



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

TASHON EARL HURELL,
Petitioner,

vs.

BRIAN KENDALL,
Respondent.

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§

CIVIL ACTION NO. 5:23-3556-MGL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION,
GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT,
AND DENYING THE PETITION**

Petitioner Tashon Earl Hurell (Hurell) filed this 28 U.S.C. § 2254 petition (the petition) against Respondent Brian Kendall (Kendall). Hurell is representing himself.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Kendall's motion for summary judgment be granted and the petition be denied. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on July 23, 2024, but Hurell failed to file any objections to the Report, even after having been given an extension of time to do so. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. It is therefore the judgment of this Court Kendall’s motion for summary judgment is **GRANTED** and the petition is **DENIED**.

To the extent Hurell moves for a certificate of appealability, such request is **DENIED**.

IT IS SO ORDERED.

Signed this 26th day of August, 2024, in Columbia, South Carolina.

/s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Hurell is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

FILED: February 25, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6974
(5:23-cv-03556-MGL)

TASHON EARL HURELL

Petitioner - Appellant

v.

BRIAN KENDALL

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

PER CURIAM:

Tashon Earl Hurell seeks to appeal the district court's order accepting the magistrate judge's recommendation, granting summary judgment to Defendant, and denying relief on Hurell's 28 U.S.C. § 2254 petition. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court entered its order on August 26, 2024. Hurell filed the notice of appeal, at the earliest, on September 26, 2024, one day after the appeal period expired. Because Hurell failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: April 7, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6974
(5:23-cv-03556-MGL)

TASHON EARL HURELL

Petitioner - Appellant

v.

BRIAN KENDALL

Respondent - Appellee

M A N D A T E

The judgment of this court, entered February 25, 2025, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-6974

TASHON EARL HURELL,

Petitioner - Appellant,

v.

BRIAN KENDALL,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Mary G. Lewis, District Judge. (5:23-cv-03556-MGL)

Submitted: February 20, 2025

Decided: February 25, 2025

Before AGEE, HARRIS, and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tashon Earl Hurell, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

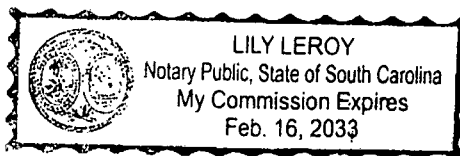
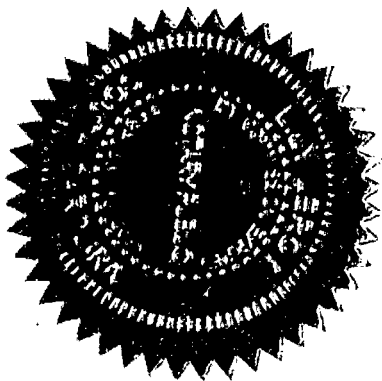
Declaration: I Janah Hurell, do freely and willfully make this declaration, under the penalty of perjury. I declare that all herein is true and goes as follows; On the night of 4-23-2014, Tashon Earl Hurell was dropped off at my house around or a little after 8:00 pm. Tramaine Hurell, myself and Tashon were talking and communicating until Tramaine went to bed around 9:30-10:00 pm. Tashon got on the phone un the living room and he and I were still comunicating until he got on the bed with his brother around 11:00 pm. I received a phone call from my daughter, Tashima Jones-Greene around 1:00 am on 4-23-2014. She told me a robbery had taken place ay the gas station up the street from her apt. And the police were there searching because someone had been on her porch. I told her that her brothers, Tashon and Tramaine were in the bed sleeping, I would wake them up and we would come down there. Tashima said no she was fine. I still woke Tashon and Tramaine up and told then what was going on. We spoke about going down there but decided not to because Tashima said she was ok. Tashon and Tramaine laid back down and I went back to my room, which was directly beside Tramaine's room. I stayed up until about 3 or 4 am. Neither Tashon or Tramaine left out of my house after 8 pm the prior night until after 8 am the next day. I told trial counsel John Loy that I was available, willing and wanting to testify. However he told me he wouldn't use me as an alibi witness because I'm Tashon's mother and the would not believe me because mothers take up for their sons. I told him I'm not one of those mothers but he said he didn't want to use me add a witness. Janah Hurell

Janah R. Hurell
Janah R. Hurell

NOV 21 2025

Loy L.

NOV 21 2025



Declaration:

On the night of 4-22-2014, my mother, Janah Hurell, my brother Tashon Hurell and I were at my mother's house. Tashon had gotten dropped off around 8pm. We were all talking and laughing and communicating. I got in the bed around 10:00 pm.

Around 11:00 pm I felt the bed shift and saw Tashon getting in the bed next to me. I noticed it was around 11 and rolled over and went back to sleep.

Later my mother, Janah Hurell, woke both me and Tashon up telling us the police were at my sister's, Tashima, house.

We talked about what was going on down there and if we should go down there. But we ended up not going. My mother went back to her room and I laid back down to go to sleep. Tashon got on his phone.

I told trial lawyer that I was willing and available to testify but he said he wouldn't use me as an alibi witness. We had this conversation at the public defender's office.

While I was there the solicitor told me he'd drop my kidnapping charge if I testified against Tashon, and said he wasn't gone to my mother's house that night. I told him I couldn't and wouldn't do that, because Tashon was in fact at the house that night until the next day.

I told all of this to trial counsel Jon Loy, but he still said he didn't want to call me as a witness.

I Tramaine Hurell do freely and willfully make this declaration, under the penalty of perjury. I declare that all herein is true and goes as follows.

Tramaine Hurell

Janie Hurell 11-23-25

Heather Rush, notary

of South Carolina, Dorchester

County have witnessed the
above signature on 11/23/2025

My commission expires 05/03/2028

Heather Rush

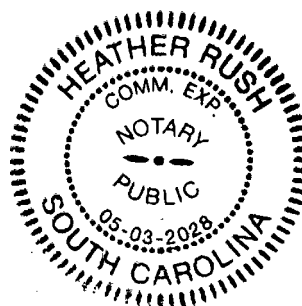


Exhibit A

1641 (Rev. 12-20-2011)



Federal Bureau of Investigation
Digital Evidence Laboratory

Operational Technology
Box Building 2951A
Quantico, Virginia 22133

REPORT OF EXAMINATION

To: Columbia
CO-6 Charleston IGA
Attn: Frederick E. Whit Jr
Date: May 20, 2014
Case ID: 343A-CO-4799435
Request No.: 140513255 AFD

Reference: Service Request dated May 8, 2014

Ref. No.: Serial 5

Title: (U) UNSUB;
KANGAROO,
1365 BOONE HILL ROAD,
SUMMERVILLE, SOUTH CAROLINA - VICTIM;
MARY J. PECORARA - VICTIM;
DOMESTIC POLICE TECHNICAL SUPPORT

Date item(s) received: May 14, 2014

Item(s) Submitted:

Q1 (1B1) One JPNV 16 GB thumb drive with barcode B5800373
NE1 One one-page copy of a Summerville Police Department Report dated 4/29/2014

Request:

For the referenced electronic communication dated May 8, 2014, Investigative Operations Analyst Frederick E. Whit Jr requested the Forensic Audio, Video and Image Analysis Unit to compare the two submitted voice samples.

Summary of Results:

No voice comparisons were conducted because the unknown voice sample from the surveillance video on specimen Q1 is of insufficient quality.

Details of Examination:

The unknown voice sample from the surveillance video of the robbery on specimen Q1 was evaluated. This voice sample has limited duration, bandwidth, and signal-to-noise ratio. The speech is often emotional and stressed. The speech is sometimes off-microphone, and some distortion is present. Therefore, this voice sample is of insufficient quality for comparison.

Page 1 of 2

For Official Use Only

AAASCLD LAB Administration
Accredited Laboratory
Since January 16, 2007



6/13/2014-10:16 AM

Call Records For 8434574946

8 of 117

(843) 437-4946	(843) 926-2405	(843) 926-2405	Outbound	04/23/2014 16:13:34	04/23/2014 16:15:12	98	690	50
(843) 437-4946	(856) 562-7989		Outbound	04/23/2014 16:14:49	04/23/2014 16:14:49	0	511	294
(856) 562-7989	(843) 437-4946		Inbound	04/23/2014 16:35:15	04/23/2014 16:35:15	0	529	198
(843) 437-4946	(856) 562-7989		Outbound	04/23/2014 16:41:25	04/23/2014 16:41:25	0	294	294
(856) 562-7989	(843) 437-4946		Inbound	04/23/2014 16:42:14	04/23/2014 16:42:14	0	533	198
(805) 218-6040	(843) 437-4946	(843) 437-4946	Inbound	04/23/2014 17:57:32	04/23/2014 17:58:33	61	690	50
(843) 437-4946	(843) 240-0566	(843) 240-0566	Outbound	04/23/2014 18:10:51	04/23/2014 18:12:06	72	690	50
(843) 240-0566	(843) 437-4946	(843) 437-4946	Inbound	04/23/2014 18:13:40	04/23/2014 18:15:25	106	690	50
(843) 437-4946	(800) 869-3557	1 (800) 869-3557	Outbound	04/23/2014 18:15:38	04/23/2014 18:17:46	128	690	50
(843) 437-4946	(843) 240-0566	(843) 240-0566	Outbound	04/23/2014 18:17:51	04/23/2014 18:17:57	5	690	50
(843) 437-4946	(843) 240-0566	(843) 240-0566	Outbound	04/23/2014 18:18:03	04/23/2014 18:18:07	4	690	50
(843) 437-4946	(843) 240-0566	(843) 240-0566	Outbound	04/23/2014 18:18:19	04/23/2014 18:20:51	152	690	50
(843) 437-4946	(856) 562-7989	(856) 562-7989	Outbound	04/23/2014 18:21:47	04/23/2014 18:21:49	2	690	50
(843) 437-4946	(856) 562-7989	(856) 562-7989	Outbound	04/23/2014 18:22:00	04/23/2014 18:22:03	3	690	50
(843) 437-4946	(800) 869-3557	1 (800) 869-3557	Outbound	04/23/2014 19:03:51	04/23/2014 19:04:25	34	690	50
(843) 437-4946	(856) 562-7989	(856) 562-7989	Outbound	04/23/2014 20:33:28	04/23/2014 20:34:16	48	690	50
(856) 562-7989	(843) 437-4946		Inbound	04/23/2014 20:43:21	04/23/2014 20:43:21	0	529	195
(843) 437-4946	(856) 562-7989		Outbound	04/23/2014 20:45:38	04/23/2014 20:45:38	0	293	293
(843) 437-4946	(856) 562-7989	(856) 562-7989	Outbound	04/23/2014 20:45:54	04/23/2014 20:58:42	768	690	50
(856) 562-7989	(843) 437-4946		Inbound	04/23/2014 20:48:02	04/23/2014 20:48:02	0	524	196
(843) 437-4946	(856) 562-7989		Outbound	04/23/2014 20:50:19	04/23/2014 20:50:19	0	506	293
(856) 562-7989	(843) 437-4946		Inbound	04/23/2014 20:51:01	04/23/2014 20:51:01	0	520	195
(843) 437-4946	(843) 437-4946		Outbound	04/23/2014 20:54:35	04/23/2014 20:54:35	0	512	293
(856) 562-7989	(843) 437-4946		Inbound	04/23/2014 21:00:38	04/23/2014 21:00:38	0	524	195
(843) 437-4946	(843) 437-4946	(843) 437-4946	Inbound	04/23/2014 21:03:55	04/23/2014 21:05:16	80	690	50
(856) 562-7989	(843) 437-4946	(843) 437-4946	Inbound	04/23/2014 21:07:49	04/23/2014 21:11:05	199	690	50
(843) 371-2320	(843) 437-4946	(842) 437-4946	Inbound	04/23/2014 21:29:13	04/23/2014 21:29:42	29	690	50
(856) 562-7989	(843) 437-4946		Inbound	04/23/2014 21:38:26	04/23/2014 21:38:26	0	515	197
(843) 437-4946	(856) 562-7989		Outbound	04/23/2014 21:43:23	04/23/2014 21:43:23	0	513	293
(856) 562-7989	(843) 437-4946	(843) 437-4946	Inbound	04/23/2014 22:42:46	04/23/2014 23:03:07	1221	690	50
(856) 562-7989	(843) 437-4946	(843) 437-4946	Inbound	04/23/2014 23:04:39	04/23/2014 23:07:22	163	690	50
(843) 437-4946	(443) 531-4422	(443) 531-4422	Outbound	04/24/2014 00:31:46	04/24/2014 00:32:16	30	690	50
(843) 437-4946	(443) 531-4422	(443) 531-4422	Outbound	04/24/2014 00:32:19	04/24/2014 00:32:56	37	690	50
(843) 437-4946	(856) 562-7989	(856) 562-7989	Outbound	04/24/2014 00:33:05	04/24/2014 00:33:27	21	690	50
(856) 562-7989	11 (843) 437-4946	(843) 437-4946	Routed_Call	04/24/2014 01:34:37	04/24/2014 01:34:45	8	690	50
(856) 562-7989	11 (843) 437-4946	(843) 437-4946	Routed_Call	04/24/2014 01:35:43	04/24/2014 01:35:50	7	690	50

2014A1820500384

STATE OF SOUTH CAROLINA

County/

Municipality of

Summerville

THE STATE
against

Tashon Earl Hurrell

Address 1225 Boone Hill Rd Apt 6
Summerville, SC 29483-2415

Phone SSN. [REDACTED]

Sex M Race B Height: 6 Weight: 179

DL State SC DL # 101011073

DOB 11/10/1988 Agency ORI # SC0180200

Prosecuting Agency Summerville Police Department

Prosecuting Officer Michael Weaver - 8787

Offense Robbery / Armed Robbery, robbery while armed or
allegedly armed with a deadly weapon

Offense Code 0139

Code/Ordinance Sec. 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to

defendant Tashon Earl Hurrell

on 12/18/2014

J. G. [Signature] L-95

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
5200 E. Jim Bilton Blvd.
St. George, SC 29477

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

WARRANT #2014A1820500384
OCA # 14-032496STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
TOWN OF SUMMERVILLEPersonally appeared before me, one Det. M. Weaver who, first being duly sworn, deposes and says
that

TASHON EARL HURRELL

did within this town, county and state on the 23RD day of April, 2014, violate section 16-11-330 of the
criminal laws of the State of South Carolina in the following particulars:DESCRIPTION OF OFFENSE
ROBBERY WHILE ARMED WITH A DEADLY WEAPON
16-11-330The affiant states that there is probable cause to believe that the defendant named above did commit
the crime(s) set forth, and that such probable cause is based on the following facts:That on April 23rd, 2014 located at 1365 Boone Hill Road, Kangaroo Gas Station, in the town,
county, and state aforesaid, the defendant, one TASHON EARL HURRELL, did willfully, unlawfully
and feloniously violate statute 16-11-330 of the state of South Carolina Code of Laws, (1976), as
amended, ROBBERY WHILE ARMED WITH A DEADLY WEAPON, in that the defendant did,
take, steal, and carry away \$106.00 cash, from the victim, while armed with a baseball bat. Facts to
prove the above are detailed in an incident report filed by the employee/victim from Kangaroo, along
with verbal and written statements, and video/audio surveillance. The surveillance shows a subject
enter the Kangaroo with a baseball bat and begins saying, "You know what time it is bitch." The
subject then hits the victim in the head with the bat. The subject drags the victim to the cash register
where he took \$106.00 cash before fleeing the scene. The subject was positively identified from the
video/audio surveillance of the gas station and a phone conversation with the affiant. A witness
observed the subject enter the balcony of apartment G4 of Somerset Apartments (1225 Boonehill
Road) before leaving in a white car shortly before officers arrived. All of which is against the form of
the statute in such cases made and provided.Sworn to Subscribed before me
this 22nd day of 2014.

Signature of Judge (L.S.)

Evidence
Exhibit B

Summerville

Personally appeared before me the affiant Michael Weaver

being duly sworn deposes and says that defendant Tashon Earl Hurrell

did within this county and state on or about 4/23/2014

State of South Carolina (or ordinance of) County/ Municipality of Summerville

in the following particulars

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts

PLEASE SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Summerville

Affiant's Address 300 West 2nd North Street

Summerville, SC 29483-

Affiant's Telephone (843)871-2463

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/23/2014 defendant Tashon Earl Hurrell

did violate the criminal laws of the State of South Carolina for ordinance of

County/ Municipality of Summerville

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 7/22/2014

Signature of Judge (L.S.)

David Wesley Whittey

Judge Code 8037-0097

Judge's Address 200 S. Main Street

Summerville, SC 29483-

Judge's Telephone (843)875-2010

Issuing Court

Magistrate

Municipal

Circuit

ORIGINAL

ORIGINAL

ORIGINAL

701
Case No 8 5:23 3556 - MGL-KDW

~~CONFIDENTIAL~~

SUMMERVILLE POLICE CRIMINAL INVESTIGATIONS
GRAND JURY INDICTMENT FORM

Case Number: 14-032496

Date of Incident: 04-23-2014

Incident Location: Kangaroo, 1365 Boonehill Road

Defendant #1: Hurrell, Tashon Earl

Charges: Attempted Murder

Kidnapping

Robbery While Armed With a Deadly Weapon

Defendant #2:

SYNOPSIS / PROBABLE CAUSE

On 04-23-2014, Officers from SPD responded to the incident location in reference to a gas station clerk bleeding from the head due to being beat with a baseball bat. The victim was dragged across the floor to the cash register where the subject took \$106. A K-9 Track led to an apartment near the incident location where a dollar bill with blood (later identified as the victim's) was recovered. The defendant was located at the apartment later this same day and briefly spoke to detectives. Audio/Video recordings were reviewed and the defendant was positively identified by his voice. Articles of clothing worn by the subject during the incident were identified as belonging to the defendant through a social media website and a witness statement.

All files.

E Hurrell

~~CONFIDENTIAL~~

C

5:23-CV-03556-MTC-RNW
Attachment for case no. (REDACTED)

State v Hurrell Samuel Stewart - Direct 2/10/16 263

1 What that stat means is if I took a random person's DNA
2 profile and I compared it to that DNA profile that I
3 developed from the evidence, that it would be a one in one
4 hundred thirty trillion -- a one hundred and thirty trillion
5 chance that that random person's DNA profile would match
6 that profile developed from the evidence.

7 Q Okay. And could you tell the jury, what is touch DNA?

8 A Touch DNA is DNA that is left behind whenever an
9 individual touches an object. Individuals shed skin
10 constantly. So it is possible to get skin cells off of an
11 object that has been touched by an individual.

12 Q And is it common in your profession to be able to
13 develop standards from just touch DNA?

14 A Yeah. It is possible to develop a DNA profile from
15 touch DNA.

16 Q But item number 1 from the dollar bill, you stated that
17 was from blood?

18 A Well, I did test for blood on that dollar bill and it
19 did come back positive for blood, but I cannot tell you
20 specifically of the DNA profile developed from blood.

21 Q Thank you.

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

23 Q Nothing further. Please anything the Defense may have.

24 THE COURT: Mr. Loy, anything on cross.

25 MR. LOY: Nothing. Thank you for coming.

Evidence Exhibit D

Evidence

Exhibit E

[Front and back]

281

State v Hurell

2/10/16

281

1 is there anything for any reason anybody might think this is
2 suspicious. It's whether or not there is actually
3 substantial circumstantial evidence that could support the
4 conviction. And without arguing further, I would submit to
5 the Court that there's not.

6 THE COURT: Now, in the Bennett case, the line in
7 the Bennett case that gives me most concern is, the court
8 must determine whether the evidence presented is sufficient
9 to allow a reasonable juror to find the defendant guilty
10 beyond a reasonable doubt. I don't think -- I think it has
11 to be sufficient, not just some evidence, even though when
12 I'm looking back over the Bostic case where they're talking
13 about proof. The line in there is unless there's a total
14 failure of competent evidence as to the charges alleged,
15 refusal by the trial judge to direct a verdict of acquittal
16 is not in error.

17 Here's the way I'm looking at the evidence. When I
18 view the video, arguably it meets the elements of the crimes
19 that were charged. In addition to the things that were
20 mentioned by the State as elements of the crime -- do I have
21 an independent witness that says the person matching the
22 description, the person who robbed and attacked the victim
23 went into the apartment and you did have a dollar bill with
24 the victim's blood on it outside the apartment. The victim
25 -- I mean, the third-party witness identifies the suspect as

State Trial Court's use of false
DNA evidence in denial of directed verdict motion

1 coming and going. There are phone records of a phone that
2 are arguably the Defendant's records if you believe that
3 that tee shirt was in the house, even though you've got the
4 conflicting testimony, I think the State -- a reasonable
5 juror could believe every step in the chain and for purposes
6 of a directed verdict motion, I'm going to deny your motion.
7 I'm going to note your objection to my ruling and I'm going
8 to deny your directed verdict motion. I think there is the
9 existence of evidence that a reasonable juror could believe
10 if they believe every step in the chain of circumstantial
11 evidence that the State has presented. So, for that reason,
12 I'm denying your directed verdict motion.

13 MR. LOY: Thank you, Your Honor.

14 THE COURT: Thank you.

15 All right. Now, we need to address the charge issues.
16 Do you want me to go ahead and address that before I bring
17 the jury out?

18 MR. WARD: Yes, sir.

19 MR. LOY: Having so successfully relied on Bennett
20 in my prior argument, my prior argument or my preceding
21 argument, I'll --

22 THE COURT: Well, since the State relied on
23 Bennett, I think Bennett's a good case to argue.

24 MR. LOY: Well, we all relied on Bennett. I just
25 relied on it unsuccessfully. Regardless, in Bennett -- I'm

State v Hurell

2/10/16 294

1 doubt. So it must be a reasonable doubt.

2 Now, ladies and gentlemen, let's get to the issue.
3 We've already talked about -- you know, the fact that these
4 crimes occurred, I don't think there's going to be any
5 argument that these crimes did not occur. You saw them.
6 The question is did he do them? That's the issue. All
7 right. It's simple.

8 And I would submit to you that a bloody dollar bill
9 that has Ms. Mary's blood on it, appears on the porch,
10 inside the little fence on the porch balcony, whatever you
11 want to call it, of Apartment G-4. And you have an
12 eyewitness, Lucas Hartman, who says I saw a man with a bag,
13 jump over that little railing and I heard him right below me
14 go in that apartment. Not once, but twice, okay? So what
15 does that do? Well, that makes G-4 the epicenter of this
16 case. In other words, all signs point to apartment G-4. So
17 the police, as they're investigating, obviously they're very
18 interested in apartment G-4 and thus the people that live at
19 apartment G-4. Because this person goes inside. He doesn't
20 stop on the balcony, hide, you know, accidentally drop
21 something and leave. He goes inside. So that would tend to
22 make a person believe that they either belong there, they
23 live there or they have a reason to be there. They know
24 people there. All right? So that's why the dollar bill,
25 the apartment and that eyewitness, that kind of starts

Evidence
Exhibit

G

Det. Weaver's
Police Report

	provided Mary with a photo line-up of Traquan, Tramaine and Tashon. Mary stated she recognized Tramaine and Traquan but only from them being customers at the store. Mary did not recognize Tashon from the photo line-up. I asked Mary what kind of injuries did she sustain. Mary stated her skull is fractured and she has orbital fractures a/so. Mary had lacerations to her forehead as well. I took photographs of Mary while she was in the hospital bed. The photographs were entered into evidence. I provided Mary with a business card and advised her to contact me with any information she might be able to remember.
3	I received a call from Tashon Hurrell at 9:21 AM on 04-24-2014. I introduced myself as Detective Weaver and Tashon stated this is Tashon Hurrell. Tashon stated to please leave his family alone. Tashon stated his brother did not rob anybody. Tashon stated he just got out of prison and he is not about to go back. Tashon stated he is about to put a warrant out on me. Tashon stated he is not trying to hinder the investigation and to leave his family alone. Tashon stated nobody in his family committed a crime and I am about to let him get away. I asked Tashon if I could talk to him for a minute. Tashon stated no. Tashon stated to leave his brother alone because he is child. Tashon hung the phone up and did not provide any contact information for how to contact him. The conversation was recorded and copied to a CD. The CD was entered into evidence. I contacted Agent Witt (Federal Bureau of Investigations) about having a voice comparison done from Tashon's phone call to me and the audio from the Kangaroo surveillance. The audio files were sent to The Forensic Audio, Video and Image Analysis Unit on 04-29-2014. The audio from the Kangaroo was found to be insufficient quality. A copy of the report from FBI was attached with this case file. The USB was entered into evidence from the Kangaroo Audio. I received the report on 06-05-2014. I met with Tashima Jones at SPD on 04-25-2014 to release the property taken from her apartment during the search warrant. <u>The items removed were found to not be related to the incident.</u> I showed Tashima the surveillance pictures from the incident and asked her if she recognized the subjects clothing. Tashima stated she has never seen that kind of clothing before. I advised Tashima that Traquan informed detectives that was his sweatshirt. Tashima stood up from her chair and stated he did not say that. Tashima stated she is leaving. Tashima signed a Property Release Form for the items and left SPD. On 05-29-2014 I met with Mary in reference to obtaining swabs of her mouth for DNA. I was wearing gloves while collecting the sample. I swabbed the inside of Mary's cheeks. Mary also provided me with the clothing she was wearing from the incident. Mary stated the hospital recently gave her the clothing. The swabs were entered into evidence and the clothing was left in a paper bag and given to our evidence personnel at SPD. A Chain of Custody was completed for the swabs and clothing. Sgt. Olsen had the dollar bill from the balcony of "G4" along with the buccal swabs from Mary sent to SLED for DNA Analysis. On 06-03-2014 I faxed a subpoena to Cricket for cell phone records of Tashima Jones. As of 07-23-2014 I have still not received her cell phone records. I faxed

Det
Weaver
ad
Tashon
Hurrell