VOL II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

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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balcony at this apartment complex. He testifies that he sees somebody running from the general area of the store where the robbery takes place. He had a bat in his hand. He jumped onto the porch under the balcony beneath him; then gets into a white Mustang, was what he originally reported to the police, and drives away; comes back; goes back on the porch; then goes back and drives away in the white Mustang.

Then, I think later, when the police started to do their investigation, they found out that Mr. Hurell's mom drove a white Pontiac Grand Am. And his sister actually lived below the witness so -- at -- in this apartment complex.

So that's -- that's the chain of events and why the Mustang is -- is pertinent here and why he wanted Mr. Loy to look into whether there was another Mustang at the complex.

Q Is that a fair summarization, Mr. Hurell?

A Yes, ma'am.

Q And to your knowledge, did Mr. Loy ever do any investigation to find out whether there was another -- a -- white Mustang or any Mustang at all at the apartment complex?

A No, ma'am.

Q Do you know whether or not Mr. Loy ever went out to

the apartment complex to look and see whether the witness could have seen somebody going on -- onto a balcony beneath him?

A No, ma'am.

Q Do you know whether or not Mr. Loy ever went out to the apartment complex to see if there were any other individuals who lived near to your sister that would have been of similar age and build and African-American?

A No, ma'am.

Q Do you know whether or not there was any investigation done by Mr. Loy beyond what was provided to him in the discovery by the solicitor?

A No, ma'am.

Q Okay. So in terms of -- well, so we've talked about the alibi. We've talked about the Mustang. We've talked about all the other things that weren't investigated. Is there anything else that wasn't investigated that you would have liked Mr. Loy to investigate?

A Yes, ma'am. As far as the DNA, because I didn't know it until after the trial, but -- and -- I believe everybody might've missed it. But the DNA expert, Samuel Stewart, testified, and it's in my transcript, page 283 line 18.

THE COURT: Hold on. Let me get there, okay?

THE WITNESS: Okay.

MS. SARJI: I believe it was page 263 ---

THE COURT: Do what, now?

MS. SARJI: Page 263 ---

THE COURT: Okay.

MS. SARJI: --- of the record, not the -- not -- not the pagination for the record on appeal, but pagination for the actual transcript. It was page 263 ---

THE COURT: Got it.

MS. SARJI: --- line ---

THE COURT: Okay.

MS. SARJI: --- 18.

THE COURT: Line 15?

THE WITNESS: 18.

MS. SARJI: Line 18.

THE COURT: 18? Got it.

THE WITNESS: Yes, ma'am.

A The DNA expert actually said that he ran two types of DNA. He ran a swab. He swabbed the dollar bill self. And then, he swabbed the blood on a dollar bill.

He said he tested for the presence of blood. It came back as positive for blood. But he couldn't tell you of any specific DNA profile developed from the blood.

The swab that he did from the dollar bill itself came back as having positive DNA on it that matches the victim. And I feel like if he would've investigated that, then they would've never been allowed to best misrepresent that

evidence. Because ---

Q Well -- okay. So let's stop right there. How was the evidence misrepresented?

A Well, everybody is assuming that just because the DNA was positive for the victim, that the blood was positive for the victim, when it's just not so.

Q And why would it have been relevant if the blood was actually positive for the victim?

A Because then, we would know that that victim's blood was actually on the money. But as of right now, nobody even knows whose blood is on the money, period. They don't know if it's cat's blood or rat's blood or my blood, Tom Joad's blood. They don't know whose blood it is.

The only thing that they can honestly and truthfully is that the victim handled that money at some point in time. But nobody can say if it was that night because they know who blood it was on the money.

Q Okay. And it did not come back according to that -- which you just pointed out in the record to the victim in the case?

A Correct.

Q And -- did Mr. Loy challenge that testimony in any way?

A No, he didn't. He didn't even question the DNA expert at all.

Q Did Mr. Loy point out in closing argument or at other time in the trial that there -- that the blood didn't match the victim?
A No, ma'am.
Q Okay. Was there any other investigation that you believe that Mr. Loy should have done that he didn't do?
A (No audible response.)
Q It's okay if the answer is no, but . . .
A No, not right now -- well, yes and -- well, I don't think it's -- it goes to an investigation.
Q Is there something else ---
A Yes ---
Q --- that you ---
A --- there is ---
Q --- think that ---
A --- something ---
Q --- he did ---
A --- else, though.
Q --- wrong?
A I signed up for a preliminary hearing in ten days, like they told me to. They gave me a preliminary hearing. He didn't show up. So the judge gave me a continuance. And instead of them giving me my preliminary hearing, they just went ahead and -- got an indictment on me. And I feel like if we would've even had that preliminary hearing and

all these things came out, that things would've went differently.

Q Okay. Did -- was there an issue in your trial about -- about your brother being ruled out as the person in the video?

A Yes. They ruled out my younger brother, Tramaine, saying that he was too tall and his voice was high-pitched, whereas I was shorter than him and my voice was supposedly huskier than his.

Q And is -- is your brother, Tramaine, the brother that we have here today?

A Yes.

Q And -- and, in fact, at the trial they called in Tramaine's girlfriend or -- to testify?

A Yes.

Q Do you recall that?

A Yes. Shelby.

Q And ---

A They ---

Q And do you recall that they testified that his voice was high-pitched, so it couldn't have been him in the video?

A Yes, ma'am. She testified that she -- it didn't sound like him. They asked her does she recognize the voice at all. She said no.

They asked her if she had any interactions with me before. And she said yes; she had been at family functions with us. So she knew me, my brother, our family. But she said the voice and the person she didn't recognize at all.

Q And did your brother -- did -- did -- did Mr. Loy call in your brother to come in and testify to the jury at all?

A No, ma'am.

Q Or to give a voice sample at all?

A No, ma'am.

Q Is that something that you wanted him to do?

A Yes, ma'am. It would've been very nice.

Q Okay. Now, there was also a point in your case where somebody testified about that you had a prior record. Do you recall that?

A Yes, ma'am.

Q And that was actually -- it -- was that your sister that ---

A Yes, ma'am.

Q --- testified?

And at that point, Mr. Loy moved for mistrial. Do you recall?

A Yes, ma'am.

Q And -- but then, you guys didn't pursue that. Can you tell me what happened with that?

A Yes, ma'am. He actually asked the judge for a recess,

to go downstairs and discuss it with me. And when we got down there -- well, before we left, my mom was, like, whispering to me, take the mistrial. And -- and I had a mind to, because, like, I didn't need them to know that I had did time before. You know, not everybody looks at -- once they find out I have been incarcerated, especially for, you know, assault on a cop, they look at me completely different.

And we got down there. He said that, you know, we had two of their witnesses already caught up on the stand in lies. And we had another witness up there looking like a fool, so we got this. You know, and I just want you to be sure that you know this is your decision, because you're the one sitting in jail, not your family. And, you know, if we take the mistrial, you're going back and sit in jail. I don't know if I'm a get you a bond. You know, you've been in there two years already without one.

So, you know, it was just a lot of pressure, making me feel like I don't want a mistrial because I don't want to sit in jail. And we probably got them, you know, dead to rights right now. So I really kind of felt pressured, like, you know, like, maybe this is best thing for me to do.

Q And do you -- did you feel like the pressure that Mr. Loy exerted on you resulted in you making a decision that

you wouldn't otherwise have made?
A Yes, ma'am.
Q Okay. Now, do you -- did you and Mr. Loy talk about whether or not you wanted to testify?
A Oh, yes, ma'am.
Q And was it your decision not to testify?
A In the end, kind of, sort of, because he said they would be able to use my past against me. And like I said, I had just got out of prison for assault on a cop.
Q Did he explain to you that he could have asked the judge not to let them talk to you about your prior record?
A No, ma'am.
Q He never discussed with you that the evidence of your prior conviction might have been able to be suppressed?
A No, ma'am.
Q So he just told you, if you testify, they're going to find out about it?
A Yes, ma'am.
Q No discussion of the procedure surrounding that at all?
A No, ma'am.
Q If you had known that -- that he may have been able to get the judge to keep that evidence out, would that have changed your mind about whether to testify?
A I mean, I still want to testify, even though, like,

they could bring my past against me. Like, I didn't want them to know that. But I wanted to testify, because I didn't just want the jury to hear one side of a story. You know, but in the end, he was, like, "They -- they going bring it up."

And I don't -- everybody might say, "Oh, he's a nice-looking guy," or whatever. But once they find out that you got into fight with a cop, they looking at you like, you know, like you just trash, so ---

Q Was it your mom who actually turned you in, in the other -- in the case that -- for the assault on the police officer?

A Yes, ma'am.

Q Did you tell Mr. Loy that when you guys were evaluating whether the jury would believe your mother's alibi testimony?

A Yes, ma'am. I actually asked him why wouldn't they believe that if she had turned me and before. And he said, "Well, they can't know that because they not supposed to know you've been locked up before." But ---

Q So it was a catch-22 you were in?

A Yeah.

Q You didn't want them to know about the prior record and you would've had to tell them that if your mom had testified?

A Correct.
Q Did you tell Mr. Loy that you were willing to take that risk and you wanted your mom to testify?
A Yes, ma'am.
Q Okay. Where were you that night? What is -- what would you have testified to if you had testified?
A I was at -- all right. I got dropped off by this girl that I was seeing a -- off and on, kind of.
Q What's her name?
A Jule -- well, we call her "Jule." Her name is Julia.
Q Okay?
A And ---
Q Where's she drop you off?
A She dropped me off at my mother's house.
Q Do you know what time about that was? Was it close to 10, maybe?
A Yeah, around there.
Q And who was at your mom's house when you got dropped off?
A My mother and my brother.
Q And is that the -- the brother that we've already talked about that's ---
A Yes, ma'am.
Q --- here today?

And what did you guys do after you got dropped off?

A We watched the game a little bit. I remember LeBron James -- that's my favorite basketball player. He was on the TV. He had put up some good stats that they.

And I was talking to this girl in Texas. She was in the military. And she wanted me to come down and see her. And I said, "I'll see you, whatever. I'll let you know something tomorrow."

And I actually just went ahead and laid down by my brother and went to sleep. Because I didn't -- I was just visiting. So I didn't have a room or a bed.

Q So where ---

A I had just ---

Q --- did you live at that point?

A I lived in Atlanta, Georgia.

Q Okay. So you were just here visiting family when all this stuff happened?

A Yes.

Q And so when you say you went and laid down by your brother, you were just sharing the bed with him for the night because you're visiting?

A Yes, ma'am.

Q Okay. And how old is your brother?

A I'm 30 -- I believe he's 27 now.

Q Okay. I'd have to the same thing if I ---

A Yeah.

Q --- had to tell you how old my brother was too.

So -- so you went in and laid down. Was your brother already in the bed when you went in?

A Yes, ma'am.

Q And did you get back up that night?

A After my mom woke us up.

Q When did your mom wake you up?

A It's hard -- I -- I can't really remember the time. But it was later.

Q Why did she wake you up?

A She said something going on. We need to get dressed so we go to my sister's house. Somebody had just robbed a gas station up the street, and the police were at her house. They were saying somebody dropped some money on her porch, and she wanted us to go down there.

I told him we ain't going nowhere. We going let them do their job. We going stay right here. And we went back to sleep.

Q Okay. Is there anything else that you would like for the judge to know about why you feel like Mr. Loy didn't do a -- a good job for you?

A No. That -- that's pretty much it.

Q Okay.

MS. SARJI: I don't have any further questions, Judge. Thank you.

THE COURT: All -- all right. Cross-examination?

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q Good -- I believe it's still morning, Mr. Hurell. So you say -- how many times did you meet with Mr. Loy before your trial?

A I met him at my first bond hearing, my second bond hearing, and maybe twice at the county jail.

Q Okay. Did he go over the discovery with you, like what the state had against you in this case?

A Some of it. He did have the whole thing.

Q What do you think you didn't have?

A I mean, it was just still pieces. It was mailed to me in piece and bits -- piece -- excuse me -- pieces and bits.

Q Okay. But did he ultimately go over with you everything that he had from the state, as far as you know?

A As far as I know.

Q Okay. Do he go over what your strategy was for the trial, what your defense was against the state's accusations?

A Yes.

Q Okay. What was that, as far as you knew?

A Well, he said he didn't want to put up a defense because they had to prove their theories or whatever. And also, they would get -- we would get the closing arguments.

Like, we would be the last ones that the jury heard. He didn't want the jury to hear the solicitors last, basically.

Q Okay. Did he mention -- along those lines, you know, wanting to speak to the jury last -- was it because a lot of the evidence was circumstantial in this case, that he wanted to have the last word to the jury?

A Yes. That's what he said.

Q Okay. So he -- he discussed his thought process for that strategy with you?

A (Nodded head up and down.)

Q Okay. And you testified that he discussed you testifying at trial with you; is ---

A Yes.

Q --- that correct?

Okay. And what was your reason again for not wanting to testify?

A Because I didn't want them -- I wanted to. But once he told me that they could basically, like, pull my record out and use it against me, like, it gave me a pause. Because everybody look at you crazy when they find out you assaulted a cop.

Q Since there was a -- a possibility of your record being brought out, would you still not have testified?

A What you mean?

Q If it was possible that the state could have brought out to the jury that you had been previously arrested for assaulting a police officer, would you have testified?
A I -- I mean, I still wanted to testify, because I didn't care about that. I do, but I don't. I just didn't want that perception to be the first thing they saw. You understand?
Q Uh-huh.
A But I still wanted to testify on my own behalf, because it's not fair when they only hear what the offense has to say.
Q Okay. And going to -- to your mom and your brother, your alibi witnesses, you said that Mr. Loy did ultimately speak to both your mom and your brother; is that correct?
A That's correct.
Q Okay. And what was his reasoning, as you know it, for not calling them as witnesses at you trial?
A He said they wouldn't believe him because there were my family and juries expect families to lie for you.
Q Okay. So he did explain his reasoning for not wanting to call them; is that correct?
A That's correct.
Q Okay. And I believe you testified earlier that if your mom testified, the state could have also asked her about your prior record, as she turned you in for the other

crime?
A Yeah.
Q Okay.
MR. LIMBAUGH: Moment's indulgence, Your Honor?
THE COURT: Yes.
Q Going to the mistrial, where Mr. Loy moved for the mistrial and then you guys had a discussion about whether you wanted that or to proceed, you did testify that it was your decision to proceed with the trial; is that correct?
A Yes.
Q Okay.
A He had told me I needed to go along with -- with it so the judge would, you know, basically be a little more lenient and understanding.
Q Okay. And I believe you testified -- and correct me if I'm wrong -- that he discussed with you that you were the one in jail and you were the taking the risk, so it's your decision, correct?
A That's correct.
Q Okay. And you decided to proceed, correct?
A That's correct.
Q Okay. And can you -- do you mind explaining again to me your issue with the DNA testing that was done on the money?
A Yeah. Sure. The DNA expert swabbed the money and

then -- and he swabbed the blood. He said he tested for the presence of blood; it came back positive for being -- for being blood.

But he couldn't tell you specifically of any DNA developed -- the -- excuse me -- the DNA profile developed from the blood. He said that he ran a touch-DNA test, meaning your DNA can get on anything that you touch. So that's where he got the DNA from, just off the regular swab of the dollar bill but not off of the blood.

Q Okay. And the touch DNA that was found, which would've been fairly recent, was of the victim; is that correct?

A Yes.

Q Okay.

MR. LIMBAUGH: A moment's indulgence, Your Honor?

THE COURT: Sure.

(Off the record briefly.)

MR. LIMBAUGH: I believe that's all I have for this witness ---

THE COURT: All right.

MR. LIMBAUGH: --- Your Honor.

THE COURT: Redirect?

MS. SARJI: None, Your Honor. Thank you.

THE COURT: All right. Okay. Come on back down at your table.

THE WITNESS: Thank you.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. Call your next witness, please.

MS. SARJI: Yes, Your Honor.

(Off the record briefly.)

MS. SARJI: I am going to call -- forgive me.

THE COURT: That's okay.

MS. SARJI: I'm going ---

THE COURT: Take your time.

MS. SARJI: --- to call Janah Hurell. And I just need to step out to -- to get her really quickly.

THE COURT: No problem.

(Off the record briefly.)

(Whereupon, the witness came forward.)

THE COURT: Yes, ma'am. Come on this way.

THE WITNESS: Okay.

THE COURT: Thank you.

DEPUTY CLERK OF COURT: Please stand right there for me. Please raise your right hand. State your full name for the record.

THE WITNESS: Janah Ruth Hurell.

JANAH HURELL, having been first duly sworn, testified as follows:

DEPUTY CLERK OF COURT: Thank you and have a seat,

please.

THE WITNESS: (Complied.)

DEPUTY CLERK OF COURT: Now, make sure you speak into the microphone.

THE WITNESS: Okay.

THE COURT: Your witness.

MS. SARJI: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. SARJI:

Q Ms. Hurell, what is your relationship to Tashon?

A I'm his mother.

Q And back in April of 2014, was -- was Tashon living in Atlanta at that point?

A He was at my ---

Q Well, at the time of this incident, do you ---

A No.

Q --- recall whether ---

A At my house ---

Q He ---

A --- in Summerville.

Q He was at your house in Summerville?

A Yes.

Q And do you -- tell me how you recall that night specifically, the night of the incident.

A The night of the incident, I just recall Tashon on the

phone in the living room. My other is in the bedroom, and I was in my bedroom. We have two bedrooms with one bed in the other bedroom.

Q And was ---

A And ---

Q --- was Tashon just visiting from Atlanta?

A Yes, he was.

Q Okay. And so you -- the two bedrooms that you had in your home, did your other son live with you?

A Yes.

Q Okay. And what is his name?

A His name is Tramaine Hurell.

Q Okay. And so y'all were all just kind of in the house that night?

A Yes. We was communicating, talking, and laughing. And then Tramaine went to bed around -- I guess around about 9, 9:30, something like that. And I was in my bed and sitting up. And Tashon would always wait till Tramaine go to bed to fall asleep so -- because at that time, I had just moved there. I didn't have any furniture there, other than the beds.

And he would wait for Tramaine to go to sleep. And then he'd go and he'd get in the bed with Tramaine. So that night he was in the bed with Tramaine. And ---

Q Okay.

A --- then, I also remember, I guess around about 12, 12:30, something to 1, my daughter called and said that the police were at her house and said there was a robbery at the gas station.

So I was, like, "Oh, really?" I said, "Well, let me wake your brothers up. We can go to you or come down there."

She said, "Yo, don't bother; don't bother come down here. I'm all right. I just wanted you to know."

I said, "Well, your brothers in the bed, sleeping." And that's where Tashon and Tramaine were in the bed, sleeping. But I went in there and I woke them up.

And I said, "Well, Tashima said that the gas station down the street got robbed." And, you know, I just told them what had happened. And she said that the police officers were down there checking her house, saying they found something on her porch or whatever.

And they wanted to go down there. I said, "Well, no. Tashima said she was all right. Let -- we'll go down there in the morning."

So the next day, we went down there that morning and detectives and them came and was questioning us and everything. And we just told them we don't know what happened. And I told them, "Well, we all was at [redacted] [redacted] Lane," because Tashima lives at Thornhill Road.

Q Is -- is the place where you live and the place where Tashima lives, is that walking distance or would you have to drive to get there?
A You have to drive to get there.
Q And did Tashon have his own car at that point in time?
A No. He never owned a vehicle.
Q And what kind of car did you have at that --- at that time?
A I had a -- a white -- oh, what's the name of the car?
Q You don't even remember?
A I remember. I just can't place it now, because I have a new vehicle now. But it was a Pontiac.
Q Okay.
A A white Pontiac.
Q And ---
A That's right.
Q --- did -- the night when you went in to go after -- when you got the call from Tashima ---
A Yes.
Q --- and you went to go wake the boys up, were the boys both sleeping at that point?
A Yes. They both were asleep. Yes.
Q Okay. And did you hear either of them get up and leave during the night?
A Oh, no. No one left during the night.

Q Did you ever tell Mr. Loy what you've told us here about where Tashon was that night?

A Yes, ma'am. I want to his office. I talked to him and told him that -- where Tashon and Tramaine were home in the bed with me. And I also told him what happened that night, as far as getting a phone call and all of that.

And then I said -- well, I -- he -- he said -- I said, "I can testify to that."

And he said, Well, they wouldn't do -- jury or no one would believe me because I was his mother and most times mothers take up for they sons. I said, "Well, I wouldn't take up for my son. Because if I know my kids are in trouble, I myself would personally walk them in there," which I have done before with Tashon, with Tramaine, any of them.

And he said, "Well, he don't have to prove -- he don't -- it's not for -- really for him to prove Tashon's innocent. It's for them to prove Tashon's guilty."

So he said no; he didn't -- couldn't use me to be a witness.

Q Okay.

MS. SARJI: Court's indulgence, Your Honor?

THE COURT: Yes.

(Off the record briefly.)

Q When you all went to -- to Tashima's the next morning

A Yes.

Q --- after, did -- did the officers ask you anything that you found peculiar that -- that -- that morning? Had they already researched your sons at that point?

A Oh, you -- I'm pretty sure they researched him. Yes, ma'am.

Q Did they ask you which ---

A They ---

Q --- one of your sons had just ---

A That would ---

Q --- gotten ---

A --- that'd been here -- that just got out of prison. Yes, ma'am.

Q Okay.

(Off the record briefly.)

MS. SARJI: I don't have anything further at this point, Judge.

THE COURT: All right. Cross-examination?

MR. LIMBAUGH: May it please the Court, Your Honor?

THE COURT: All right.

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q What time did you go to sleep the night of this incident?

A I guess I went to sleep around about 4 -- 3 or 4 in the morning.
Q Went to sleep at 3 or 4 in the morning?
A Yes, sir.
Q To ---
A I stays up late at night ---
Q Quite -- so you're ---
A --- watching TV and -- yeah.
Q Okay. So you didn't go to bed around the time that the ---
A No. I ---
Q --- boys did ---
A --- was in the bed, but I didn't go to sleep.
Q Okay.
A Yes, sir.
Q So you're saying that he got in the bed with Tramaine around 9 or 9:30?
A No, sir. He got in the bed with Tramaine around about -- I'll say about 10:30, eleven o'clock, something like that. Somewhere between 10 and 11, he was -- got in the bed with Tramaine.
Q Okay. And you had a white Pontiac ---
A Yes, sir.
Q --- as best you can -- okay.
To the best of your memory, where were the keys to

that white Pontiac kept?

A In my room on my dresser.

Q Okay.

MR. LIMBAUGH: That's all I have for this witness, Your Honor.

THE COURT: Any redirect?

MS. SARJI: Nothing, Judge. Thank you.

THE COURT: All right. Is this witness under subpoena?

MS. SARJI: She is not.

THE COURT: Okay.

MS. SARJI: But we would ask that she be allowed to remain in the courtroom ---

THE COURT: If she wishes.

MS. SARJI: --- if she wishes.

THE COURT: If she wishes. All right.

You may step down. You may be excused from the witness stand.

(Whereupon, the witness exited the witness stand.)

THE COURT: Call your next witness, please.

MS. SARJI: Thank you, Your Honor. I'm going to call Tramaine Hurell.

(Off the record briefly.)

(Whereupon, the witness came forward.)

DEPUTY CLERK OF COURT: Stand right here for me.

Please raise your right hand. State your full name for the record.

THE WITNESS: Tramaine Hurell.

TRAMAINE HURELL, having been first duly sworn, testified as follows:

DEPUTY CLERK OF COURT: Thank you and have a seat, please.

THE WITNESS: (Complied.)

DEPUTY CLERK OF COURT: We need you to speak into the microphone, okay?

THE WITNESS: Okay.

THE COURT: And just so we are correct, how do you spell Tramaine?

THE WITNESS: T-r-a-m-a-i-n-e.

THE COURT: Thank you. Your witness.

MS. SARJI: Thank you, Your Honor. May it please the Court.

DIRECT EXAMINATION

BY MS. SARJI:

Q Mr. Hurell, what is your relationship to Tashon?

A That's my brother.

Q Is he your older brother or younger brother?

A My older brother.

Q And were you -- you were aware that he went to trial that resulted in this conviction?

A Correct.
Q Were you actually present at the trial?
A Yes, I was.
Q Who had subpoenaed you?
A The prosecution.
Q And did you -- did they ever call you in to testify?
A No.
Q But you were here and available to testify during the whole trial; is ---
A Yes, ma'am.
Q --- that right?
Did Mr. Loy -- did you talk to Mr. Loy about what happened with Tashon?
A Yes, briefly.
Q Okay. What did you tell Mr. Loy?
A I told him that my brother and I shared a bed and he was home sleeping during the commission of that crime and that he didn't do it.
Q Okay. Do you remember what time that you went to bed that night?
A It was about -- I'd say about ten o'clock.
Q And do you remember -- how did Tashon get over to your mom's house?
A I believe someone dropped them off.
Q Okay. Did you see who dropped him off?

A No, I didn't see who ---
Q Okay.
A --- dropped him off.
Q Okay. And what do you remember -- you said that you went to bed. Were you already asleep at the point that Tashon came and got in the bed?
A Yes, softly sleep and ---
Q So were you aware of him getting into the bed next to you?
A Yes, ma'am.
Q Do you -- can you say what time that was?
A I'd say -- no. I can't remember for certain. But I know it was about eleven o'clock.
Q It was after you had gone to bed?
A Yeah, after I went to bed. He -- he usually comes in the bed after me.
Q Are you a light sleeper?
A Yes.
Q If Tashon had gotten up out of the bed that night and left the apartment or the house for any reason, do you believe that you would have woken up?
A Yes, ma'am.
Q And did you tell -- you told Mr. Loy that Tashon was sleeping in the bed with you that night. Did you tell him you would be willing to testify to that during the trial?

A Yes, ma'am.
Q And what was Mr. Loy's response to you?
A He -- he didn't want -- he didn't want me to testify, I believe, for -- because he said that it was the defense -- the state's choice to try to prove that he's guilty, rather than him try to say that he's innocent.
Q So was that before the trial ever started that he told you that ---
A Yes.
Q --- nope, you don't need to come?
A Yes, that was before the trial started. I was at the public defender's office because I was there seeing a public defender myself, and I stepped in and spoke to Mr. Loy.
Q Okay. Do you recall that night getting woken up by your mother?
A Yes, ma'am.
Q Can you tell us about that, please?
A She woke me up and she was saying that the police was at my sister's house, saying that something had happened and stuff and that they found something on her porch or that -- and they believed that it be a dollar bill of some sort with blood on it.
Q And so did -- were you -- was on Tashon in the bed with you at the point when your mom came in to wake you up?

A Yes, ma'am.
Q And was he asleep? Like, were y'all both woken up by your mom?
A Yeah, we was both woken up.
Q And after -- did y'all go back to sleep after your mom left?
A Yes, ma'am.
Q Okay. And did you go back over to your sister's house the next morning or no?
A Next morning? No.
Q Okay.
(Off the record briefly.)
Q Okay. Was -- did the -- did the solicitor talk to you before the trial in the case about you coming in to testify?
A They subpoenaed me.
Q Did they offer you a plea deal if you would testify against your brother?
A To try to get my kidnapping charges dropped?
Q Yes, sir. Did they offer that to you?
A Yes, ma'am.
Q Did you tell them you couldn't because you were with him when this was happening?
A Yes, ma'am.
(Off the record briefly.)

MS. SARJI: I don't have any further questions, Your Honor. Oh, I'm sorry.

THE COURT: All right. Cross-examination?

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q So you testified that you were asleep when you brother got in the bed with you; is that correct?

A Yes, sir.

Q Okay. And that typically, when he would get in the bed to go to sleep, you would already be asleep, correct?

A Yes.

Q Okay. And so your testimony at trial would've been that your brother got in the bed and you knew that while you were sleeping?

A Yes. I -- I'm a light sleeper. So when -- we -- we slept on a full-size mattress on the floor together. So have you ever slept on a full-size mattress with another grown man? Probably not, right?

So depending on our weight, so when he gets in the bed, it shifts. And it shifts the springs, and it -- it disturbs my sleep and I wake up. I noticed -- noticed him getting in the bed. So I just roll over and go back to sleep.

Q Okay. And so the solicitor offered you a -- what was the deal again?

A I had a kidnapping charge.
Q Uh-huh.
A And they wanted to -- to help me get that dropped, essentially for testifying.
Q Okay.
THE WITNESS: You said something, Mr. Loy?
MR. LOY: (Shook head from side to side.)
THE WITNESS: Oh, I thought I heard him say something.
THE COURT: You don't need to worry about Mr. Loy. You need ---
MR. LIMBAUGH: Moment ---
THE COURT: --- to answer ---
MR. LIMBAUGH: Moment's indulgence ---
THE COURT: --- the questions that ---
MR. LIMBAUGH: --- Your Honor.
THE COURT: --- are posed to you, sir, okay? All right.
MR. LIMBAUGH: That's all I have for this witness, Your Honor.
THE COURT: Okay. Redirect?
MS. SARJI: None, Your Honor. Thank you.
THE COURT: All right. And is this witness under subpoena?
MS. SARJI: No, ma'am. But ---
THE COURT: All right.

MS. SARJI: --- if -- if he would like to stay, I would like for him to be able to as well, if he the wishes.

THE COURT: All right. Do you need him sequestered for any reason?

MR. LIMBAUGH: No, Your Honor.

THE COURT: Very well. You may step down from the witness stand, sir.

(Whereupon, the witness exited the witness stand.)

MS. SARJI: I will call Julia Piper Simmons to the stand, Judge.

THE COURT: All right.

(Off the record briefly.)

(Whereupon, the witness came forward.)

DEPUTY CLERK OF COURT: Please stand right here for me, please.

THE WITNESS: (Complied.)

THE COURT: Please raise your right hand. State your full name for the record.

THE WITNESS: Julia Marie Ann Piper Simmons.

JULIE PIPER SIMMONS, having been first duly sworn, testified as follows:

DEPUTY CLERK OF COURT: Thank you. Have a seat, please. I need you to speak into the microphone, okay?

THE WITNESS: Okay.

THE COURT: Yes, ma'am. Your witness.

MS. SARJI: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. SARJI:

Q Ms. Piper Simmons, what is your relationship to Tashon?

A I was his girlfriend around the time of the incident.

Q Okay. So back in -- I guess it was -- 2014 you were dating Mr. Hurell?

A Yes, ma'am.

Q And do you recall specifically the day of this incident?

A No, ma'am.

Q Okay. Do you -- you don't recall having dropped him off at his mom's house on the day that this happened?

A Okay. I misunderstood what you said. Yes. I do recall that part.

Q Okay. Can you tell me how you how -- how you recall that part, please?

A He came over. He come over right around the dusk of dawn; came and spent some time with me. I was in the middle of a video chat with a friend, and that's how I can remember that day.

He came over. I was cooking dinner. He didn't stay very long. And then I fix him a plate of food, and I drove him to his mama's house.

Q And what kind of car did you have at the time?
A At the time I had a 2001 gold Acura SUV.
Q And did Mr. Hurell ever drive that car?
A Yes, ma'am.
Q You didn't have a white Mustang as well, did you?
A No, ma'am.
Q How -- do you remember what time it was about when you dropped him off at his mom's house?
A I want to say anywhere between, like, 8 and 10, somewhere between them times.
Q Was it dark out already?
A It -- it was a little light when he -- when he showed up, and it was dark when we left.
Q Okay. Did you go inside with him to his mom's house?
A I don't recall that. No.
Q Okay.

(Off the record briefly.)

MS. SARJI: I don't have any other questions, Judge.

THE COURT: All right. Cross-examination?

MR. LIMBAUGH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q So the best of your memory, you dropped him off at his mom's house somewhere between eight and ten o'clock?
A Yes, sir.

Q Okay. But you have no specific memory of when that would've been between -- in that time frame?
A Not with -- not with that time. I just know it was dark outside.
Q Okay. And you were Mr. Hurell's girlfriend at the time?
A Yes, sir.
Q Okay.
MR. LIMBAUGH: That's all I have for this witness, Your Honor.
THE COURT: Redirect?
MS. SARJI: Just very briefly.

REDIRECT EXAMINATION

BY MS. SARJI:
Q So when you -- you dropped Tashon off at his mom's house that night, was that the first time that you had dropped him off there?
A No.
Q Had you dropped him off there numerous times in the past?
A I did. He spent a lot of time at my house. If he wasn't using my vehicle to go home, I stayed home. He was using mine. Majority of the time, if he wanted to go home, I would drop him off.
Q Okay.

MS. SARJI: I don't have any other questions, Judge. Thank you.

THE COURT: Recross?

MR. LIMBAUGH: Briefly, Your Honor.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. LIMBAUGH:

Q How often was Mr. Hurell in town at that time?

A He spent a majority of time with me.

Q Okay.

A He was with me at my place the majority of the time.

Q Okay. Because there's been some testimony that he was living at the time, but ---

A He did. He -- he did -- he did leave for a brief moment. And he was at my place when he left. And when he came back, he came back to my place.

MR. LIMBAUGH: Okay. That's all I have, Your Honor.

THE COURT: All right. And is this witness under subpoena?

MS. SARJI: Yes, Your Honor.

THE COURT: And is she free to leave?

MS. SARJI: Yes, Your Honor.

THE COURT: All right.

MS. SARJI: Thank you.

THE COURT: You are released from your subpoena.

I gather there's no objection?

MR. LIMBAUGH: No objection, Your Honor.

THE COURT: All right. Very well.

THE WITNESS: Thank you.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. Call your next witness.

MS. SARJI: Thank you, Your Honor. We'll call Tashima Hurell.

(Off the record briefly.)

(Whereupon, the witness came forward.)

DEPUTY CLERK OF COURT: Hi.

THE WITNESS: Hello.

DEPUTY CLERK OF COURT: If you'll stand right here for me, please.

THE WITNESS: Okay.

DEPUTY CLERK OF COURT: And please raise your right hand. State your full name for the record.

THE WITNESS: Tashima Alish Jones.

TASHIMA JONES, having been first duly sworn, testified as follows:

DEPUTY CLERK OF COURT: Thank you. Have a seat, please.

THE WITNESS: (Complied.)

DEPUTY CLERK OF COURT: I need you to talk into the microphone.

THE WITNESS: Okay.
THE COURT: And how do you spell your last name?
THE WITNESS: J-o-n-e-s.
THE COURT: Jones? Okay.
THE WITNESS: Yes, ma'am.
THE COURT: Your witness.
MS. SARJI: Thank you, Judge.

DIRECT EXAMINATION

BY MS. SARJI:

Q And I apologize. I called you Tashima Hurell. Is ---
A No.
Q Okay. Is Hurell your maiden name?
A No. Jones is my maiden name.
Q Okay. And what is your relationship to -- to -- to Tashon?
A He's my brother.
Q Okay. And back in 2014, where you living? Do you recall?
A 1225 Boone Hill Road, Apartment G4.
Q All right. And can you tell us a little bit about how those apartments were situated? Was it, like, a duplex? Was it different floors of apartments?
A There are different floors. You have different buildings, if I recall. I think it's maybe eight apartments in each building: four downstairs, four

upstairs.
Q Was -- the apartment you were in, G4, was that a downstairs apartment?
A Yes.
Q And did you have a -- sort of a little porch area outside of your apartment?
A Yes.
Q And was there a railing or something around that porch area?
A A balcony railing.
Q And across from you, like, would -- would your front door have opened onto a breezeway that -- and there was another apartment that mirrored yours directly across from you?
A In the -- the front door?
Q I believe was the front door, yes.
A Yes.
Q And do you know the number of that apartment that was directly across from you?
A No, ma'am.
Q Does G1 ring a bell?
A Yes ---
Q Do you ---
A --- ma'am. They -- G -- all the 1s and ---
MS. SARJI: Sorry.

A --- 4s are downstairs. And then, they go up.

MS. SARJI: I'm ---

MR. LIMBAUGH: I just have to make the objection, Your Honor: leading.

MS. SARJI: It was ---

THE COURT: Yes.

MS. SARJI: --- quite leading. Yes, Your Honor. I'll withdraw the question.

Q And so at the time that you lived in Apartment G4 -- do you still live there now?

A No.

Q And at the time that you lived there, who lived there with you?

A Just myself and my son.

Q And how old is your -- was your son the time?

A That was five years ---

Q Do you remember?

A --- ago, so he would've been about 3 -- about 4. Yeah.

Q So he was a young ---

A Yes.

Q --- child?

And did you have any pets or anything like that?

A Yes. I had a -- a Yorkie.

Q Is that a dog?

A Yes, a dog. Sorry.
Q And is that a large dog?
A No. She's ---
Q No?
A --- a small little Yorkie shire.
Q Okay. Did she bark a lot?
A She -- yes.
Q When would she bark?
A There wasn't never was a time when she didn't bark, really. She's known -- they are know for yappers.
Q Okay. And so when you would go to bed at night, would the dog continue yapping through the night?
A No. No. Only time she normally barked, if there were movement or noise.
Q Okay. And the night of this incident that your -- your brother got convicted of, were you at home that night?
A Yes, I was.
Q Was on Tashon with you at your apartment?
A No, he was not.
Q Did on Tashon have keys to your apartment?
A No, he did not.
Q Is the balcony -- the -- the door to -- to the porch, is that something and -- and -- that goes to your -- not your front door, but the door from the porch into your apartment, is that something that requires a key to open?

A No. It's only open from the inside of the home.

Q Okay. And tell me what happened that night, as far as the police coming and -- and knocking on your door.

MR. LIMBAUGH: Your Honor, if I may interject, can we have a brief consultation at the bench?

THE COURT: Sure.

(Whereupon, a bench conference was held off the record.)

THE COURT: Ms. Jones?

THE WITNESS: Yes.

THE COURT: I don't want you to go reading anything into this, okay?

THE WITNESS: Okay.

THE COURT: I really don't.

THE WITNESS:

THE COURT: And in other words, I don't have some sort of inside information or anything else, okay?

THE WITNESS: Okay.

THE COURT: And -- and let me tell you what just happened in that conversation. I'm going to just lay it out to you.

THE WITNESS: Okay.

THE COURT: Mr. -- Mr. Limbaugh approached, obviously, with Ms. Sarji. And he -- this is what he said: I did not realize that Ms. Jones was going to be testifying. And it

is our practice, through the attorney general's office, that if someone testifies at a PCR that testified at trial, that it -- we are inclined to appoint those people counsel for the purpose of having that lawyer just share with the witness that testified at the trial and going to testify at the PCR that the -- and what they -- and what the attorney general wants to have happen ---

THE WITNESS: Uh-huh.

THE COURT: --- is for the lawyer that's appointed to tell the person testifying at the PCR that they testified once under oath ---

THE WITNESS: Uh-huh.

THE COURT: --- and if they testify in a different manner at the PCR, that they subject themselves to the possibility of a perjury charge, just because you're under oath both times.

THE WITNESS: Uh-huh.

THE COURT: You see what I'm saying?

THE WITNESS: Yes.

THE COURT: Don't read --- I don't want you to read anything into that. But Mr. Limbaugh was just -- he is concerned because it's their practice ---

THE WITNESS: Okay.

THE COURT: --- through the attorney general. And he's concerned that he didn't know you were testifying; no

one's been -- no one's been appointed to represent you to tell you that.

THE WITNESS: No.

THE COURT: I just told you that.

THE WITNESS: Yes, ma'am.

THE COURT: You have any questions?

THE WITNESS: No, ma'am.

THE COURT: Do you need to talk to a lawyer about that?

THE WITNESS: No, ma'am.

THE COURT: All right. Very well.

THE WITNESS: Okay. Thank you.

THE COURT: Thank you. All right. Very well.

MR. LIMBAUGH: Thank you, Your Honor.

THE COURT: Yes, ma'am. You may proceed.

MS. SARJI: Thank you, Judge.

Q Okay. I lost my place little bit, Ms. Jones. And I think it was asking you about whether ---

(Off the record briefly.)

Q Okay. So -- so the door to your balcony was only able to be opened from the inside?

A Yes.

Q And Tashon was not in your apartment that night when you went to bed?

A No, he was not.

Q If -- and are you aware -- when the police came, what happened when the police game? They knocked on your door and -- and what happened?

A Then they knocked on the door. They first ordered me to put my dog up, because she was barking. So I did that. And they told me that a crime had happened and it was said that someone came in through the door to my balcony.

They asked was anyone here. And I told them just myself and my son. And they asked was I sure. Yes.

Then I gave permission to look around, because I asked if someone was on my porch, I -- I need to know. I live here by myself and my son.

And they looked around. And then they left and said that if I knew anything, just to give a call or hear anything.

Q So your dog barked even when just the police came and knocked on your door?

A Yes.

Q Was it a -- the dog barking, is that enough to wake you up?

A Yes.

Q And did -- did you hear the dog barking or anyone coming onto your porch at all that night before the police got there?

A No.

Q Did Mr. Loy talk to you at all about what -- what you're talking about here today, in terms of your -- what happened that night or the dog barking and nobody came in? Did Mr. Loy talk to you about that stuff?

A No.

Q Did Mr. Loy ever talk to you about whether Tashon had been in your apartment that night?

A No.

Q Did anybody from the defense ever come and speak to you, an investigator or someone from Mr. Loy's office?

A No.

Q At the trial of the case, did Mr. Loy ask you any of these questions that I'm asking you here today?

A No.

Q Did Mr. Loy ever ask you about a white Mustang or a Ford Mustang at your apartment complex?

A No.

Q In terms of -- do you know the fella that the police talk to that said that somebody came into the downstairs apartment?

A No, I don't.

Q Okay. So you -- did you ever talk to him about any of this?

A No.

Q Okay.

MS. SARJI: Court's indulgence, Your Honor?

THE COURT: Okay.

(Off the record briefly.)

MS. SARJI: I don't have any further questions of this witness, Judge.

THE COURT: All right. Cross-examination?

MR. LIMBAUGH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q So your -- the door to the balcony can only be opened from the inside?

A Yes.

Q Okay. Do you recall about what time you went to sleep that night?

A No, I don't.

Q Know?

A (No audible response.)

Q Okay. Even early? late? anything?

A It wasn't late, because they knock -- I recall the time they knocked, but it was not late. It wasn't too early.

Q Okay. I mean, if you don't -- if you don't remember, that's fine. I was just curious if you had a memory of it.

Does your dog barking at people it knows?

A Yes.

Q It does? Barks ---
A Yes.
Q --- at everybody?
A Uh-huh.
Q Okay. And you gave the police officers permission to search your apartment?
A Yes.
Q Okay.
MR. LIMBAUGH: That's all I have for this witness, Your Honor. Actually -- my apologies.
THE COURT: That's okay.
Q So is -- how are the porches set up again on the apartments? So is it -- there -- is there a porch directly above yours and then yours below?
A Yes.
Q Okay. So the witness who testified would've been sitting essentially directly above your porch; is that correct?
A Yes.
MS. SARJI: Objection, Your Honor. I think that calls for speculation on -- on her part. She said she's never spoken to the man.
THE COURT: If she knows.
MR. LIMBAUGH: I'm just asking as to the layout of the apartments, Your Honor.

THE COURT: I understand.

MR. LIMBAUGH: I'll leave it there, Your Honor. Thank you. That's all I have.

THE COURT: All right. Redirect?

MS. SARJI: Nothing, Your Honor. Thank you.

THE COURT: And is this witness under subpoena?

MS. SARJI: No, ma'am.

THE COURT: All right. Very well.

You can come down. If you want to stay in the courtroom, that's fine.

THE WITNESS: Okay. Thank you.

THE COURT: Uh-huh.

(Whereupon, the witness exited the witness stand.)

THE COURT: Call your next witness.

MS. SARJI: Thank you, Your Honor. I will call Jay Stevens to the stand.

(Off the record briefly.)

(Whereupon, the witness came forward.)

DEPUTY CLERK OF COURT: Please stand right here for me. Please raise your right hand for me. State your full name for the record.

THE WITNESS: Jather Stevens.

JATHER STEVENS, having been first duly sworn, testified as follows:

DEPUTY CLERK OF COURT: Thank you. Have a seat,

please.

THE COURT: And how do you spell your first name when you're seated? Get seated first.

THE WITNESS: Okay. It's Jather, J-a-t-h-e-r.

THE COURT: Your witness.

MS. SARJI: Thank you, Judge.

DIRECT EXAMINATION

BY MS. SARJI:

Q Mr. Stevens, how do you know me?

A I've -- we've worked several cases together.

Q And you -- did -- have you involved in this case as an investigator for Tashon Hurell?

A Yes, ma'am, I have.

Q And in terms of how your investigation went, did you have a chance to review the record in the case?

A Yes, ma'am, I did.

Q And what is your background? If you could just give us a background of your qualifications.

A So I became a private investigator in 2010 doing a nature of -- variety of investigations, including criminal defense, domestics, civil litigation, that kind of thing. Prior to that I was law enforcement with the City of Myrtle Beach. Aside from a short time working the special-operations division, I went into plainclothes narcotics undercover work, working task -- excuse me -- task -- I

can't talk -- task forces with the DEA, Marshal's, ICE, that kind of thing, going after violent criminals, gangs, drugs, that kind of thing.

Q And are you a licensed private investigator the state of South Carolina?

A I am.

Q And so as part of your investigation in Mr. Hurell's case, did you start out -- how -- how did your investigation develop? Like, what -- what were you looking for?

A Well, the first thing I do is I read through the notes to kind of get familiar with the case and what happened with the case and -- and so on. Then I do a phone interview with the defendant to try to figure out what -- what his issues are, what he wants investigated that were not investigated, being that this is a PCR. It's not -- it's not a case going to trial.

But either way, after doing the consultation with him, I got -- became familiar with some of the issues that he had. And then, I go from there and start interviewing and witnesses and looking at the crime scene and basically trying to develop the case.

Q And did you have the opportunity to go to the crime scene or to the apartments in this case ---

A Yes, ma'am.

Q --- or both?
A Yes, ma'am.
Q Did -- you went to both?
A Yes, ma'am.
Q And can you tell me: Did you also try to look for whether or not there was a Ford Mustang that was registered to anybody at those apartments where his sister lived, Mr. Hurell's sister?
A Yes, ma'am.
Q Were you able to locate a Ford Mustang registered to the -- in the area where his sister lived?
A Yes, ma'am.
Q Where was it registered?
A It was registered to a Angela Blackwell. I believe her name today is Brunson, is the last name. At the time it was Blackwell. It was registered to her at the apartment G1, which is directly across the hall from Tashima's apartment, G4.
Q And what is your understanding of what the significance of a Ford Mustang being registered to that apartment across the hall from Ms. Jones would be?
A According to the police report and everything I read with this investigation was that the suspect, upon leaving the crime scene over at the Kangaroo, went to the apartment complex; apparently entered one of the apartments on the

first floor; then left the apartment; got into a Ford Mustang; left the apartment complex; came back in a Ford Mustang; went back into the apartment; came back out of the first-floor apartment; got back in the Ford Mustang; and then fled the scene, I guess, for the remainder of the situation.

Q So -- and -- and so -- so we -- you were able to confirm, though, that there was a Ford Mustang registered to somebody living in the -- the place right across from the sister?

A That's correct.

Q And was there anybody else that you were able to determine lived in that apartment, G1, right across from the sister?

A At the time there were a couple -- aside from Ms. Blackwell, there was a couple of black males. One, I think -- without my notes in front of me -- his last name was Rowe. You got my summary. I -- I can't remember if it's Andrew -- something. And then, there was Christopher Gastisse or ---

Q Gaddist?

A --- Gaddist -- both black males, both approximately the same age as the defendant.

Q Okay. And did you -- after you went -- was there anything that struck you about the location of the balcony

where the witness was versus where they say that somebody went in?

A Okay. I mean, so -- so there's -- there's -- there's several things kind of that -- that strike me odd with this whole thing. For example, I guess that at the outset when you first review these cases, you know, there's usually some kind of a witness that says, you know, the person came from here, they came from there, or -- my question initially was: How did the police end up at -- at -- at Tashima's apartment, you know, of -- of all the apartments? Because when you leave the -- I walked the trail.

So when you leave the apartment -- or -- excuse me -- leave the Kangaroo, you walk through a short grass trail; you walk across this very large parking lot. Then, you walk through a grass clearing. Then, you walk through some more woods. And then, you come into the apartment complex at -- at the, I guess, the corner of the apartment complex.

To get to her apartment building, you've got to pass two or three other buildings before you can get to her building. They were told, from what I gathered, was that a K-9 led them directly to her apartment, at which point they supposedly found this dollar bill on her porch. But the police reports indicate they didn't use the K-9; that they were going to use the K-9, but they put the K-9 up, because they didn't have enough officers for security perimeter to

allow use of the K-9.

So there was no K-9 that led them to her apartment directly. So that left the question of how did they go to her apartment. So now you come into what you're asking me about the witness upstairs in G8.

My understanding, going down there, looking at this place, going the trail, talking to people in that area, that trail is used frequently for criminal activity. It -- it's traveled, not even just for criminal activity. It's basically a -- a well-traveled route from that apartment complex to the Kangaroo, so much so they put fences up and they still continue to cut holes in the fence to traverse through those woods.

Therefore, to me, the police would be very well aware of that, so they would travel down that path back to the apartment complex. When they got back through the apartment complex, they're looking for the suspect. They encounter -- to me, they encountered the witness over G8 over -- Tashima's apartment, G4.

And he's out on the balcony, per his statement. "Did you see anything?" And he says, "Yeah. Somebody jumped the balcony in the floor apartment below me."

Now, and that's where you get into the whole Mustang and all that kind of stuff. Now, what you're asking specifically about the locations of the apartments, I gave

you a diagram in my summary. But the way departments are set up and the balconies are set up, there -- either side, there's breezeway between them. The balconies face out to the parking lot.

G4 -- G1 -- G8's directly above. If he's in G8, looking down, he's not really going to see, per se, anybody jumping the balcony into G4. If he's on G8, he has more of a line of ---

MR. LIMBAUGH: Objection ---

A --- sight ---

MR. LIMBAUGH: --- Your Honor: speculation as to what the witness would've seen from his apartment.

MS. SARJI: I think, Judge, he can testify to what his observations were, in terms of line of sight from going out there to the scene to these apartments.

THE COURT: He can talk about line of sight. But he can't testify to -- to what the witness would have seen.

Q Was there direct line of sight to the entry into the apartment directly below G8, namely G4?

A No.

Q Was there a line of sight that would have -- been from the G8 apartment down into the G1 apartment?

A Yes, ma'am.

Q If somebody had gone out there, another investigator from the public defender's office, or if Mr. Loy had gone

out to the apartment complex, do you believe -- is it your opinion that that would have been evident to him?

A Yes, ma'am.

Q Did you -- other than going out to those apartments, was there anything else that you did as part of your investigation to try to gather additional information in the case?

A Again, going back to walking through the trail, basically trying to recreate the steps of where the suspect ran, you know, how they got there or -- or -- or -- or fled from the scene of the crime to the apartment complex, if -- if you start from the apartment complex, which is where I started when I walked the trail, again, you come out of the woods. You come into a clearing. There's a church there. And then, it goes into, I believe, another little section of woods.

Then, it opens up into a very large parking lot. That very large parking lot is a parking lot for the Summerville Adult Community Education Center. Across the top of that building -- first of all, in the parking lot -- again, very large -- it has numerous light posts. And then, across the top of the building, I counted six security cameras aimed out into the parking-lot area.

Q Did you have opportunity to talk to anybody at the Summerville Adult Education Center as to whether those

cameras would have been active and in existence at the time that this armed robbery took place?

A Yes, ma'am, I did.

Q And did they tell you that there -- that there were cameras, in fact, at the time of this incident?

A Yes, ma'am. They said that the lights were out; the lights are on at night. The lights are very bright, and the cameras were in existence and functioning and record 24/7.

Q And would there have been a view from the cameras at the Summerville Adult Education Center that would have captured the suspect fleeing from this incident?

A In multiple angles. There's six cameras, all aiming at different angles to cover the entire span of the parking lot. So where they come out of the woods, there's cameras aiming there, as well aiming at every step along the way leading to the Kangaroo. So the entire expanse of the parking lot would have been covered, including the trail or path.

Because there isn't a trail or path. You come out the woods into the parking lot. And you're across the parking lot before you go to another section of woods right next to the Kangaroo. So they would've been wide open in the parking and in clear view of these cameras.

Q And did the folks that you talked to at the

Summerville Adult Education Center, did they indicate that anyone from the public defender's office or Mr. Loy himself had come to pull that footage from the security cameras?

A They said this was the first that they had heard of it and nobody had spoken to them.

Q Okay. Was there anything else that you felt about your investigation that was pertinent, that if another investigator had done at the time, it -- it would've given us a different picture of this case?

A Not other than what you've already heard from the witnesses that didn't testify.

Q Okay.

MS. SARJI: I don't have anything further, Judge. Thank you.

THE COURT: Cross-examination?

MR. LIMBAUGH: Nothing for this witness, Your Honor.

THE COURT: All right. Thank you. You can ---

THE WITNESS: Thank you, ma'am.

THE COURT: --- come back down.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. Call your next witness.

MS. SARJI: Judge, we have nothing further.

THE COURT: Okay.

MS. SARJI: Thank you.

THE COURT: Very well. Yes, sir, Mr. Limbaugh. Call

your first witness.

MR. LIMBAUGH: The state would call Mr. Loy.

THE COURT: All right.

(Whereupon, the witness came forward.)

DEPUTY CLERK OF COURT: Please raise your right hand. State your full name for the record.

THE WITNESS: John -- excuse me -- John Matthew Loy.

JOHN LOY, having been first duly sworn, testified as follows:

THE COURT: Your witness.

MR. LIMBAUGH: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LIMBAUGH:

Q Good afternoon, Mr. Loy.

A Good afternoon.

Q So I'm basically going to try and run those these allegations one by one, if that's all right with you. So let's start with the amended application. When -- that's the mistrial. So you -- you heard testify earlier -- testimony earlier that you discussed your initial motion for a mistrial with the applicant; is that correct?

A That's correct.

Q Okay. And what was some of the substance of that conversation, if you recall?

A Well, I made the motion for a mistrial. And I -- you

know, both at -- at the table, as well as in the hallway, I got the impression that the mistrial would be granted if we pursued it. But after I made the motion, then I asked the judge if we could take a break so I could discuss it with Mr. Hurell as to whether or not he actually wanted the mistrial. Just because he could have, it doesn't necessarily mean he would want it.

And as we described, he went downstairs; we talked about it. Ultimately, I did tell him, "You're the guy with your name at the top of the sheet, you know, sitting in the hot seat. So it's your call. You can" -- but -- and I would've given my opinion and my perspective.

He did not want a mistrial at that point. He said he thought that the case was going very well; that he had already been in jail for a -- a really long period of time.

We also discussed the fact that the state essentially had -- the -- the first case hung. And we won by a plurality, which was a Pyrrhic victory at best. But I think it was 8 to 4 voted for not guilty, is what I was told, where they ended up, is my recollection.

And the state, to their credit, I mean, they tried a -- they tried a different case. They came back; they changed their strategy. They presented evidence they didn't put in. It wasn't just a replay from the first case.

And part of what they did was they left out what Mr. Hurell and I thought was the most compelling piece of evidence against him. And when we got past that point in the trial and we said, "Oh, we -- they're not doing that," we were both, like -- like, relieved at the table. We were not going to have to argue with this.

And even at that point, he's like, "They're still not doing this thing, you know. Let's -- let's go while that's not the form."

We discussed it. His presentation is not inaccurate that I would've advised him of -- you know, the way it goes, I would've advised him, "I still don't think you're getting a bond with the history that you've got. You'll be back in jail. We can get the mistrial, I think. It's up to you."

And as he indicated, I would have told him, you know, but -- "Your call. What are we going to do?" I would've given him my best insight.

Q Okay. And you didn't try and coerce him or anything of that nature, correct?

A No. No. I -- I didn't -- I -- I certainly wouldn't have tried to coerce him. I had no -- I mean, my interest was purely professional.

Q I believe you also renewed your motion for a mistrial as the jury was deliberating; is that correct?

A Yes. I'm ---
Q Okay.
A --- I'm sorry. Yes, I did.
Q Okay.
A And should I ---
Q Elaborate, please, if you would.
A As the original mistrial was the solicitor called -- I -- I think it's Tashima -- called the defendant's sister to the witness stand. And he essentially caught her cold, because she had refused to talk to him prior, is my understanding. He had not talked to them, so he just put her up there and went -- and went.

And at one point, he asked a question which elicited the response, something along the lines of, "Are you asking about the last time he did time or when he got back from doing time before," something that was a clear implication that the defendant had been incarcerated in the past.

I made the motion. And then, it went as I described: that as we went answers and we withdrew it. However, I did -- and I put it on the record at that point. I said, "Judge, we're going to withdraw the motion, but I would reserve the right to renew it if there's something cumulative comes up." I don't want to just abandon this. If something cumulative comes up, I would want to bootstrap it in and make a motion if it -- the totality was such that

I thought should be made.

And he said, "Yes, we should do that."

And then, during the course of deliberations, the jury sent out a note that said: "Did she say the last time he was doing time" or something that clearly indicated they were discussing that particular piece of inadmissible evidence.

And at that point, I renewed the motion. And I said, "Look, they're back there talking about it. We didn't get past it. If there was a curative, it didn't work. I would renew my motion, based on both the prior misstatement on -- or a misstep, as well as adding this in with it, and move for a mistrial."

Q And correct me if I'm wrong, but I also believe maybe moments, if minutes later, the jury sent out a note almost instantaneously that says: "Never mind; don't worry about it," ---

A It ---

Q --- something to ---

A No. They ---

Q --- that effect?

A --- they sent out a note: "Please disregard the note," exclamation mark.

Q Thank you. I'll move on. I think we've covered that thoroughly at this point.

What investigation -- independent investigation did you do in this case?

A Not a whole lot. I -- I met with the defendant. I discussed the situation and allegations, etc., with his family. I went through the paperwork, all of the discovery. I looked at the videos and pictures, etc. I spoke with his family, as they indicated the -- that I did.

I -- you -- you know, I -- I think I went to -- I -- I think I went to the apartment complex. I'm fairly sure that I did.

But we tried the case twice. And there was a lot of videos shown during the course. It's possible I've just got the assumption or the feeling I was there because I -- I've watched the videos and seen it done that way.

I believe I went to the apartment complex, but I didn't go knock on doors or anything of that ilk. I mean, I tried basically the case that we got.

Q Okay. And to the best of your knowledge, you got a full and complete discovery from the prosecution and shared and reviewed that with the applicant?

A Yes.

Q Okay. Do you recall about how many times you met with Mr. Hurell before the trial?

A Well, we tried the case strike twice. I would have gone through the full trial preparation for the first

trial. Then we would have went through what had happened subsequent to that. I -- I don't specifically recall.

I mean, I -- I -- there was never a complaint that he and I did not have a line of communication. And he ---

Q So ---

A --- you know, I met with him as much as I thought was necessary to prepare his case for trial.

Q So there was some comment -- testimony earlier about these -- the audiotape matches, it -- Mr. Hurell's phone conversation with a detective being recorded and then that being sent off to be matched to the surveillance video?

A Sent ---

Q Do you mind ---

A Sent to the FBI.

Q To the FBI, correct. Do you mind telling me a little bit more about that situation?

A No. What happened was they -- Mr. Hurell, the defendant, had made a phone call to Detective Weaver subsequent to the initiation of investigation and the interview of Mr. Hurell's brother.

And he essentially said, "My brother's in college. He's a good kid. He's a nice guy. You don't need to be interviewing him; you don't need be messing with them. You know, he -- he -- he's not a guy would be involved in something."

That was the gist of the conversation. He was saying, "Leave my family alone."

Q Uh-huh.

A So Summerville Police Department took that recording, their recording of that conversation, as well as the recording of the -- well, it wasn't a conversation, but the words that were spoken during the course of the robbery that was the subject of the trial. Because they -- the person who robbed the -- the Kangaroo store did say some things, you know: "Give me the money," or, you know, "You know what time it -- you know what it is."

There were various things they said that were audible. I mean, you can make out the words. And they sent them for a match.

The FBI returned the -- the -- the -- the items and said, you know, it's too distorted or the camera's too far away; we can't get clear enough to say that this is a match or -- or -- or not.

What we did with that at first trial -- and I felt like was advantageous -- because they didn't bring the FBI guy. But as a course of a matter of talking with the police officer about his investigation, I asked, "And isn't a fact that you had these recordings? Isn't it a fact that you listened to them? Isn't it a fact you sent it to the FBI so they could do the analysis? Don't they have all

this computer-analysis stuff? Blah-bidy-blah."

I don't believe I was able to get into the -- finding would've been hearsay. I did want to anyway. I left it there.

And then, I was just able to argue and close: "Don't you think if there was anything the FBI had produced, they've be down here, giving it up? That's why they're not here."

In the course of the second trial, the -- and I told you that they had tried the case differently. They did not introduce that tape of an Mr. Hurell's conversation with Detective Weaver. For whatever reason, they chose to leave that out.

Well, I have some idea of the reason. But for various reasons, they -- they chose to leave that out. So there wasn't a -- there was not testimony as to a voice match, etc. And to my recollection, the FBI did not exclude Mr. Hurell and say it couldn't have been his voice; it's just that we don't have an opinion.

First trial I was able to spin that just by leading up to the point that the table went -- stuff to the FBI. But the most critical point, as far as that goes, is when I talked earlier about not wanting the -- the mistrial. And when I said it was because there were things they weren't doing in this case they had done, this is the tape. I

mean, the fact that they pulled this tape, Mr. Hurell and I agreed. And we discussed it a good bit. We thought was the most compelling evidence that they had.

I did -- you know, and I told Mr. Hurell, if I was prosecuting the case, I would've just lined those two hits and -- play the one in the store, play the phone call; play the one in the store, play the one in the phone call. Because it sounds exactly like you, which is another reason we really were very hesitant or reticent about the idea of him testifying.

The fact that we had gotten past Detective Weaver's testimony, the fact that the tape-recorded conversation had not been produced, we felt like strengthened our case tremendously, even over and above what we had the first time out where were, like, 8 to 4 or 10 to 2, as it was said.

Q So with that in mind and you wanting to basically have the applicant's voice play as small of a role in this case as possible, is it fair to say that the case was fairly circumstances from the state's side?

A I thought it was extraordinarily circumstantial, and I thought it was a weak case. And I -- I thought it should have gone differently on appeal.

Q Okay.

A But yes. I'm sorry. I've -- I editorialized. It was

a circumstantial case. Yes.

Q Okay. And along those lines, you discussed with Mr. Mr. Hurell his right to testify and the strategy behind him either testifying or not, correct?

A Yes. I would've done that more than once.

Q Okay. And I believe Mr. Hurell testified earlier that it ultimately was his decision not to testify; is that correct?

A Yes. It would -- I -- I -- I can't stop the defendant from testifying, even under extraordinary circumstances. It's his decision. I'm -- I wouldn't bet my license by depriving him of his rights speak in his own behalf.

Q What would your advice have been on him testifying? I believe you mentioned it in passing just a minute ago. But did you want him up there on the stand during this case?

A I did not, no.

Q And why would that be?

A Well, I didn't think he had a lot to add. We pled not guilty, which essentially was a denial, at least in the jury's eyes, I -- I suspected. But also the voice: It's -- he has a fairly distinctive voice, the video from the store, as well as the video from the call, as well as his voice there. We -- we -- but I wouldn't want to put a spotlight on it, coupled with the fact that it's more an art than a science.

And different people have a different perspective. I start with the perspective of that unless there's a real good reason for you to get up to -- defendant and testify, you don't. I know other people will take the position and say: They -- they want to hear you say you didn't do it, unless there's a real good reason not to, you do. And I -- I -- I think both are defensible, but I -- I generally start at Plan A.

Q Okay. So along the lines of witnesses testifying, you did meet with his mother and his brother; is that correct?

A Yes.

Q Okay. And can you tell me a little bit about why you didn't feel it was good strategy to call them as alibi witnesses in this case?

A I met with his mother and his brother both. I -- I -- other than the fact that I -- I -- I -- I didn't find -- I guess I didn't find them compelling; I didn't want to give up our right to find -- to closing argument. Indication, as I recall, was that the telephone that he owned was -- attributed to him was moving around somewhat during the time that it was alleged to have -- he was alleged to have been sleeping in bed.

His brother, in my interview at my office, was pretty angry and uncooperative. And at that point in time, I certainly didn't he was going to be helpful to us.

But as far as a specific reason, I -- no. We would've walked through it. And I would've told Mr. Hurell: "These are my thoughts. This is what they are." But there's nothing that just struck out like a bolt of lightning that said, "Oh, no, I won't use you," or "I won't call you."

But I would not have refused. I -- and I did not refuse to offer an alibi defense if, in fact, that had been the defendant's wish.

Q Okay.

A I may well have advised him that I think it's -- you know, would be a bad choice.

Q Okay. So is it fair to say that there -- there would've been more negatives brought out by the alibi witnesses, as opposed to the strengths of their alibi, in relation as well to your strategy in wanting to preserve closing argument? Is that fair?

A You know, the -- I'm sure that there's a lot going on at that point in time. And we would've reserved the -- there's a lot going on at that time. Within the context of the case, we felt like it would be disadvantageous to pursue that, and so we did not.

Q Okay. In your experience and professional opinion, is it highly important to retain closing argument, especially in a case where the state's -- mostly has circumstantial evidence against your client?

A I don't really know. I mean, I like to have closing argument. I'm not sure it really makes it in final. I -- I mean, I prefer -- I tell myself it makes a difference. I -- I don't know.

At least I don't have to listen the state argue twice. But, I mean, I -- I -- I don't know that it really makes a difference or not. I prefer to retain it if I can. Given my choice, I will. Whether or not it actually is a game-changer, I mean, I -- I have no -- I -- and I don't really know.

Q Okay. There was some testimony earlier as to how the police officers might've gotten to Tashima's apartment. Was there some video of the K-9 search, to you -- or you -- to your knowledge?

A And -- and again, the case was tried twice. My recollection is that there was -- there was -- that the dog actually led them out there and that -- I think that the police officer had a body cam. It's -- you know, and -- and I -- I haven't gone back and reviewed this. But I -- I think that they played at the first one.

I remember it being tedious and some courtroom personnel were, you know -- had -- you know, with the -- anyway, it -- it was -- it was in detail. I believe that the dog was deployed and that he was used to get at least to the vicinity of the apartment.

Q Okay. And regardless of how they ended up there, there ultimately was a witness who saw a man jumping into the apartment below and with a baseball bat and money was recovered with the DNA of the victim at that apartment; is that correct? Or outside of that apartment. My apologies.

A The testimony of the witness was that he was sitting on his balcony, a small balcony, over -- over which was situated directly above and symmetrical with the balcony below him, or the little patio area below him, I -- I guess is what it is. That is relatively small, but he's sitting on the edge; that a person came out of the woods, carrying a baseball bat and a bag, baseball bat having been used in the -- the attack at the Kangaroo; nodded at him; came down; jumped the rail, which, I guess, if he leaned over and looked down, the guy went under him -- because he said he saw him jump the rail and he heard the door open and close into the apartment of the defendant's sister.

And that is the balcony or the little patio area where the dollar bill was found. So the -- the cops came, showed up, and that -- see anything? He said, "Yeah. I saw this down below." The -- you know ---

Q Okay. And do you recall his testimony more being that it was possibly a white Mustang, not that it was not 100 percent a white Mustang?

A I explored that with him at detail -- in -- in detail.

And I -- I -- I think that I adequately covered it. What happened was he told the police whoever did this or -- by that, just jump the balcony and, you know, carried the bat and the bag -- left in a white Mustang. Later, he wanted to testify that he thought it could been a Pontiac and could -- I think a LeMans, but it could've been a Pontiac.

And I went back and I walked him through it. Your first statement, it doesn't say it might have been. It says it was a Mustang, as I recall. And he didn't want -- but anyway, we got to that point. And then, I took him to the -- in -- to the point that in the first person who ever mentioned a Pontiac to you was law enforcement; is that right? And he said yes, it did -- that was -- that that was correct.

Eventually -- I mean, he was reticent to go there. But so I -- I felt like I diffused any issue as to the Pontiac. It was -- and -- and -- and that that law enforcement coming back to him and saying, "You sure it couldn't have been a Pontiac?" when his initial thing -- car was a Mustang.

Q Okay.

MR. LIMBAUGH: Moment's indulgence, Your Honor?

THE COURT: Yes.

MR. LIMBAUGH: Thank you.

(Off the record briefly.)

MR. LIMBAUGH: That's all I have for this witness, Your Honor.

THE COURT: All right. Very well.

Cross-examination?

MS. SARJI: Thank you, Your Honor.

THE COURT: Yes.

CROSS-EXAMINATION

BY MS. SARJI:

Q Mr. Loy, you testified that the state's case against Mr. Hurell was circumstantial?

A Largely, yes.

Q And in ---

A Oh, completely, I guess. There was -- the -- no direct person to pick him out and say, "That's the man who did this." So yes, I would say it was a circumstantial case.

Q Do you find, as a matter of practice -- and you've been practicing criminal for how long now?

A Thirty years.

Q And in the 30 years that you've been practicing criminal law, do you find that in cases where it's purely circumstantial evidence, that small details matter in defending a case?

A I think small details matter in defending every case. I mean, I -- I think -- I -- I don't know what -- what

changes from -- from one case to another. I mean, I certainly think it's important to pay attention to details.

Q And so it matters in every case and maybe even more in a circumstantial-evidence case?

A I -- I -- I don't know. I don't really understand that question.

Q Okay. A second ago, just to start off with this K-9 issue, you said that you felt like the K-9 tracked directly to Ms. Jones's apartment. Do you recall a moment ago saying that?

A I -- I recall saying that, yes. I think the K-9 was deployed, and I think he led them to that -- that apartment or that vicinity, some -- close enough so they made contact with the guy who was on the balcony up above.

Q Okay. If you -- do you have a copy of the transcript ---

A I do.

Q --- in the case?

A I have two: a record on appeal and the transcript. Which -- and I don't know if they're ---

Q So what I have is the record on appeal. If you look at page 94 for the transcript, which is page 51 of the record on appeal, just to refresh your memory about this issue with the K-9.

A Just give me one sec. What page are ---

Q Sure.
A --- you're looking at?
MS. SARJI: Permission to approach the witness ---
A Oh, I ---
MS. SARJI: --- Judge?
A --- see.
THE COURT: Yes.
A 51 on the top?
Q Yes. But 94 of the actual transcript.
A I think I'm there.
Q I apologize that it's ---
A I -- I ---
Q --- paginated ---
A --- I see what ---
Q --- differently.
A --- you're talking about. Yes ---
Q Yeah.
A --- 51/94.
Q Yeah. And so do you see the line -- starting with line 19, where they talk about put away the dog before they ever got to the apartments?
A Give me one -- just one moment. It -- I mean, you can read it as well as I. But, I mean, in its entirety, from page 1, it says that a -- I mean, line 1, it seems to say they picked him out; they deployed him around the side of

the truck. They said he was actively tracking. They notified the supervisor. They had a track; that the track took them off the back of the store. I assume that means they're tracking with the dog and there's an area of woods that opens up into a parking lot, education center.

THE COURT: Whoa, whoa, whoa. Just -- just slow down reading.

THE WITNESS: Oh, okay.

A Well, I -- there it is. It -- it -- it lays out what the officer testified to. Yes.

Q Okay. And so that's just a detail you're remembering differently now than what was actually testify to the trial. Would you agree with me there?

A No.

Q You wouldn't -- you don't agree with me that it says that the wood line that's between the -- at -- starting at line 20, where he says (as read): "It -- the -- the track continued going through the parking lot where it met the next wood line, the wood line that's between the Flowertown Baptist Church and also abuts up against the apartments. At that point we stopped the track."

A Yes.

Q So you -- would you agree with me that your recollection is different than that they took you to -- they took -- that the dog took them over to Ms. -- Ms.

Jones's apartment?
A Well, I don't know. Let's talk about the apartments. I -- I -- I -- I don't really read it that differently. No. It looks to me -- I read this as saying they deployed the dog behind the store; he led them in the general vicinity, past the site that the investigator was describing the adult-education ---
Q Okay.
A --- center and into the general area of the apartments.
Q Okay. So you agree with me, then, it's the general area; it did not track over to Ms. Jones's apartment?
A Yeah.
Q Okay. And ---
A But I ---
Q --- do you also ---
A --- I don't agree that that's what I told you earlier. That was my testimony that -- I said it led to the general area.
Q Okay. I'm sorry. I thought that your -- your testimony was that the dog tracked to Ms. Jones's apartment and that that's how they got there. So I apologize if I misunderstood that.
Do you also recall that there was testimony at the trial that evidence like a bat and other things that were

recovered were actually returned to the family because they didn't have any of Mr. Hurell's -- or there were -- they weren't linked to the crime, essentially?

A Yes. A bat was taken, and some sneakers were taken. They were determined to be of no evidentiary value and returned to the family.

Q Did you have investigator at the public defender's office at the time of this trial that was employed by the public defender's office?

A You know, we've been through a few of them. And there have been some gaps. Sometime during the course of the pendency of this case, I would suspect we had one. I mean, whether at that exact time of the second trial or not, I -- I don't know.

Q Have you had the opportunity to review your file in this case prior to coming in today?

A I've had the opportunity. I haven't been back through that file.

Q Okay. And so you can't testify whether or not you had an -- an independent investigator working on this case or not?

A I would not have had an independent investigator. If ---

Q Or someone other than yourself?

A If I had an -- an investigator, someone in our office,

it would've been specifically to address specific points. I use an investigator to say, you know: How -- what is the distance from here and how will you be will testify to it? Can you take pictures of this or pictures of that and then verify them in court? I tend not to just take my file and give it to an investigator and say, "Investigate this, work it up, and get back to me."

So I suspect I would have had access to someone if I needed someone to take photographs that -- that then they would -- then be able to authenticate, things of that ilk. I -- it -- I could've used anybody my office, even if we were down an investigator at that point.

Q Okay. And did -- did you do that in this case?

A I don't think so. I don't -- don't recall.

Q Did you ever check to see whether any Ford Mustangs were registered to any of the surrounding apartments?

A No.

Q Did you ever walk the track and go see about getting the cameras from the adult-education center?

A No. But part of what happens is the arrest is made. Bond is made, or the hearing is had. The defendant's incarcerated. Eventually, he gets a chance to be screened for counsel, but it's not the day after arrest.

It can be as much as ten days, if we're in court, before counsel is appointed. Then the order of appointment

comes to me, but all I have is an order of appointment. I don't have any discovery, any paperwork, anything else like that.

Typically, in my experience, most of those cameras don't run and just maintain evidence for three or four weeks. And -- and ---

Q So you ---

A --- it -- it ---

Q --- didn't ---

A --- may be ---

Q --- even try?

A --- remiss. But in my experience, when there are cameras on the crime scene, I have been able to rely on law enforcement to get those and produce them, because they are involved at the outset.

Q Okay. And so because in the past you rely on law enforcement to gather that evidence, you did not even try this case; is that correct?

A I did not go out and look for cameras.

Q Thank you. And did you -- Mr. Loy, you were testifying earlier about the alibi testimony and that you -- you didn't find it to be compelling?

A I -- I don't recall it being a real issue with us. I mean, if I had found it to be compelling, then I would have encouraged Mr. Hurell: "Let's put it up."

I don't recall us having real long debates and arguments and real discussions about it or anything. The fact that we did not put up alibi witnesses, I think, the only reason I could think of for not doing it would be because I didn't believe it would be compelling.

Q Did Mr. Hurell ask you, as he says that he did, to talk to his mother and brother to substantiate his whereabouts on the night of the incident? Do you recall that?

A I -- I don't recall a specific conversation of the words that he used. But I know that I talked with him and his brother about that circumstance. And I imagine that was at the behest of Mr. Hurell.

Q And so Mr. Hurell thought that it was important to establish that he was elsewhere on the night of the incident. Would you agree with that?

A I think Mr. Hurell would've loved to establish he was elsewhere on the night of the incident. Yes.

Q You testified during your direct examination that there was a cell phone that was moving around at the time that Mr. Hurell was sleeping. Do you recall that?

A I recall that.

Q Did you consult with a cell phone expert in this case?

A I have -- I didn't call one to the witness stand. And I didn't -- no. No. I have consulted with them and I was

aware of what they were doing with this particular cell phone and where they were going with it. But I did not go get a -- an expert or ask him specifically what does this mean or that.

Q So you don't know whether or not there were a number of different cell towers in between mom's residence and sister's residence? Do you know how many cell towers there were, if there more than one?

A You -- you know, I don't recall this point. That -- the cell phone information is something I would have looked at. It's something I would have prepared for my cross-examination. And I -- it -- to my mind, I would've been prepared for it.

If I felt like I needed to hire an expert, I would've got the funding and hired the expert. Do I recall if there were three towers or six? No. I recall that the testimony that we eventually were able to elicit, I believe, was that, you know, the -- the fact that it shows it's moving here or there is a just question of, you know, which -- it can stay stationary and ping on one side of the tower and then on the other side of the tower. But ---

Q Okay.

A --- I don't think we needed an expert to establish that.

Q Right. And so -- and that's exactly where I was

going, is that you established that the phone could've been stationary?

A Yes.

Q But my understanding of your testimony just now, when you were responding to Mr. Limbaugh's questions, was that part of why you didn't find the alibi-witness testimony to be compelling is that his phone was moving around during the period of time that they said that he was asleep.

A Yes.

Q So can you -- because you established at trial that his phone could have been stationary but still pinging on different towers, did that play in at all to your -- to your analysis of the alibi-witness testimony and whether it would've been credible or not?

A No. I -- I -- I -- what I recall and what I would've done is discussed with Mr. Hurell all the things that we had; told him what I thought he should do; and then, as he indicated, told him in the final analysis, at the end of the day, the -- the decision is yours.

I don't specifically recall discussing with him whether or not his phone moved or didn't move or how critical that was to our analysis. We had a full and frank conversation about it. And at that point in time, his decision was: "I'm going to accept your advice, Mr. Loy, and not put this up."

Q Did you talk to him about the fact that you could have tried to suppress his prior record if he chose to testify call?

A I don't recall.

MS. SARJI: Permission to approach the witness, Your Honor?

THE COURT: Sure.

(Off the record briefly.)

Q I am going to show you this report of examination from the FBI analysis of the voice thing. Do you recall that?

A I recall ---

Q Of the ---

A --- that there ---

Q --- recording? Sorry.

A I recall that there was one. If you give me a minute, let me look at this.

Q Sure.

A Yes, I recall this. The -- the -- this part that you've got marked over here, I -- I don't know what this is.

Q Yeah. That -- and this is the only copy I have of it. I apologize if it's unclear. I just wanted to ask you about the text of that where it indicates that the sample from the store was distorted and of insufficient quality for them to perform a comparison.

A Yes. That's what it says.
Q Okay. And so when you're talking about one of the risks that you were concerned about Mr. Hurell testifying was that they were going to be -- they were going to somehow match up the voice or that they would play the two recordings and match his voice. Was it not a distorted sample?
Q It may have been distorted for purposes of running a computer analysis and doing them -- they -- whatever it is they do. To my mind, it was not distorted beyond recognition and it sounded exactly like on Mr. Hurell. Mr. Hurell agreed, that does sound exactly like me. We agreed that was the strongest piece of evidence that they have against him.

I mean, I -- I don't want to -- I'm -- I'm sure they're still in existence.
Q I'm sure that they are too, but I don't have them here today. So we can't -- we can't listen to them.

MS. SARJI: All right. Court's indulgence, Your Honor?

(Off the record briefly.)

MS. SARJI: I don't have any other question, Judge. Thank you.

THE COURT: All right. Any redirect?

MR. LIMBAUGH: Just briefly, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. LIMBAUGH:

Q So to your ear and to Mr. Hurell's ear, the voice sounded exactly like his on those videotapes and was not distorted to the human ear?

A No. To -- to -- no. The -- we felt -- we agreed that the most compelling piece of evidence against him was the -- the phone call that he made that -- to Detective Weaver that was recorded. We agreed that -- and that's, again, a large part of the reason we didn't want to take a mistral. Because they just didn't put it in.

They changed things up from the first trial. And we felt like we were worlds stronger without it. And again, we felt like the way to prosecute his case -- we were proven there's another way -- but just align those two tapes up and hit them back and forth. I mean, I -- if -- if I was the solicitor, that would've been my trial strategy.

Q Okay.

MR. LIMBAUGH: That's all I have, Your Honor. The -- the state rests.

THE COURT: Okay. Recross?

MS. SARJI: No, Your Honor. Thank you very much.

THE COURT: All right. Thank you, Mr. Loy.

THE WITNESS: Thank you.

THE COURT: And -- and I know he's got work going on in the other courtroom, so if you need to go -- and thank you.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. And you said the state rests?

MR. LIMBAUGH: The state rests, Your Honor.

THE COURT: All right. Is there any reply?

MS. SARJI: No rebuttal testimony, Your Honor.

THE COURT: Okay.

MS. SARJI: Thank you.

THE COURT: Okay. Very -- very well. Very well. All right. Counsel, I don't normally ask for any kind of closing argument, because I -- I -- I -- I think I know where you're coming from. I think I have followed your -- your presentation.

And I think what is appropriate is for me to ask you for proposed orders, if you would do that for me. Obviously, I'm going to hold onto the -- the -- the box with the transcripts. And if you all will just submit those to me.

Now, I am going to ask for them in 45 days. Now, both of you are extraordinarily busy. And I am aware of that. If you need more time, just consult with each other. Come up with a new schedule.

And then, just let -- don't let me know. Let my law clerk know. And we'll certainly keep -- keep up with the scheduling in that regard. Okay?

MS. SARJI: Thank you, Your Honor.

MR. LIMBAUGH: Thank you, Your Honor.

THE COURT: And -- very well. Thank you both so much.

(Whereupon, the proceeding was concluded at 1:09 p.m.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR-M, Official Court Reporter for the Eighth 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 proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 11th day of September, 2019.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter

Columbia, South Carolina
November 5, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2018-CP-18-1709
Tashon Hurell,	)	
	)	ORDER OF DISMISSAL
Applicant,	)	
V.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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This matter came before me in Dorchester County on September 11, 2019 upon Applicant's request for post-conviction relief ("PCR"). The Applicant, Tashon Hurell, made several arguments in support of his claim of ineffective assistance of trial counsel. Those arguments and the Court's findings on each are discussed below.

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. Applicant was indicted in case number 2015-GS-18-0085 for one count of Attempted Murder; in case number 2015-GS-18-0086 for one count of Kidnapping; and in case number 2015-GS-18-0087 for one count of armed robbery. Applicant entered a not guilty plea and was tried by a jury on February 8 – 10, 2016 before the Honorable Edgar W. Dickson. Applicant was represented at trial by John Loy, Esquire. He was found guilty on all three charges and was sentenced to thirty years on each charge, with sentences on all charges to run concurrent.

Applicant filed a timely Notice of Appeal and appealed his conviction. His appeal was denied by the Court of Appeals on August 1, 2018, and Applicant's conviction and sentence were affirmed. The Remittitur was issued on August 27, 2018.

CURRENT APPLICATION

On September 25, 2018, Applicant filed an initial application for post-conviction relief, as well as an amended application for post-conviction relief, dated September 3, 2019. Applicant's amended application for post-conviction relief alleges that he is being held in custody unlawfully as he received ineffective assistance of counsel for the following reasons that were pursued during the hearing of this matter:

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.

STATEMENT OF FACTS ADDUCED AT TRIAL

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 tbe 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 bis, 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~~ 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~~ Appellant to see if he recognized the shirt and testified that ~~Appellant~~ 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 rohbery 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 hoth 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 Tracfones 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 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

[1] 415 S.C. 232, 781 S.E.2d 352 (2016).

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).

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This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a " 'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an 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 an 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U. S., at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would bave been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive tbe defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

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"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can he certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have heen established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result

would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

Allegation: Advising Applicant to Waive Right to Mistrial

Applicant alleges trial counsel was ineffective for advising him to waive the motion for mistrial. Counsel initially moved for a mistrial following testimony from Applicant's sister that Applicant used her address "prior to him getting out from serving some time." Applicant testified that he remembered counsel initially moving for a mistrial. Applicant testified that he recalled discussing with counsel whether or not he wanted to go forward with the mistrial motion or proceed with the trial. Applicant testified that counsel told him that it was ultimately his decision as to whether or not to move forward with the mistrial motion and that he chose to proceed with trial. Counsel testified that he discussed the mistrial motion with Applicant and that he told Applicant that it was his decision as to how he wanted to proceed. Counsel testified that it was ultimately Applicant's decision to withdraw the motion and proceed with the trial. Even if counsel did not withdraw the motion, there is no indication that the grounds for the motion were sufficient for the court to grant a mistrial.

"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).

Applicant has failed to show how counsel, after conferring with Applicant, was deficient for withdrawing the motion for mistrial. Applicant has failed to show that if the motion had not been withdrawn there would have been grounds sufficient for the trial court to grant the motion. Further, Applicant has failed to show any prejudice resulting from the decision to withdraw the motion. This Court finds that Applicant has failed to meet his burden of proof in showing deficiency on the part of counsel as it relates to this allegation. Therefore, this Court dismisses this allegation with prejudice.

Allegation: Failure to Subject Prosecution's Case to Meaningful Adversarial Testing

Applicant alleges counsel was ineffective for failing to put the State's case through meaningful adversarial testing. This Court finds this allegation to be exceedingly broad and is encompassed by Applicant's other allegations. However, this Court will note that counsel did subject the State's case to meaningful adversarial testing. Counsel thoroughly cross-examined State's witnesses, moved for a directed verdict, provided an in-depth closing argument to the jury, and moved for a mistrial during jury deliberations. This Court finds that counsel did subject the State's case to meaningful adversarial testing and Applicant has failed to show otherwise. Therefore, this Court finds that Applicant has failed to meet his burden in showing counsel's deficiency and the allegation is dismissed with prejudice.

Allegation: Failure to Adequately Investigate the Case and Offer Alibi Witness Testimony

Applicant alleges counsel was deficient for failing to adequately investigate the case and for failing to present alibi witnesses at trial. Applicant testified that he felt counsel was ineffective for failing to investigate and call alibi witnesses at trial including: Janah Hurell, Tremayne Hurell, and Julia Piper-Simons. All three of these potential alibi witnesses were present and testified during the evidentiary hearing.

Applicant testified that he wanted counsel to investigate the aforementioned alibi witnesses and call them at trial to testify that Applicant was sleeping at his mother's home when the crime occurred. Applicant testified that he told counsel about the existence of Julia Simons and that counsel did not investigate her as a potential witness. Applicant testified that he told counsel to investigate his mother and his brother as potential alibi witnesses and that he wanted them to be called on his behalf at trial. Applicant testified that he was aware that counsel did in fact investigate his mother and his brother as potential witnesses. Applicant testified that counsel discussed calling them at trial, but that counsel felt that a jury would not believe them because they were his close family. Applicant testified that he did not understand why a jury would not believe them and that he still wanted them to be called at trial.

Applicant's mother, Janah Hurell, testified at the evidentiary hearing. She testified that counsel met with her to discuss her potential testimony and ultimately told her that the jury would not believe her because she was Applicant's mother. She testified at the evidentiary hearing that she was home the night of the incident. On direct examination, she testified that Tremayne went to sleep around 9 or 9:30 that night, but changed her testimony on cros-examination to being either 10 or 11pm. She testified that Applicant would typically wait for his brother to go to sleep before he would go get in bed. She testified that her daughter called around

12:30 or 1 and told her that a robbery had occurred at the gas station near her apartment. She testified that Applicant and his brother were both asleep when her daughter called.

Applicant's brother, Tremayne Hurell, testified at the evidentiary hearing. Tremayne testified both that he did not speak with counsel until after the trial and that he had spoken with him before the trial. Tremayne testified that he spoke with counsel about what happened with Applicant and that Applicant was in bed with him when the incident occurred. Tremayne testified that he told counsel prior to trial that he wanted to testify, but counsel told him that it was the State's burden and that he did not think the jury would believe him because he was Applicant's brother. Tremayne testified that he and Applicant were sleeping in the same bed because Applicant was visiting from Atlanta. Tremayne testified that he went to sleep around 10pm the night of the incident. Tremayne testified that he was a light sleeper and that he believes he would have woken up had Applicant gotten out of bed. Tremayne testified that his mother woke he and Applicant up when his sister called. Tremayne testified that he and Applicant both went back to sleep after their mother woke them up. Tremayne testified on cross-examination that at trial he would have testified that he was asleep when Applicant got in the bed with him, but that he would have noticed if another full grown man got out of the bed.

Applicant's sister, Tashima Hurell, testified at the evidentiary hearing. Tashima testified that she was home the night of the incident and woke up to a police K-9 unit at her door. Tashima testified that the officers told her the K-9 led them from the incident location at the gas station to her apartment. Tashima testified that the police also told her that a witness had reported seeing the suspect jump onto her balcony and go into her apartment through the balcony door. Tashima testified that the balcony door was always locked, that the door locked from the inside, and that Applicant did not have a key to that door. Tashima testified that she has a Yorkie, breed

of dog, that barks constantly and loudly. Tashima testified that the dog barks at people it knows, she did not hear the dog bark that night, and that the dog would have barked if someone entered the apartment that night. Tashima testified that counsel did not interview her about the case, but that she was called at trial as a witness by the State. Tashima testified that counsel did not ask her any of the questions asked by PCR counsel during the evidentiary hearing. (ALL OF THIS TESTIMONY WAS ELICITED ON DIRECT AT TRIAL)

Applicant's girlfriend at the time, Julia Piper-Simons, testified at the evidentiary hearing. Julia testified on direct examination that she was with Applicant that day and dropped him off at his mother's house around 9 or 10pm that night. Julia testified that she dropped Applicant off at his mother's house a number of times, he often stayed there when he was in town visiting. Julia testified that counsel did not interview her prior to trial to discuss the case.

Trial counsel testified at the evidentiary hearing that he recalled discussing the possibility of calling his brother and mother as potential alibi witnesses, but did not recall Applicant mentioning that he wanted his sister or Julia Simons to testify as alibi witnesses. Counsel testified that he interviewed Applicant's mother and brother, but that he did not believe that their story or testimony would be compelling to a jury. Counsel testified that he does not remember Applicant being adamant about calling the potential alibi witnesses at trial or it being a big issue that the decision had been made not to call them. Counsel also testified that he wanted to have the final argument to the jury in this case and felt that it was important. Counsel testified that he did not speak with Applicant's sister or Julia Simmons prior to trial.

Encompassed in counsel's duty to investigate is the duty to investigate alibi witnesses identified by a defendant. Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (citing Grooms v. Solem, 923 F.3d 88, 90 (8th Cir. 1991)). "Failure to make some effort to contact them

to ascertain whether their testimony would aid the defense is unreasonable." Id. However, when the testimony presented at the evidentiary hearing from purported alibi witnesses do not establish an alibi defense, no prejudice can result from the alleged deficiency. See Glover v. State , 318 S.C. 496, 458 S.E.2d 538 (1995) (holding trial counsel's failure to contact alleged alibi witnesses did not result in prejudice when the testimony these alibi witnesses presented did not establish an alibi defense). Moreover, questions concerning the weight and believability of alibi witnesses is Walker, 407 S.C. at 407, 756 solely within the province of the post-conviction relief court. S.E.2d at 147.

Through an alibi, an accused attempts "'to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime.'" State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136)). To do so, the accused must show "'he was at a place so distant that his participation in the crime was impossible.'" Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "Since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Glover, 318 S.C. at 498, 458 S.E.2d 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319).

Here, Applicant has failed to show deficiency hy counsel for failing to call two potential alibi witnesses at trial and for failing to investigate two other potential alihi witnesses. Applicant has also failed to show any resulting prejudice from the alleged deficiency of counsel. Applicant alleges trial counsel should have called his mother and his brother at trial to testify to the fact that he was home asleep at the time of the incident. Counsel testified that he interviewed both

potential witnesses and decided that the jury would likely not believe their testimony or find it compelling. Both counsel and Applicant testified that they discussed this decision and counsel testified that he recalled Applicant agreeing with the decision at the time. This Court agrees that the testimony of Applicant's mother and brother at the evidentiary would not have made for a compelling alibi defense for Applicant. Although their testimony was consistent, this Court agrees that it is perfectly reasonable for counsel to weigh how the jury will respond to an alibi presented by Applicant's close family with the potential benefits of having the final DS closing argument to the jury. The testimony of Applicant's brother Tremayne was also not an alibi at all. Tremayne's testimony at the evidentiary hearing was that he was asleep when his brother returned home and was only made aware of his presence in the bed when their mother woke them up to tell them about the incident. Tremayne testified that he believes he would have woken up if Applicant got out of the bed that night, however, he did not testify with certainty. Tremayne's testimony in no way accounts definitively for Applicant's whereabouts until the point where his mother comes in to wake them up. Applicant's mother's testimony could potential provide an alibi, however, counsel made a reasonable strategic not to call her as a witness for the reasons enumerated previously.

In regards to the first potential alibi witness counsel failed to investigate, Julia Piper-Simmons, this Court must examine the reasonableness of counsel failing to investigate this witnesses, whether her testimony provides an alibi at all, and whether or not Applicant has demonstrated prejudice from any alleged deficiency. There is discrepancy in the testimony as to whether or not Applicant asked counsel to investigate Julia Simmons as a potential alibi witness. Applicant testified that he asked counsel to investigate, counsel testified that he only recalled Applicant requesting that he interview his mother and his brother. Regardless, this Court will

examine her testimony accordingly. Julia's testimony at the evidentiary hearing was that she dropped Applicant off at his mother's house between 9 and 10pm the night of the incident and did not see him the rest of the evening. This testimony suffers from the same issue as Applicant's brother, it in no way accounts for Applicant's whereabouts during the time the incident occurred. All this testimony would have presented to the jury was that Applicant was dropped off at his mother's house around that time. This Court must consider this testimony as what the witness would have presented at trial and the testimony elicited would not have amounted to a possible alibi for Applicant. In evaluating this testimony, this Court finds that Applicant has failed to prove he was prejudiced by counsel not investigating and calling this witness at trial. This Court dismisses this allegation under the prejudice prong of Strickland.

In evaluating the failure to investigate the second potential alibi witness, Tashima Hurell, this Court will use the same standards as set forth above. There is no discrepancy in the testimony as it relates to this witness, both counsel and Applicant testified that counsel was not asked to investigate Tashima as a potential alibi witness. This Court notes that counsel was in fact deficient for failing to interview Applicant's sister who was interviewed by law enforcement and would have been known to counsel in preparation for trial. However, this Court must evaluate whether her testimony provides an alibi for Applicant and whether or not Applicant was prejudiced by counsel not calling her as an alibi witness at trial. Tashima's testimony at the evidentiary hearing was that Applicant was not at her apartment that night, if someone had been in her apartment her dog would've barked, her balcony door locked from the inside, and Applicant did not have a key to the apartment. Tashima's testimony in no way accounts for Applicant's whereabouts during the incident. The testimony does not affirmatively place Applicant anywhere during the time of the incident, but simply works as a counter to the State's theory of what happened after the incident occurred. Tashima's testimony does not provide an alibi defense for Applicant when it does not at all account for his whereabouts during the time of the incident and leaves open the possibility that Applicant could have been at the incident location at the time of the incident. Further,

Applicant could not possibly be prejudiced by counsel's failure to call Tashima at trial to elicit this testimony because the same testimony was elicited by the State on direct examination at trial. During the State's direct examination at trial Tashima testified to the following: 1. Nobody had come in the apartment that night and she did not open the door for anyone. 2. Applicant was staying at their mother's house while he was there visiting. 3. Applicant did not have a key to her apartment. App. 213-216. The testimony elicited during the evidentiary hearing would have been duplicative to the testimony the jury heard during the State's case, eliminating the need for counsel to lose last argument by calling her as a witness and removing any potential prejudice alleged by Applicant. Applicant cannot show he was prejudiced by counsel failing to call Tashima as an alibi witness where the jury heard all of her relevant testimony during the State's case. Ultimately, Applicant got the benefit of the jury hearing the testimony he wanted counsel to elicit, but without the consequence of losing last argument to the jury. Considering the relevant testimony at the evidentiary hearing was the same as that at trial, this Court cannot find it to be reasonable that the result of the trial would have been different had Tashima testified on behalf of Applicant. Therefore, this Court dismisses this allegation with prejudice.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review,

PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 21 day of April, 2020.

Diane S. Goodstein

DIANE GOODSTEIN
Presiding Judge
[redacted] Judicial Circuit
(1st) FIRST

Tashon Hurell,

Petitioner,

V

State of South Carolina,

Respondant,

State of South Carolina

2018-CP-18-1709

Rule 59(E) Motion

FILED-RECORDED
5-22-2020
Cheryl Graham
Clerk of Court
Dorchester County

Pursuant to rule 59(E), SCRCP, I hereby move PRO SE to alter or amend the order and states as follows:

A) Trial council failed to move/object to evidence; Trial council failed to question DNA Expert Samuel Stuart about DNA evidence, where expert testified he could not tell about a DNA profile developed from the blood.

B) Trial council failed to request a preliminary hearing; Trial council failed to ~~object~~ appear for ~~the trial~~ petitioners preliminary hearing, where the judge gave an extention and set a later date for the preliminary hearing due to that failure to appear; where the state got an indictment after the 90 day time frame as to avoid a preliminary hearing.

In ruling on an application for PCR, "the PCR court shall make specific findings of fact, and state expressly it's conclusions of law, relating to each issue presented." SC Code Ann. §17-27-80 (2014)

WHEREFORE, I pray that the PCR judge rule on all issues raised at my PCR hearing including but

620 Not limited to the above.

5/19/2020

Tayhon Howell

Petitioner, PRO SE

CC: Title

Benjamin H. Lambaugh

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP1801709

Tashon Earl Hurell		**South Carolina State Of**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2020 JUN -8 AM 9:16
CLERK OF COURT
DORCHESTER COUNTY

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: **Pursuant to this Court's authority under Rule 59(f) SCRC, the Plaintiff's Motion to Reconsider is dismissed without oral argument and determined upon the pleadings on file. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Diane S. Goodstein, Circuit Court Judge	**2112**	**6/30/2020**
	Judge Code	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

This judgment was entered on 7/8/2020, and a copy mailed first class or placed in the appropriate attorney's box on 7/8/2020, to attorneys of record or to parties (when appearing pro se) as follows:

Tashon Earl Hurell Lcl Cb08 #320499 P.O Box 205
Ridgeville, SC 29472
Leslie Therese Sarji 230 Congress Street Charleston, SC 29403

Sarah Gunton and
Benjamin Hunter Limbaugh 1000 Assembly Street
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.