
13 like they did in the first trial, then either the outcome
14 would've been the same with a not -- excuse me -- a
15 mistrial or a not-guilty verdict. Because it's -- it's
16 just blatant. He just blatantly lied about the evidence
17 and misrepresented it.

18 Q Do you feel that Mr. -- so you -- you wanted Mr. Loy
19 to have called in somebody to testify about the fact that
20 there was no match between your voice ---

21 A Yes.

22 Q --- and the recording at the convenience store?

23 A Yes, ma'am.

24 Q And Mr. Loy did -- he -- that -- that -- that happened
25 in the first trial, but not the second? Is that what

1 you're saying?

2 A Yes, ma'am.

3 Q And did you and Mr. Loy discuss whether or not to put
4 that evidence in at the second trial?

5 A No.

6 Q Okay. What is that just was a decision that he made
7 on his own without ---

8 A Yes, ma'am.

9 Q --- consulting you?

10 THE COURT: You gotta wait ---

11 THE APPLICANT: Oh, yeah. I ---

12 THE COURT: --- for ---

13 THE APPLICANT: --- apologize.

14 THE COURT: That's okay. I just -- my court
15 reporter's got to be able to take down everything.

16 Q Okay. So -- okay. So that -- that's the -- the
17 voice-recognition you wanted him to dispute that your voice
18 matched?

19 A (Nodded head up and down.)

20 Q Is that a "yes"?

21 A Yes, ma'am.

22 Q Did that issue come up in the second trial?

23 A No, ma'am.

24 Q Okay. So what -- there was never any discussion about
25 whether your voice matched or not in the second trial?

DIRECT EXAMINATION BY MS. SARJI - TASHON HURELL

18

1 A No, ma'am.

2 Q And -- but you wanted Mr. Loy to bring that up and he
3 didn't do that?

4 A Yes, ma'am.

5 Q Okay. Now, you talked a second ago about a car. What
6 -- tell -- tell the judge about that -- that there was a --
7 an issue with a car that you felt like Mr. Loy should've
8 investigated further.

9 A Okay. My mom drove a Pontiac Grand Am. It was white.
10 The witness that night who -- who -- he saw somebody come
11 from behind another apartment building and jump -- he said
12 he saw them jump on the porch. But he said at -- they
13 jumped into a white Mustang; drove off; later came back;
14 got onto a porch; got out -- excuse me -- jumped off the
15 porch; jumped back into a white Mustang and drove off.

16 Well, from day one, the police officer, Detective
17 Michael Weaver, like, just flipped that around and said a
18 white Pontiac. But, like, nobody was out there looking for
19 this white Mustang. It was just more convenient for them
20 to say it was this white Pontiac that my mother drives.

21 And then, at trial they introduced a picture of a '90-
22 something Mustang and a picture of a '90-something Grand
23 Am, trying to compare the two. But Mr. Loy didn't
24 investigate anything about a white Mustang or anything. He
25 didn't even -- you know, the most he did was question the

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1 detective's work about why he was trying to switch it from
2 a Mustang to a Pontiac. But if he would've investigated, I
3 think he would've found something even further than that,
4 you know.

5 MS. SARJI: Oh -- and to be clear, Judge, I'm happy to
6 -- I'm sure that you've read the record. But I'm happy to
7 just sort of summarize why this is relevant in the case.
8 Or I can ask him the questions. I don't know if it's
9 clear, the -- the -- the relevance of the car and this --
10 the apartments and all of that. Do you want me to clarify
11 that with him or did you ---

12 THE COURT: It's up to ---

13 MS. SARJI: --- gleaned it from the record already?

14 THE COURT: It's up to Mr. Limbaugh, if he -- because
15 what you would be asking for would be a stipulation and ---

16 MR. LIMBAUGH: As long as it's just a stipulation to
17 the facts, I mean, that's ---

18 MS. SARJI: Yeah.

19 MR. LIMBAUGH: --- it's fine.

20 MS. SARJI: I think, just to summarize -- thank you,
21 Ben.

22 MR. LIMBAUGH: Uh-huh.

23 MS. SARJI: So the -- to summarize the facts in the
24 record, so there -- there was testimony at trial that there
25 was a witness who was sitting in the -- in an upstairs