

17295

STATE OF SOUTH CAROLINA

VOLUME ONE OF FOUR

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Daniel F. Pieper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GENE TONY COOPER, JR.,

APPELLANT

RECORD ON APPEAL

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~~CONFIDENTIAL~~

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
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COUNTY OF LEXINGTON) 90-GS-32-83
THOMAS H. COMERFORD) 90-GS-32-84
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) Defendant's Motion No. 1

v.)
) DEFENDANT'S AMENDED
) DEMAND FOR SPEEDY TRIAL

GENE TONY COOPER,)
)
)
Defendant.)
_____)

TO THE HON. DONALD V. MYERS, SOLICITOR, ELEVENTH JUDICIAL
CIRCUIT:

You will please take notice that the defendant Gene Tony
Cooper hereby moves, pursuant to S.C. Const. art. I, §§ 9 and 14,
to the speedy trial guarantees of the Sixth and Fourteenth
Amendments to the Constitution of the United States, and to S.C.
Code Ann. § 17-23-90 (West 2003), a speedy trial of all charges
now pending against him. In support of this motion, he would
show:

1. In 1990, The defendant was indicted for kidnaping,
armed robbery, conspiracy, and murder in connection with the
death of Kimberly Quinn. He was convicted and sentenced to death
on the murder count, and to terms of years for the other
offenses, on February 22, 1991.

2. On January 10, 1994, the South Carolina Supreme Court
reversed the defendant's murder conviction and remanded that

count for a new trial. At the same time, the South Carolina Supreme Court affirmed the defendant's other convictions and sentences. State v. Cooper, 312 S.C. 90, 439 S.E.2d 276 (1994).

3. On September 4, 1995, the defendant filed an application for post-conviction relief respecting his noncapital convictions. Counsel for the state and for the defendant informally agreed that the retrial of the murder charge should await disposition of his-PCR challenge to the remaining counts.

4. The post-conviction court granted relief with respect to all of the defendant's remaining convictions on December 3, 1998, following an evidentiary hearing. The state appealed, and on August 12, 2002 the South Carolina Supreme Court affirmed the grant of post-conviction relief. Cooper v. Moore, 351 S.C. 207, 569 S.E.2d 330 (2002).

5. The state did not petition for rehearing, and the Clerk of the South Carolina Supreme Court sent down the remittitur to the Circuit Court for Lexington County on August 29, 2002.

6. Since August 29, 2002, the state has, to the defendant's knowledge, taken no action to bring him to trial.

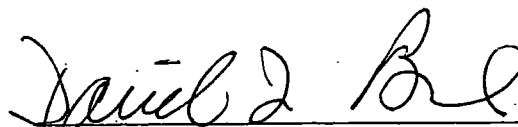
7. On June 23, 2003, Deputy Solicitor Riddle returned a telephone inquiry from defense counsel and advised that the state would respond to counsel's informal inquiry regarding a trial date in ten days. The ten day period elapsed on July 3, 2003. On July 11, 2003, Mr. Riddle returned counsel's call but advised

that the State was currently not in a position to propose a date certain for the trial of this case.

8. The defendant remains in confinement awaiting his retrial.

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper demands a speedy trial of all charges now pending against him.

Respectfully submitted,



DAVID I. BRUCK
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(803) 765-1044

ATTORNEY FOR GENE TONY COOPER

July 11, 2003

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

3
4
5 STATE OF SOUTH CAROLINA,)

6 -vs-)

7 GENE TONY COOPER,)

8 Defendant.)

Transcript of Record

90-GS-32-083 & 084

9
10 August 18, 2003
11 Lexington, South Carolina

12
13 B E F O R E:

14 HONORABLE MARC H. WESTBROOK, Judge.
15
16

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

18 DONALD V. MYERS, Solicitor
19 C. DAYTON RIDDLE, III, Deputy Solicitor
Attorneys for the State

20 DAVID I. BRUCK, Esquire
21 ROBERT E. LOMINACK, Esquire
Attorneys for the Defendant

22
23
24 L. COCONUT PANISARI, R.P.R.
25 Circuit Court Reporter

1 THE COURT: In the matter of the State versus
2 Gene Tony Cooper, Mr. Bruck, I believe this is your
3 motion?

4 MR. BRUCK: Yes, it is, Your Honor. I should
5 say that I am waiving the Defendant's presence here
6 today with his expressed consent.

7 THE COURT: Okay.

8 MR. BRUCK: If Your Honor please, this is
9 simply a motion to get a trial date set. We have
10 moved for a speedy trial. At this point the relief we
11 are seeking is simply a trial.

12 By way of background, Mr. Cooper was arrested
13 in 1989, tried in early 1991, sentenced to death. His
14 conviction was reversed for murder in 1994; however,
15 the Supreme Court declined on procedural grounds to
16 reverse several -- two other noncapital charges which
17 he was convicted of at the same time.

18 In effect it required us to return to circuit
19 court to seek post conviction relief. Mr. Cooper did
20 that successfully. Post conviction relief was granted
21 by Judge Keesley.

22 The State appealed and on August the 12th,
23 2002, the Supreme Court affirmed the grant of post
24 conviction relief as to all remaining charges.
25 Therefore we are now back to square one. Mr. Cooper

1 is a pretrial detainee in the contemplation of the law
2 and has been for one year and six days.

3 To be fair, although this case is 14 years
4 old, I don't want to make it appear that the State has
5 dragged its feet for a lot of that time. The Attorney
6 General's Office, Mr. Myers, and I all agreed that
7 until the status of his noncapital cases was finally
8 resolved on post conviction, it was in the interest of
9 neither Mr. Cooper nor the State to proceed on retrial
10 of the murder case.

11 Therefore, in effect the murder cause was held
12 in abeyance by mutual consent. However, that period
13 ended on August 12, 2002. We are now more than a year
14 down the road.

15 Mr. Cooper has maintained his innocence of all
16 of these charges since the day of his arrest in 1989.
17 He wants a trial. I have waited for a trial date to
18 be set or hear on something for a number of months.

19 Finally on June 20, 2003, I left a phone
20 message for Mr. Myers. Mr. Riddle called me back
21 after a couple of days and advised Mr. Myers was
22 unavailable for family, personal reasons and was not
23 in the offense, requested that I give Mr. Riddle about
24 ten days to get back to me about a trial date.

25 That call came back on June 23rd. I left

1 several more messages. Finally on July 11th, 2003,
2 Mr. Riddle called me back to say that I probably
3 needed to go ahead and file this motion, that the
4 State was not in a position to propose a trial date as
5 yet. Since then we have been going through the
6 mechanics to bring the matter before the Court.

7 I realize that there are a lot of other cases.
8 But, of course, this case is an old case. It has been
9 pending and ready for retrial now, as I say, for more
10 than a year. There is no other reason why Mr. Cooper
11 is in jail, prison other than this case.

12 Obviously, once a date is set, I need enough
13 time to get ready and subpoena our witnesses; but we
14 would like an early trial date set. My only schedule
15 at this point includes only one other firm commitment,
16 and that is on February 15th.

17 I am set for resentencing in the case of State
18 against Schaffer in Union County, which I am appointed
19 by the Court for resentencing. Other than that, I
20 will be ready to go.

21 I would ask the Court to consider a trial date
22 in November of this year. I think that would give
23 both sides enough time to get ready and get this case
24 finally tried and Mr. Cooper's guilt or innocence
25 decided. Thank you.

1 THE COURT: Mr. Myers.

2 SOLICITOR MYERS: Your Honor, this is just one
3 of about eight or nine that are lined up. Mr. Starnes
4 who just left, he is on the list, too. We also have
5 Mr. Cooper's codefendant, Robert Southerland, that we
6 have to schedule also.

7 As you know, we have been trying to work with
8 Mr. Delgado on the Radwell case, Caleen Radwell's
9 case, Your Honor. That has already been set. We have
10 got one coming up in September, Mr. Northcutt's case.
11 I think that we had worked out that Radwell was next
12 in line.

13 This one would have to come after Radwell.
14 Then we have Mr. Cooper's codefendant Southerland.
15 We've got William Kelly that the United States Supreme
16 Court sent back on a parole charge.

17 We have got Jeffrey Jones. We have got
18 Hazeldon on a parole charge coming back. We've got an
19 Ard case in the hopper. So that's just some of them
20 that are on retrial.

21 One further matter, Your Honor, I would like
22 to bring up at this time is that we would move
23 Mr. Bruck be disqualified from being involved in this
24 case and that he have no input, be enjoined from any
25 participation whatsoever.

1 Mr. Cooper was sent to death row, and then
2 Mr. Southerland was sent to death row. They are
3 codefendants in this case. Once they were on death
4 row, Your Honor --

5 MR. BRUCK: Your Honor, may it please, I had
6 no notice that this motion would be made today. I am
7 going to object to notice to a motion to disqualify me
8 without at least giving notice.

9 I think if the State had a motion like that,
10 they should have reduced it to writing, served me; and
11 we will litigate it at the appropriate time.

12 THE COURT: Mr. Myers, I think he probably
13 does have a right to have some notice.

14 SOLICITOR MYERS: I will put him on notice
15 that I'm going to move to have him disqualified for
16 his contact with Bo Southerland, which he has admitted
17 in transcripts that we have with the Court.

18 He has stipulated to it. We are going to move
19 at that time and will set this up as soon as we can.
20 So we need to dispose of that before we set a trial
21 date.

22 THE COURT: We can probably try to do it when
23 we set the other matter for Mr. Starnes. We can
24 probably set this at that same time. Should
25 Mr. Southerland's attorneys be notified also? Would

1 that come into play at all?

2 SOLICITOR MYERS: I can notify them, but I
3 don't know -- I can let them know that we are going to
4 do that at that time. They can be here or not be
5 here. I will leave it up to them.

6 THE COURT: Let me do this. Let me --
7 anything else, Mr. Bruck?

8 MR. BRUCK: Well, yes, sir. I don't think the
9 fact that the State plans to try to run me off the
10 case affects the fact that we still have -- I am
11 Mr. Cooper's lawyer now. He has made a motion. I
12 think we should set the case for trial.

13 If it turns out I get booted out of the case
14 for whatever reason, then the trial data can be
15 reexamined at that time. But I should note that the
16 State in other -- there's a couple of things I would
17 like to say by way of response.

18 One is that Southerland, Kelly, and Hazeldon
19 are all resentencings. That is to say, those people
20 are convicted of murder. They are not going anywhere.
21 I certainly think it would be unfair to give those
22 cases priority over a case where the pending charge is
23 the only thing keeping the man in jail.

24 He wants a trial on his guilt or innocence.
25 Guilt or innocence is not an issue on either Kelly,

1 Hazeldon or Southerland, as I understand the status of
2 those cases.

3 That is not to say they don't have other guilt
4 phase cases also pending. It seems to me that the
5 fact that there are a lot of other cases piled up is
6 — not an excuse to keep people in jail year after year
7 after year without a trial.

8 We have not made a motion for release on bond.
9 I thought we would take things up one at a time. If
10 the State does not have the capacity to give this man
11 a trial, then obviously he is entitled to release on
12 bond.

13 I don't know if electronic monitoring or
14 whatever might be needed, but at this point I simply
15 am asking the Court today to set a date for
16 Mr. Cooper.

17 If there is no case set for November right
18 now, why don't we set this case for November? In
19 reviewing the transcript of another case, Mr. Riddle
20 said they did intend to call a case for November.

21 The reason they couldn't put the Northcutt
22 case back then when Northcutt's lawyers wanted it to
23 be was that if they did that, they wouldn't be able to
24 try anything else this year. So the inference was
25 that they needed to keep a slot open in November. We

1 would like to fill it. So why not?

2 THE COURT: I understand. One of the
3 problems -- let me just note from a Court standpoint,
4 there would be some problem with November. As you
5 know, November is the time that has been set to
6 actually begin moving into the new courthouse. --

7 There is going to be some necessary disruption
8 that is going to take place obviously with the Court's
9 procedures during that. We don't know the exact dates
10 at this point.

11 We have a tentative date of November 22nd from
12 the contractors. They tell us that some moving may
13 take place prior to that. The problem is we don't get
14 to control that.

15 The contractors and the architect really more
16 than anybody probably would have control over that at
17 this point. So there are some uncertainty in terms of
18 November because of that particular issue.

19 MR. BRUCK: Understanding that, Your Honor, I
20 would ask that we set a date. If it turns out that it
21 has to be adjusted by a few weeks, we can work our way
22 around that. I just feel like we would like to get
23 the process moving if we can.

24 THE COURT: I certainly understand. Let me
25 take -- I agree, I will not -- well, am I going to

1 have to hear the motion on disqualification first
2 though?

3 Because I guess in essence if you are not
4 disqualified, then it would make no difference. If
5 you were disqualified, would it be fair in essence to
6 set a trial date for other attorneys to have to deal
7 with?

8 MR. BRUCK: Well, at this point I am the only
9 attorney appointed to the case. I think I may have
10 some assistance from another lawyer who would be
11 appearing pro bono.

12 To begin with, I think I know the grounds of
13 Mr. Myer's motion. Without going to pre judge a
14 motion that I haven't seen yet, I would be extremely
15 surprised if the Court finds that it has merit.

16 I don't doubt for a moment that he would like
17 to see me out of the case. But leaving that aside, I
18 don't think I will be out. If that were to happen,
19 then the date can be changed. We change trial dates
20 all the time.

21 But if there is no case set for November now,
22 why don't we set this case for November? Then if it
23 has to be changed, it has to be changed. I don't see
24 that they are proposing to set anything else for
25 November.

1 THE COURT: Let me do this. I will take it
2 under advisement at this point, mainly because of
3 those two issues. The one is the disqualification
4 issue.

5 The other, the main issue really, is the
6 uncertainty of the Court's schedule right now. Let me
7 do this. Let's get a hearing set for sometime later,
8 and I will have a little better idea of what the
9 schedule is like at that point. We are probably
10 talking about just a couple of weeks or so.

11 MR. BRUCK: Very well.

12 THE COURT: Thank you.

13 MR. BRUCK: If I could, Your Honor. I think I
14 mentioned to the Court when scheduling this, the one
15 understanding on which I waived ~~the need to have~~
16 Mr. Cooper here was that I would be able to send him a
17 transcript of this short hearing.

18 THE COURT: Yes, sir.

19 MR. BRUCK: I will make a request, but if I
20 could get any assistance in having a transcript sent
21 to Mr. Cooper and letting him know the outcome.

22 THE COURT: Madame Court Reporter, would it be
23 any disruption on your schedule to go ahead and give
24 that priority?

25 COURT REPORTER: No, sir.

1 THE COURT: How about do that then, please.

2 COURT REPORTER: Yes, sir.

3 MR. BRUCK: Thank you so much, Your Honor.

4 THE COURT: Thank you, sir.

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, .
Official Reporter for the Eleventh Judicial Circuit of
the State of South Carolina, do hereby certify that
the foregoing is a true, accurate, and complete
Transcript of Record of all the proceedings had and
the evidence introduced in the hearing of the
captioned cause, relative to appeal, in the Criminal
Court for Lexington County, South Carolina on the 18th
day of August, 2003.

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

August 19, 2003

L. Coconut Pantsari

Court Reporter

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON) 2005 FEB 10 P 11:15

90-GS-32-83

90-GS-32-84

BETH A. CARRIGG-
 CLERK OF COURT
 STATE OF SOUTH CAROLINA)
 LEXINGTON) SC

Defendant's Motion No. 2

v.

DEFENDANT'S RENEWED
 DEMAND FOR SPEEDY TRIAL

GENE TONY COOPER,

Defendant.

TO THE HON. DONALD V. MYERS, SOLICITOR, ELEVENTH JUDICIAL
 CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that at 12:00 noon on Tuesday,
 February 15, 2005, or as soon thereafter as counsel can be heard,
 the undersigned counsel for the defendant Gene Tony Cooper will
 appear in open court before the Honorable William P. Keesley,
 Chief Administrative Judge for General Sessions, Eleventh
 Judicial Circuit, at Lexington County Courthouse, to renew his
 outstanding motion for a speedy trial of all charges pending
 against him.

YOU WILL FURTHER TAKE NOTICE that by the service of this
 pleading, the defendant hereby moves, pursuant to S.C. Const.
 art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth
 and Fourteenth Amendments to the Constitution of the United
 States, and to S.C. Code Ann. § 17-23-90 (West 2004), for a

speedy trial of all charges now pending against him. In support of this motion, he hereby realleges all facts set forth in his Amended Motion for Speedy Trial filed on or about July 11, 2003, and heard in by Judge Westbrook in open court on August 18, 2003, and again in chambers on August 25, 2003, as well as all facts alleged by undersigned counsel at the August 18, 2003 hearing.

He would further show:

1. At the conclusion of the August 18, 2003 hearing, Judge Westbrook remarked on the uncertainty of the court's schedule, and asked that another hearing be set for the near future, in "just a couple weeks or so." Aug. 18, 2003 Hearing Tr. at 11. Pursuant to this direction, an in-chambers conference before Judge Westbrook was conducted on the afternoon of August 25, 2003. At that time, Deputy Solicitor Riddle advised Judge Westbrook and the undersigned counsel for the defendant that the state would call Mr. Cooper's case for trial during the spring of 2004--that is, between April and the end of June, 2004. Based on this representation, no on-the-record hearing was held at that time.

2. Despite its undertaking to call the defendant's case for trial during the spring of 2004, the state has not done so.

3. The defendant remains imprisoned at Lieber Correctional Institution, without bond, and has been there awaiting his retrial since before August 29, 2002, the date when the South

Carolina Supreme Court sent down the remittitur of its judgment affirming the grant of post-conviction relief as to the last of the criminal convictions arising from the homicide of Kimberly Quinn. Cooper v. Moore, 351 S.C. 207, 569 S.E.2d 330 (2002).

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper again demands a speedy trial of all charges now pending against him.

Respectfully submitted,

A handwritten signature in cursive script, reading "David I. Bruck", written over a horizontal line.

DAVID I. BRUCK
P.O. Box 11744
Columbia, SC 29204
(803) 765-1044

ATTORNEY FOR GENE TONY COOPER

February 8, 2005

ORIGINAL

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON) 2005 FEB 10 P 1:15
 90-GS-32-83
 90-GS-32-84

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON SC

STATE OF SOUTH CAROLINA

CERTIFICATE OF SERVICE

v.

GENE TONY COOPER,

Defendant.

I do hereby certify that I have served upon counsel for the State
 Defendant's Motion No. 2, Defendant's Renewed Demand for Speedy
 Trial, by first class mail, with postage prepaid and addressed
 to:

Dayton Riddle, Esq.
 Deputy Solicitor
~~Eleventh Judicial Circuit~~
 Lexington County Courthouse Annex
 205 E. Main Street
 Lexington, SC 29072

This the 8th day of February, 2005.

Natasha J. Holliday
 Natasha J. Holliday

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF LEXINGTON

4
5 THE STATE,

6 V.

7 GENE TONY COOPER,

8 DEFENDANT.

9
10 B E F O R E : THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

11
12 A P P E A R A N C E S :

13 FOR THE STATE: DAYTON RIDDLE, DEPUTY SOLICITOR

14 FOR THE DEFENDANT: DAVID I. BRUCK, ESQUIRE

15
16 COURT REPORTER: SMOKEY PERRY

17
18 FEBRUARY 15, 2005

19
20 90-GS-32-83

21 90-GS-32-84

22

23

24

25

1 MR. BRUCK: IF I CAN PASS UP A COPY OF THE MOTION THAT WAS THE
2 REASON WE'RE HERE TODAY AND RENEW DEMAND FOR A SPEEDY TRIAL.

3 THE COURT: OKAY. ALRIGHT. GO AHEAD, MR. BRUCK, PLEASE.

4 MR. BRUCK: THANK YOU, YOUR HONOR. THIS IS A MOTION, A RENEWED
5 DEMAND FOR A SPEEDY TRIAL IN THE MATTER OF THE STATE -VS- GENE TONY
6 COOPER. I'D LIKE TO SAY MR. COOPER IS NOT HERE TODAY. WITH HIS CONSENT
7 WE WAIVE HIS PRESENCE FOR MAKING THIS MOTION. I HEREBY WISH TO DEMAND
8 AGAIN IN OPEN COURT A SPEEDY TRIAL OF ALL CHARGES NOW PENDING AGAINST
9 MR. COOPER.

10 BY WAY OF BACKGROUND, YOUR HONOR, THE RECORD WILL REFLECT THE
11 FIRST MOTION FOR SPEEDY TRIAL WAS MADE BEFORE JUDGE WESTBROOK AS
12 CHIEF ADMINISTRATIVE JUDGE IN AUGUST 2003. HE ASKED THE PARTIES TO COME
13 BACK IN A WEEK OR TWO FOR A TRIAL DATE SETTING. WE DID SO. AT AN IN
14 CHAMBERS CONFERENCE THAT WAS NOT RECORDED, AT THAT TIME THE STATE
15 REPRESENTED THAT IT WOULD CALL MR. COOPER'S CASE DURING THE SPRING OF
16 2004 IN APRIL, MAY OR JUNE OF THAT YEAR. THERE THE MATTER RESTED. THE
17 STATE DID NOT CALL MR. COOPER'S CASE FOR TRIAL. HE AT ALL TIMES HAS
18 DESIRED A SPEEDY TRIAL, AND FOR THIS REASON WE ARE NOW RENEWING OUR
19 DEMAND FOR SPEEDY TRIAL.

20 I SHOULD SAY I ASKED THIS MATTER BE HEARD LAST WEEK. MR. RIDDLE
21 SAID THAT WAS NOT CONVENIENT FOR THE STATE. WE AGREED TO HAVE IT
22 HEARD TODAY. IT WAS MY INTENTION TO ASK THE COURT TO SET, AND IS MY
23 INTENTION, TO ASK THE COURT TO SET A TRIAL DATE IN THIS MATTER.

24 NOW MR. RIDDLE JUST A MOMENT AGO ADVISED ME THAT MR. MYERS IS
25 NOT PRESENT TODAY AND THAT THE STATE IS NOT PREPARED TO GO FORWARD

1 WITH THE DATE SETTING IN MR. MYERS' ABSENCE. I APPRECIATE THAT MR.
2 MYERS IS THE MAN IN THESE MATTERS, BUT, NEVERTHELESS, THE STATE HAS HAD
3 NOTICE FOR A WEEK OF THIS MOTION. THIS MATTER SHOULD'VE BEEN TRIED A
4 LONG TIME AGO, AND AS CHIEF ADMINISTRATIVE JUDGE, YOUR HONOR HAS THE
5 POWER TO SET THE CASE FOR TRIAL AND WE WOULD ASK THAT YOU DO THAT.

6 I SHOULD BY WAY OF BACKGROUND STATE THAT AFTER THE TIME IN
7 WHICH THE STATE WAS GOING TO TRY THIS CASE IN THE SPRING OF 2004 ELAPSED,
8 I TOOK A JOB AS A CLINICAL PROFESSOR OF LAW AT WASHINGTON AND LEE
9 UNIVERSITY LAW SCHOOL IN LEXINGTON, VIRGINIA. THAT'S A FIVE-HOUR DRIVE
10 FROM HERE.

11 IN EFFECT, I FEEL LIKE I'VE BEEN WAITED OUT. I KNOW THAT THE STATE
12 DIDN'T KNOW THAT WAS GOING TO HAPPEN, BUT THAT'S WHAT HAPPENS WHEN A
13 CASE IS NOT TRIED. CHANGE AND DIFFICULTIES INCREASE.

14 THE CLIENT IS VERY ANXIOUS NOT TO HAVE A CHANGE OF COUNSEL
15 AFTER ABOUT 14 YEARS I REPRESENTED MR. MYERS -- MR. COOPER, AND -- AND
16 HE WANTS ME TO REPRESENT HIM AND I'M WILLING TO DO IT. THE SCHOOL YEAR
17 IS OVER IN MAY, AND I'D BE PREPARED TO TRY THIS CASE IN JUNE OR JULY OF
18 THIS YEAR. I REALIZE THAT SCHEDULES ARE NOT NORMALLY MADE AROUND THE
19 CONVENIENCE OF LAWYERS ON EITHER SIDE. BUT UNDER THESE VERY UNUSUAL
20 CIRCUMSTANCES, THE FACT THIS CASE HAS BEEN PENDING, ALL CHARGES
21 HAVING BEEN REVERSED SINCE LATE AUGUST OF 2002, THE FACT THAT THE STATE
22 HAS HAD THIS MOTION FOR A SPEEDY TRIAL PENDING FOR QUITE SOME TIME AND
23 THE FACT THAT NOW MY AVAILABILITY IS SOMEWHAT CONSTRAINED, I THINK
24 THOSE ARE REASONABLE TIMES IN WHICH TO TRY THE CASE, AND I MOVE THAT
25 THE CASE BE SET FOR TRIAL DURING ONE OF THOSE TWO MONTHS. THAT'S THE

1 MOTION.

2 THE COURT: WELL--

3 MR. RIDDLE: YOUR HONOR, I WAS NOT PRESENT AT THE PRIOR HEARING
4 BEFORE JUDGE WESTBROOK; NOR WAS I PRESENT AT THE CHAMBERS
5 CONFERENCE THAT MR. BRUCK ALLUDED TO THAT TOOK PLACE A COUPLE OF
6 WEEKS AFTER THE HEARING BEFORE JUDGE WESTBROOK.

7 SO I'M UNABLE TO ADDRESS ANYTHING THAT MAY HAVE TAKEN PLACE AT
8 EITHER OF THOSE TIMES.

9 IT OCCURS TO ME, YOUR HONOR, THAT THE SUPREME COURT HAS ALWAYS
10 APPOINTED A JUDGE TO HEAR MATTERS RELATED TO CAPITAL MURDER CASES,
11 AND IT JUST OCCURS TO ME THAT MAYBE -- I GUESS A PRELIMINARY MOTION TO
12 SET A TRIAL DATE IS GONNA BE -- WE NEED TO GET A JUDGE APPOINTED BECAUSE
13 EVEN IF YOUR HONOR WERE TO SET A TRIAL DATE AND THEN CHIEF JUSTICE TOAL
14 WAS TO APPOINT A PARTICULAR JUDGE THAT, YOU KNOW, WAS UNAVAILABLE
15 DURING THAT PARTICULAR TIME, IT JUST SEEMS LIKE WE'RE PUTTIN' THE APPLE
16 BEFORE THE -- EXCUSE ME -- PUTTIN' THE CART BEFORE THE HORSE AS IT WERE.
17 BUT, YOUR HONOR, SOLICITOR MYERS WAS HERE EARLIER. HE HAD TO LEAVE
18 WHEN THE SUPREME COURT RAN LATE THIS MORNING AND WE -- THIS WAS
19 ORIGINALLY SCHEDULED FOR ABOUT 45 MINUTES AGO, YOUR HONOR.

20 AND, FRANKLY, JUDGE, YOU KNOW HOW THESE CASES WORK WITH
21 SOLICITOR MYERS. I CANNOT SET A TRIAL DATE -- CANNOT AGREE TO ANY TRIAL
22 DATE ABSENT WHAT HE IS DOING. WHAT I HAD PROPOSED TO MR. BRUCK IS THAT
23 WE HAVE A CONFERENCE CALL AND TRY TO DISCUSS THIS WHERE MR. BRUCK
24 WON'T HAVE TO DRIVE BACK DOWN HERE FROM WASHINGTON AND LEE. BUT I'M
25 JUST NOT IN A POSTURE WHERE I CAN CONSENT OR AGREE OR DISAGREE OR

1 WHATEVER WITH ANYTHING.

2 THE COURT: ALRIGHT. NO CIRCUIT JUDGE HAS BEEN ASSIGNED.

3 MR. BRUCK: THAT'S CORRECT. I DON'T KNOW FOR A FACT THAT THE
4 STATE INTENDS TO SEEK THE DEATH PENALTY, AND IF THEY DO NOT, THEN IT
5 WOULD NOT BE NECESSARY TO ASSIGN A JUDGE. THAT'S THEIR CALL OBVIOUSLY.
6 THEY HAVE NOT SAID ANYTHING TO ME ONE WAY OR THE OTHER.

7 THE COURT: YOU GET OUT OF THE SCHOOL YEAR WHEN?

8 MR. BRUCK: THE FIRST WEEK IN MAY. I SHOULD ADD THAT MR. COOPER
9 HAS NO OBJECTION TO YOUR HONOR TRYING THIS CASE. YOU HEARD THE PCR
10 AND ARE BROADLY FAMILIAR WITH IT. IF THAT'S AGREEABLE TO THE STATE WE
11 COULD JUST SEE IF YOUR HONOR IS ABLE TO WORK IT INTO A REGULAR GENERAL
12 SESSIONS TERM. I KNOW YOU HAVE AT LEAST ONE DURING THE PERIOD. AND SEE
13 IF THAT'S AGREEABLE WITH COURT ADMINISTRATION.

14 THE COURT: ALRIGHT. LET ME DO THIS: LET ME TAKE IT UNDER
15 ADVISEMENT, AND I WILL ISSUE A WRITTEN ORDER AND I'LL -- WHEN I DO IT I'LL
16 E-MAIL IT TO YOU IF YOU CAN GIVE ME YOUR E-MAIL ADDRESS.

17 MR. BRUCK: YES, SIR.

18 THE COURT: I AGREE WITH MR. RIDDLE IF THE CASE -- IF A DEATH
19 PENALTY NOTICE IS ASSIGNED, THE INSTRUCTIONS THAT WE'VE BEEN GIVEN -- I
20 DON'T KNOW THAT THEY'RE ANYWHERE IN WRITING, BUT WHAT WE'VE BEEN
21 TOLD IS THAT WE DEFER EVERYTHING TO THAT ONE JUDGE. I DON'T SEE TWO
22 WEEKS OF CRIMINAL COURT BACK TO BACK WITH THE SAME JUDGE. I DON'T
23 KNOW EXACTLY HOW LONG THIS CASE WOULD TAKE TO TRY. OBVIOUSLY, IT
24 DEPENDS ON A LOT OF THINGS. BUT IT'S A 1990 CASE AND IT NEEDS TO MOVE.
25 ALRIGHT. MR. BRUCK, I APPRECIATE YOUR COMIN' DOWN. I DIDN'T REALLY

1 REALIZE Y'ALL HAD THIS. SO I DON'T KNOW ANYTHING ABOUT IT.

2 MR. BRUCK: I THINK THERE MAY BE A LETTER WAITING IN EDGEFIELD FOR
3 YOU ABOUT IT.

4 THE COURT: OKAY. WELL, THAT'S ENTIRELY POSSIBLE. THANK YOU VERY
5 MUCH. I'LL SEND YOU A WRITTEN ORDER.

6 MR. BRUCK: THANK YOU.

7 MR. RIDDLE: THANK YOU, YOUR HONOR. AND YOUR HONOR HAS MY E-
8 MAIL.

9 MR. BRUCK: APPRECIATE YOU TAKING TIME FOR US.

10 THE COURT: NO PROBLEM.

11 *****ENDOFTRANSCRIPT*****
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CERTIFICATE

1
2
3 I, THE UNDERSIGNED, CARLA PERRY, OFFICIAL AND CERTIFIED COURT
4 REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
5 FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT TO THE BEST OF MY ABILITY
6 AND SKILL.

7
8 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR
9 INTEREST TO ANY PARTY HERETO.
10

11
12 Smoley Perry
13

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15 1-31-08
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ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF GENERAL SESSIONS

THE STATE,

2005 APR 25 P 5:27

-vs-

BETH A. CARRIG
CLERK OF COURT
LEXINGTON

ORDER FOR SPEEDY TRIAL

GENE TONY COOPER,

Case Number: 1990-GS-32-0083

1990-GS-32-0084

Defendant.

The defendant has moved for a speedy trial. The case is to be heard before the end of 2005, or the defendant may move for bail or for dismissal of the charges.

Mr. Cooper had been convicted and sentenced to death, but was granted Post-Conviction Relief, which was affirmed by the South Carolina Supreme Court in 2002. A speedy trial motion was argued before The Honorable Marc H. Westbrook on August 18, 2003. Judge Westbrook needed to check the court's schedule and directed that a hearing be scheduled in a couple of weeks. A meeting was held in chambers on August 25, 2003, during which the State indicated that the case would be tried in the Spring of 2004. The case has not been called for trial yet.

The court directs that the Solicitor's office speak with the Judge assigned to this case and to the Chief Judge for Administrative Purposes and select a firm date for the commencement of the trial, which shall begin in 2005. Notice of that date is to be given to defense counsel within 30 days from today's date.

AND IT IS SO ORDERED.


William P. Keesley
Judge

April 25, 2005

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON 2005 JUN -1 P 4: 57 90-GS-32-83
90-GS-32-84

STATE OF SOUTH CAROLINA **BETH A. CARRIGG**
CLERK OF COURT Defendant's Motion No. 3
LEXINGTON, SC

v.) NOTICE OF MOTION AND MOTION TO
) DISMISS ALL CHARGES FOR LACK OF
) SPEEDY TRIAL
GENE TONY COOPER,)
) Defendant.)
_____)

TO THE HON. DONALD V. MYERS, SOLICITOR, ELEVENTH JUDICIAL
CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that at a time to be set by the
Court not less than one week after service of this motion, the
undersigned counsel for the defendant Gene Tony Cooper will move
before the Honorable William P. Keesley, Chief Administrative
Judge for General Sessions, Eleventh Judicial Circuit, at Lex-
ington County Courthouse, for an order dismissing all charges
against him for lack of speedy trial.

YOU WILL FURTHER TAKE NOTICE THAT, should the motion to
dismiss be denied or deferred, the defendant will move for his
immediate release pending trial, upon such conditions as the
Court may direct.

YOU WILL FURTHER TAKE NOTICE that by the service of this
pleading, the defendant hereby renews his demand, pursuant to
S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees

of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90 (West 2004), for a speedy trial of all charges now pending against him.

GROUND'S FOR RELIEF

In support of the foregoing requests for relief and demand for speedy trial, the defendant hereby realleges:

- all facts set forth in his Amended Motion for Speedy Trial filed on or about July 11, 2003, and heard in by Judge Westbrook in open court on August 18, 2003, and again in chambers on August 25, 2003, as well as all facts alleged by undersigned counsel at the August 18, 2003 hearing.
- all facts set forth in his Second Motion for Speedy Trial filed on February 8, 2005, and heard in open court on February 15, 2005.

He would further show:

1. At the conclusion of the February 15, 2005 hearing before the Honorable William P. Keesley, Chief Administrative Judge, Eleventh Judicial Circuit, the Court advised that it would issue an order respecting a trial date.

2. On April 7, 2005, counsel for Mr. Cooper wrote to Judge Keesley inquiring about the order respecting a trial date, which had yet to issue.

3. On April 25, 2005, Judge Keesley issued an order that the case be tried before the end of 2005. The order included the following directive:

The court directs that the Solicitor's office speak with the Judge assigned to this case and to the

Chief Judge for Administrative Purposes and select a firm date for the commencement of the trial, which shall begin in 2005. Notice of that date is to be given to defense counsel within 30 days from today's date.

3. This order was sent to the parties by e-mail on April 25, 2005, along with an invitation to advise the court if there were any problems. In response to this invitation, counsel for Mr. Cooper sent the following message via e-mail to Judge Keesley, with copies to opposing counsel, on April 26, 2005:

Dear Judge Keesley:

I realize that scheduling a trial to suit everyone is never easy, but since you invited us to advise if there were any problems, I have to say that there is one.

As I mentioned at the speedy trial motion hearing before you on February 15, 2005, I'm now a law professor at Washington & Lee, and am available to try this case from early May to early August. From mid-August to early December I am both teaching a lecture course and running the Virginia Capital Case Clearinghouse, a clinical program at W&L.

Normally such conflicts would be my problem and no one else's. But here my scheduling crunch is actually a result of the state's long delay in bringing this case to trial. Mr. Cooper is extremely anxious to have me defend him, and has been asking me for years not to hand over his case to anyone else. It does not seem fair for the state to force either a further delay of the trial into 2006 or else a change of counsel by, in effect, waiting me out. This is especially true considering Mr. Cooper's three motions for speedy trial, and considering the state's prior commitment, reflected in your order, to bringing the case to trial in the spring of 2004.

Under the circumstances, I must respectfully renew my request that this case be set for trial on or before August 1 of this year. This request is made so that Mr. Cooper will not be unfairly disadvantaged by the

state's unjustified and (to me at least) unexplained delay in calling his case for trial.

(Emphasis added).

4. On April 27, 2005, Judge Keesley responded by e-mail that he would speak to Judge Westbrook about counsel's message.

5. Despite Judge Keesley's order of April 25, more than 30 days have now elapsed since that order, and the state has failed to inform the defendant or his counsel of a trial date. Instead, on May 18, the solicitor wrote to Judge Westbrook requesting that a hearing be held as soon as convenient. To counsel's knowledge, no action has been taken respecting this request.

6. Along with the letter to Judge Westbrook, the Solicitor filed and enclosed a frivolous motion to disqualify "all present attorneys and agents" involved in Mr. Cooper's defense, on the grounds that in early 1992, more than 13 years ago, the undersigned counsel interviewed a co-defendant in the case, Robert Southerland, at Mr. Southerland's request but without permission from Mr. Southerland's counsel.

7. Defense counsel has been informed by the staff of the South Carolina Court Administration on April 26, 2005, and again on May 27, 2005, that there has been no request received from the Eleventh Circuit Solicitor's Office for assignment of a trial judge or scheduling a trial in this case at any time between 2003 and May 27, 2005.

8. Upon counsel's information and belief, Judge Westbrook

has not been assigned as trial judge in this case, and therefore is not "the judge assigned to this case" with whom Judge Keesley's order of April 25, 2005 directed the Solicitor's Office to confer. Due to the Solicitor's persistent failure to advise Court Administration of the need for a judicial assignment, no judge is currently "assigned to this case."

9. Judge Westbrook has previously recused himself, on motion of the applicant, from presiding at Mr. Cooper's post-conviction relief hearing, due to his having heard the PCR application of the co-defendant Southerland. Although Mr. Cooper made his August, 2003 demand for speedy trial before Judge Westbrook, the motion was made at a time when Judge Westbrook was serving as the Chief Administrative Judge for the Eleventh Judicial Circuit. Judge Keesley is currently the Chief Administrative Judge for the Eleventh Judicial Circuit, and will remain in that capacity for the remainder of 2005. Under these circumstances, it appears that Judge Keesley is the appropriate judge to hear and decide this motion.

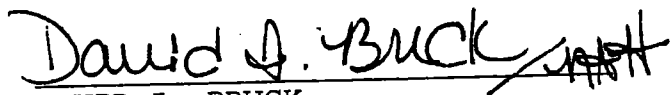
9. In view of the persistent refusal of the state to call Mr. Cooper's case for retrial, compounded by its failure to abide by the express terms of Judge Keesley's order of April 25, 2005, or to take any other action necessary to bring this case to trial, the defendant submits that the relief prayed for in this motion should be granted.

CONCLUSION

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper hereby moves for an order dismissing all charges against him for lack of speedy trial. Should the motion to dismiss be denied or otherwise not granted, the defendant further moves, reserving his rights under his motion to dismiss all charges, for his immediate release pending trial, upon such conditions as the Court may direct.

The defendant further hereby renews his demand, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90, for a speedy trial of all charges now pending against him.

Respectfully submitted,



DAVID I. BRUCK
P.O. Box 11744
Columbia, SC 29204
(803) 765-1044

ATTORNEY FOR GENE TONY COOPER

May 27, 2005

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

2005 JUN -1 P 4: 51

90-GS-32-83

90-GS-32-84

STATE OF SOUTH CAROLINA)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

CERTIFICATE OF SERVICE

v.)

GENE TONY COOPER,)

Defendant.)

I do hereby certify that I have served upon counsel for the State Defendant's Motion No. 3, Notice of Motion and Motion to Dismiss all Charges for Lack of Speedy Trial, by first class mail, with postage prepaid and addressed to:

Donald V. Myers - -
Solicitor
Eleventh Judicial Circuit
Lexington County Judicial Center
205 E. Main Street, Third Floor
Lexington, SC 29072

This the 27th day of May, 2005.

Natasha J. Holliday
Natasha J. Holliday

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) COURT OF GENERAL SESSIONS

State of South Carolina,)
PLAINTIFF,)
-VS-) MOTIONS HEARING
Gene Tony Cooper,) 1990-GS-32-0083
DEFENDANT.) 1990-GS-32-0084

BEFORE THE HONORABLE WILLIAM P. KEESLEY, JUDGE

July 12, 2005
LEXINGTON, SOUTH CAROLINA

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

Donald V. Myers, Esq.
For the State

Stuart M. Andrews, Jr., Esq.
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

David A. Bruck, Esq.
Washington and Lee University
Sydney Lewis Hall
Lexington, Virginia 24450-0303

Jack Duncan, Esq.
For the Defendant

REMA K. GANTT
CIRCUIT COURT REPORTER

EXHIBITS

PAGE NO.

(There were no exhibits introduced at this hearing.)

1 THE COURT: Thank you. Have a seat,
2 please.

3 Have you got the file on Mr. Cooper?

4 CLERK OF COURT: Yes, sir.

5 THE COURT: All right. In the matter of
6 the State of South Carolina versus Gene Tony Cooper,
7 there are some motions ~~that we need to consider and~~
8 some logistical issues that we'll need to discuss.
9 There's been a motion for speedy trial filed by Mr.
10 Cooper.

11 There have been several motions for
12 speedy trial that have been filed and heard. The
13 last one was heard by me and an order issued on
14 April 25, 2005, which directed the commencement of
15 this trial in the year 2005 and directed that
16 defense counsel be notified of a date within 30
17 days.

18 It's my understanding there's a
19 renewed motion for speedy trial. There's also a
20 motion filed by the State to excuse defense counsel,
21 Mr. Bruck, from the case. And there is a motion by
22 the State to have the Solicitor's Office for the
23 Eleventh Judicial Circuit step out of the case, and
24 that's based on a potential claim for conflict of
25 interest.

1 Mr. Cooper is present with counsel.

2 Mr. Myers is present for the State. Do you all want
3 to be heard on the order in which we should take
4 these?

5 MR. BRUCK: I propose that we take the
6 matters up in the matter that Your Honor has listed
7 it.

8 THE COURT: Okay, let's go.

9 MR. MYERS: It may be better, Your Honor,
10 to take up our disqualification thing first, because
11 that might resolve some other things.

12 MR. BRUCK: We have no preference about
13 that, except that it can't possibly resolve the
14 speedy trial motion or any alternative for release
15 on bond, because he'll need to have that heard
16 today. But with that proviso, whatever suits the
17 Court.

18 THE COURT: The rulings may be different.

19 I mean, I may rule after the hearing that some of
20 these can't be ruled upon if I grant their motion.
21 But at this point, even though it may be somewhat of
22 a waste of time -- I don't know what the ultimate
23 rulings will be -- I'm going to hear from you first,
24 Mr. Bruck.

25 MR. BRUCK: Thank you, Your Honor. This

1 is a motion to dismiss all charges for lack of
2 speedy trial. And in the alternative, we have
3 requested reserving our rights under that motion
4 and, should it be denied, that Mr. Cooper be
5 released on bond pending trial.

6 I'm not going to go through the
7 entire history of Mr. Cooper's fruitless efforts to
8 bring this case to trial because the record already
9 abundantly reflects them. But just by way of
10 refreshing the Court's memory, this case was ready
11 to be retried in its entirety, all charges, at the
12 end of August 2002, when the Supreme Court finally
13 affirmed Your Honor's grant of post-conviction
14 relief to disapprove it as non-capital charges.

15 After 11 months went by and there was
16 no sign of any activity from the State about
17 bringing the case to trial, I contacted the
18 Solicitor's Office, Mr. Riddle and thereafter, when
19 I was unable to secure a trial date through an
20 informal process of negotiation, moved for speedy
21 trial. That was heard on two occasions in August of
22 2003.

23 The record reflects the second time
24 when Judge Westbrook heard those motions, although
25 Judge Westbrook had previously recused himself from

1 hearing Mr. Cooper's post-conviction case, which is
2 why the case was ultimately assigned to Your Honor.
3 But he did hear us on the speedy trial motions.

4 And finally in in-chambers conference
5 at the end of August 2003, the State agreed to call
6 the case during the spring of 2004. That was not
7 reduced to an order, but it's reflected in the
8 record that has developed since then. The case was
9 not called in the spring of 2004, and the State took
10 no other action.

11 In 2005, Mr. Cooper made a second
12 written motion for speedy trial that was heard
13 before Your Honor on February 15, 2005, here in this
14 courthouse. Some weeks later, Your Honor issued an
15 order for speedy trial, which, as the Court has
16 recited, was issued on April 25th and directed the
17 State to get a trial date set and advise Mr. Cooper
18 and counsel of that date within 30 days. When the
19 30 days had nearly run, Mr. Myers wrote a letter to
20 Judge Westbrook concerning the scheduling of a trial
21 date.

22 I also advised the Court that because
23 the State had waited so long and I had actually
24 moved out of South Carolina and had responsibilities
25 as a full-time professor of law at Washington and

1 Lee University, the end of 2005, the last half of
2 the year -- at least the last four months of the
3 year -- posed serious logistical problems for me.
4 And I renewed the request that I had made back in
5 February, which was to try the case before August 1,
6 2005. That's where matters stood when the present
7 motion was made.

8 As the motion reflects, I contacted
9 Court Administration and determined that the State
10 never contacted Court Administration to ask for the
11 assignment of a trial judge. Now, that could
12 reflect that the Court doesn't intend to seek the
13 death penalty, in which case there is no need for a
14 specially assigned judge.

15 Or it could reflect that the State is
16 simply not interested in complying with Your Honor's
17 order to get a trial date set, which included the
18 directive that the State confer with the judge
19 assigned to the case. Now, that can't be done if no
20 judge is assigned to the case, and yet no action was
21 taken, even after receiving a written order from
22 Your Honor to make this happen within 30 days.

23 Close to three years have now elapsed
24 since this case was ready for retrial, and close to
25 two years have elapsed since the first of Mr.

1 Cooper's motions for speedy trial. Then at the last
2 minute, about ten days before today, or June 29th,
3 to be precise, Mr. Myers had written a letter to the
4 Court raising for the first time the prospect of a
5 conflict of interest which would require his office
6 to be recused.

7 Now, we had not spotted this problem.
8 We are inclined to believe that he does present a
9 problem. But the immediate problem for this motion
10 is, why wasn't it raised before now?

11 The timing, I would suggest, should
12 not entitle the State by this sort of dilatory
13 approach to more time to try this matter. He is on
14 Death Row. He has been there for 16 years and,
15 according to the South Carolina Supreme Court, has
16 yet to have his first fair trial. He's still there.
17 And this just isn't fair. It goes on, and on, and
18 on.

19 Now, having done a little bit of
20 investigation, it's entirely possible that the
21 reason for that is that the State may have a very
22 difficult time proving Mr. Cooper's guilt. The
23 State Supreme Court already found in affirming Your
24 Honor's ruling last time that the case for guilt was
25 not overwhelming.

1 It depends on the credibility of
2 convicted criminals. And Mr. Cooper has denied his
3 guilt and asserted his innocence since the day he
4 was arrested in 1989, so vigorously that he insisted
5 on himself with a portable tape-recorder
6 tape-recording his own interrogation by the
7 Lexington County Sheriff's Department, because he
8 was afraid that what he actually said was not going
9 to be recorded. What he said was, "I didn't do
10 this." And that's still what he says. —

11 The way we resolve that is not by
12 lawyers arguing about it in court but by having a
13 jury trial. And the State seems to be unwilling to
14 accord this man his day in court. We think really
15 they've had their chance and they've missed it, and
16 it's time to dismiss the charges.

17 The length of the delay is completely
18 unreasonable. The reasons for the delay are
19 entirely invalid. I'm not really aware that there
20 are any, except that there is always some other case
21 which has to be tried before this one.

22 It seems to have developed -- and I'm
23 sure Mr. Myers has these case names and dates in his
24 mind. But it always seem to develop that the cases
25 ahead of Mr. Cooper's case don't actually get tried,

1 but they were always the reason why his couldn't be
2 tried.

3 This is not a substitute for a trial,
4 just keeping a man in prison forever. And we think
5 the time in which this can be tolerated has elapsed,
6 particularly because Your Honor issued an order that
7 directed that this end, in response to the second
8 motion for speedy trial.

9 And that order has got to be obeyed,
10 and it wasn't. And there's got to be some sanction
11 for that. So we respectfully submit that the Court
12 should dismiss this case for lack of prosecution,
13 for lack of speedy trial, and let that be the end of
14 it.

15 In the alternative -- and that is our
16 motion -- at the same time, should that be denied,
17 I'd like to be heard further on Mr. Cooper's right
18 to be released now on bond. And there are all sorts
19 of measures that could be taken.

20 THE COURT: Just go ahead, Mr. Bruck.

21 MR. BRUCK: I'm sorry?

22 THE COURT: Just go ahead, because I'm
23 probably not going to rule from the bench on these
24 things.

25 MR. BRUCK: Well, as I've told you, Mr.

1 Cooper has been in prison for 16 years. His roots
2 are in Lexington County. His father, Gene Cooper,
3 Sr., is present in the courtroom, along with Mr.
4 Cooper's stepmother.

5 Mr. Cooper, Sr., has a home for Tony,
6 a three-bedroom house. He would be happy for his
7 son to come home and live with him. Mr. Cooper,
8 Jr., would, of course, agree to any reasonable
9 condition -- or any condition, reasonable or
10 otherwise -- imposed by the Court, including the
11 wearing of an electronic ankle bracelet and any
12 restrictions on his movement that the Court would
13 think appropriate.

14 So we would not be proposing that the
15 Court simply turn him out without any substantial
16 supervision. He could be placed on house arrest 24
17 hours a day if that seemed to be the appropriate
18 restriction on his movement.

19 But it is simply unfair to keep a man
20 in maximum security confinement forever when the
21 State had their chance to bring him to trial, was
22 ordered to bring him to trial, and didn't do it.
23 And that changes the ordinary calculus of whether
24 bond is appropriate in a capital case, whether bond
25 would have been appropriate in this case.

1 The State should not be heard to say
2 this is too terrible a crime. It is a terrible
3 crime, but Mr. Cooper says he didn't do it. And the
4 State should not now be heard to say that you should
5 not order his release on bond because of the facts
6 of the crime or Mr. Cooper's record from when he was
7 17 years old and went to prison for a series of
8 armed robberies previously or anything else.

9 This needs to be considered in
10 conjunction with the motion for speedy trial. And
11 we really think that it would be extremely unfair to
12 keep this man in prison any longer.

13 So that's the motion that we ask to
14 have heard today. What remains is Mr. Myers's
15 request that I be excused. I don't know if he wants
16 to argue that today or what. We filed a written
17 return with exhibits and tried to be respectful
18 about the arguments of opposing counsel.

19 But suffice it to say that the law
20 cited in support of this motion is without merit.
21 Mr. Myers's contention that I violated the canons of
22 ethics by speaking to the represented co-defendant
23 has absolutely nothing to do whatsoever with whether
24 or not I can continue as Mr. Cooper's attorney.

25 We anticipate that this represented

1 person, Bo Sutherland, will be a defense witness at
2 trial. We plan to apply to the Court for an order
3 authorizing us -- if his lawyers do not agree,
4 authorizing us to meet with Mr. Sutherland in order
5 to prepare his testimony. I haven't spoken to him
6 in many, many years. _____

7 But the motion represents that for
8 some reason the fact that I interviewed Mr.
9 Sutherland, as I would interview any witness who is
10 material to the case, makes me a witness in the
11 case. Now, if that were true, when Mr. Myers
12 interviews and prepares witnesses for trial, that
13 makes him a witness and he can't ever prosecute
14 anything in this courtroom.

15 The contention on its face is
16 preposterous. We have an additional case that I did
17 not see in time to include in our reply, but I'll
18 hand it to Mr. Myers and hand it up to the Court,
19 State against Sanders. Briefly, that was a case
20 involving co-counsel who was accused by the State of
21 actually trying to coerce and manipulate the
22 testimony of the State's witnesses.

23 The murder conviction was reversed
24 because the Court granted the motion to relieve
25 co-counsel, co-counsel being the sister of the

1 defendant, and said that an evidentiary hearing had
2 to be conducted on such a motion and there had to be
3 proof of actual prejudice and an actual basis for
4 recusing, and disqualifying counsel without such a
5 basis is reversible error, apparently without even
6 showing its prejudice. So we think that takes care
7 of Mr. Myers's motion.

8 I'm not sure whether Mr. Myers thinks
9 that there might have been some parallel between
10 this situation and my talking to Mr. Sutherland in
11 the Quattlebaum case. I'm just mystified by the
12 motion, but I don't know.

13 In any event, we don't think that it
14 should be granted. I should add that I've
15 represented Tony Cooper since 1991. He is extremely
16 anxious to have me continue on the case. This is
17 the one case pending trial that I committed to him
18 many years ago that I would not abandon him, no
19 matter what happened.

20 I have now moved to Virginia. I had
21 to drive five hours to be down here today, but I am
22 prepared to stay with the case. He wants me to, and
23 I think he's entitled to have me.

24 The last motion in the matter is Mr.
25 Myers's request to be withdrawn. I know nothing

1 more about that than what's in his letter. You
2 probably should hear it from him.

3 THE COURT: I'll hear it from him. Mr.
4 Bruck, I don't know. What if Mr. Sutherland now
5 changes his story? Would you then become a witness?

6 MR. BRUCK: I don't believe so. He has
7 told the same story so many times to so many
8 different --

9 THE COURT: I'm not saying that he will.
10 I'm just asking you what if he --

11 MR. BRUCK: No, I'm indulging -- no, no.
12 I mean let's say he changed his story and it became
13 adverse. He has told a story which is exculpatory
14 to Mr. Cooper, including in open court during his
15 own post-conviction hearing. He has signed a
16 statement that's been notarized by someone other
17 than me. There is a tape-recording.

18 If that were to happen, one can
19 always imagine a situation when any witness gives
20 any version that it's always possible that he could
21 change his story and that it's always possible that,
22 among others, a lawyer in the case could be a
23 witness.

24 THE COURT: Let's assume the worse.

25 MR. BRUCK: Right.

1 THE COURT: Who else is representing Mr.
2 Cooper so that if we're in the middle of the trial
3 and that happens? Does he have a first seat
4 attorney? Does he have a death penalty qualified
5 attorney who can --

6 MR. BRUCK: Yes. And I apologize, I
7 should have introduced the lawyers at the counsel
8 table with me before I began. Stuart Andrews from
9 the firm of Nelson Mullins has been assisting me
10 back at the time of the post-conviction, as Your
11 Honor will recall, and has volunteered pro bono to
12 continue to assist Mr. Cooper through this trial.

13 The Lexington County Public
14 Defender's Office, which was originally involved --
15 and, in fact, Jack Duncan, who is also present at
16 the counsel table, has also agreed to assist. And
17 Mr. Cooper, despite the fact that one discrete issue
18 there was an allegation of ineffectiveness which
19 Your Honor sustained, Mr. Cooper is happy to have
20 Mr. Duncan's assistance.

21 So if that were to happen, there
22 would be two lawyers present, of whom Mr. Duncan is
23 death qualified -- well, both are -- well, Mr.
24 Duncan is death qualified from felony trial
25 experience. And so if I were to be relieved in the

17

1 middle of the trial in order to become a witness for
2 either side, the case could go on pretty much
3 without a hitch. I cannot imagine that happening.
4 But regardless of what -- what Mr. Sutherland will
5 or won't do.

6 THE COURT: Well, I understand that.

7 MR. BRUCK: Right.

8 THE COURT: He testified at the PCR
9 hearing where there's transcripts of all of that
10 still around.

11 MR. BRUCK: Right.

12 THE COURT: Okay. Thank you, sir.

13 Mr. Myers, let me hear your motion
14 that you filed. And then if you want to respond to
15 anything they've brought up, that's fine.

16 MR. MYERS: Which motion, Your Honor?

17 THE COURT: Your motion.

18 MR. MYERS: For us being disqualified.
19 Your Honor, he's wrong about not having, as he said,
20 spotted a conflict litigation until my letter of May
21 18th. And in that letter, I clearly brought out
22 that at a prior hearing I brought this motion up,
23 and I was prepared to argue it then to get it out of
24 the way.

25 But Mr. Bruck objected because he had

1 no notice of the issue. So as to spotting a
2 conflict issue, he spotted that quite some time ago.
3 Rick Hubbard, who is my Deputy Solicitor, whose
4 office is right next to mine, who I work with more
5 closely on a daily basis with the operation of the
6 Solicitor's Office, he was the clerk for Judge
7 Hubert Long for his trial.

8 Mr. Hubbard assisted Judge Long
9 tremendously -- matter of fact, he did a lot of work
10 -- on ex parte communications, on things that the
11 Solicitor's Office couldn't be present, and we were
12 told we had to leave the courtroom, to discuss very
13 attorney-client issues. And Mr. Hubbard in that
14 capacity, I think there is a tremendous conflict
15 with our office proceeding.

16 Now, whatever you rule today has no
17 bearing on what could happen later on. Mr. Bruck
18 brought up the Quattlebaum issue. Judge Tommy
19 Cooper ruled in the Quattlebaum issue that the
20 Solicitor's Office did nothing wrong. The Supreme
21 Court didn't believe that, and they didn't care what
22 the Circuit Court Judge had ruled.

23 So whatever you do today still puts
24 Mr. Hubbard and I in a precarious situation. And I
25 frankly don't want to get involved anymore with

19

1 attorney-client matters, which is exactly what this
2 is. For example, in Quattlebaum, I have no idea
3 what was on that tape, didn't see the tape. When I
4 heard about it, I turned it over to the defense.

5 And I know about this issue. I know
6 that Mr. Hubbard was present. I know Mr. Hubbard
7 was in there, a lot of attorney-client matters in
8 which we could not even be present. So based upon
9 that, I think that it would be highly unjust for my
10 office to proceed and then later some defense
11 lawyers or the -- or somebody else file a complaint.

12 And this is a more clear-cut case
13 than the Quattlebaum case. We raised this in our
14 old motion previously. The defense said that they
15 weren't ready to proceed. I informed you and Judge
16 Westbrook of the matter. And I vigorously submit to
17 the Court that the Eleventh Circuit Solicitor's
18 Office should not be involved.

19 That's on the conflict issue. If you
20 want me to go on to the speedy trial one, I'll be
21 glad to do that.

22 THE COURT: Go ahead.

23 MR. MYERS: You issued an order on April
24 the 25th. And in that order, you directed the
25 Solicitor's Office to speak to the judge assigned to

1 this case and for the Chief Administrative Judge to
2 select a firm date beginning in 2005. Twenty-three
3 days later, on May the 18th, I wrote Judge
4 Westbrook, who I have assumed all along was assigned
5 to this case, because he has been the only presiding
6 judge up until April 25th that has ruled on this or
7 had hearings.

8 I told him that enclosed is your
9 order. I also submitted an e-mail that Mr. Bruck
10 had sent saying that he wanted it tried between May
11 and August. I told Judge Westbrook that it would be
12 impossible to try it in that time frame. And I also
13 enclosed the motion to disqualify Mr. Bruck and
14 other attorneys and agents associated with the case.

15 And I also asked him to have a
16 hearing, and I asked him then, thinking we would
17 have a hearing on that. One was not held. Within
18 the 30 days, I tried to get this resolved. The
19 matter couldn't be tried between May and August, and
20 I was looking for him to have a hearing so we could
21 resolve this and other issues.

22 As far as their motion to dismiss for
23 lack of speedy trial, in your order it says it must
24 be tried in 2005. I think the cart is before the
25 horse. Also, as to bond, I have no motion on bond,

1 and I would submit that's not before the Court.

2 Lastly, I think Mr. Bruck and the
3 attorneys associated with Mr. Bruck relating to --
4 should all be disqualified. I submitted a brief
5 that I sent to you and to Judge Westbrook, I
6 believe, and I outlined the reasons. You may want
7 to talk with Mr. Sutherland's attorney. They're in
8 the courtroom.

9 You may want to talk with them as to
10 whether or not Mr. Sutherland sticks by his
11 statement, whether he's made some statements, there
12 is some impropriety with the defense attorneys, or
13 whether or not other folks are involved in this
14 matter.

15 — If you get into a trial, you have to
16 excuse one or more attorneys or agents for improper
17 contact with a co-defendant without permission of
18 their lawyers. We cited cases in there in our
19 brief. That's highly improper. It's kind of like
20 when they accuse law enforcement officers of
21 improper conduct.

22 And if you get into a trial and you
23 have to start excusing lawyers, what if you get down
24 to only one lawyer that's left? The defendant is
25 entitled to two. What effect is that going to have

1 on the case? Is that a mistrial?

2 So that matter needs to be resolved
3 up front. And I submit to you that there will be,
4 the way I see it -- whether I try it or somebody
5 else tries it, I submit to you there's going to be
6 some serious issues about defense attorneys being
7 witnesses, contacting a co-defendant without
8 permission of that person's lawyer. It's a clear
9 violation.

10 So for those matters, we submit,
11 number one, that my office should be disqualified
12 from the case. That doesn't mean that it's not
13 going to be tried this year. The order says it's
14 going to be tried in 2005.

15 Number two, I think there is a
16 serious problem with the attorneys associated with
17 Mr. Bruck and Mr. Bruck continuing in this case,
18 because there is going to be a conflict. And bond
19 is not before the Court at this time.

20 There's no motion for that. The lack
21 of speedy trial is premature, and I would request
22 that you ask Mr. Sutherland's lawyers their
23 position.

24 MR. BRUCK: A couple of matters in direct
25 response, if I could.

1 THE COURT: Yes, sir, Mr. Bruck.

2 MR. BRUCK: First of all, I think the
3 Solicitor has confused two allegations of conflict.
4 The transcript of the August 2003 hearing reflects
5 that he did raise a motion about getting off the
6 case, but it wasn't about his getting off the case.
7 I'll read it to you.

8 After discussing scheduling, at page
9 five of the August 18, 2003, hearing, Mr. Myers
10 says, "One further matter, Your Honor, I would like
11 to bring up at this time is that we would move Mr.
12 Bruck be disqualified from being involved in this
13 case and that he have no input, be enjoined from any
14 participation whatsoever."

15 He starts to make his argument, and I
16 objected, "There's been no notice. This is an oral
17 motion that's come out of the blue." Judge
18 Westbrook, who was hearing the case because he was
19 Chief Administrative Judge in 2003, as you are Chief
20 Administrative Judge now -- and that explains why
21 each judge heard the cases when they did.

22 Judge Westbrook said, "Mr. Myers, I
23 think he probably does have a right to have some
24 notice." And Mr. Myers said, "I will put him on
25 notice that I'm going to move to have him

1 disqualified for his contact with Bo Sutherland,
2 which he has admitted in transcripts that we have
3 with the Court. We need to dispose of that before
4 we set a trial date."

5 And that's all that was said about
6 counsel for either side at that hearing. So Mr.
7 Myers has made an error. He did not notify us that
8 he intended himself to get off the case. He
9 notified me orally in 2003 that he wanted to boot me
10 off the case.

11 And the first we ever heard about the
12 State wanting to withdraw was in his letter of June
13 29th, which the letter itself reflects that this is
14 something that they're at least saying came up
15 recently. The second paragraph begins, "It has been
16 brought to my attention that my office and I have a
17 major conflict."

18 It's dated June 29, 2005, so I just
19 think it is incorrect that this has been hanging
20 around in this case, at least in anybody's minds
21 other than Mr. Myers's.

22 This letter which I received almost a
23 week after it was written was the first I ever heard
24 of this. And we're at a loss to understand why it's
25 being raised at such a late date, long after the

1 time that Your Honor had ordered a trial date be set
2 had elapsed.

3 As far as whether the State has
4 notice of our bond motion, I know the Court has read
5 the bond motion through. And at the end of the
6 speedy trial, we say, in the alternative, if the
7 motion for speedy trial is denied, and reserving our
8 rights and not waiving them, Mr. Cooper wants to be
9 released on bond, and he is so moving.

10 That's the State's notice. They
11 received that a good while ago. They've had plenty
12 of notice to resist a bond motion, if that's what
13 they intend. And --

14 MR. MYERS: I'm sorry, Your Honor, I hate
15 to interrupt. But I don't see the words "bond
16 motion" in there. But you can direct me to what
17 page it's on.

18 MR. BRUCK: I'm trying to locate it. It
19 doesn't use the words "bond motion." It says,
20 "Should the motion be dismissed be denied or
21 otherwise not granted, the defendant further moves,
22 reserving his rights under his motion to dismiss all
23 charges, for his immediate release pending trial,
24 upon such conditions as the Court may direct,
25 respectfully submitted."

1 That's the motion. And the State has
2 had this notice since May 27, 2005. So it's a
3 little late in the day to say they have been
4 surprised by it. I think I also -- I'm not sure
5 what the -- I would add that on July 5th, within
6 minutes of receiving in the mail Mr. Myers's letter
7 about wanting to get off the case, I wrote an e-mail
8 to the Court, a letter which probably -- well, it's
9 been filed with the Clerk -- to guard against the
10 possibility that Mr. Myers's motion to get off the
11 case would derail today's speedy trial motion and
12 the bond motion.

13 And I referred by name to it in that
14 way: "While I appreciate and respect Mr. Myers's
15 concern with the situation that has prompted this
16 action, we are now one week away from a scheduled
17 hearing before you on Mr. Cooper's motion to dismiss
18 for lack of speedy trial, or, in the alternative,
19 for release on bond pending his retrial."

20 I don't know how to make it any
21 clearer than that. That's what the motion prayed
22 for. That's what I reminded Mr. Myers's by cc in a
23 letter which should not have been too long to read
24 -- it was only one page long -- on July 5th. And
25 that was a week ago, which is more time than the

1 State would have been entitled to if this was the
2 only notice they had had of Mr. Cooper's intent to
3 move for bond.

4 This is the pattern that we've been
5 encountering, Judge, for almost two years. It's
6 always mañana, it's always "We're not ready," it's
7 always "We didn't get notice, and plus we've got
8 something else," which would keep you, the Court,
9 from doing anything to vindicate this man's rights.

10 Everybody has got rights in this
11 country, including Tony Cooper. And time's up. So
12 we think that the Court should entertain both of
13 these motions today, rule on them, and grant the
14 speedy trial motion; and if you notify that one,
15 grant the motion to release Mr. Cooper under
16 appropriate description for the day, if it ever
17 comes, that the State actually brings his case to
18 trial.

19 The last matter, if Mr. Myers intends
20 to have an evidentiary hearing as required by the
21 case law and prove to us that I'm a witness in this
22 case, this is his opportunity to do it. He's the
23 moving party. We certainly object to hearsay
24 allegations about what Bo Sutherland now claims or
25 doesn't claim, that I be accused of.

1 Clearly, the case law makes very
2 clear that without a showing of prejudice from
3 failure to -- that unless the State is going to be
4 prejudiced, unless someone is going to be
5 prejudiced, it is reversible error to relieve
6 counsel in a criminal case over the defendant's
7 objection.

8 And there hasn't been any suggestion
9 of what prejudice the State is going to suffer from
10 any of these allegations. I am confirmed in my
11 belief that this may just be sort of a reprise
12 without much understanding of the appreciation of
13 the legal points involved in the Quattlebaum matter.

14 Those two situations could not be any
15 more different. Obviously, that was the intrusion
16 by the prosecution into an attorney-client
17 conference, in violation of the Constitution, by the
18 prosecution. The fact that I did or did not speak
19 to a witness who under the rules of ethics I
20 shouldn't have been speaking to without permission
21 from his lawyer, there is absolutely no resemblance
22 to that.

23 Mr. Sutherland will be a witness, he
24 won't be, he'll be a witness for one side or the
25 other. And if the State actually has evidence that

1 I have to be disqualified, the time for them to put
2 that evidence up is today, and that takes care of
3 the problem. And we mean evidence through witnesses
4 who will give admissible testimony and be cross-
5 examined. Thank you.

6 MR. MYERS: I can't put up the co-
7 defendant. His attorneys can speak for him, but I
8 can't put up the co-defendant, just like I can't put
9 up the defendant. And I can't contact the co-
10 defendant, just like the defense can't contact the
11 co-defendant.

12 THE COURT: Mr. Thorne and Ms. Hogue, (PH),
13 did you all want to say something?

14 MR. THORNE: Not at this time, Your Honor.

15 THE COURT: All right. Have I heard
16 everything I need to hear?

17 MR. BRUCK: If we could confer with our
18 client for a moment, Your Honor. That's all, Your
19 Honor.

20 THE COURT: Thank you.

21 Mr. Cooper, do you want Mr. Bruck to
22 represent you?

23 MR. COOPER: Yes, sir, absolutely.

24 THE COURT: So what he told me about being
25 your lawyer since 1991 and you adamantly wanting him

1 to represent you, that's all true?

2 MR. COOPER: Absolutely.

3 THE COURT: Thank you, sir.

4 All right, you'll have an order
5 within 48 hours. Thank you.

6 MR. BRUCK: Thank you, Your Honor. -----

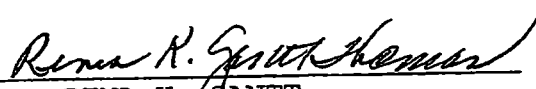
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR 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
ABOVE-CAPTIONED CASE ON JULY 12, 2005, IN LEXINGTON,
SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
FIFTH DAY OF FEBRUARY, 2006.



REMA K. GANTT
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 12/13/2010

STATE OF SOUTH CAROLINA)
)
 v.)
)
 GENE TONY COOPER, JR.,)
)
)
)
 Defendant.)
)

90-GS-32-83; 90-GS-32-84

MOTION TO DISQUALIFY AND
RECUSE DEFENDANT'S ATTORNEYS
AND AGENTS

TO: DAVID-I. BRUCK, Defense Attorneys and Agents:

Please take notice that The State, at the next hearing in the above case, will move for the defendants' attorneys and agents to be disqualified, recused, relieved and removed from this case.

The Defendant Cooper and Co-defendant Robert Southerland were arrested and indicted on capital murder charges. They were tried separately, and the jury in each respective trial returned death penalty sentences as to each defendant.

Mr. Bruck did not represent either defendant at trial. However, at a later date, Mr. Bruck undertook representation for Cooper. Mr. Bruck has never been the attorney of record for Southerland.

Southerland's sentence was affirmed by the S.C. Supreme Court with Joseph Savitz being his appellate attorney. Wayne Floyd and Bill Rast were appointed to represent Southerland for his Post Conviction Relief (PCR) proceeding. Subsequently, the S.C. Supreme Court granted Southerland a re-sentencing trial. The State's Notice to Seek the Death Penalty remains in full force against Southerland.

Mr. Bruck represented Cooper at Cooper's PCR hearing. During the hearing, Mr. Floyd and Mr. Rast appeared and objected to Mr. Bruck attempting to subpoena Southerland as a witness. Mr. Floyd stated that Mr. Bruck had contacted and communicated with Southerland and obtained statements from Southerland relating to facts surrounding the murder and crimes charged against Southerland and Cooper, all —without the consent of Southerland's attorneys in violation of Rule 4.2 of the Code of Professional Responsibility. Mr. Floyd argued the statements taken from Southerland by Mr. Bruck were not admissible due to the unauthorized contact and communication. Mr. Floyd offered to present Joseph Savitz as a witness to prove the lack of consent by Southerland's attorneys.

At the time, Mr. Bruck then stipulated that Southerland's PCR attorneys and his appellate attorney, Joseph Savitz, did not authorize the contact or communication by Mr. Bruck. Based upon Mr. Bruck's stipulation, Joseph Savitz was excused by the judge. See attached transcript. Mr. Bruck further admitted communicating with Southerland on numerous occasions without notifying or seeking consent from Southerland's attorneys. The statements concerned the actions of Cooper and Southerland in the indicted murder and other charges.

Based upon Mr. Bruck's unauthorized contact and communications with Southerland without consent of Southerland's attorneys, the State moves for an Order to (1) disqualify and remove Mr. Bruck and other present attorneys and agents from this case, (2) to appoint other attorneys to represent Cooper, and (3) to prohibit Mr. Bruck, other defense attorneys, and agents from discussing this case or delivering any tapes, statements and materials of any and all communications with Southerland to the newly appointed attorneys.

This motion is further based upon:

1. A violation of Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR. State v. Chisolm, 439 S.E. 2d 850 (1994); In Re: Vaught, 235 S.E.2d 115 (1997); United States v. Lopez, 4 F.3d 1455 (9th Cir. 1993); People v. DeLoach, 944 P.2d 522 (Colo. 1997); Re: Mahoney, 437 N.E.2d 49 (Ind. 1982); Cases collected in 26 A.L.R. 4th 102.

2. That any and all statements taken by Mr. Bruck from Southerland are fruits of the unauthorized communications and violations of Rule 4.2.

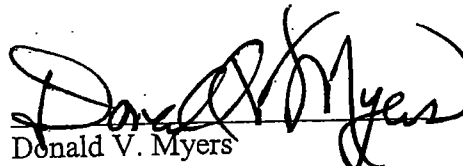
3. That Mr. Bruck would be a witness relating to statements made to him by Southerland if Southerland is a witness in the trial of the above case.

4. That Mr. Bruck would be a witness relating to statements made by Mr. Bruck to Southerland if Southerland is a witness in the trial of the above case.

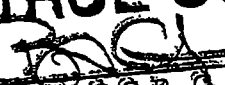
5. That Rule 3.7 prohibits a lawyer as advocate at a trial in which the lawyer is likely to be a necessary witness.

6. That the interest of justice requires the disqualification of all present attorneys and agents based upon the unauthorized communications without consent, all of the above, and the violations of the Rules of Professional Conduct.

Respectfully submitted,


Donald V. Myers
Solicitor

May 18, 2005
Lexington, South Carolina

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & R.D.

383
Dum

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 v.)
)
 GENE TONY COOPER, JR.,)
)
 Defendant.)
 _____)

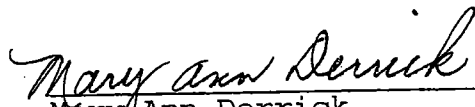
90-GS-32-83; 90-GS-32-84

CERTIFICATE OF SERVICE

I do hereby certify that I have served upon counsel for the Defendant the State's Motion to Disqualify and Recuse Defendant's Attorneys and Agents, by first class mail, with postage prepaid and addressed:

David Bruck, Esq.
 Director
 Virginia Capital Case Clearinghouse
 Washington & Lee Law School
 Lexington, VA 24450

This the 18th day of May, 2005.


 Mary Ann Derrick

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Honorable William P. Keesley, Circuit Court Judge

Case No. 95-CP-32-2248
Opinion No. 23987

GENE TONY COOPER Respondent,

v.

MICHAEL MOORE, Commissioner, South Carolina Department of Corrections Petitioner.

APPENDIX

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ATTORNEYS FOR PETITIONER

1 JUDGE WESTBROOK FOUND THAT MR. SOUTHERLAND'S
2 SWORN STATEMENT WAS FREELY AND VOLUNTARILY GIVEN TO HIM.
3 THE STATE'S ONLY POSITION IN THIS WOULD BE THAT ANY RULING
4 THAT YOU MAKE WOULD NOT AFFECT THE PREVIOUS FINDING
5 CONCERNING THE VOLUNTARY NATURE AND KNOWING NATURE OF THE
6 STATEMENTS BY MR. SOUTHERLAND TO JUDGE WESTBROOK.

7 THE COURT: WHAT IS YOUR MOTION, MR. FLOYD?

8 MR. FLOYD: THANK YOU, YOUR HONOR. IN CASE YOU
9 DON'T HAVE ONE, I WILL PASS IT UP TO YOU.

10 (HANDS TO COURT).

11 (PAUSE).

12 THE COURT: ALL RIGHT. MR. BRUCK, ARE YOU ALL
13 PREPARED TO ARGUE THIS MOTION?

14 MR. BRUCK: YES, SIR.

15 THE COURT: OKAY. WHICH OF YOU IS GOING TO DO
16 IT, MR. FLOYD OR MR. RAST?

17 MR. FLOYD: YOUR HONOR, I WILL BE MAKING THE
18 ARGUMENT.

19 THE COURT: OKAY. YOU ALL ARE APPOINTED TO
20 REPRESENT MR. SOUTHERLAND IN HIS POST CONVICTION RELIEF
21 ACTION?

22 MR. FLOYD: THAT'S CORRECT, YOUR HONOR. MR.
23 SOUTHERLAND'S -- WE HAD OUR POST CONVICTION RELIEF HEARING
24 AND THE MATTER IS PENDING CERT TO THE SOUTH CAROLINA
25 SUPREME COURT. WE HAVE GOT NO RULING ON THAT AS OF THIS

1 TIME. WE ARE ALSO APPOINTED TO REPRESENT HIM ON THE APPEAL
2 TO THE SUPREME COURT, AS WE WERE IN THE CIRCUIT COURT BELOW
3 ON HIS POST CONVICTION RELIEF MATTER.

4 THE COURT: WHAT IS YOUR MOTION?

5 MR. FLOYD: YOUR HONOR, IT IS OUR UNDERSTANDING
6 THAT THE ATTORNEYS FOR MR. COOPER DO INTEND TO CALL ROBERT
7 SOUTHERLAND AS A WITNESS IN MR. COOPER'S POST CONVICTION
8 RELIEF MATTER.

9 YOUR HONOR, BACK IN FEBRUARY OF 1992, THERE WAS A
10 STATEMENT OBTAINED FROM MR. SOUTHERLAND BY MR. COOPER'S
11 CURRENT ATTORNEY, MR. BRUCK. AT THAT TIME MR. SOUTHERLAND
12 WAS REPRESENTED BY THE APPELLATE DEFENSE. WE HAVE PRESENT
13 MR. JOSEPH SAVITZ, WHO WAS WITH APPELLATE DEFENSE AT THAT
14 TIME.

15 YOUR HONOR, WE ARE PREPARED TO PRESENT TESTIMONY
16 FROM MR. SAVITZ THAT'S HE DID NOT GIVE CONSENT TO MR. BRUCK
17 TO CONTACT MR. SOUTHERLAND TO OBTAIN THE STATEMENT AT THIS
18 TIME.

19 YOUR HONOR, IT IS OUR POSITION THAT THAT WOULD
20 BE IN VIOLATION OF RULE 4.2 OF THE CODE OF PROFESSIONAL
21 RESPONSIBILITY WHICH SAYS THAT A LAWYER SHALL NOT
22 COMMUNICATE WITH A PARTY WHO THE LAWYER KNOWS TO BE
23 REPRESENTED BY ANOTHER LAWYER UNLESS THE LAWYER HAS THE
24 CONSENT OF THE OTHER LAWYER OR IS AUTHORIZED BY LAW TO DO
25 SO.

1 YOUR HONOR, IT'S OUR POSITION THAT THAT WAS
2 UNAUTHORIZED CONTACT AND THAT THE STATEMENT THAT WAS
3 OBTAINED AT THAT TIME, WHICH IS CONTRARY TO MR.
4 SOUTHERLAND'S INTEREST, WOULD NOT BE ADMISSIBLE AGAINST MR.
5 SOUTHERLAND IN ANY TYPE OF PROCEEDING.

6 YOUR HONOR, IT'S OUR POSITION THAT AS MR.
7 SOUTHERLAND'S ATTORNEYS NOW WE ARE ENTITLED TO HAVE AN
8 ORDER ISSUED QUASHING ANY SUBPOENA TO REQUIRE MR.
9 SOUTHERLAND TO TESTIFY IN ANY PROCEEDING FOR MR. COOPER AND
10 ALSO TO RESTRAIN MR. COOPER OR ANY AGENTS OF MR. COOPER
11 FROM HAVING ANY FURTHER CONTACT WITH MR. SOUTHERLAND IN
12 CONNECTION WITH ANY MATTERS WITHOUT OUR PERMISSION, YOUR
13 HONOR.

14 YOUR HONOR, IF YOU FEEL LIKE WE NEED TO PUT ON
15 THE TESTIMONY OF MR. SAVITZ, WE WILL DO THAT.

16 MR. BRUCK: WE WILL STIPULATE THAT MR. SAVITZ DID
17 NOT AUTHORIZE.

18 THE COURT: OKAY. MR. SAVITZ, I DON'T KNOW IF
19 THEY NEED YOU ANY FURTHER. IF YOU WANT TO STICK AROUND,
20 WHATEVER YOU WISH TO DO.

21 MR. SAVITZ: I PREFER TO LEAVE IF IT'S OKAY WITH
22 YOU.

23 THE COURT: THANK YOU VERY MUCH. MR. BRUCK, WHAT
24 DO YOU HAVE TO SAY?

25 MR. BRUCK: IF YOUR HONOR PLEASE, MR. SOUTHERLAND

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON)
 2005 JUL 13 P 4 10

THE STATE,

BETH A. LORANGE
 -vs- CLERK OF COURT
 LEXINGTON CO)

ORDER REGARDING MOTIONS

GENE TONY COOPER,

Case Number: 1990-GS-32-0083
 1990-GS-32-0084

Defendant.)

Several motions are pending in this death penalty case. (1) The State's motion to remove defense counsel is denied. (2) The State's motion to have the 11th Circuit Solicitor's office disqualified is granted. (3) The defendant's motion to dismiss is denied. (4) The defendant's motion for bail is denied. To the extent that the defense is reasserting a motion for speedy trial, that issue is already covered in the Order of April 25, 2005, directing that the case be tried in 2005.

(1) REMOVAL OF DEFENSE COUNSEL

The State has moved to have defense counsel, David I. Bruck, Esquire, and his co-counsel and agents removed from the case based on allegations that he had unauthorized communications with a co-defendant, Robert "Bo" Southerland, without the knowledge or consent of Mr. Southerland's attorneys. While there may be issues related to this matter that have to be resolved by the judge assigned to handle this case or by those charged with enforcement of the rules of ethics, the motion is denied at this point. There has not been a sufficient showing to justify removal of defense counsel.

(2) DISQUALIFICATION OF THE SOLICITOR'S OFFICE

The State has also moved to have the Solicitor's Office of the Eleventh Judicial Circuit disqualified on the case due to a conflict of interest. A Deputy Solicitor, S. Richardson Hubbard, III, was serving as law clerk to the trial judge who presided over

Mr. Cooper's first trial. As such, the current Deputy Solicitor was privy to *ex parte* proceedings related to attorney-client matters. The court agrees that the Solicitor's Office for the Eleventh Judicial Circuit should be disqualified based on this conflict.

(3) DISMISSAL BASED ON FAILURE TO HAVE A SPEEDY TRIAL

The defendant was arrested on October 11, 1989. In February 1991, he was sentenced to death for murder and also received sentences for kidnapping, armed robbery, and conspiracy to commit armed robbery. The Supreme Court of South Carolina reversed his murder conviction in 1994. He was granted post-conviction relief (PCR) by this court on the other convictions in December 1998. The granting of PCR was affirmed in August 2002.

WAL #2
Mr. Cooper has been incarcerated on these charges for about 16 years. Since at least August 2002, he has repeatedly sought to have his case called for trial. There are several speedy trial motions. When the Honorable Marc H. Westbrook was Chief Judge for Administrative Purposes, he held hearings and status conferences in an attempt to get this case set for re-trial. At the last conference with Judge Westbrook, the State indicated that it intended to call the trial in the Spring of 2004. No formal Order was issued.

After the undersigned judge was designated as Chief Judge for Administrative Purposes, another speedy trial motion was heard, from which an Order issued on April 25, 2005. It directed that the case be called for trial in 2005, failing which the defense could move again for dismissal or speedy trial. One of the defense attorneys, Mr. Bruck, is now a full-time professor of law at Washington and Lee University in Virginia. Upon receiving the Order, he contacted the court and indicated that he needed to have the case tried before the school year resumed. Then, the Solicitor filed the motions to remove Mr. Bruck from the case and to disqualify the 11th Circuit Solicitor's office.

The court finds insufficient cause at this stage to dismiss the charges. Obviously, the court is troubled by the fact that the removal of the Solicitor's office from the case may result in a further delay of the trial. However, the court does not accept the

defense's assertion that this is part of an intentional pattern of delay. If the case is not heard by the end of 2005, the judge assigned to the case may consider whether the case should be dismissed or bail should be granted.

(4) REQUEST FOR BAIL

Defense counsel strenuously argued that the defendant should be released on bail. The motion is denied. If the case is not tried as directed in the April 2005 Order, the motion may be reasserted.

CONCLUSION

The court will probably not be able to accommodate Mr. Bruck's request that the case only be tried during periods when he is not involved in his professorial duties, while also trying to schedule the case at the earliest possible time. The court knows of 8 cases with death penalty notices in Lexington County, as well as several other cases which would have been pursued as death penalty cases but for the United States Supreme Court's determination that persons who were minors at the time of committing an offense cannot be executed.

One of the pending cases involving a minor has a defendant who has never been tried, despite spending 10 years in pretrial detention. That case is also one in which the Solicitor's office of this circuit has been disqualified. Today, a date was set for that trial to begin in November 2005. This court is willing to take extraordinary steps to move terms around to accommodate the trial of Mr. Cooper's case, even though there are also serious scheduling problems involving the backlog of civil court. If the newly assigned prosecutors can be ready to try this case in 2005, it is unlikely that it could be done around the calendar of the law school at Washington and Lee.

On the other hand, this court has frequently expressed its deep concern about the length of time that people accused of crimes are being required to sit in jail (in this case, on death row) awaiting trial. The court is aware that there are many reasons for this situation, including the explosive growth of this county. But, defense counsel is correct

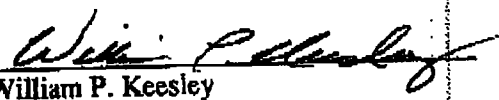
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in his protestations that the constitutions of the United States and South Carolina must mean something when they afford to everyone the right to a speedy trial.

The court has previously had communications with the Chief Justice about the need to schedule the large number of death penalty cases pending in Lexington County. Today, the court received a list of the pending cases, which will be forwarded to the Chief Justice. Notice is being given today to the Chief Justice, Court Administration, and the Attorney General's office about this decision and the need for expedited steps to bring this matter to trial.

The court directs that the Solicitor's office transmit its file to the Attorney General's office or the designated prosecutors immediately.

AND IT IS SO ORDERED.


William P. Keesley
Judge

Hy
July 12, 2005

SCCA/233 (1/2003)

COPY
FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

90-GS-32-83 2005 DEC 29 P 4: 11
90-GS-32-84

STATE OF SOUTH CAROLINA)
)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Defendant's Motion No. 4

NOTICE OF MOTION AND RENEWED
MOTION TO DISMISS ALL CHARGES FOR
LACK OF SPEEDY TRIAL, OR IN THE
ALTERNATIVE FOR RELEASE PENDING
TRIAL

v.)
)
)
)
GENE TONY COOPER,)
)
)
Defendant.)
)

TO THE HONORABLE DAVID PASCOE, SOLICITOR:

YOU WILL PLEASE TAKE NOTICE that at a time to be set by the Court not less than one week after service of this motion, the undersigned counsel for the defendant Gene Tony Cooper will move before the Honorable Daniel F. Pieper, Presiding Judge, Eleventh Judicial Circuit, at Lexington County Courthouse or at such other location as the Court may direct, for an order dismissing all charges against the defendant for lack of speedy trial.

YOU WILL FURTHER TAKE NOTICE THAT, should the motion to dismiss be denied or deferred, the defendant will move for his immediate release pending trial, upon such conditions as the Court may direct.

YOU WILL FURTHER TAKE NOTICE that by the service of this pleading, the defendant hereby renews his demand, pursuant to S.C. Const. Art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90 (West 2004), for a speedy trial of all charges now pending against him.

GROUNDS FOR RELIEF

In support of the foregoing requests for relief and demand for speedy trial, the defendant hereby realleges:

- all facts set forth in his Amended Motion for Speedy Trial filed on or about July 11, 2003, and heard in by Judge Westbrook in open court on August 18, 2003, and again in chambers on August 25, 2003, as well as all facts alleged by undersigned counsel at the August 18, 2003 hearing.
- all facts set forth in his Second Motion for Speedy Trial filed on February 8, 2005, and heard in open court on February 15, 2005.
- all facts set forth in his Motion to Dismiss All Charges for Lack of Speedy Trial filed on or about May 27, 2005, and heard in open court on July 12, 2005.

He would further show:

1. The record already reflects that on April 25, 2005, Judge Keesley, more than two months after hearing Mr. Cooper's second demand for speedy trial, Judge Keesley, as Chief Administrative Judge for the 11th Judicial Circuit, issued an order that this case be tried before the end of 2005. The order included the following directive:

The court directs that the Solicitor's office speak with the Judge assigned to this case and to the Chief Judge for Administrative Purposes and select a firm date for the commencement of the trial, which shall begin in 2005. Notice of that date is to be given to defense counsel within 30 days from today's date.

2. Despite this clear and unambiguous order, the state failed to notify S.C. Court Administration of the need for assignment of a judge to this case, and took no other action of any kind to set this case for trial within the time specified by Judge Keesley. Instead, after another delay of one month, Solicitor Myers moved to recuse his office on the basis of a conflict which had been in existence for many years.

3. In light of the state's failure to set the case for trial within 30 days, as Judge Keesley's order required the state to do, Mr. Cooper moved to dismiss for lack of speedy trial.

That motion was denied after a hearing on July 12, 2005, but Judge Keesley issued a second order in which he reiterated his April 25, 2005 order that the case be tried in 2005, failing which "the judge assigned to the case may consider whether the case should be dismissed or bail should be granted."

4. Despite this second directive to accord Mr. Cooper his constitutional right to a speedy trial, the Eleventh Circuit Solicitor's Office appears to have taken no action other than to deliver the file to the Attorney General Office and to request assignment of a new solicitor.

5. After the state failed to honor its own commitment to try this case in the spring of 2004, as it promised Judge Westbrook it would do, Mr. Cooper's lead counsel, David Bruck, began new employment as a clinical professor of law at Washington & Lee University School of Law in Lexington, Virginia. This circumstance was yet another reason why Mr. Cooper pressed the state to call this case for trial during the summer of 2005, during Mr. Bruck's academic summer recess. However, Mr. Bruck has consistently made clear that his academic and employment responsibilities would not prevent him from representing Mr. Cooper at any time that this case could be called for trial, and he did not and does not seek any delay in this case for this (or any other) reason.

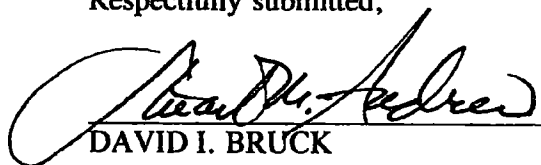
6. Mr. Cooper recognizes that the state is now represented by new counsel who are not personally responsible for most of the state's unconstitutional refusal to call his case for retrial. This circumstance—which is itself attributable to the inexcusable delay of the Eleventh Circuit Solicitor's office in moving to withdraw—should not, however, affect the disposition of this motion in any way. It goes without saying that a denial of a defendant's right to a speedy trial cannot be remedied or even affected by substitution of counsel for the prosecution.

CONCLUSION

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper hereby renews his motion previously made by motion dated May 27, 2005, and heard in open court on July 12, 2005, for an order dismissing all charges against him for lack of speedy trial. Should the motion to dismiss be denied or otherwise not granted, the defendant further moves, reserving his rights under his motion to dismiss all charges, for his immediate release pending trial, upon such conditions as the Court may direct.

The defendant further hereby renews his previous demands, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90, for a speedy trial of all charges now pending against him.

Respectfully submitted,



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(803) 255-9461

ATTORNEYS FOR GENE TONY COOPER

December 29, 2005

COPY

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Gene Tony Cooper, Jr., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering to the following address(es):

Pleadings: DEFENDANT'S NOTICE OF MOTION AND RENEWED MOTION TO DISMISS ALL CHARGES FOR LACK OF SPEEDY TRIAL, OR IN THE ALTERNATIVE FOR RELEASE PENDING TRIAL

Counsel Served:

U.S. Mail

B. Harrison Bell, Jr., Esq.
First Judicial Circuit Solicitor's Office
140 N. Main Street, Ste. 102
Summerville, SC 29483

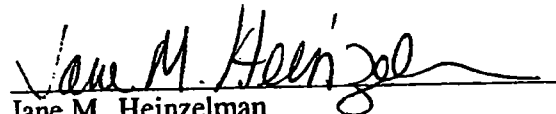
U.S. Mail

David Michael Pascoe, Jr., Esq.
First Circuit Solicitor's Office
P.O. Box 604
St. Matthews, SC 29135

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2005 DEC 29 12 41 11

FILED


Jane M. Heinzelman
Administrative Assistant

December 29, 2005

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT
INDICTMENTS 1990GS32-83, 84

FILED

STATE OF SOUTH CAROLINA

2006 JAN 11 A 9:11

-versus-

GENE TONY COOPER

Defendant.

BETH A. CARRIGG

CLERK OF COURT

LEXINGTON

STATE'S RESPONSE

TO DEFENDANT'S MOTION FOR
SPEEDY TRIAL AND/OR GRANTING
BAIL

I.

The defendant moves that the charges against him be dismissed because the State has violated his right to a speedy trial guaranteed by the South Carolina Constitution, S.C. Const. Art. I, §§ 9 and 14, the United States Constitution by the Sixth Amendment through the Fourteenth Amendment, and pursuant to §17-13-90, Code of South Carolina, 1976, as amended. He also moves in the alternative if the court does not dismiss his case because of failure to afford him a speedy trial, that the Court release him on bond pending trial.

II.

The State opposes the motion that the charges against the Defendant be dismissed because he has not been granted a speedy trial. This case, as it sits now, is somewhat different than most cases that deal with the issue of a speedy trial either directly or indirectly, i. e., violation of due process due to preindictment or pretrial delay, because it has been tried. Most of the speedy trial cases deal with preindictment or pretrial delay. See Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972); United States v. Loud Hawk, 474 U.S. 302, 106 S.Ct. 648 (1986); Howell v. Barker, 904

F. 2d 889 (1990); State v. Brazell, 480 S.E.2d 64 (S.C., 1997), State v. Lee, 602 S.E.2d 113 (S.C. App., 2004).

In Barker, the United States Supreme Court characterized the right to a speedy trial as "generically different" than any of the other rights guaranteed by the U. S. Constitution because (1) there is a "societal interest" in providing for a speedy trial separate from and sometimes in opposition to the interests of the accused, (2) the deprivation of this right may sometimes work to the accused's advantage, and (3) this right is somewhat more vague than other procedural rights because fixed time schedules are hard to place on the system. Barker v. Wingo, at 519-522. The Court stated that courts should analyze speedy trial cases on a case-by-case basis employing a balancing test that considers a number of factors. These factors include (1) Length of delay (being somewhat of a triggering mechanism), (2) the reason the government assigns to justify the delay, (3) whether and how a defendant asserts his rights to a speedy trial, and (4) prejudice to the defendant encompassing three subfactors, (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) the most serious subfactor; the possibility that the defense will be impaired. The Court stated that, "we regard none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." Id at 530-533. The South Carolina Supreme Court adopted the Wingo analysis in State v. Brazell for speedy trial cases under Article I, Section 14 (and presumably Section 9) of the South Carolina Constitution and under the Sixth and Fourteenth Amendments of the United States Constitution.

Here, the State concedes that the length of delay triggers further analysis as to the reasons the trial has been delayed and whether the defendant has been prejudiced. However, the State would only agree that the delay has been approximately 3 years and 4 months, beginning on August 29, 2002, the date of the remittitur of the judgment of the South Carolina Supreme Court of Cooper v. Moore, 569 S.E.2d 330 (2002). More importantly, the defendant has been tried previously on these charges and that trial commenced approximately one year and four months after the crime occurred.

Second, prior orders (specifically the order of Judge William Keesley, July 25, 2005) in this case indicate other factors related to the delay. First, the explosive growth of Lexington County has increased the length of time people accused of crimes are required to stay in jail. Second, there are numerous cases in Lexington County that have death penalty notices pending as well as other potential death penalty cases that were awaiting Appeal. Third, the Eleventh Circuit Solicitor's Office was disqualified by Judge Keesley on July 25, 2005 and the First Circuit Solicitor's Office took over the case in September or October of 2005. While the State has been accused of delaying the retrial of this case in prior motions for speedy trials, the State does not stand to benefit by actively delaying the trial. It is important to remember that the defendant was tried, convicted, and sentenced a little over one year after this crime occurred. The State certainly didn't delay the first trial. While testimony exists from the record of the first trial, the live witnesses are getting older and their availability is not guaranteed, which may, in fact, inhibit the prosecution of this case. It was also alleged the State was waiting until Mr. Bruck went to his professorship in Virginia to get him off of the case. However, Mr. Bruck has stated in prior motions that he will continue to represent the defendant. Therefore, even if the State purposely delayed, as alleged, there is no benefit derived from the delay.

Third, the State would agree that the defendant has asserted his right to a speedy trial several times and before the proper Courts. The State would remark that those courts for whatever reason have denied dismissing the charges against the defendant based on the speedy trial motions.

Fourth, the State argues that the defendant has not been prejudiced after considering all the subfactors from the *Wingo/Brazell* analysis. The defendant has been incarcerated for a long time, a total of almost fifteen years. However, the vast majority of that time, 11-12 years, were awaiting the results in the Appellate Courts. The most serious prejudice to the defendant is that the defense would be impaired by the delay. That is not the case here. As stated above, the defendant was tried before. He was tried just over a year after this crime occurred. He had the opportunity to cross examine and subpoena witnesses. He had the opportunity to present a defense. He has had the opportunity to review that trial over these years. There have been further

hearings involving witnesses that could inure to his benefit. The testimony of the witnesses has been staked out completely. The defendant, if anyone, has benefited from the delay in this case.

The two cases that the State relies on with delays of 5 years in Wingo and 3 years and 5 months in Brazell. Those periods of time were disturbing to the respective Courts. However, upon reviewing the facts found, the defendants' speedy trial rights were not violated. The Courts have focused more on the lack of prejudice to the defendant. Especially in Brazell, the South Carolina Supreme Court found that the delay was lengthy and that the State could not justify the delay. However, the Court found the defendant was not prejudiced by the delay, and that his speedy trial rights were not violated.

The Court must consider these factors as well as any other factors to determine if the case should be dismissed because of the alleged lack of a speedy trial. The State's main position in this case is that the defendant has been tried and convicted for the crimes he now faces. Because of that, the defendant has not been prejudiced by the delay. The convictions were overturned on a technical not an evidentiary ground and justice demands that this case be retried, not dismissed.

III.

As to the motion pursuant to §17-23-90, Code of Laws of South Carolina, 1976, as amended, the case was originally indicted in 1990 and called for trial and tried in 1991. The State has fulfilled its duty under this statute.

Assuming, for the sake of argument, that the State has not fulfilled its duty, this statute does not apply to the present case. Since this case involves a "special term" of Court, that is, one ordered by the Chief Justice and not a statutory term of Court, this statute does not apply. Ex parte Attardo, 249 S.E.2d 771, (1978).

IV.

The State opposes the granting of a bond to the defendant pending his trial. First, the controlling statute, §17-15-10, Code of Laws of South Carolina, 1976, as amended, does not allow

this. This Section allows bond for persons charged with non-capital crimes. This case is a capital murder trial.

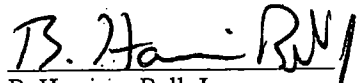
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Second, if the Court finds that bond for this defendant may be appropriate, the state would oppose bond on the grounds that, pursuant to §17-15-30, Code of Laws of South Carolina, 1976, as amended, the defendant is a danger to the community based on the crimes he is currently charged with; Murder, Kidnapping, Armed Robbery, and Conspiracy to commit Armed Robbery; the fact that he was convicted of these crimes and was sentenced to Death; and that he has prior convictions for violent crimes and crimes that would pose a danger to the community: Armed Robbery in February 1977; Burglary and Armed Robbery in March 1977; and two counts of Housebreaking and Larceny in September 1977. Also, pursuant to §17-15-30, the defendant is a flight risk because he has been convicted of Attempted Escape in December of 1977, Escape in September 1980, and Escape in March 1985.

V.

The State does not believe that the defendant's speedy trial rights, pursuant to the United States and South Carolina Constitutions, have been violated and therefore the current charges should not be dismissed. The State further believes that §17-23-90 does not apply in this case. However, the State is ready for the Court to set a trial date in this matter. Finally, the State strongly opposes the setting of bond or the release of this defendant prior to the trial based on the above state reasons.

Respectfully submitted,


B. Harrison Bell, Jr.
Senior Assistant Solicitor
First Judicial Circuit
140 N. Main St., Suite 102
Summerville, South Carolina 29483

David M. Pascoe
Solicitor
First Judicial Circuit
140 N. Main St., Suite 102
Summerville, South Carolina 29483

ORIGINAL

91

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS
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90-GS-32-83
90-GS-32-84

STATE OF SOUTH CAROLINA)
BETH A. CARRIGG)
CLERK OF COURT)
LEXINGTON SC)

v.)
GENE TONY COOPER,)
Defendant.)
DEFENDANT'S REPLY TO STATE'S
RESPONSE TO RENEWED MOTION TO
DISMISS FOR LACK OF SPEEDY TRIAL,
OR FOR RELEASE PENDING TRIAL

The state correctly identifies Barker v. Wingo, 407 U.S. 514 (1972), as providing the governing legal framework for addressing Cooper's motion. As summarized in one of several South Carolina cases applying Barker, that case identifies four factors that must be weighed in evaluating claims that the Sixth Amendment's right to a speedy trial has been violated: "(1) the length of the delay; (2) the government's reason for the delay, (3) the time and manner of the defendant's assertion of his rights; and (4) the prejudice suffered by the defendant." State v. Tyson, 323 S.E.2d 770, 771 (S.C. 1984). The state also acknowledges Barker's critical admonition that "none of the four factors identified above [is] either a necessary or a sufficient condition for the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." 407 U.S. at 533. With these principles in mind, Mr. Cooper will review the reasons offered by the state why the Court should in effect disregard the prosecution's persistent failure to honor his demands for speedy trial.

1. Length of the delay. The state admits, as it must, that the delay of "approximately three years and four months" between the reversal of the last of Cooper's convictions and his still-unscheduled retrial is sufficient to trigger judicial scrutiny under the Speedy Trial Clause of the Sixth Amendment. Response at 2. This is not open to debate as matter of federal constitutional law, since the United States Supreme Court has recognized that, as a general matter, delays approaching one year are regarded as presumptively prejudicial. Doggett v. United States, 505 U.S. 647, 652 n. 1(1992). A delay of close to three-and-a-half years, moreover, already exceeds that found in almost any reported South Carolina case. See e.g., State v. Brazzell, 480 S.E.2d 64, 70 (S.C. 1997) (two years, four months); State v. Chapman, 344 S.E.2d 611, 612 (S.C. 1986) (one year); State v. Tyson, supra (13 months); State v. Waites, 240 S.E.2d 651, 652 (S.C. 1978) (two years, four months); State v. Allen, 237 S.E.2d 64 (S.C. 1977) (two years, four months); cf. State v. Robinson, 528 S.E.2d 269, 271 (S.C. App. 1999) (delay of nearly five years triggered Barker scrutiny, but trial occurred 10 months after defendant's first request for speedy trial, and no prejudice resulted from delay); State v. Foster, 197 S.E.2d 280 (S.C. 1973) (seven-and-a-half year delay in trying defendants who jumped bond before trial and were imprisoned in another state for unrelated crimes; trial occurred within 15 months of their belated demand to be returned to South Carolina for trial).

Despite the almost unprecedented length of the delay in this case, the state urges that its significance is diminished by the fact that Cooper has already been tried one time, and that the state's prolonged inaction has occurred only with respect to his retrial. Response at 2. This argument does not withstand scrutiny. The state cites no authority for the proposition that the

Sixth Amendment's speedy trial guarantee is diluted or rendered ineffective by an intervening conviction and appellate reversal. If anything, the opposite is true: having marshaled its proof once, the state is normally in a better position to accord a defendant a speedy trial after his conviction is reversed. "[C]ommon sense suggests that, ordinarily on retrial, less time will be necessary to bring a case to trial than before," State v. Ferguson, 576 So.2d 1252, 1254 (Miss. 1991), and courts have recognized that "the delay that can be tolerated for a retrial is considerably less than for an initial trial because the issues and evidence have been fully explored." Lahr v. State, 615 N.E.2d 150, 152 (Ind. App. 1993). This observation holds all the more in this case because the state has already familiarized itself with the evidence not once, but twice, due to the separate trial of the co-defendant Southerland. Under these circumstances, there is no merit to the state's suggestion that its extremely long delay in scheduling Cooper's retrial should count for less in the Barker analysis because his case was tried once before, and because the state did not also violate his right to a speedy trial the first time around.

(2) The government's reason for the delay. Next, the state makes a series of unsupported factual assertions concerning the reasons for the delay. Taking a sentence out of context from Judge Keesley's July 12, 2005 order, the state seems to imply that Judge Keesley attributed some part of the state's failure to call Cooper's case for trial to criminal court backlogs caused by the "explosive growth of Lexington County." Response at 3. In fact, Judge Keesley alluded to these systemic problems merely as background to his reiteration of his prior order of April 25, 2005, directing that this case be tried before the end of 2005.

It is clear that the state's failure to abide by Judge Keesley's repeated orders to try this case by December 31, 2005 cannot be explained by vague generalizations or mere protestations of good faith. The most likely explanation appears to be simply that, for whatever reason, the state was concerned that it could not establish Mr. Cooper's guilt beyond a reasonable doubt, and wished to delay the moment of reckoning (while Mr. Cooper sat in a Death Row cell) as long as possible. The state cites the transfer of the case from the Eleventh Circuit Solicitor's Office to the First as an additional reason for delay, but that explanation begs the question of why Solicitor Myers waited so many years—including close to two years of speedy trial demands by Cooper—before advising the court of what he deemed to be a disqualifying conflict that had existed for a decade or more. The state also fails to explain why, in the face of at least three speedy trial demands and two orders mandating a 2005 trial, the First Circuit Solicitor's Office took no discernible action to bring this case to trial after receiving the file from the Attorney General in September 2005.

The fact is that the state has offered no adequate explanation for its failure to follow through on its August 2003 promise to try Cooper in the Spring of 2004, nor for its failure to abide by Judge Keesley's two orders mandating a trial in 2005. The accumulated evidence now supports the inference that the state's delay was willful, although the possibility exists that part of the delay was merely negligent. No evidence shows it to have been justified.

Barker v. Wingo requires this Court to determine why Cooper's case has yet to be tried, and in particular to determine whether the state has deliberately delayed the trial, or whether its inaction is explained by more "neutral" reasons such as negligence or crowded dockets. 407 U.S. at 531. To be sure, negligence and crowded dockets still weigh in favor of

the defendant, but less heavily than deliberate delay. Id. Since the state's response sheds no light on the actual reasons for the state's persistent refusal to take any action to set this case for trial through the end of 2005, and in order to assess the extent to which the delay was willful as opposed to negligent, an evidentiary hearing will be necessary at which the Court may take the testimony of the two prosecutors responsible for most of the delay, namely, Solicitor Donald V. Myers and Deputy Solicitor Dayton Riddle. Accordingly, Cooper hereby advises the state of his intention to issue subpoenas for the attendance of Mr. Myers and Mr. Riddle at the hearing on his motion, unless the state prefers to provide an assurance that they will be present.

3. Assertion of the speedy trial right. The state further admits that Cooper "has asserted his right to a speedy trial several times and before the proper courts." The fact that he has been persistently demanding a trial ever since July, 2003 is yet another important factor differentiating this case from almost all of the reported South Carolina cases decided since Barker: in most of these cases, the defendants' requests for a speedy trial came late if ever, and much of the delays complained of were actually attributable to the defendants or their counsel. E.g. Tyson, supra (part of 13-month delay attributable to defendant's initial refusal to accept appointed counsel); State v. Chapman, supra (first assertion of speedy trial right was made the day of motion to dismiss); State v. Waites, supra (defendant contributed to delay and never requested speedy trial); State v. Allen, supra, (defendants requested continuance and never requested speedy trial). Cooper's persistence in seeking to vindicate his constitutional right to a speedy trial differentiates this case from the great majority of reported cases dealing with claims of pretrial delay, and weighs heavily in favor of granting his motion to dismiss.

4. Prejudice. Finally, the state claims that Cooper was not prejudiced by the long delay in retrying him. Barker lists “oppressive pretrial incarceration” and anxiety and concern of the accused” as two of the three forms of possible prejudice that may arise from the denial of a speedy trial, 407 U.S. at 532, and Cooper’s incarceration in a Death Row cell in Lieber Correctional Institution for the past three years and eight months, while awaiting the day when he is again placed in jeopardy of being sentenced to death, amounts to no small prejudice in and of itself. As for the remaining component of prejudice under Wingo, impairment of Cooper’s defense at trial, he has not yet identified witnesses or evidence that have become unavailable since August of 2002. However, in the absence of a trial date, he has not been in a position to subpoena witnesses for trial, and he anticipates that the trial-related harm from this long delay may become clearer as he finalizes his trial preparation. At this point, he would merely stress that trial-related prejudice, while potentially a reason to grant a motion like this one, is not a prerequisite for relief. Barker, supra, 407 U.S. at 533 (“We regard none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.”) The Supreme Court’s discussion in Doggett, supra, provides a useful caution:

[C]onsideration of prejudice is not limited to the specifically demonstrable, and, as [the government] concedes, affirmative proof of particularized prejudice is not essential to every speedy trial claim. Barker explicitly recognized that impairment of one’s defense is the most difficult form of speedy trial prejudice to prove because time’s erosion of exculpatory evidence and testimony “can rarely be shown.” 407 U. S., at 532. And though time can tilt the case against either side, see id., at 521; Loud Hawk [v. United States], 474 U. S. 302,] 315 [(1986)], one cannot generally be sure which of them it has prejudiced more severely. Thus, we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify. While such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other Barker

criteria, see Loud Hawk, supra, at 315, it is part of the mix of relevant facts, and its importance increases with the length of delay.

505 U.S. at 655-6 (emphasis added, internal citations omitted). This passage from Doggett disposes of the state's reliance on its claim that the long delay in scheduling Cooper's retrial may actually have hurt the state more than the defense. Response at 3-4. The point is not that this could not be true, but that its truth or falsity is unknowable. Doggett shows that to deny Cooper's motion solely on the ground that he cannot now demonstrate sufficient trial-related prejudice would impermissibly impose a crippling burden of proof on an accused whose trial has been needlessly delayed for years, and would effectively vitiate the Constitution's speedy trial guarantee.

To be sure, Cooper envisions that should his present motion be denied, it will be necessary to renew it as trial approaches, and likely during the trial itself, as previously-undetectable prejudice reveals itself. But he submits that a fair application of the Barker factors mandates dismissal now, without waiting for additional evidence of trial-related prejudice. The state had a reasonable time in which to retry him. It first agreed to do so, but did not. Then it was ordered to do so, and still did not. Now, nearly three and a half years after the Supreme Court ordered that the last of his charges be retried, the state's time is up.

CONCLUSION

For the reasons set forth above and in his Renewed Motion to Dismiss for Lack of Speedy Trial, or for Release Pending Trial previously filed on December 29, 2005, the defendant Gene Tony Cooper hereby requests:

- (1) that the Court set an early date for an evidentiary hearing on his motion;

- (2) that the Court take the testimony of Solicitor Myers and Deputy Solicitor Riddle concerning the reasons for the lengthy delay in retrying this case,
- (3) that it grant the motion and dismiss all charges now pending against him by reason of the state's denial of his right to a speedy trial under the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Section 14 of the Constitution of South Carolina, and
- (4) should the motion to dismiss be denied or deferred, that it order the defendant's immediate release pending trial, upon such conditions as the Court may direct.

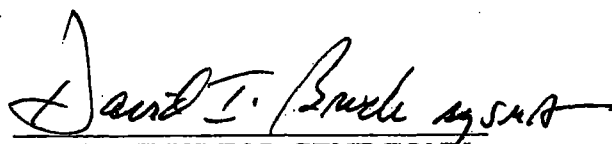
Respectfully submitted,

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BY:


ATTORNEYS FOR GENE TONY
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January 18, 2006

ORIGINAL

99

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Gene Tony Cooper, Jr., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering to the following address(es):

Pleadings: DEFENDANT'S REPLY TO STATE'S RESPONSE TO RENEWED MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL, OR FOR RELEASE PENDING TRIAL

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2006 JAN 18 A 10:42
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Jan. 18, 2006

CERTIFICATE OF SERVICE

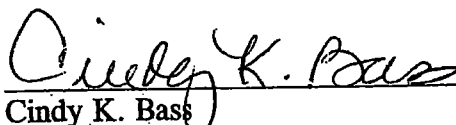
I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Gene Tony Cooper, Jr., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering to the following address(es):

Pleadings: DEFENDANT'S RESPONSE TO THE STATE'S MOTION TO DISQUALIFY
AND RECUSE DEFENDANT'S ATTORNEYS AND AGENTS

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Cindy K. Bass
Administrative Assistant

June 24, 2005

State of South Carolina) Court of General Sessions
County of Lexington) Eleventh Judicial Circuit
State of South Carolina,)
vs.) Case No. 90-GS-32-83, 84
Gene Tony Cooper,)
Defendant.)

TRANSCRIPT OF RECORD

February 8, 2006

Charleston, South Carolina

B E F O R E:

The Hon. Daniel F. Pieper, Judge

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

B. Harrison Bell, Jr., Esq.
Attorney for the StateDavid Bruck, Esq.
Jack Duncan, Esq.
Attorneys for the DefendantBrenda Cooley
Circuit Court Reporter

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* * *

(The exhibits were retained by the Clerk of Court.)

1 (On Wednesday, February 8, 2006, the
2 defendant being present with counsel, the hearing
3 convenes at approximately 10:00 a.m., and the
4 following proceedings were had:)

5 THE COURT: Good morning. The first
6 thing I'd like to do, if you'd each identify
7 yourselves for the record and who you're
8 representing.

9 MR. BRUCK: I'm David Bruck. I'm
10 appointed by the Court to represent Tony Cooper.
11 With me is Jack Duncan, assistant public defender for
12 Lexington County, also representing Mr. Cooper.

13 THE COURT: All right.. This is
14 Mr. Cooper?

15 MR. BRUCK: I'm sorry?

16 THE COURT: Is this Mr. Cooper?

17 MR. BRUCK: That is Mr. Cooper. I
18 apologize.

19 THE COURT: All right.

20 MR. BELL: Thank you, Your Honor. My
21 name is Harrison Bell. The First Circuit Solicitor's
22 Office has now been assigned the case. I'm a senior
23 assistant solicitor.

24 THE COURT: All right. You said you want
25 to take up an issue about the cuffs?

1 MR. BRUCK: Yes, Your Honor. Mr. Cooper
2 is wearing box cuffs. His hands are visibly
3 swelling. He's been cuffed like that for many hours
4 now.

5 It's been my normal experience with
6 clients who are being held on death row, which he is,
7 although he's not a death row inmate, that the courts
8 most often order the Department of Corrections to
9 release the cuffs.

10 He has leg irons, so he's not going
11 anywhere. Mr. Cooper has been in court hearings
12 before. There's never been a bit of trouble.

13 As the state has pointed out in response
14 to the bond motion, that he had an escape history,
15 but that was 25 years ago.

16 And this man is no risk at all. And it
17 not only is physically painful to him, it keeps him
18 from taking notes.

19 THE COURT: You're not asking that his
20 leg shackles be removed?

21 MR. BRUCK: No, sir, just the handcuffs.

22 THE COURT: All right. I'll allow that.

23 MR. BRUCK: Thank you very much.

24 THE COURT: Yes, sir.

25 (The defendant is escorted from the

1 courtroom and returns, said handcuffs removed.)

2 MR. BRUCK: Thank you, Your Honor.

3 THE COURT: All right. And I understand
4 you have some matters pertaining to speedy trial
5 issues and a bond?

6 MR. BRUCK: Speedy trial, yes, Your
7 Honor; and if that should be denied, bond.

8 THE COURT: All right. I'll be happy to
9 hear you out on it.

10 MR. BRUCK: Thank you.

11 The first thing which we'd like to do
12 before getting to the legal argument on this is to
13 put on some evidence.

14 As Your Honor is well aware, one of the
15 four *Barker v. Wingo* factors is the reason for the
16 delay in bringing a case to trial. And to that, in
17 order to elucidate that issue, we have Mr. Myers here
18 today and Mr. Dayton Riddle, deputy solicitor, and
19 we'd like to call Mr. Myers to examine him on the
20 reason for the delay.

21 THE COURT: All right. I mean, are these
22 reasons in dispute?

23 MR. BRUCK: I'm sorry?

24 THE COURT: Is there some dispute as to
25 these facts?

1 MR. BRUCK: The state has simply -- the
2 burden is on the state to show the reason, and there
3 are no -- there is nothing in their Return to show an
4 itemized particularized reason why in 2002 and 2003
5 and 2004, even when there was a court order in 2005,
6 this case was not called for trial, and there is
7 simply no other way to develop the record other than
8 to ask the person whose job it was to call it why it
9 wasn't called.

10 THE COURT: All right. That's fine.
11 Before you do that, can anyone tell me why a judge
12 was never assigned to this case since the time that
13 this case has been reversed in 2002?

14 MR. BRUCK: That is another reason why I
15 wanted to question Mr. Myers.

16 It is the solicitor's job to call Court
17 Administration and ask for a case -- a judge to be
18 assigned if they intend to seek the death penalty,
19 which we didn't know, so we couldn't do it, and
20 the ---

21 THE COURT: When the case came back
22 down, did they re-file the notice of the death
23 penalty?

24 MR. BRUCK: No, sir.

25 THE COURT: Okay.

1 MR. BRUCK: No action was taken, period,
2 and that's what we need to explore.

3 THE COURT: All right. Go ahead.

4 Do you have any problem with that?

5 MR. BELL: Your Honor, the only problem I
6 have is it seems to me from the July 12th order from
7 Judge Keesley they've already explored most of these
8 issues. I mean, the only time period would be from
9 then on when we got the case.

10 And, I mean, in his order he said -- and
11 he denied the speedy trial motion, so apparently he
12 heard these. And he also found that even the
13 solicitor moving to get out of the case back then was
14 not to delay the case, not to do it. I mean, we
15 think it's already been adjudicated.

16 THE COURT: Well, then what did he mean
17 when he said the matter could be reconsidered if it
18 were not tried in December?

19 MR. BELL: That I don't know. I mean, I
20 can't answer that, Your Honor.

21 THE COURT: I mean, I normally deem
22 reconsideration to be reconsider *de novo*. If that's
23 not the case, then I'll be happy to hear you on that.
24 But if the judge says he can bring it, it would seem
25 to be somewhat academic to just say you can revisit

1 the speedy trial motion from the date of the order
2 only; would it not?

3 MR. BELL: That's correct, Your Honor.
4 But, I mean, you know, you can have bond
5 reconsiderations at, you know ---

6 THE COURT: But he didn't ---

7 MR. BELL: --- for a change of
8 circumstances.

9 --- THE COURT: --He didn't say, as we often
10 do, if it doesn't go to trial the defendant may apply
11 to the Court for bond. I understood him to say the
12 motion for speedy trial could be renewed. Is that
13 not the case?

14 MR. BELL: I believe that is correct.
15 That's how it's said in there, Your Honor.

16 THE COURT: Now, my concern would be, as
17 I would imagine your same concern is, that you are
18 not from the Solicitor's Office that was originally
19 handling this case. So one of the reasons that I
20 might be willing to hear this testimony is that I'm
21 not sure that you'll be able to fill in the gaps
22 yourself, will you?

23 MR. BELL: I doubt I can. That's true.

24 THE COURT: All right.

25 MR. BELL: I can only base it from when

1 we got the case in September or so.

2 THE COURT: So do you have any problem
3 with him telling us the history?

4 MR. BELL: No, Your Honor, I don't.

5 THE COURT: All right. Come forward.

6 DONALD LEE MYERS, ESQ.,
7 being first duly sworn by the clerk, is examined and
8 testifies as follows:

9 THE CLERK: Please be seated. If you
10 would, sir, please state your full name to the Court
11 and spell your last.

12 THE WITNESS: Donald Lee Myers,
13 M-Y-E-R-S.

14 MR. BRUCK: All right. Good morning,
15 Mr. Myers.

16 One housekeeping matter. Mr. Riddle, the
17 deputy solicitor, he's here. We would ask that
18 Mr. Riddle, so as not to put him in an awkward spot,
19 have -- possibly remembering something different than
20 his boss, that Mr. Riddle wait in the hall until
21 Mr. Myers ---

22 THE COURT: All right. Step out,
23 Mr. Riddle, please.

24 (Mr. Riddle leaves the courtroom.)

25 MR. BRUCK: Thank you.

DIRECT EXAMINATION

BY MR. BRUCK:

Q. You are the solicitor of the Eleventh Judicial Circuit?

A. Yes, sir.

Q. And you prosecuted Tony Cooper in 1991 in the case we're concerned with today?

A. I prosecuted him. I don't remember the year.

Q. Okay. Mr. Myers, the record reflects that on August 29th, 2002, the remittitur was sent down from the Supreme -- from the Supreme Court on the remaining non-capital counts against Mr. Cooper, just to say that this case was entirely ready to be retried on all charges. Is that your recollection?

A. It was sent back down. There was an appeal to the Supreme Court, and then there was a PCR. The PCR was appealed, and then the final decision was to come back down for a new trial.

Q. Okay. Do you know, Mr. Myers, at that time, excluding cases that were only awaiting resentencing, what was the oldest murder case in Lexington County?

A. I don't know.

Q. You don't know if it was this one or some other one?

A. No. I don't think it was this one.

1 Q. But which one do you think it was?

2 A. I really couldn't tell you, because some of
3 the -- probably -- probably Raymond Patterson.

4 Q. Okay. But that case was only pending
5 resentencing, correct, not a whole new trial?

6 A. Patterson the last time was sentencing.

7 Q. Right. Okay. And I'm not asking you about
8 anyone that's going to be doing death or life no
9 matter what, no matter when they're retried. I'm
10 asking about people who have no conviction
11 whatsoever, keeping them in jail for the charge of
12 murder. Would this be the oldest case in the
13 Eleventh Judicial Circuit?

14 A. As of when?

15 Q. As of August 29th, 2002, when this case was
16 sent back from the Supreme Court.

17 A. I really couldn't say. I mean, it very well
18 could be, because of all the appellate process and
19 the PCRs.

20 Q. Okay. Now, within your office, when a case is
21 sent back from -- for retrial, do you assign it, or
22 is it assigned to a member of your staff to be the
23 lead prosecutor?

24 A. Yes.

25 Q. And was this case assigned?

1 A. Yes.

2 Q. And who was it assigned to?

3 A. Dayton Riddle helped me on this one.

4 Q. He helped you on it?

5 A. Uh-huh.

6 Q. And did you keep the case, or did you give it
7 over to Dayton, or who is responsible?

8 A. They are responsible for all the pretrial
9 workup, getting it together for it, yeah.

10 Q. Okay. And do you know what was done to work
11 this case up after August 29th, 2002, or would we
12 have to ask Mr. Riddle about that?

13 A. Probably the files were trying to -- to be
14 relocated.

15 Q. Now, when you say probably, are you telling us
16 how it normally works, or are you testifying to
17 Judge Pieper about what was done in this particular
18 case?

19 A. What's normally done.

20 Q. And if you can, can you tell me what was done
21 in this case?

22 A. No, sir.

23 Q. You don't know or you don't remember or which?

24 A. Both.

25 Q. You neither know nor remember?

1 A. We've probably had eleven or twelve death
2 penalty cases pending for the last several years.

3 Q. Okay. And was this the oldest one in terms of
4 the date of arrest in which there was no valid
5 conviction on the books as of August 29, 2002?

6 A. Probably. I couldn't tell you with any
7 definite.

8 Q. Okay. All right. So the case in the normal
9 course would have been assigned to Mr. -- was
10 assigned to Mr. Riddle; and in the normal course, he
11 would try to find the file. Is that your testimony?

12 A. Uh-huh.

13 Q. But you don't know if he did that in this
14 case?

15 A. No.

16 Q. You don't know ---

17 A. I can't -- you know, I can't tell you whether
18 Dayton tried this thing with us the first time or
19 not. He didn't -- not today.

20 Q. Right.

21 A. And Dayton probably came in later on, after --
22 he may have left in the mid-nineties.

23 Q. Okay. Can you tell us when, if ever, Dayton
24 gave you a progress report about how his work on this
25 case was ---

1 A. I really can't. Once Judge Keesley took over
2 this thing and we had all these hearings and then our
3 office was removed from it, I told him to box up
4 everything and send it to the new prosecutor, and I
5 moved on to other stuff. I haven't looked through
6 this stuff in quite a while, Mr. Bruck.

7 Q. Okay. Well, we'll take it in order then. Do
8 you remember what directions, if any, you gave
9 Mr. Riddle about getting this case ready for trial?

-10 A. No. — — —

11 Q. And I'm talking about 2002.

12 A. No, sir.

13 Q. And does that mean you don't remember, or you
14 don't -- didn't give him any?

15 A. I don't remember.

16 Q. You don't remember. Okay. Now, if a case is
17 going to be tried as a death penalty case, it
18 requires the Court Administration or the Supreme
19 Court Chief Justice to assign a judge specially; is
20 that correct?

21 A. Usually.

22 Q. Usually?

23 A. Uh-huh.

24 Q. And it has required that invariably since the
25 early 1990s, hasn't it?

1 A. In fact, when this case first came up, that
2 wasn't the practice. We had different judges setting
3 bonds, different judges having hearings.

4 Q. Okay. But I'm asking you about August 29th,
5 2002, and thereafter.

6 A. They got around to doing that.

7 Q. I'm sorry?

8 A. They got around to doing that, yes.

9 Q. Okay. And how does Court Administration know
10 that a judge has to be assigned?

11 A. I notify the chief administrative judge, and
12 the chief administrative judge usually talks to Court
13 Administration. Sometimes I communicate with Court
14 Administration and then send copies to the chief
15 administrative judge.

16 Q. Okay. And can you tell us when you notified
17 the chief administrative judge in this case after
18 August 29th, 2002, that this case had to be retried
19 and needed a judge assigned?

20 A. Judge Westbrook would have been the chief
21 administrative judge, and probably within six months.

22 Q. Now, when you say probably, do you remember
23 that you made the request, or are you saying ---

24 A. No. Because Judge Westbrook and I would talk
25 periodically about cases and scheduling court,

1 because he handled most of the capital cases because
2 Judge Keesley had recused himself on capital cases.

3 Q. All right. So to be precise, you have no
4 memory of talking to Judge Westbrook about the need
5 for assigning of a judge to try this case?

6 A. What I'd do is give him a list of cases, and
7 as we tried to set up things six months in advance
8 and arrange our court schedules, we would go over
9 them. And we would get the ones that had been sent
10 back by the Supreme Court, whether it was for new
11 trial, a retrial, whatever, plus the new ones coming
12 up.

13 Q. Okay. If Judge Westbrook didn't hear from you
14 about the need to assign a judge, he wouldn't in the
15 normal course of his duties know about it, correct?

16 A. Oh, sure, he'd know about it.

17 Q. Whose job is it to make this process happen?

18 A. The chief administrative judge.

19 Q. Not yours?

20 A. Sometimes I do.

21 Q. And, in fact, you could notify Court
22 Administration on your own, couldn't you?

23 A. Sure. I have.

24 Q. And you have done that many times?

25 A. Uh-huh.

1 Q. But you didn't do it in this case?

2 A. No.

3 Q. Why not?

4 A. Because sometimes I notify them at the request
5 of the chief administrative judge; sometimes the
6 chief administrative judge. I'm not in charge of the
7 court schedule; the judges are.

8 Q. That's not responsive to my question.

9 A. I apologize.

10 Q. My question is: Why in this case did you not
11 take it upon yourself to notify Court Administration
12 that you needed a judge?

13 A. Because it was my impression that
14 Judge Westbrook had been assigned to it.

15 Q. And what do you base that impression on?

16 A. Discussions I had with him.

17 Q. *Ex parte*?

18 A. No. About court schedules.

19 Q. Okay. But Mr. Cooper's attorneys were not
20 involved in that, correct?

21 A. Yes. And y'all would file motions. Then I
22 would ask the judge, you know, when do you want to
23 have these motions. General Sessions, nonjury,
24 chambers weeks? Things of that nature.

25 Q. Okay. There was no -- the record reflects

1 there was no motion filed between August 29th, 2002,
2 and July of 2003. What request, if any, did you make
3 of Judge Westbrook or of Court Administration between
4 those two dates?

5 A. None.

6 Q. You made none. Okay.

7 A. As to a judge being assigned? As to a judge
8 being assigned?

9 Q. Right.

10 A. None.

11 Q. Okay. Why not?

12 A. Because I talked to Judge Westbrook about
13 pending capital cases we had.

14 Q. And Judge Westbrook told you that there
15 shouldn't be a judge assigned?

16 A. No, sir.

17 Q. What did he tell you?

18 A. He said we'd try to get a schedule fixed up
19 and try to work it in. And with all the problems we
20 had with the courthouse and the new courthouse,
21 things were pretty hectic for a while.

22 Q. All right. And Mr. Cooper's attorneys were
23 notified of this, that you had talked about
24 scheduling and Judge Westbrook had told you that it
25 couldn't be done any time soon, or is that not a fair

1 characterization of Judge Westbrook's statement to
2 you?

3 A. No, sir, Mr. Bruck, you don't understand. The
4 chief administrative judge for General Sessions...

5 Q. Yes, sir.

6 A. --- they are in charge of the court schedule.
7 It's just like now when I communicate with
8 Judge Keesley and I tell him we want to have double
9 terms of court or single terms of court. I give him
10 a list of capital cases, I give him a list of old
11 cases, jail cases, and we try to organize the General
12 Sessions docket, anything from shoplifting to capital
13 cases.

14 Q. Okay.

15 A. And I did the same thing with Judge Westbrook.
16 It was -- and I can't speak for him, but I was fully
17 convinced that he had been assigned to this case as
18 the presiding judge.

19 Q. All right. And you were served with a
20 subpoena *duces tecum* to bring with you records, paper
21 records, if any, of any communication between you and
22 the Court concerning the exact matters we're
23 discussing, the scheduling of this case. What did
24 you bring with you?

25 A. (The witness removes file from briefcase.)

1 This is all that I have in my file.

2 Q. May I examine it?

3 A. Sure.

4 MR. BRUCK: May I approach?

5 THE COURT: Yes, sir.

6 (The witness tenders file to Mr. Bruck.)

7 (Mr. Bruck reviews documents in file.)

8 BY MR. BRUCK:

9 Q. This file is everything that is responsive to
10 the subpoena that you have in your possession?

11 A. That is my file. The other files were boxed
12 up ---

13 Q. Right.

14 A. --- and sent to the solicitor for the First
15 Circuit. Now, Dayton may have some more stuff, I
16 don't know.

17 Q. Okay. So as far as correspondence concerning
18 the scheduling of this case, if it ain't here it
19 don't exist?

20 A. No. No. I can't say that, because there may
21 be in those boxes that we gave to the First Circuit
22 Solicitor's Office.

23 Q. Okay.

24 A. I'm just saying that that's what I have had in
25 my office in my personal file.

1 Q. Okay. So if you don't have it, the prosecutor
2 that has this case now does?

3 A. I assume he does, or Dayton may have it, or
4 there may be some mis-filed correspondence in those
5 other files.

6 (Mr. Bruck tenders file to Mr. Bell.)

7 (Mr. Bell reviews documents in file.)

8 MR. BELL: No objection, Your Honor.

9 THE COURT: All right.

10 MR. BRUCK: This would be defendant's ---

11 THE WITNESS: I've got some legal
12 research in there. Can I take it out?

13 BY MR. BRUCK:

14 Q. Show me what you're taking out.

15 A. (The witness complies.)

16 THE COURT: Is there something in
17 particular in that file you want me to look at?

18 MR. BRUCK: Well, it's partly a negative,
19 Your Honor. I've just had a chance to look quickly
20 through it, and we may be able to cull it by consent
21 after the...

22 THE COURT: Well, that's what -- I mean,
23 if the negative is something that's not in there and
24 we can all agree to that, then I don't need to look
25 for a negative. If y'all agree that there's nothing

1 pertinent in that file, he can keep his file.

2 MR. BRUCK: Let me quickly cull it out
3 and see what -- if there's anything germane.

4 Okay. I think we have reduced this down.

5 Mr. Myers, I'm going to hand you back
6 most of your file.

7 We have agreed that the contents of what
8 will now be marked as defendant's one for purposes of
9 this hearing are all the materials in -- when I say
10 we, the state and I have agreed -- are all the
11 materials that Mr. Myers produced responsive to the
12 subpoena *duces tecum* germane to the issue of the
13 motion to dismiss for lack of a speedy trial.

14 THE COURT: Correct?

15 MR. BELL: Yes, Your Honor.

16 MR. BRUCK: May I have it marked.

17 (Defendant's Exhibit No. 1, file of
18 documents of Solicitor Myers, is marked for
19 identification and received in evidence.)

20 BY MR. BRUCK:

21 Q. Now, you may need to look in your file to see,
22 but between 2002 and 2003 is there anything in your
23 file reflecting any communication between you and
24 Judge Westbrook or any other judge about the
25 scheduling of this case?

1 A. I would not have written the judge. I would
2 have called him personally.

3 Q. And when did you talk to him between those two
4 dates?

5 A. I can't tell you.

6 Q. And what did you say concerning this case?

7 A. This case ---

8 Q. If you remember.

9 A. --- might not have been specifically
10 discussed. This would have been one of many capital
11 and serious cases in which we'd talk about needing
12 additional terms of court or not needing court and
13 organizing the court schedule.

14 Q. And did you tell -- and what decision was made
15 after this conversation of unknown date with
16 Judge Westbrook concerning the need to schedule
17 additional court?

18 A. That we would advise Court Administration of
19 the cases that would be tried whenever the dates were
20 set and then we would try to work out the court
21 schedule then.

22 Q. And what discussion did you have with court --
23 with Judge Westbrook or anyone else about setting a
24 date for the Tony Cooper case prior to the first
25 motion for speedy trial in July of 2003?

1 A. I don't think we ever had a hearing on that.

2 Q. That's not what I asked you. You're telling
3 me that you're having these conversations with the
4 chief administrative judge.

5 A. I'm sorry. Repeat the question.

6 Q. The question is: What discussion was there
7 between you and Judge Westbrook or any other judge
8 about a date for this case?

9 A. For this case specifically?

10 Q. Yes.

11 A. None.

12 Q. None. Okay. Then in July of 2003 you
13 received a motion for a speedy trial, correct?

14 A. We received a motion for speedy trial. I
15 don't know when it was.

16 Q. Okay. And prior to that, Mr. Riddle had
17 gotten a phone call from me in which I attempted to
18 just discuss informally agreeing on a trial date for
19 Mr. Cooper, correct, and he raised it with you?

20 A. I don't know what y'all talked about.

21 Q. Okay. Did Mr. Riddle come and talk to you and
22 say that Bruck had called and wanted a trial date for
23 Tony Cooper and what did you want to do?

24 A. He could have. I don't recall if he did.

25 Q. You don't remember?

1 A. Uh-uh.

2 Q. Okay. So if Mr. Riddle responded to me later
3 that he couldn't set a date and I'd have to make a
4 motion, you wouldn't -- after talking to you, after
5 representing that he had talked to you, you wouldn't
6 know one way or the other if that was true?

7 A. No.

8 Q. Okay. Then we had a on-the-record motion
9 hearing on August 18th, 2003, correct?

10 A. Before whom?

11 Q. Well, maybe you don't ---

12 A. Before whom?

13 Q. Before Judge Westbrook.

14 A. I know we had a hearing before
15 Judge Westbrook. I don't remember when.

16 Q. Right, okay.

17 A. I think we had several.

18 Q. Right. And the record reflects that date?

19 A. Uh-huh.

20 Q. And I was trying to get a trial date set?

21 A. Uh-huh.

22 Q. And you were saying you had other cases to
23 try?

24 A. Yes, sir.

25 Q. Okay. What was there about -- tell me which

1 other cases had priority over this one and why.

2 A. I don't recall right now.

3 Q. You don't know. Okay. And you don't know at
4 this point what work, if any, had been done to see
5 whether or not you could get this case ready for
6 trial?

7 A. What do you mean by that?

8 Q. Whether witnesses had been contacted, whether
9 the file had been reviewed, whether readiness of the
10 case for re-prosecution had been set by your office?

11 A. A judge never set a trial date.
12 Judge Westbrook never set a trial date. That's
13 correct.

14 Q. No, that's not what I'm asking you. I'm
15 asking you about your office. When you were
16 resisting a trial date being set in the fall of 2003
17 at that hearing, as reflected by the transcript, you
18 can't tell us what you knew about any proof problems
19 or anything else in the Cooper case?

20 A. No, sir.

21 Q. You don't know? There might have been some,
22 might not? You just don't know?

23 A. That's correct.

24 Q. Okay. And you don't -- and Mr. Riddle didn't
25 tell you about that?

1 A. Well, he -- he could have.

2 Q. But you don't remember?

3 A. Not specifically.

4 Q. And your file doesn't reflect anything,
5 correct?

6 A. No, sir.

7 Q. Okay.

8 A. I try not to communicate with my staff by
9 written word. We'd ask each other and we'd meet and
10 we'd talk about things, but I don't keep notes of
11 that stuff.

12 Q. Okay. Have you ever read the case of *Barker*
13 *v. Wingo*?

14 A. I've heard of it.

15 Q. You've looked at that?

16 A. A speedy trial, among other things.

17 Q. Okay. Are you aware that the Supreme Court
18 has said that a delay of more than a year is
19 presumptively prejudicial?

20 A. No, sir.

21 Q. You didn't know that?

22 A. No, sir.

23 Q. Okay.

24 A. And I don't think there has been a death
25 penalty case in South Carolina in the last seven or

1 eight years that's been tried in less than a year.
2 Because every time we call it for the first time,
3 y'all move for a continuance.

4 Q. Okay. And what about this case? Have you
5 ever had another death penalty case in which rather
6 than asking for a continuance the defendant asked for
7 a speedy trial?

8 A. Sure.

9 Q. Which one?

10 A. I don't know. _____

11 Q. Do you think there has been, but you can't
12 tell us which case?

13 A. No, sir, I can't tell you.

14 Q. All right. But it happened in this case?

15 A. Yes, sir.

16 Q. All right. Do you think this might have been
17 the oldest murder case pending?

18 A. I don't know.

19 Q. Okay. Then we reconvened a week after that in
20 chambers with Judge Westbrook. Correct?

21 A. If you say so. I don't recall.

22 Q. Well, Judge Keesley's order reflects that on
23 August 25th there was an in-chambers meeting at which
24 you or your office said that you would call the case
25 in the spring of 2004. Do you remember that?

1 A. Yes, sir.

2 Q. And so, specifically, between August and June,
3 I think was the representation, sometime in there?

4 A. I can't tell you. I don't know.

5 Q. Spring of 2004, that was the plan, right?

6 A. August and June?

7 Q. I'm sorry. April and June?

8 A. It could have been, Mr. Bruck. I really don't
9 know.

10 Q. All right. So you don't disagree if that's
11 what's in Judge Keesley's order, right?

12 A. No. If it's in Judge Keesley's order. That's
13 fine.

14 Q. All right. And was the case -- what did you
15 do between -- what did your office do, you or
16 Mr. Riddle or anyone else, to get this case ready for
17 trial so that it could be tried in the spring of
18 2004?

19 A. What did we do?

20 Q. Yes.

21 A. I don't know. You'll have to ask him. I
22 didn't do anything.

23 Q. You didn't do anything?

24 A. I don't get involved in the death penalty
25 cases till about a month or two before we get ready

1 to go to trial.

2 Q. Okay. And, of course, the record reflects
3 that the case was not called for trial in the spring
4 of 2004. Do you know why?

5 A. There were many reasons.

6 Q. Well, tell us what they were.

7 A. Some of the reasons had to do with us moving
8 around so much. Other reasons were for other cases.
9 Other reasons were court schedules.

10 Q. All right. I need you to be more specific.

11 A. I can't. That's as specific as I can be for
12 you.

13 Q. Do you know what case had priority over this
14 one?

15 A. No, sir.

16 Q. Now, in between 2002, August 29th of 2002, and
17 the time of the making of the speedy trial motion in
18 July, how many death penalty cases did you try in
19 your circuit?

20 A. I don't have any idea.

21 Q. Would it surprise you to know that the answer
22 is none?

23 A. No, sir.

24 Q. Okay. And between 2000 -- August 18th, the
25 first speedy trial hearing, and -- and the spring of

1 2004 -- I'm sorry -- the summer of 2004 ---

2 A. I'm sorry, you lost me.

3 Q. Okay. Between the speedy trial motion
4 hearing, the first one...

5 A. When was that?

6 Q. On August 18th, 2003, and the end of 2004, how
7 many death penalty cases did you try in the Eleventh
8 Judicial Circuit?

9 A. I don't have any idea.

10 Q. Would it surprise you to learn it would be --
11 would you disagree with me that the answer is one,
12 the *Northcutt* case?

13 A. If you say so.

14 Q. Well, you remember the cases, the capital
15 cases you tried, don't you?

16 A. I remember the capital cases I tried. The
17 dates and times, I couldn't tell you when we tried
18 this thing first. I can't tell you when it went to
19 the Supreme Court first. I can't tell you when y'all
20 took it on PCR and then it went back to the Supreme
21 Court. I don't keep up with all those dates,
22 Mr. Bruck.

23 Q. Okay. But you remember ---

24 A. Or remembering what I had for breakfast.

25 Q. You remember the cases you tried. What was

1 the last capital case you tried, your office tried?
2 Would it have been Northcutt?

3 A. I think you're right, yes.

4 Q. And that was in November of 2003?

5 A. If you say so. I don't remember.

6 Q. Okay. And, in fact, Mr. Northcutt did not ask
7 for a speedy trial, did he?

8 A. I don't know.

9 Q. Not that you can recall?

10 A. No.

11 Q. But you had received a letter from
12 Mr. Northcutt asking if he could plead guilty and be
13 sentenced to death. Correct?

14 A. I think you're right on that.

15 Q. Right. And, in fact, he ended up standing in
16 front of the jury and asking for the death penalty?

17 A. Yes.

18 Q. So that case was like shooting fish in a
19 barrel, wasn't it?

20 A. No, sir. I think it's been on appeal since
21 y'all had him withdraw his -- I guess by now it's
22 going through an appeal. None of these cases are
23 shooting fish in a barrel.

24 Q. All right. Can you tell us why the Northcutt
25 case, in which there was no motion for speedy trial

1 and which was not nearly as old a case as this one,
2 was called by your office before this case was?

3 A. No, sir.

4 Q. You cannot tell us?

5 A. No.

6 Q. You have no idea why?

7 A. No.

8 Q. All right. Does anyone know?

9 A. I don't know.

10 Q. Is there a reason out there somewhere?

11 A. For what?

12 Q. For why the Northcutt case was tried in 2003
13 and this one wasn't, even though there was an
14 outstanding motion for speedy trial by Mr. Cooper?

15 A. I don't think we had heard these motions by
16 then. Maybe we had, I'm not sure, but a date wasn't
17 set for that, Mr. Bruck.

18 Q. Okay.

19 A. When we have hearings on things, the judges
20 usually set the dates. I've had five dates set for
21 this year on capital cases and ---

22 Q. I'm sorry. You've had five dates set for
23 what?

24 A. For capital cases for this year.

25 Q. Uh-huh.

1 A. By the judge. And when the judge sets it,
2 then we start looking forward to that one.

3 Q. Okay. Well, there had been an agreement to
4 set this case in 2004, in the spring of 2004, right?

5 A. Uh-huh.

6 Q. And then you didn't dō anything?

7 A. No, sir.

8 Q. No, sir, you didn't do anything?

9 A. We didn't call this case for trial, and a
10 judge didn't set this case for trial, Mr. Bruck.

11 Q. And you didn't notify Court Administration
12 that you needed a judge?

13 A. No, sir. I notified the chief administrative
14 judge of the Eleventh Judicial Circuit for General
15 Sessions Court.

16 Q. Orally in the conversations you can't put a
17 date or time on?

18 A. That's true.

19 Q. Okay. And you can't tell us that you ever had
20 a conversation that was focused on this case as
21 opposed to all the other cases that were pending?

22 A. I can't tell you whether we did or not.

23 Q. Okay. All right. Would you say that this is
24 a complex case to retry?

25 A. All of them are complex.

1 Q. And this no more than any other?

2 A. Equally.

3 Q. Okay. So there's nothing unusually complex
4 about this case as opposed to other murder cases that
5 have been reversed and sent back, correct?

6 A. All of them are complex, Mr. Bruck.

7 Q. Okay.

8 A. None of this stuff is -- is a cakewalk or
9 shooting fish in a barrel, as you term it, physically
10 or emotionally for anybody, on all sides.

11 Q. So was it the physical and emotional toll of
12 this case that made you not try it when your office
13 agreed to try it in the spring of 2004?

14 A. No, sir.

15 Q. What was it?

16 A. We didn't get to it, we had other cases, and
17 we didn't get to this, and a judge did not set a date
18 for a trial.

19 Q. Okay. Although you tried no other case in
20 2004?

21 A. If you say so. No capital case.

22 Q. Okay. Can you tell us if you ran into any
23 specific -- that you know of, any specific problem
24 having to do with witnesses, having to do with
25 evidence, having to do with the law that impeded or

1 delayed the calling of this case and setting of this
2 case for retrial by your office?

3 A. Mr. Bruck, for the Eleventh Circuit, in
4 capital cases, the judges set the case for trial in
5 consultation with the solicitor and the defense
6 attorneys.

7 Q. I'm going to ask you the question again. Was
8 there any problem or aspect of the case of *The State*
9 *vs. Tony Cooper* relating either to the availability
10 of witnesses, to the availability of evidence, to
11 changes in the law that posed a problem for the state
12 in retrying this case between 2002 and the present
13 day? That you know of?

14 A. Not that I know of. It could have been, but
15 not that I know of.

16 Q. Not that you know of. All right. Okay. Then
17 there was another speedy trial motion made in
18 February of 2005, correct, before Judge Keesley who
19 was then the chief administrative judge?

20 A. I think there were two before Judge Westbrook.
21 I'm not sure.

22 Q. All right. And in response to either one,
23 however many there were, did the state get -- did the
24 state take any action to call this case for trial?

25 A. Now, you wrote something in there about you

1 couldn't get your motions heard for two years. You
2 wrote some correspondence that you had been trying to
3 get those motions heard for two years, but the judges
4 didn't set a hearing on it.

5 Q. Well, the letters will ---

6 A. Pardon me?

7 Q. I say the record will reflect whatever it
8 reflects.

9 A. I've got it in this, somewhere in these files
10 that y'all got, that you wrote me and said for two
11 years you had been trying to get the speedy trial
12 motions heard, but the judges hadn't set a date.

13 Q. Okay.

14 A. We can find that. You wrote me that yourself.

15 Q. All right.

16 A. For two years you couldn't get a hearing set
17 on your motion. So that will take care of two years.

18 MR. BRUCK: Does the Court still have the
19 file, the exhibit?

20 (Defendant's Exhibit No. 1 is tendered to
21 Mr. Bruck.)

22 BY MR. BRUCK:

23 Q. Can you tell me what you're referring to?

24 A. I'll have to look through this. (The witness
25 reviews exhibit.) This was a letter from you to

1 Judge Keesley dated July the 5th, 2005, and it talked
2 about my office being conflicted out, and you say,
3 the second paragraph:

4 "While I appreciate and respect Mr. Myers'
5 concern over the situation that has prompted his
6 action, his timing creates potential problems.
7 Mr. Cooper has been awaiting retrial since August of
8 2002, and his successive motions for speedy trial
9 have been pending for nearly two years."

10 Q. Right. Okay.

11 A. So I took that to mean that you had motions
12 for two years and a judge hadn't set up a hearing on
13 your motion.

14 Q. All right. The -- okay, whatever. Now ---

15 A. I don't set speedy trial hearing motions,
16 either, Mr. Bruck. The judge does that.

17 Q. Okay. And you're aware that when a demand for
18 speedy trial is made, it's pending until the case is
19 -- until the motion is either withdrawn by the
20 defendant or the case is tried -- is tried?

21 A. Or until the motion is heard by a Circuit
22 Court judge.

23 Q. Right. And, in fact, getting back to what I
24 was asking you, in February of 2005 a hearing was
25 held, and two months later Judge Keesley issued an

1 order directing this case to be tried by the end of
2 2005?

3 A. I know that he issued an order in 2005.

4 Q. Okay. Ordering the case to be called for
5 trial before the end of the calendar year 2005?

6 A. Yes, sir. ,

7 Q. And directing you within thirty days to
8 contact Court Administration to have a judge set this
9 -- to have a judge designated to hear this case.

10 Correct?

11 A. (The witness further reviews exhibit.) No,
12 sir, I don't think it does.

13 Q. Look down at the bottom of the order.

14 A. (Reading:) "The Court directs the Solicitor's
15 Office to speak with the judge assigned to this
16 case."

17 Q. Right.

18 A. "And to the chief administrative judge for
19 administrative purposes to select a firm date for the
20 commencement of a trial which shall begin in 2005."

21 Q. Okay. Does it say ---

22 A. I don't see anything about the Court
23 Administration.

24 Q. And what judge was assigned to this case at
25 that point?

1 A. I thought Judge Westbrook was. I never could
2 figure out how it went from hearings before
3 Judge Westbrook to a hearing before Judge Keesley,
4 other than there may have been -- I don't really know
5 that the -- but anyhow, after this, after this April
6 25th letter, that's when I started writing to the
7 judges.

8 Q. Who did you write to? You wrote to
9 Judge Westbrook?

10 A. Judge Westbrook.

11 Q. Okay.

12 A. And I sent him, I said -- I wrote to him on
13 May 18th, 2005; and I talked about Judge Keesley's
14 order, and I talked to him about a motion to
15 disqualify you.

16 Q. Which you had originally brought up orally
17 with no notice to me, a year and a half before, in
18 August 2003. Correct?

19 A. I brought it up. I don't know when it was.

20 Q. Right. You hadn't filed a motion, you just
21 started talking about it in open court, and the judge
22 said you had to file it in writing, and a year and a
23 half later you ---

24 A. No, sir. You objected to it.

25 Q. Okay. And a year and -- and Judge Westbrook

1 told you on the record that I was entitled to notice.
2 And a year and a half later, you still hadn't filed
3 it. Correct?

4 A. That's right.

5 Q. Okay. But then when you got an order from
6 Judge Keesley telling you this case had to be set for
7 trial and tried by the end of 2005, then you served a
8 notice to try to get me kicked off the case. Right?

9 A. To have you disqualified, yes, sir.

10 Q. Kicked off the case?

11 A. Disqualified, yes, sir.

12 Q. Okay. Now, how long has Rick Hubbard worked
13 in your office?

14 A. A long time. I couldn't tell you.

15 Q. Ten years?

16 A. Pardon me?

17 Q. Ten years?

18 A. Probably.

19 Q. And when is the first time you mentioned the
20 possibility of a conflict because Mr. Hubbard had
21 been the law clerk to the trial judge when this case
22 was tried the first time?

23 A. Hubbard mentioned it to me.

24 Q. And when was that?

25 A. I can't tell you.

1 Q. You don't know?

2 A. No, sir.

3 Q. Okay. But you didn't bring that to anybody's
4 attention until the summer of 2005, after
5 Judge Keesley ordered this case be tried by the end
6 of the year?

7 A. I brought it to your attention in a hearing
8 before Judge Westbrook, and you objected to me making
9 a motion.

10 Q. No. I'm not talking about kicking me off.
11 I'm talking about kicking yourself off. Did you say
12 anything in that hearing on the record that will
13 reflect it so?

14 A. I don't recall.

15 Q. You don't know. Okay. So there's nothing in
16 the record prior to your correspondence in May 2005
17 alerting the Court to your desire to withdraw from
18 the case or your need to withdraw? As far as you
19 know, that's the first time that anyone outside of
20 your office became aware of it, correct?

21 A. I don't know whether anybody outside of my
22 office was aware of it or not.

23 Q. Okay. All right. Then at that point we had a
24 hearing in July at which Mr. Cooper moved to dismiss
25 the case?

1 A. Yes, sir.

2 Q. For lack of a speedy trial? Before
3 Judge Keesley?

4 A. Yes, sir.

5 Q. And by the way, in 2005 -- you have expressed
6 mystification about why we were before Judge Keesley
7 rather than Judge Westbrook. Is it not correct that
8 Judge Keesley was the chief administrative judge for
9 General Sessions in the year 2005?

10 A. He came in in 2005, yes, sir.

11 Q. So that if a lawyer were to make a motion and
12 no judge was assigned to the case, it would have been
13 before Judge Keesley, correct, because he was the
14 chief administrative judge for administrative
15 purposes?

16 A. Yeah. That's right. And, you know, I can't
17 understand that, because in his order of April he
18 directed me to talk to the chief administrative
19 judge. And he's the chief administrative judge. I
20 didn't understand that.

21 Q. That would be to talk to him?

22 A. Anyway, I couldn't understand that terminology
23 in there.

24 Q. But isn't that just like saying talk to the
25 Court? Signed by the Court?

1 A. No, I -- I couldn't understand why he would
2 put that in there when we are referring to the chief
3 administrative judge when he is the chief
4 administrative -- and he didn't put that title down
5 on the copy that he sent me. It said "Judge." And
6 then to say to talk with him, well, when we set a
7 death penalty case or something, we try to work it
8 out with both sides in order to meet that the best we
9 can.

10 Q. What effort did you make to work it out with
11 me?

12 A. Pardon me?

13 Q. What effort did you ever make to work out the
14 scheduling of this case with me?

15 A. When you wrote back and said you wanted to try
16 it between May and August because you were teaching
17 at some law school ---

18 Q. Yes, sir.

19 A. --- and I had informed the judge that that was
20 impossible under our schedule.

21 Q. Okay. And that was the extent of your effort
22 to cooperate with me, correct? Is that what you're
23 telling me?

24 A. For what?

25 Q. To set a trial date.

1 A. I don't know whether anything else was said at
2 those hearings or not, but I didn't contact you
3 personally.

4 Q. Okay. Then on July 12th, 2005, where
5 Judge Keesley denied your motion to disqualify me,
6 correct?

7 A. Uh-huh.

8 Q. And granted your motion to disqualify your
9 office, correct?

10 A. Uh-huh.

11 Q. And directed you to furnish the file to the
12 Attorney General, correct?

13 A. Yes, sir.

14 Q. At that point there was an outstanding order
15 to try this case by the end of 2005, correct?

16 A. Yes, sir.

17 Q. He didn't rescind that order in any way, did
18 he?

19 A. Not as I know of.

20 Q. All right. Did you notify the Attorney -- who
21 did you speak to at the Attorney General's Office, by
22 the way?

23 A. Judge Keesley's order was signed July the
24 12th, 2005.

25 Q. Right.

1 A. July 13th, 2005, I wrote this letter in
2 exhibit number one to Henry McMaster...

3 Q. Right.

4 A. --- telling him about the hearing the day
5 before, and enclosed a copy of Judge Keesley's order
6 disqualifying my office from retrial, and the next
7 paragraph is: "My office will certainly assist with
8 files and documents being transferred to the new
9 prosecutor." I think before I wrote this letter, I
10 think I talked to John McIntosh...

11 Q. Okay.

12 A. --- to let him know the letter was coming.

13 Q. May I see that letter?

14 A. Sure.

15 Q. (Mr. Bruck reviews document.) All right.
16 There is nothing in that letter alerting the Attorney
17 General to the fact that there is a court order
18 requiring that the case be tried by the end of the
19 year, is there?

20 A. Yes, sir.

21 THE COURT: Can I stop you for a second,
22 Mr. Bruck?

23 MR. BRUCK: Yes, sir.

24 THE COURT: Maybe you can explain your --
25 part of what's going on in your head, and then he can

1 explain, too.

2 MR. BRUCK: Yes, sir.

3 THE COURT: This whole process is
4 somewhat foreign to me, because, I mean, you know,
5 I've had eight assigned to me and it's been my
6 practice that no one touches them other than the
7 presiding judge, except issues as to counsel
8 sometimes, to go ahead and appoint counsel to get
9 things moving even though ---

10 MR. BRUCK: Right.

11 THE COURT: --- the assignment has not
12 been made. I've never known a judge to touch a case
13 before the appointment has been made. Is that the
14 practice in Lexington?

15 MR. BRUCK: Judge, I am mystified by
16 this, too, and I am simply trying to explore
17 something that I've never seen before.

18 Our contention is, in effect, that the
19 state lodged a sit-down strike in this case. And the
20 one thing they did to ensure that no one would call
21 them on it was they made no effort, as is normally
22 required to be done, to get a judge assigned who
23 would do exactly what Your Honor has done, which is
24 to start the case moving.

25 THE COURT: Well, according to this order

1 by Judge Keesley, he said he was giving notice that
2 the Chief Justice, Court Administration -- that he
3 saw the need for expedited steps to bring this matter
4 to trial. Was that done? Was a copy of the order
5 sent? I mean, I thought it was a pretty interesting
6 statement on his part, he gave the Chief Justice
7 notice.

8 MR. BRUCK: Well, at that point,
9 Judge Keesley took it upon himself at some point to
10 notify Court Administration, and then there was then
11 apparently a brief delay because Judge -- Chief
12 Justice Toal is disqualified from the case.

13 THE COURT: She's disqualified from the
14 case?

15 MR. BRUCK: Right. So it apparently took
16 a little longer than it normally does, but not much.
17 We're only talking about a few weeks.

18 THE COURT: Well, what I'm asking you is:
19 As far as your position being advocated, from July
20 12th, if Judge Keesley gave the people in Columbia
21 notice about the need to get this thing moving, are
22 you attributing some responsibility to the state for
23 a judge not being appointed even though the chief
24 judge gave notice to them about the need to get this
25 thing going?

1 MR. BRUCK: Well, we don't -- we don't
2 have the correspondence to the Chief Justice or to
3 Court Administration, so we don't know the exact
4 date, but Mr. Myers has already testified that he
5 frequently calls Court Administration himself and not
6 required to wait for the judge to do anything.

7 THE COURT: I agree with that.

8 MR. BRUCK: And if the state were making
9 any effort of any sort to move this case along,
10 that's what they would have done.

11 Now, as far as from July 12th on, until
12 Your Honor was appointed, it sort of goes into a bit
13 of a black box, but -- and there are some other
14 issues to be explored there, as well, but I'm just --
15 I'm ploughing the ground in the same black box that
16 Your Honor is. I don't ---

17 THE COURT: I mean, I'm just mystified
18 that the first thing that was not done in this case
19 is just to get a judge appointed.

20 MR. BRUCK: Right.

21 THE COURT: Everybody knows that's the
22 practice.

23 MR. BRUCK: Yes.

24 THE COURT: All right. Go ahead.

25 MR. BRUCK: We then had a judge to go to,

1 because there was a chief administrative judge, and
2 that's why we went first to Judge ---

3 THE COURT: That's my point. I'm saying
4 that if this were down here, for example, and -- I've
5 seen it where counsel is appointed right away because
6 someone presents the matter to the Court to get the
7 counsel appointed, whatever, to get things moving.
8 Even though we all know amongst ourselves that the
9 judge handling the case usually handles the
10 appointment of counsel, if we don't hear something,
11 we might go ahead and appoint counsel or remove
12 counsel. I could see a recusal or something being
13 handled.

14 MR. BRUCK: Right.

15 THE COURT: But other than that, I don't
16 know any judge in the state whose inclination
17 wouldn't be to just say let's get the judge
18 appointed.

19 I mean, this whole process is just
20 interesting to me. I mean, I'm just wondering if
21 it's done differently there.

22 MR. BRUCK: Well, I think it is. And
23 there are a few more issues.

24 BY MR. BRUCK:

25 Q. Mr. Myers, you said there was a backlog of

1 about eight death penalty cases?

2 A. Do you want to withdraw your question on this
3 letter to the Attorney General about it being tried
4 in 2005?

5 THE COURT: I mean, I guess what I'm
6 saying -- is that withdrawn?

7 MR. BRUCK: Yes.

8 THE COURT: All right. I guess what I'm
9 saying, too, like even here, for example, oftentimes
10 the public defender notifies the Court we need a
11 second counsel appointed right away, for example.

12 MR. BRUCK: Right.

13 THE COURT: And, I mean, there's just
14 something moving right away. I'm just at a loss. Go
15 ahead.

16 BY MR. BRUCK:

17 Q. Mr. Myers, you -- Mr. Myers, you said there
18 were about eight other death penalty cases pending?

19 A. Now?

20 Q. As of the beginning of 2005, let's say.

21 A. Maybe more.

22 Q. Okay. And I'd like now just to ask you about
23 cases in which the entire case had to be tried,
24 either for the first time or on a retrial. There's
25 this case, right, where the date of arrest was 11 --

1 10/11/89, October 11th, 1989. Correct?

2 A. You're asking about what now?

3 Q. Cases in which the entire case was pending
4 trial, not just resentencing but the entire case,
5 guilt and innocence as well as punishment. How many
6 cases like that would have been at the beginning of
7 2005?

8 A. I think it was one, maybe two, that were just
9 for resentencing only.

10 Q. Okay. Did Judge Keesley direct your office to
11 -- at the beginning of 2005 to work with the clerk to
12 compile a list of all pending criminal cases that
13 were more than a certain amount old, more than a year
14 old?

15 A. No. I think what we did at the first of every
16 year is go over all of them, all capital cases, no
17 matter what the age, or potential capital cases.

18 Q. Okay. But was there also a list compiled at
19 Judge Keesley's direction of all pending criminal
20 cases that were over a year or...

21 A. Oh, yeah.

22 Q. And a list like that was compiled?

23 A. Yes.

24 Q. Eventually?

25 A. You're talking about all old cases in the ---

1 Q. Yes.

2 A. --- General Sessions court roster? Oh, yes.

3 Q. Yes. I'm handing you a 33-page printout dated
4 2/7/2006 which reflects 1,082 cases, the oldest of
5 which -- the second oldest of which is this one and
6 the most recent of which--shows a date of arrest of
7 11/12/03, and I ask you if this is the list or
8 appears to be the list that was compiled at
9 Judge Keesley's direction?

10 A. You'll have to give this to Dayton, because
11 Dayton is in charge of old cases. I'm in charge of
12 the ---

13 Q. All right. Would that list refresh your
14 memory if I ask you ---

15 A. You'll have to ask Dayton.

16 Q. You don't know anything about it. Okay.

17 A. Well, yes, I've seen it, and I've asked him
18 from time to time what's the status, that we're
19 bringing in 200 defendants every other week or so, to
20 try to find out where they are and what the status
21 is.

22 Q. All right. We'll ask him about that.

23 Did you notify the Attorney General's Office
24 orally of the fact there was an order to try this
25 case by the end of 2005 when you -- at any time after

1 the hearing before Judge Keesley when you were ---

2 A. Here again, Judge Keesley signed the order on
3 July 12th.

4 Q. Right.

5 A. I am confident that I called John McIntosh
6 with the Attorney General's Office and told him what
7 had happened and that I was going to be sending a
8 letter over and I needed to know what to do with the
9 file. The letter was -- I probably called him while
10 we were -- before we typed the letter up, to find out
11 who he wanted me to send it to and what he wanted to
12 do.

13 There's no doubt about it, and we sent him the
14 order, that in there -- attached to that letter to
15 Henry McMaster from me on July the 13th, the day
16 following Judge Keesley's order on July 12th, the
17 first paragraph says in here about issues already
18 covered in the order of April 25, 2005, directing
19 that the case be tried in 2005.

20 Q. Very good. So that was the notice you
21 provided, a copy of the order?

22 A. And I probably told Henry -- John McIntosh the
23 same thing when I talked with him.

24 Q. And the record ---

25 A. Because there was an urgency of getting

1 somebody appointed to the case now from the other
2 Solicitor's Office.

3 Q. Okay. And did you make a recommendation as to
4 which Solicitor's Office might be an appropriate
5 choice?

6 A. No, sir.

7 Q. Okay. And have you had any further
8 involvement in the case in any way, shape, or form
9 since then?

10 A. The only involvement we had was the
11 transferring what files my staff had put together.

12 Q. Okay. Has any member of the staff of the
13 First Circuit Solicitor's Office contacted you or
14 your office for assistance in getting this case ready
15 for trial?

16 A. They could have contacted my office about
17 files and stuff. I have not been contacted
18 personally.

19 Q. All right. And do you know whether there's
20 been contact with any other member of your staff
21 other than concerning getting ahold of the file?

22 A. Come again?

23 Q. Do you know whether the First Circuit
24 Solicitor's Office has been in touch with any -- any
25 member of your staff concerning getting this case

1 ready for trial other than getting ahold of the file?

2 A. I don't know. I wouldn't be surprised if
3 there had been contact, but I don't know. No one has
4 contacted me personally.

5 MR. BRUCK: Okay. Your Honor, if you'll
6 bear with me for just a moment. I appreciate your
7 indulgence.

8 BY MR. BRUCK:

9 Q. One last question just to sum up, Mr. Myers.

10 Can you give us the reason why this case has not yet
11 been tried?

12 A. Yes, sir.

13 Q. What is the reason?

14 A. Because a judge didn't set it for a date
15 certain until Judge Keesley set it to be tried in the
16 latter part of 2005.

17 Q. And why was that?

18 A. You'll have to ask the judge.

19 Q. Who is deceased.

20 A. It was my understanding all along that this
21 case had been assigned to Judge Westbrook. All the
22 hearings were held before him until the first of the
23 year in 2005.

24 Q. Are you aware that Judge Westbrook recused
25 himself from hearing a post-conviction hearing in

1 this matter?

2 A. No, sir.

3 Q. You didn't know that?

4 A. No, sir. Because he heard the motions that
5 you made after this case was sent back by the Supreme
6 Court.

7 Q. Okay. And at the time I made those motions,
8 he was chief administrative judge in the Eleventh
9 Circuit, right?

10 A. He was the chief administrative judge ---

11 Q. So if no other judge -- if no other judge had
12 been especially assigned to this case, he was the
13 only judge to go to, right?

14 A. Oh, yeah. I'm sure. He was the chief
15 administrative judge.

16 MR. BRUCK: Thank you. Nothing further.

17 THE COURT: Any questions?

18 MR. BELL: Just a couple, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BELL:

21 Q. Solicitor.

22 A. Yes, sir.

23 Q. Death penalty cases, they are a little
24 different than the run of the mill criminal case; is
25 that correct?

1 A. Considerably.

2 Q. How long do they take to try at a minimum in
3 your experience?

4 A. How long do they take to try?

5 Q. Yes, sir. At a minimum.

6 A. By selecting a jury, trying the case, a week
7 and a half, a week. At least a week and a half or
8 so.

9 Q. And they take a significant chunk of court
10 ~~time~~ to be -- to be prosecuted. Is that correct?

11 A. Yes, sir.

12 Q. And back in 2003, can you estimate about how
13 many cases, death penalty cases you had pending?

14 A. Ten, give or take. You have to understand,
15 back in 2003 we were in the old courthouse in
16 Lexington. It was during all that time that -- we
17 moved in and out of our old courthouse twice. That's
18 four moves. Court was shut down because of the mold
19 problem. We moved into the new building. We moved
20 five times in the -- in a time period and in which
21 court was cancelled.

22 And it was mentioned about the Northcutt case.
23 We tried the Northcutt case in whatever year they
24 said it was. Back then, we only had one court
25 running, so that -- that effectively eliminated a

1 month of court there.

2 We probably lost seven or eight months more of
3 court with moving in and out of the courthouse
4 because of the mold and the new courthouse.

5 So court time was substantially consumed since
6 2000 in Lexington County for various reasons.

7 Q. And when this case was returned in August,
8 late August of 2003, there were matters that were
9 already scheduled; is that correct?

10 A. Some were.

11 Q. So this just kind of plopped down in the
12 middle of what had been scheduled; is that correct?

13 A. Well, this was another log in the fire.
14 That's the best way to describe it.

15 Q. And originally back -- I believe the case was
16 originally tried in 1991, and the defendant was
17 convicted; is that correct?

18 A. Yes.

19 Q. So there was no reason that it couldn't be
20 tried again; is that correct?

21 A. None that I know of.

22 Q. I mean, you're not intending -- your office
23 didn't intentionally delay it for any reason; is that
24 correct?

25 A. No.

1 Q. I mean, it was just a matter of getting the
2 witnesses back together; is that correct?

3 A. And getting it organized, like any case we
4 have.

5 Q. But basically what you're saying is: With the
6 move from the courthouse and the backlog of the
7 schedule, which I believe is reflected in
8 Judge Keesley's order, are the main reasons that this
9 case was not heard; is that correct?

10 A. In summary, yes.

11 MR. BELL: Thank you. I have nothing
12 further.

13 REDIRECT EXAMINATION

14 BY MR. BRUCK:

15 Q. Mr. Myers, when did you move into the new
16 courthouse?

17 A. I think it was 2004. I'm not sure.

18 Q. When, beginning or end?

19 A. Pardon me?

20 Q. The beginning of 2004, correct?

21 A. It took us several months, but I think we
22 started -- I think we started in December and the
23 last of January or February.

24 Q. You began in December 2003 ---

25 A. March.

1 Q. --- to move into the new courthouse, right
2 after the *Northcutt* case, correct?

3 A. No, sir. February the 14th of 2003, we were
4 in the old courthouse. I can tell you about that
5 date.

6 Q. No, I understand that. I'm talking about the
7 end of 2003 and the beginning of 2004, that was when
8 you moved into the new courthouse, right?

9 A. That sounds about right.

10 Q. Okay. So you've been in the new courthouse
11 for two years. Correct? —

12 A. Yes, sir.

13 Q. And in that case, you have tried no death
14 penalty cases?

15 A. That's correct. We've tried no death penalty
16 case in the new courthouse.

17 Q. You have not?

18 A. We have not.

19 MR. BRUCK: Thank you. That's all I
20 have.

21 MR. BELL: Nothing further, Your Honor.

22 THE COURT: You may step down. Thank
23 you.

24 THE WITNESS: Thank you.

25 MR. BRUCK: I'd ask that Mr. Myers be

1 excused, although I know Mr. Riddle doesn't want to
2 be left.

3 THE COURT: Any objection?

4 MR. BELL: No objection.

5 THE COURT: You may be excused.

6 THE WITNESS: Will I get a copy of this
7 back, Judge?

8 (The witness refers to Defendant's
9 Exhibit No. 1.)

10 THE COURT: Yes. We'll hold it -- well,
11 do you need that?

12 MR. BRUCK: Well, we can copy everything
13 in there, and let counsel look at what we're
14 substituting, and send it back to Mr. Myers. I don't
15 know if we'll do it right away, but...

16 THE COURT: Okay.

17 MR. BRUCK: --- we'll do it by the end of
18 the day.

19 THE COURT: All right.

20 THE WITNESS: There's no rush.

21 THE COURT: That's all right.

22 THE WITNESS: Thank you.

23 THE COURT: Just put the copy in the
24 record and give him the original back.

25 MR. BRUCK: Thank you. That'll be fine.

1 (Copy of Defendant's Exhibit No. 1, file
2 of documents from Solicitor Myers, to be substituted
3 for original.)

4 (The witness is excused from the witness
5 stand and leaves the courtroom.)

6 MR. BRUCK: Dayton Riddle.

7 (Mr. Riddle enters the courtroom.)

8 CHARLES DAYTON RIDDLE, III,
9 being first duly sworn by the clerk, is examined and
10 testifies as follows:

11 THE CLERK: Please be seated. If you
12 would, please state your full name to the Court and
13 spell your last.

14 THE WITNESS: Charles Dayton Riddle,
15 R-I-D-D-L-E, the Third.

16 DIRECT EXAMINATION

17 BY MR. BRUCK:

18 Q. Good morning, Mr. Riddle.

19 A. Good morning.

20 Q. What do you do for a living, sir?

21 A. I'm a deputy solicitor at Lexington County.

22 Q. And how long have you been employed in that
23 capacity or as an assistant in Lexington County?

24 A. '91 or '92. '91 or '92.

25 Q. Fifteen years, thereabouts?

1 A. Ballpark, yes, sir.

2 Q. All right. And were you the member of
3 Mr. Myers' staff to whom the case of Tony Cooper was
4 assigned after the final reversal by the Supreme
5 Court in August of 2002?

6 A. I'm the one that was dealing with you,
7 Mr. Bruck. I don't know that it was ever formally
8 assigned to me.

9 Q. Okay. Well, how does -- how does that work?

10 ~~How many lawyers are in your office?~~

11 A. Total?

12 Q. Uh-huh.

13 A. Well, counting the tri-counties and Family
14 Court, roughly 20, I guess.

15 Q. Okay. And in -- for murder cases, I assume
16 that senior lawyers within the office are assigned
17 those cases?

18 A. There's about five of us that have those
19 cases, excluding Mr. Myers.

20 Q. And, of course, you're one of those five?

21 A. Yes, sir.

22 Q. And to get a murder case, it's formally
23 assigned to you in some way?

24 A. I'm sorry?

25 Q. To get a murder case on your plate, it is

1 formally assigned to you in some way through an
2 office procedure?

3 A. It depends. Some cases are assigned to me.
4 Murder cases or other kinds of cases are assigned to
5 me. Some cases are assigned to Solicitor Myers, and
6 yet I would be doing legwork on them.

7 Q. Okay. Which case did this -- which category
8 did the case of Tony Cooper fall into?

9 A. I don't think Mr. Cooper or Mr. Southerland
10 ever appeared on my roster, on my personal roster.

11 Q. Okay. Would that mean that it was being
12 handled by another member of your staff or by
13 Mr. Myers?

14 A. It could be either way. I would suspect that
15 this was on Solicitor Myers' roster, but I -- I don't
16 recall ever going and looking in the clerk system --
17 in the computer system to see, you know, whose
18 initials appeared by that case.

19 Q. Okay. And what was the first contact you had
20 with this case after it was reversed by the Supreme
21 Court, after the final charges were reversed in
22 August of 2002?

23 A. I think the first contact I had was an e-mail
24 from you.

25 Q. Okay. And do you have that e-mail with you, a

1 copy of it?

2 A. I should. The first one that I remember was
3 in August of '03.

4 Q. In August of '03?

5 A. Yes, sir. That's the first one I could find.

6 Q. Okay. Prior to that, do you recall getting a
7 phone call from me in June of '03 to discuss the
8 setting of the case for trial?

9 A. I may have; I may not have.

10 ~~Q. Okay.~~

11 A. I can show you this e-mail.

12 Q. If you would.

13 A. (The witness tenders document to Mr. Bruck.)

14 Q. Okay. And the e-mail concerns scheduling a
15 speedy trial motion. Correct?

16 A. Yes, sir.

17 Q. And prior to that, that e-mail seems to
18 reflect that we had had some ongoing communications
19 before that, correct?

20 A. Yes, sir.

21 Q. All right. And but you don't remember when
22 they were?

23 A. No, sir. I mean, I know we talked on the
24 phone, but specifically when, I couldn't tell you.

25 Q. Okay. Other than responding to inquiries from

1 me about a speedy trial, what involvement did you
2 have in this case, in Tony Cooper's case, between
3 August 2002 and the speedy trial motion in August of
4 2003?

5 A. None that I can think of.

6 Q. Okay. So you weren't getting this case ready
7 for trial?

8 A. I was not -- no, not at that point, I was not.

9 Q. Okay. And as far as you know, no one else was
10 either?

11 A. I don't know.

12 Q. Had you ever heard that anyone other than you
13 or Mr. Myers in your office after August 2002 had any
14 involvement whatsoever in this case in any way,
15 shape, or form?

16 A. No, sir.

17 Q. Not that you heard?

18 A. Not that I know of.

19 Q. Okay. So a pretty safe bet that if you didn't
20 do it, Mr. Myers must have or else it wasn't done?

21 A. No, I wouldn't say that.

22 Q. Okay. But you don't know?

23 A. But I don't know.

24 Q. All right.

25 A. But I'm not going to speculate about what

1 Mr. Myers may have done with one of the other
2 solicitors in the office.

3 Q. Okay. I understand. All right. So I take it
4 from that that Mr. Myers did not give you any
5 direction about what to do about getting this case
6 ready for trial in 2002?

7 A. None that I recall.

8 Q. Okay. Or 2003?

9 A. None that I recall.

10 Q. Or 2004?

11 A. None that I recall.

12 Q. Or 2005?

13 A. None that I recall.

14 Q. And did you take it on your own initiative to
15 start readying this case for retrial?

16 A. No, sir.

17 Q. You didn't contact witnesses?

18 A. Did I?

19 Q. Contacted or direct ---

20 A. I would put that in the -- in the prior, the
21 overall question...

22 Q. Right, okay.

23 A. --- you know. I don't know that you need to
24 go through every...

25 Q. Then I won't. Thank you. Did it come to your

1 attention that there was any problem, any proof
2 problem in this case, between 2002 and today? And
3 let me be more specific. That would include
4 unavailable witnesses, uncooperative witnesses,
5 evidence that had disappeared or become unavailable
6 for whatever reason, or a change in the law.

7 A. I don't follow what you're asking, Mr. Bruck.

8 Q. All right. You said that you didn't do
9 anything to get this case ready for trial between
10 2002 and now. Right?

11 A. Yeah.

12 Q. Okay. And you're not aware of anyone else in
13 the office that did...

14 A. No, sir, I'm not.

15 Q. --- anything? And you can't even name someone
16 who might have, other than Mr. Myers?

17 A. Well, I certainly can name other people, but I
18 don't know that they would have done anything.

19 Q. I got you. Okay. No reason to name anyone
20 who...

21 A. Again, I'm not going to speculate about it,
22 Mr. Bruck.

23 Q. Okay.

24 A. I don't know. So the answer is I don't know.

25 Q. You're quite right. I withdraw the question.

1 In any way did it come to your attention that
2 there was any problem with retrying this case due to
3 the unavailability of a witness or for any other
4 reason between 2002 and now?

5 A. I don't know of any witnesses that are
6 unavailable.

7 Q. So the answer to my question is no?

8 A. Ask the question again, and then I'll tell you
9 the answer.

10 Q. Have you at any time between 2002 and today
11 been made aware of any problem that would inhibit or
12 make more difficult the re-prosecution of this case
13 due to either the unavailability of witnesses or any
14 other evidentiary problem?

15 A. The only thing that I can think of is what was
16 in the basis of the motion to recuse you.

17 Q. And that had to do with the fact that I had
18 taken a statement from the codefendant at some point,
19 Mr. Southerland ---

20 A. Right.

21 Q. --- at his trial?

22 A. And apparently Mr. Southerland may have made
23 differing statements at some point. I don't know.

24 Q. Okay. Of course, Mr. Southerland is not a
25 witness for the state as far as you know, correct?

1 A. I don't know whether he is or not.

2 Q. All right.

3 A. I know that he is represented by Mr. Rast and
4 Mr. Floyd, I believe.

5 Q. Okay. Do you know why this case has never
6 been set for trial?

7 A. Do I personally?

8 Q. Yes, sir.

9 A. No, sir.

10 Q. You do not know why?

11 A. No, sir.

12 Q. Were you part of any of the discussions
13 concerning the decision that was made by the
14 Solicitor's Office to move to be recused on the
15 grounds of conflict of interest?

16 A. No, sir, I didn't know anything about that. I
17 knew that Rick Hubbard had clerked for Judge Long a
18 long time ago.

19 Q. Uh-huh.

20 A. I did not realize that Rick Hubbard had been
21 involved with Judge Long at the time of the original
22 trial. I didn't know a thing in the world about
23 that.

24 Q. Okay. Now, I'm going to hand you a 33-page
25 case roster and ask you -- it's not stapled, but we

1 can staple it if we need to -- and ask if you can
2 tell me what that is.

3 A. Yeah. That's a roster that I generated.

4 Q. Okay. And what is that -- describe for us
5 what the roster is.

6 A. It's the 1156 oldest defendants pending in
7 Lexington-County as of a certain date, and I'm not
8 sure what that date is.

9 Q. And might that date have been one year after
10 the youngest case or in November of...

11 A. No. I'm -- what I'm saying is, I don't know
12 what the date was that I originally generated this
13 roster.

14 Q. Okay.

15 A. It was ballpark November of '05.

16 Q. Okay. And what is the oldest case shown on
17 that roster?

18 A. Raymond Patterson.

19 Q. All right. And Raymond Patterson is pending
20 only resentencing, correct? His death sentence
21 was ---

22 A. Yes. I think that's correct.

23 Q. Okay. So at least serving a sentence or at
24 least has a valid conviction for murder, that is not
25 disturbed by any...

1 A. Not as far as I know.

2 Q. Right.

3 A. Correct.

4 Q. Okay. And he's just waiting for life or
5 death?

6 A. Yes, sir.

7 Q. Okay. What's the next oldest case?

8 A. Cooper.

9 Q. This case?

10 A. Uh-huh.

11 Q. Okay. When your office schedules, if you
12 know, cases for trial, do you pay any attention to
13 the amount of time that the case has been pending or
14 how old it is?

15 A. Do I pay any attention to that?

16 Q. Yes.

17 A. Certainly.

18 Q. Certainly. And why do you -- why is that
19 important?

20 A. All kinds of different reasons, Mr. Bruck. I
21 mean, it's important in differing cases for different
22 reasons. I mean, if it's a unlawful weapons charge
23 and it's 90 days old and the guy is in jail, he's
24 just about maxed out the sentence. So, you know, a
25 case like that, you may have a different timetable of

1 when they need to be tried than others, but, I mean
2 -- I don't know how to explain that answer.

3 Q. Okay. I don't know that you really need to.

4 MR. BRUCK: I'd like to offer this roster
5 that Mr. Riddle prepared.

6 THE COURT: Mr. Bell.

7 MR. BELL: No objection.

8 MR. BRUCK: All right. We're going to
9 need to both mark it and staple it, if we could,
10 Madam Court Reporter.

11 (Defendant's Exhibit No. 2, roster of
12 pending cases, is marked for identification and
13 received in evidence.)

14 MR. BRUCK: Bear with me.

15 BY MR. BRUCK:

16 Q. Mr. Riddle, did you ever have any meetings
17 with Mr. Myers concerning the case of The State
18 against Tony Cooper between 2002 and today? Well, I
19 should say yesterday. You drove down here together.

20 A. We had talked about it on various occasions,
21 but I guess it depends on how you define the word
22 "meeting."

23 Q. Okay. Well, do you remember any discussion
24 with Mr. Myers about getting this case set for trial?

25 A. I don't have any specific recollection of it,

1 no, sir.

2 Q. Okay. Do you know why it wasn't set for
3 trial?

4 A. I've already indicated to you that I don't
5 know.

6 MR. BRUCK: Okay. I think that is all I
7 have. Thank you, sir.

8 MR. BELL: I don't have any questions for
9 this witness, Your Honor.

10 THE COURT: You may step down.

11 (The witness leaves the witness stand.)

12 MR. BRUCK: We've been at this an hour
13 and a half. I'm prepared to argue, but maybe the
14 Court's pleasure -- I don't know if we can take a
15 short recess?

16 THE COURT: Yeah, let's go ahead and take
17 a short break. Thank you.

18 MR. BRUCK: We'd ask that Mr. Riddle be
19 excused.

20 MR. BELL: No objection.

21 THE COURT: You may be excused, sir.

22 (The witness is excused from the witness
23 stand.)

24 THE COURT: We'll go ahead and take a
25 short break.

1 (A break is taken at approximately
2 11:25 a.m.)

3 (The hearing reconvenes at approximately
4 11:35 a.m., the defendant being present with counsel,
5 and the following proceedings were had:)

6 THE COURT: All right. Yes, sir.

7 MR. BRUCK: Thank you.

8 Your Honor, this is a motion to dismiss
9 all charges against Mr. Cooper for the denial of his
10 Sixth Amendment and South Carolina state
11 constitutional rights to a speedy trial.

12 Now, I have to say, I've only been
13 practicing law for thirty years in May of this year,
14 and this is the first time I have ever made a motion
15 like this, and I know that Your Honor probably has
16 not heard very many and probably has not granted many
17 at all.

18 Typically, a speedy trial motion occurs
19 when there's been a substantial delay by a defendant
20 who didn't want a trial, and when he finally has to
21 face it, he for the first time remembers that he had
22 a right to a speedy trial and claims it's been
23 denied.

24 And those are routinely denied by the
25 courts, and we don't have much case law on the

1 granting of speedy trial motions. This is the
2 exception, though, to the rule.

3 One can look through the reported
4 decisions of the U.S. Supreme Court and for the
5 South Carolina Supreme Court and not find another
6 record where the evidence requiring dismissal is so
7 compelling as this one. I didn't realize that when I
8 began working on this motion, because I knew the
9 facts of this case, but I didn't fully grasp how
10 strong the law is in Mr. Cooper's favor.

11 It is not an easy thing to dismiss
12 charges, for a judge, for any judge, and less so in a
13 murder case and less so in a murder case where the
14 defendant was once sentenced to death, albeit at a
15 trial that has been found not to have been fair, but
16 I would submit that this is that rarest of case where
17 Your Honor's duty is to grant the motion, and I'd
18 like to explain why.

19 THE COURT: Yes, sir.

20 MR. BRUCK: Before I do, I want to say
21 that this -- I have been representing Tony Cooper for
22 fifteen years. And he first got his murder
23 conviction reversed, and then it took eight more
24 years in order to persuade the Circuit Court and the
25 Supreme Court that his other convictions should be

1 reversed.

2 And Mr. Cooper has been denying his guilt
3 from the day he was arrested. He actually tape
4 recorded, he tape recorded, the interrogation with
5 the police because he wanted to be absolutely sure
6 that he was never misquoted about what he was saying.
7 The police might have wanted to tape record it
8 themselves.

9 And he has consistently from that day in
10 October 1989 until today denied guilt in this case,
11 and he has waited and waited and waited for what in
12 contemplation of the law will be his first fair and
13 lawful trial.

14 Finally, in August 2002, all of the
15 charges were reversed, and he was back to square one.
16 And at that point, we encountered what I referred to
17 before and I think now that Your Honor has heard the
18 testimony can fairly be described as a sit-down
19 strike by the prosecution.

20 This is the oldest case, not counting
21 re-sentencings which are a different category, and
22 there was simply a concerted refusal to even think
23 about bringing this case to trial.

24 Now, the framework that Your Honor must
25 use, of course, is the four-factor test under *Barker*

1 v. *Wingo* which has been applied many times by our
2 State Supreme Court.

3 The first factor is the length of the
4 delay. A year is presumptively prejudicial, as the
5 court noted in *United States vs. Doggett* which is the
6 most recent speedy trial decision of the United
7 States Supreme Court.

8 THE COURT: But they used the language
9 it's "presumptively prejudicial"? I know you said
10 that earlier in reference to *Barker*, but *Barker*
11 didn't say that. *Barker* said that until we find that
12 -- that line where it is presumptively prejudicial,
13 then we have to look at all the factors.

14 MR. BRUCK: Right. Well, though, the one
15 year is -- they explained it in both cases, I think,
16 or at least in *Doggett*, that presumptively
17 prejudicial is used in two different ways.

18 One is the triggering requirement that
19 you employ the four-factor test. A year is on the
20 far side of what is required.

21 THE COURT: Right.

22 MR. BRUCK: And there are many speedy
23 trial cases where you don't even need a year.

24 THE COURT: Now, I might be more inclined
25 to agree with that.

1 MR. BRUCK: Right.

2 THE COURT: That there is a time period
3 for which you should go through all the factors.

4 MR. BRUCK: Right.

5 THE COURT: I don't think that's what
6 presumptively prejudicial means insofar as there is
7 prejudice to your client.

8 MR. BRUCK: Okay.

9 THE COURT: And I'm looking at *Barker*
10 *vs. Wingo* to make sure that my recollection is
11 correct, and what they did -- the only context that
12 they used presumptively prejudicial was unless there
13 is that period then you look to all the factors.

14 MR. BRUCK: Yeah, no, that's right. If I
15 implied differently, I misspoke. I didn't mean to
16 suggest that the one year takes care of the prejudice
17 inquiry. It certainly doesn't.

18 THE COURT: All right.

19 MR. BRUCK: And I'll get to that. That's
20 the last factor.

21 But, of course, we have now a
22 three-and-a-half year delay. And I assume the case
23 can't be tried today even if -- so the delay would be
24 longer before this case is called to trial.

25 Your Honor would look through the

1 South Carolina cases and there are precious few that
2 involve and allege anything like this, and the ones
3 that do usually involve a greater or lesser extent of
4 consent to the delay by the defendant.

5 That gets me to the next factor, which is
6 the demand, and that is part of what really separates
7 this case out. I'll touch on reason for delay, I
8 think that's actually the number two factor, but I
9 want to deal with the issue of the demand for speedy
10 trial, because that is what makes this case different
11 from almost every other South Carolina case. It's
12 what makes it different from *Barker vs. Wingo*. It's
13 what makes it different even from *Doggett* where the
14 defendant prevailed. Of course, *Doggett* couldn't
15 have demanded it because he didn't know about the
16 charge.

17 THE COURT: In that case, did they show
18 prejudice?

19 MR. BRUCK: Absolutely not. Not an ounce
20 of prejudice. Mr. Doggett wasn't even in jail. They
21 couldn't possibly have shown any sort of prejudice
22 because he had been going on with his life and didn't
23 even know that there was a charge outstanding. And
24 *Doggett* is the case on which we place very heavy
25 reliance on the prejudice, and I'll come back to

1 that.

2 THE COURT: Do you have a copy of that
3 case?

4 MR. BRUCK: Yes.

5 THE COURT: Can I see it?

6 MR. BRUCK: Yes.

7 (Mr. Bruck tenders document to the
8 Court.)

9 MR. BRUCK: In our reply brief -- well,
10 I'll let Your Honor examine the case.

11 (The Court reviews document.)

12 MR. BRUCK: Judge, we draw your attention
13 to the part we quote in our brief, 505 U.S. 655, 656,
14 dealing with prejudice.

15 (The Court further reviews document.)

16 THE COURT: All right.

17 MR. BRUCK: Yes, sir. Before leaving
18 length of delay, I should have responded to a point
19 the state made in their brief.

20 According to the state, the delay was not
21 that big a deal because of the fact that this is --
22 that its significance is diminished by the fact that
23 Mr. Cooper has already been retried one time and the
24 delay there was only a little bit over -- over a
25 year.

1 That actually cuts the exact opposite
2 way. I mean, there are no South Carolina cases on
3 point, and I've cited some cases from other states
4 that make a perfectly commonsensical point; but when
5 the state has a trial transcript showing the whole
6 roadmap of how to try the case, it takes less time
7 not more, normally, unless there is some particular
8 problem, and I certainly canvassed that.

9 THE COURT: Well, does that same fact
10 work against the defendant insofar as this concept of
11 presumptive prejudice in *Doggett*?

12 In *Doggett*, the court specifically
13 indicated that that presumption of prejudice had not
14 been rebutted. In *Doggett*, there's no facts
15 developed, there's no witnesses that were procured.

16 You have all of that just the opposite
17 here, correct? You have all your witnesses
18 identified, and you have testimony that's been
19 preserved.

20 You don't have some of the problems that
21 they were concerned about in *Doggett* that the court
22 was suggesting takes place by the failure of a
23 prosecution to not try the case, that it affects your
24 ability to develop your case in an evidentiary
25 manner. That's not here, right?

1 MR. BRUCK: Let's keep in mind -- it's
2 true that there is a transcript for both sides. What
3 we don't know yet is whether we'll be impugned in
4 presenting live testimony, which is ---

5 THE COURT: Let's stop at that point:
6 What we don't know yet.

7 MR. BRUCK: Right.

8 THE COURT: All right. Now, what does
9 "yet" mean to me?

10 MR. BRUCK: What that means is, without a
11 trial date we cannot subpoena our witnesses. The
12 final trial preparation will reveal whether or not
13 there are proof problems on our side that we didn't
14 know about yet.

15 The state, apparently, except for
16 whatever has been done in the last few weeks or
17 couple months, and all this time, the testimony from
18 the Eleventh Circuit's office is they haven't done a
19 lick of work in preparing the case. So there's
20 nothing that we can begin getting new discovery
21 about. We don't know.

22 But let's recall that there are three
23 forms of prejudice, and they have to be analyzed
24 separately, and we have the first two in spades.

25 The first form of prejudice is pretrial

1 confinement. *Barker vs. Wingo*, the man was out on
2 bond for all the ten months, and the court
3 nevertheless took all that very seriously.

4 Tony Cooper has been held in a death row
5 cell, in isolation, in the most severe and oppressive
6 conditions that one could possibly imagine, for day
7 after day and week after week and month after month
8 and now it's been year after year.

9 Now, the only way for us to think that
10 that is not the most horrendous type of prejudice is
11 to suppose that because he had already endured many
12 years of this, despite his protestations of innocence
13 and despite his claim, ultimately vindicated, that he
14 hadn't gotten a fair trial, that it doesn't hurt
15 Tony Cooper as much as it hurts us.

16 And I have to say that that is a natural
17 way of -- that those of us who work in the criminal
18 justice system tend to fall into; that there are
19 people on the inside, and there are people on the
20 outside, and even though if I were to go to death row
21 for one night, I would remember every hour of that
22 night for the rest of my life, that somehow three and
23 a half extra years on a death row for Tony Cooper
24 isn't prejudicial. I know the Court does not imagine
25 that that could possibly be true.

1 This is torment, and it is more torture
2 because he thought he was going to have a chance to
3 vindicate his innocence three and a half years ago,
4 and here we still are.

5 He thought he was going to have a chance
6 to vindicate his innocence when the state promised to
7 try the case in the spring of 2004. And then they
8 didn't do it.

9 And then he had a court order that it was
10 going to be tried in 2005, and they still haven't
11 done it.

12 Now, that goes to other *Barker* factors,
13 but it certainly goes to the issue of prejudice. You
14 cannot treat an American citizen like that without a
15 very good reason. It is cruel, it is -- it is
16 impermissible.

17 That's the first form of *Barker vs.*
18 *Wingo* prejudice, and we could hardly have more of
19 that. You will not find another speedy trial case in
20 which a man has been held in maximum security death
21 row confinement as a pretrial detainee for three and
22 a half years. If there is one, I am sure Mr. Bell's
23 research would have turned it up.

24 This case is *sui generis*. It is out
25 there at the outer edge of prejudice under the *Barker*

1 analysis. Okay. That's the first form.

2 The second form of prejudice is anxiety
3 and the stress of a pending charge, and I don't know
4 how anything can be more stressful and more anxiety
5 provoking than the fear of being convicted and
6 sentenced to death of a capital murder case of an
7 infamous crime like this.

8 Mr. Cooper is presumed innocent. So we
9 do not analyze his fear and anxiety as though he were
10 guilty of this crime. We analyze and we
11 empathetically imagine his fear and anxiety as though
12 he were innocent of the charge. And for three and a
13 half years, this sword hangs over him.

14 Now, again, you will not find another
15 speedy trial case where a man has been dangled over
16 the abyss for three and a half years pending trial
17 for his life. There ain't one. This case stands
18 alone.

19 Those are the first two forms of
20 prejudice, and yet you then -- yes, there is the
21 third form of prejudice under the *Barker* four factors
22 which is effect on Mr. Cooper's ability to defend
23 himself. And at this point, we don't know.

24 THE COURT: All right.

25 MR. BRUCK: Yes, sir.

1 THE COURT: Why would that be -- did not
2 the court in *State vs. Foster* indicate that they had
3 a five-and-a-half year period of delay in
4 South Carolina and indicated that the government
5 demonstrated a lack of prejudice? Now, why would
6 that have not been the same case there? It's an even
7 longer period.

8 MR. BRUCK: If you'll give me the date of
9 *Foster*, I will ---

10 THE COURT: 1973..

11 MR. BRUCK: I'm sorry?

12 THE COURT: 1973.

13 MR. BRUCK: Okay. *State vs. Foster* is
14 the case where everybody jumped bond. The reason for
15 the five-and-a-half year delay was the defendants not
16 only didn't want a trial, a speedy trial; they didn't
17 want any trial at all. They didn't even want to be
18 in South Carolina. Five and a half years was caused
19 by their -- by their decision to jump bond and flee
20 the jurisdiction.

21 Now, once they were securely locked up
22 for other crimes in Florida, of course, they then all
23 of a sudden become interested in a speedy trial right
24 in South Carolina. And they were tried within
25 18 months of their making a demand, or I think it

1 was 18 months or 15 months. Let's see. The court
2 said:

3 "The fact the defendant did not request a
4 trial for some five and one half years and that the
5 state had shown a lack of any prejudice to the
6 defendants means that this speedy trial demand was
7 not -- was not meritorious.

8 "There was a one-and-a-half-year delay
9 subsequent to the defendant's demand, and that can be
10 attributed to the state's administrative procedures
11 in returning the defendant to South Carolina."

12 Well, why did the state have to get them
13 to South Carolina? Because they had run.

14 Now, what has Mr. Cooper done to be
15 responsible for one day of this delay? Nothing. On
16 the contrary, Mr. Cooper has been moving for a speedy
17 trial, he has been demanding a speedy trial, he has
18 been begging for a speedy trial, and ---

19 THE COURT: I'm inclined to agree with
20 that. How do you still respond to my earlier
21 question, has the state rebutted -- let's just call
22 it presumptive prejudice. Has the state rebutted
23 that?

24 MR. BRUCK: Well, they certainly haven't
25 rebutted the experience of leaving this man as a

1 pretrial detainee on death row. If they want to put
2 on witnesses to say it wasn't so bad, I guess they
3 can. They certainly haven't rebutted the anxiety and
4 the stress of dangling in this situation for three
5 and a half years.

6 And at this point, the only thing they
7 have said to rebut the last factor -- which we don't
8 even need. I mean, *Doggett* is the case that says if
9 you make a strong showing on the first three factors,
10 you don't need any of the forms of prejudice on the
11 fourth factor.

12 THE COURT: Well, I mean, *Doggett*
13 specifically indicated that that presumption had not
14 been rebutted. That's what was important to the
15 court...

16 MR. BRUCK: Right.

17 THE COURT: --- the presumption of
18 prejudice. Let's say they call it presumptive of
19 prejudice. *Doggett* indicated that it had not been
20 rebutted.

21 MR. BRUCK: Well, like I say,
22 Your Honor ---

23 THE COURT: That's why my question is,
24 has it been rebutted. Does it work the opposite when
25 you actually have trial testimony that's preserved?

1 No dispute at this time as to whether or not
2 witnesses will be available. Do all those go into
3 the pot to say that prejudice has been rebutted,
4 unlike -- we haven't had all those factors in the
5 other case.

6 MR. BRUCK: I will acknowledge that until
7 we do final trial prep, we cannot make a further
8 showing, because that's when you encounter small
9 things that really hobble a case, the missing
10 witnesses that we thought were there that aren't that
11 may have to be presented through a transcript in a
12 much less compelling way, and so on and so forth.

13 THE COURT: So what happens if the state
14 stands up--and says that? The witnesses' testimony
15 has been preserved; there's no indication they will
16 not be here; we had a prior trial; yes, there's a
17 delay, but we rebut that prejudice by the fact that
18 the defendant's case has not been impaired in any
19 way.

20 MR. BRUCK: No. All that does is rebuts
21 that one of the three forms of prejudice. And even
22 if the prejudice was rebutted entirely, even if the
23 state could somehow show that he didn't suffer from
24 three and a half years of pretrial confinement and he
25 didn't experience any anxiety, and that is to say,

1 even if the state could rebut the entire *Barker vs.*
2 *Wingo* prejudice showing, which obviously they can't,
3 that just gets you to *Doggett* which says, okay, so
4 there isn't a showing of effect on the trial, but
5 what about the other three factors? *Doggett* is a
6 case where -- there was no -- it's not that he also
7 showed prejudice. It's that an actual showing of
8 prejudice was not -- was not required.

9 THE COURT: And I just think that's
10 totally consistent with the jurisprudence that no one
11 factor controls...

12 MR. BRUCK: Right.

13 THE COURT: --- in its most elementary
14 form.

15 MR. BRUCK: That's right. No one factor
16 controls. So that even if the state can say that
17 because we've got a transcript to look at and a
18 transcript to guide our trial preparation, just like
19 they do, that doesn't end the inquiry.

20 THE COURT: Then why does *Barker* say that
21 it had been un-rebutted? I mean -- yeah. Why did
22 *Barker* say it had been -- I mean, *Doggett* say it had
23 been un-rebutted?

24 MR. BRUCK: I guess because -- I guess
25 because the state -- the government, the federal

1 government didn't make any showing of why it had no
2 -- why the delay had no effect on *Doggett's*.

3 The state can't do that either. I mean,
4 the mere fact that there is a transcript and we have
5 a list of witnesses and their testimony has been
6 preserved, let's not forget that this is the
7 testimony that was sufficient to convict Mr. Cooper.

8 THE COURT: I'm not saying -- not just
9 the mere transcript. The fact -- the lack of any
10 indication to the Court that the witnesses are
11 unavailable, also, or that the defense has been
12 impaired in any type of way.

13 While I understand actual prejudice may
14 not be shown, I want to understand why the *Doggett*
15 court said presumption of prejudice is neither
16 extenuated, as by the defendant's acquiescence, nor
17 persuasively rebutted, and therefore the defendant is
18 entitled to relief.

19 Under what, perhaps -- I'll rephrase.
20 Under what circumstances would that presumption be
21 rebutted? Tell me, under case law, what they mean by
22 that.

23 MR. BRUCK: If there was a showing that
24 *Doggett* had -- had no possible defense, that there
25 was nothing that he wanted to present. In this case,

1 you are guided by the fact that the South Carolina
2 Supreme Court, reviewing the evidence that the state
3 has to convict this man, has already held it is not
4 overwhelming, such that he was able to show a
5 reasonable likelihood that he would have been
6 acquitted if he had only been allowed to address the
7 jury.

8 Now, that's -- well, we don't have to
9 argue about weight of the evidence, because basically
10 the court has assessed it and told you that is --
11 that is the record you've got. And under that, we
12 haven't -- the Supreme Court, having found that this
13 is a case that is so evenly balanced, I just don't
14 see how the state, having the case in the can, as it
15 were, the case that was sufficient to convict
16 Mr. Cooper, constitutes any sort of rebuttal of the
17 possibility that it's going to be harder for him to
18 retry this case. At that point, this is simply an
19 unknown.

20 I think it will -- well, we made this
21 motion because we thought we had adequate grounds for
22 it before we began our final trial preparation which,
23 of course, we were inhibited from doing until first
24 we had a judge, which happened fairly recently, and
25 until we have a trial date, which, of course, we

1 still don't have.

2 Once that happens, if the Court were to
3 -- if the motion were to be denied now, I feel sure
4 we are going to encounter examples of how our case or
5 our ability to challenge the state's case has been
6 impeded by this long delay since 2002.

7 Something else about that, though. One
8 thing that's going to make it very, very hard for us
9 to pinpoint damage is the fact that the state can
10 always say, oh, no, it's not the delay from
11 August 2002 till now that is the problem; it's the
12 delay from 1989 until 2002. And, of course, we don't
13 have a Sixth Amendment speedy trial claim because
14 Mr. Cooper was challenging his convictions during
15 those years.

16 That's another example of why *Doggett*
17 says don't require a defendant to show trial-related
18 prejudice in passing on a speedy trial. It is an
19 important thing to consider; but in the end, it is
20 ultimately unknown. And this is -- this is a
21 textbook example of why that's so. The state can
22 always make the prejudice disappear unless we have a
23 witness who actually dies.

24 THE COURT: Well, I mean, when would you
25 ever overcome -- putting it in the position of the

1 state, how would you overcome the other type of
2 prejudice that you claim exists? The prejudice
3 attributable to confinement, if that door is opened
4 by the court and challenged, what kind of factual
5 scenario would allow that challenge to be made?

6 MR. BRUCK: On this record, they can't.
7 That's my whole point. After you let a man dangle on
8 death row for three and a half years without the
9 slightest indication of a valid justification of any
10 sort, it's over. It's over. It cannot be rebutted.
11 The time ran on the State of South Carolina while
12 they did nothing except deny this man a trial.

13 That's really my whole point. It assumes
14 a way out of the case to say if you assume that a man
15 demanded a speedy trial for two and a half years and
16 that for three and a half years the state let him
17 dangle in this kind of pretrial incarceration and if
18 you further assume, which is the issue I haven't even
19 got to yet, that there is no good reason, no
20 justification, not even negligence, rather just a
21 willful refusal to do anything to bring this man to
22 trial, even when they were confronted with demand
23 after demand for a speedy trial, then the question
24 is, well, what can they do to get out of that? Well,
25 the answer is there isn't anything they can do.

1 THE COURT: Well, the language you use,
2 you have to be very careful with that type of
3 language. I think there is a difference between
4 intentional bad faith conduct on the government and
5 perhaps negligent conduct on the government. Do you
6 agree with that concept?

7 MR. BRUCK: Yes, I do, but let's be --
8 let's also be careful about -- about negligence.
9 Negligence is what happened in *Doggett* where you had
10 government gumshoes, one hand didn't know what the
11 other was doing, and they should have known but they
12 didn't. That's the kind of thing that bureaucracies
13 do all the time.

14 This is negligence. This is the oldest
15 case, not counting a resentencing, on their docket.
16 They know it's coming in 2002. The case isn't
17 assigned to anybody.

18 And Mr. Myers, I had expected Mr. Myers
19 to put on more of an explanation than he did. I was
20 kind of stunned when it turned out that he just
21 basically let it sat.

22 He had some vague memory that he would
23 mention from time to time to Judge Westbrook that
24 there are a lot of cases. He had no recollection of
25 discussing this one specifically. And then after

1 eleven months or ten months, they get a call from me
2 wanting to know what's going on, and then a formal
3 speedy trial motion, and then they put another case
4 in front of this and try it, and they don't try
5 anything else for two years, and that's not
6 negligence.

7 The one thing we don't have -- if the
8 prosecution does nothing at all, simply goes on
9 strike and refuses to try this man's case just
10 because they don't want to try it, then we can't
11 prove that they had the maligned motive of impeding
12 his defense. This -- on the other hand, that is not
13 negligence.

14 THE COURT: Well, what if it's about the
15 procedural -- the procedural question posited at the
16 beginning of the hearing; that the prior judge, chief
17 judge in that circuit, ruled there was no speedy
18 trial violation at that time and set it for the end
19 of December.

20 And just for the purposes of the record,
21 I was not assigned this case until December. The
22 last two weeks of December are not court terms, and
23 there was no way to try this case in December.

24 But what about that question? He denied
25 it, but based on all that stuff up to that point, and

1 while I say I have to review it perhaps *de novo*, you
2 know, everything that's going on in the context of my
3 decision, until that point there was some -- at least
4 included a finding by the judge that the state had
5 not engaged in that type of conduct; was there not?

6 MR. BRUCK: He denied our speedy trial
7 motion in the context of the order that was then
8 outstanding to try the case by the end of 2005, which
9 in my wildest dreams I did not think would be
10 disregarded as it was.

11 THE COURT: Right. But, you see, then
12 that -- that gets to my point. If Judge Keesley put
13 in the order that he was notifying Court
14 Administration about the case...

15 MR. BRUCK: Right.

16 THE COURT: --- and no one took any
17 action about assigning a judge -- as far as I know,
18 this is the first time I've ever seen this happen
19 where a judge was not immediately assigned within a
20 few weeks to a death penalty case. Is that conduct
21 attributable to negligence or whatever on the part of
22 the state or to Court Administration?

23 MR. BRUCK: Well, there's no -- as far as
24 Mr. Cooper's speedy trial right, it makes no
25 difference. The State of South Carolina is

1 represented by both the judiciary and the
2 prosecution. Now, there are a couple of balls in the
3 air and ---

4 THE COURT: Well, it makes a difference
5 -- it makes a difference if you're trying to label
6 something as bad faith conduct on the part of the
7 prosecution ---

8 MR. BRUCK: Yes.

9 THE COURT: --- as opposed to something
10 else; does it not?

11 MR. BRUCK: Yes, it does. And, of
12 course, we need to keep the dimensions -- I had
13 thought about having a big chart so it would be --
14 and I probably should have so it would be -- you
15 know, we just want to keep visually in mind the
16 magnitude of time.

17 Almost all of this delay was occasioned,
18 three years of it minus a few weeks, was entirely
19 attributable to the Fifth Circuit Solicitor's Office.
20 That takes us to July of 2005. And even then, one
21 has to question why it was that not until they were
22 under court order to try the case did they seem to
23 remember that they've got a conflict going back a
24 decade or more. And now they're saying, well, that
25 justifies further delay. Well, that is attributable.

1 That's more fault.

2 My original point about bad faith versus
3 negligence is that at one extreme of bad faith is the
4 willful desire to hobble a man's defense; but very,
5 very close to that is another form of bad faith which
6 is the desire to punish the defendant without trial,
7 and that is what the state, the Solicitor's Office,
8 did.

9 THE COURT: What would suggest that?

10 MR. BRUCK: Their conduct. They knew
11 that the man was a pretrial detainee. He wasn't
12 going to be released on bond. He was going to have
13 this case dangle, and they didn't care. They let him
14 rot.

15 (The Court reviews document.)

16 THE COURT: Go ahead.

17 MR. BRUCK: That is a form of bad faith.
18 That is not negligence. It didn't slip their mind
19 that Tony Cooper was sitting on death row, waiting
20 and waiting and waiting and waiting.

21 As I say, negligence is what happened in
22 *Doggett*. And if this isn't the same kind of bad
23 faith, it weighs right about as -- as a deliberate
24 intention to hobble the defense.

25 In a way, it's almost worse, because at

1 least the hobbling of the defense contemplates that
2 eventually there'll be a trial, but a willful refusal
3 to move a case toward trial -- and remember that this
4 is one of the very few states where the prosecution
5 controls the docket. It's an extremely unusual
6 aspect in South Carolina. I did some research on it
7 one time, and there's only one or two other states
8 where that's -- that's true. So the prosecution has
9 unusual power over whether a case gets tried in this
10 case.

11 And their willful refusal to move this
12 case toward -- toward trial was, in effect, a
13 decision to punish Mr. Cooper without according him
14 any trial whatsoever, not just a trial at which his
15 defenses would be impaired by the delay but no trial
16 at all. I mean, it's like Guantanamo or whatever,
17 he's just been a detainee in perpetuity as far
18 as ---

19 THE COURT: I agree that -- well, I'm
20 somewhat inclined to agree that in the majority of
21 the situations that you demonstrated, that if the
22 government has intentionally delayed or violated
23 someone's speedy trial rights, due process, then the
24 government would have to go extremely far in
25 convincing this Court why a dismissal should not take

1 place...

2 MR. BRUCK: Yes, sir.

3 THE COURT: --- in light of intentional
4 conduct, bad faith conduct on the part of government.
5 That's why I think there is a little bit of a
6 dividing line.

7 MR. BRUCK: Well, maybe I should address
8 that. This really gets us to the third factor, the
9 reason for the delay, maybe it's the second, but the
10 reason, which was the point of why -- the point of
11 putting these witnesses on. And I appreciate your
12 bearing with us. I did not have any idea it would
13 take so long to get the answers from Mr. Myers, that
14 there is no reason for delay, but that's really what
15 -- no valid reason.

16 You'll look in the South Carolina cases
17 and find that much shorter delay than this is excused
18 by the fact that the state had a backlog which they
19 were diligently attempting to -- to move to trial.

20 I'm trying to think of the -- well, I'm
21 not putting my hands on it right now, but it's one of
22 the cases from the early seventies that talks about
23 they were doing everything they could to move this
24 along to trial.

25 Well, this is the 180-degree opposite,

1 because they were not doing anything.

2 THE COURT: Interestingly enough, I don't
3 know of any South Carolina case that's really focused
4 on confinement in the manner which you suggest, not
5 that I disagree with that, because I think the whole
6 point of the right to a speedy trial is directly
7 derivative from the concept of liberty.

8 MR. BRUCK: And what we've got here is
9 *Doggett* plus. *Doggett* was a no confinement case. It
10 was a no anxiety case. The guy was blissfully going
11 on about his business for eight years, while
12 negligently -- and there's no suggestion it was
13 anything other than genuine garden variety negligence
14 -- and negligently the government failed to arrest
15 him.

16 And -- and no showing that -- that he
17 couldn't have defended the case eight years later.
18 He pled guilty, for heaven's sake. It was a
19 conditional guilty plea. And the court upon appeal
20 dismissed the charges, the U.S. Supreme Court.

21 The reason, like I said, there is no case
22 for this is that no deprivation of a speedy trial in
23 this state has ever been this bad. You know?

24 I mean, usually no one on death row wants
25 a speedy trial. I'll be very candid about it. None

1 of my other clients want a speedy trial. It's the
2 last thing they want.

3 But Mr. Cooper is in a different
4 category. He says he doesn't belong on death row, he
5 didn't do it, and he's been trying to have his trial
6 for a long, long time.

7 And that's why you can't find another
8 case to analyze it. If there was, it would have been
9 dismissed. The motion would have been granted.

10 THE COURT: Go ahead.

11 MR. BRUCK: Then, finally, even though we
12 have the -- well, one thing that was very telling was
13 the fact that for -- I mean, this is one of those
14 cases where the Court cannot find on the evidence
15 that the backlog or any of the usual excuses has
16 anything to do with the failure to call this case or
17 the courtroom, the courthouse move, or there being
18 mold for a few weeks or anything of these things that
19 Mr. Myers strung together as a vague sort of
20 justification. And the...

21 THE COURT: Go ahead.

22 MR. BRUCK: Excuse me.

23 THE COURT: I do that a lot. I'm
24 listening to you.

25 MR. BRUCK: Okay. Well, I ---

1 THE COURT: You've got to understand
2 while I'm doing this -- everybody else knows about
3 that. I can hear and listen. Go ahead.

4 MR. BRUCK: The really telling detail was
5 the *Northcutt* case. They tried one death penalty
6 case between 2002 and now. And Mr. Myers
7 acknowledged it was a case where there was no speedy
8 trial motion, it was tried in the fall of 2003, the
9 defendant had told Mr. Myers he wanted the death
10 penalty, and they put that case in front of this one.

11 Now, no matter what other imaginary,
12 un-remembered, vague reason Mr. Myers might have had
13 for not trying that case or this case or the next
14 one, there is no hint of a reason why that case
15 received precedence over Tony Cooper.

16 At that time he had a pending,
17 outstanding motion for speedy trial. The *Northcutt*,
18 pendency of the *Northcutt* case was even discussed on
19 the record at a first speedy trial demand hearing in
20 August of 2003.

21 They just made the decision they wanted
22 to try something else, period, without the slightest
23 hint of a justification. And now here we are, two
24 and a half years after the *Northcutt* trial, and they
25 still haven't tried this or any other pending capital

1 case in Lexington County. I mean, the record is
2 unbelievable.

3 THE COURT: Let me ask you -- let me ask
4 you a question.

5 MR. BRUCK: Yes, sir.

6 THE COURT: Does our jurisprudence
7 confuse what speedy trial is all about, prejudice to
8 liberty as opposed to prejudice to defense?

9 MR. BRUCK: I don't understand what you
10 mean.

11 THE COURT: In South Carolina?

12 MR. BRUCK: In South Carolina? To some
13 degree. I mean, I don't want to concede that the
14 South Carolina cases violate *Barker vs. Wingo* and
15 *Doggett* by having a hard and fast prejudice
16 requirement that is not in the U.S. Supreme Court
17 cases.

18 You know, all we -- and there is no case
19 in South Carolina that denied a motion to dismiss for
20 speedy trial where the only basis for doing so, the
21 only factor that weighed in favor of the state, was
22 lack of prejudice.

23 And what *Barker* basically says is: That
24 can't carry it. Because the speedy trial right, they
25 explain certain -- many societal interests other than

1 the fairness of the trial.

2 THE COURT: Well, there is no doubt that
3 one of the concepts is to consider whether or not the
4 defense has been impaired in the case.

5 MR. BRUCK: That's correct.

6 THE COURT: But it's not the overriding
7 objective of the speedy trial involved with the
8 constitution. It's an objective that springs from
9 the concept of liberty.

10 MR. BRUCK: Yes. Absolutely.

11 THE COURT: And if one's liberty is
12 severely impaired for an inordinate period of time,
13 is that what the speedy trial clause is all about?

14 MR. BRUCK: You have made my argument for
15 me. That is exactly correct. That is what the
16 speedy trial clause is all about.

17 And it would be a very serious error and
18 an unconstitutional error to say that even though
19 this man's liberty has been so grievously impaired
20 for so many years with no justification, that because
21 he can't also show one of the three additional forms
22 of prejudice of the case law, therefore, in effect,
23 the tail -- the tail will wag the dog and the motion
24 will be denied because he can't make that additional
25 showing. That is exactly what *Doggett* cautions about

1 against.

2 And *Doggett* on its facts shows that the
3 lack of a trial-related prejudice does not weigh
4 against the defendant. It doesn't weigh in his
5 favor, obviously, but it doesn't help the state. The
6 state still has to prevail on all -- on the four
7 factors viewed as a whole.

8 And if there is a case ---

9 THE COURT: So you think that when
10 *Doggett* used the language in conclusion that it had
11 not -- the state had not persuasively rebutted the
12 presumption of prejudice, you think that they may
13 have been talking about prejudice to one's liberty?

14 MR. BRUCK: I'm at a disadvantage because
15 I handed the Court my only copy, and maybe I should
16 look at that in the context in which -- you know, I
17 don't know if they were talking about only
18 trial-related prejudice, but certainly it only makes
19 sense in light of the rest of the jurisprudence if
20 they mean prejudice across the board.

21 THE COURT: All right.

22 MR. BRUCK: All three forms.

23 And as I say, there is -- there ain't no
24 rebutting that can be done as far as the first three
25 forms of *Barker v. Wingo* prejudice, because they are

1 as plain as day, and there is no South Carolina case
2 and there is no U.S. Supreme Court case which
3 presents those kinds of prejudice in this extreme
4 form.

5 THE COURT: All right.

6 MR. BRUCK: That's why at the beginning I
7 said this -- this is the rare case. I don't think
8 there is any way around it.

9 And, of course, the remedy for the denial
10 of the constitutional right to a speedy trial is not
11 to do the best we can and set a trial date now. That
12 was then. That's what Judge Keesley required the
13 state to do in April of 2005.

14 Perhaps when Mr. Bell stands up he will
15 tell us what trial preparation was undertaken by his
16 office to comply with Judge Keesley's order between
17 September when I understand they received the file
18 and December 31st, 2005; but if the answer is that
19 they didn't start getting the case ready for trial
20 until then, I think that weighs against the state
21 even more.

22 They had notice of the case. They
23 received the -- they received this file with a
24 ticking clock in it that anyone who was listening
25 couldn't help but hear, and the alarm bell was going

1 to go off on New Year's Eve. And they were not at
2 liberty to just say, well, we better wait until a
3 judge gets assigned and until someone tells us what
4 to do, while this man every day woke up and went back
5 to bed in a ten-by-six-foot cell on death row.

6 So here we are, and our motion is to
7 dismiss. Thank you.

8 THE COURT: State.

9 MR. BELL: Thank you, Your Honor.

10 Your Honor, the main thrust of the
11 state's -- I mean, he's been awaiting trial, retrial,
12 for three months now -- three years, excuse me, and
13 six months, and we have to concede that point.
14 There's no doubt about that.

15 The main -- we do argue the reasons. And
16 we will go back to Judge Keesley's order, as a
17 reference, not as a prior ruling. I mean, they were
18 there, they were in Lexington County, they had the
19 chance to see everything and all the evidence, so I
20 do it by reference, that he did not grant a speedy
21 trial motion even though he set the date for
22 December 2005.

23 And he also found that the motion to
24 recuse himself -- he specifically found in that order
25 that it was not -- it was no intentional pattern of

1 delay done.

2 He also references in that order that --
3 I think there's an evidentiary reference that there
4 were backups of death penalty cases pending, as well
5 as an explosive docket. I mean, while that's --
6 that's a neutral reason, as I understand it, for
7 that, I mean, and it weighs somewhat against the
8 state, it's still not part of intentional -- an
9 intentional pattern of delay of prejudicing the
10 defendant.

11 I will say, from the First Circuit
12 Solicitor's Office, we did get the case in -- I can't
13 tell you the exact date. It was in September. We
14 got the file in late September.

15 We were relying on that order stating
16 that a judge would be ordered to be -- ordered to be
17 the new trial judge, so that we -- we were ordered to
18 get with that judge to set a trial date.

19 When none was -- when none was
20 forthcoming, I will say I took it upon myself to call
21 Judge Keesley to ask what's the status of it. And,
22 basically, he found that it hadn't been done as
23 pursuant to his order, and that's when Your Honor was
24 finally brought in as the judge in that.

25 We were relying on the order of September

1 12th, 2005. We took steps to get the judge, we took
2 the steps to get a judge appointed on this, to have a
3 trial date set, as best we could. Unfortunately, it
4 was late, due to the process, due to the court's
5 mistake, not to the prosecution's mistake in that.

6 And the other reason, talking about the
7 delay, the argument is kind of illogical to me, to
8 the state, that we're intentionally delaying this
9 case, because I have to reference that the case has
10 been tried before.

11 As I said in my -- in my response to
12 their motion, most of the witnesses' testimony has
13 been fleshed out. The evidence is out there. I
14 don't know that it's going to get any more different.
15 I mean, everything's been fleshed out as far as the
16 trial. The trial has been -- been made.

17 There was a conviction back in 1991, and
18 the state realizes it can get a conviction. There is
19 no logical reason why they'd want to delay. It makes
20 no sense why there is an intentional delay on the
21 state.

22 We would say that the state did not
23 intentionally delay this case. So that factor weighs
24 at least neutral. It's certainly not intentional.
25 It doesn't go to the defendant's factor.

1 We concede that he has asserted his right
2 on at least two different occasions since
3 August 2002. We have no argument with that.

4 And the fourth one is prejudice to the
5 defendant; and in my review of most if not all the
6 cases, that's been the overriding factor in the
7 court's decision.

8 I mean, in *State vs. Bradley*, one of the
9 Supreme Court cases that factors *Barker vs. Wingo*, I
10 mean, they found that the delay was three years four
11 months, and the delay triggered a review. They found
12 that the state couldn't -- didn't have any valid
13 excuse for the delay, and yet their overriding
14 concern was there was no prejudice to the defendant.

15 And that's -- if you read *Barker vs.*
16 *Wingo*, it talks about the three types of prejudice,
17 of course, and the fourth factor, which Mr. Bruck
18 referenced.

19 The pretrial confinement, yes, there is
20 that in that. And that's a subjective. I don't know
21 how the state can rebut that.

22 The mental anguish on the defendant, I
23 don't know how the state can rebut that.

24 But if I remember correctly, *Barker vs.*
25 *Wingo* says the most important of those was the

1 impairment of a defense to -- to the defendant. In
2 this case, that hasn't been impaired. I mean, the
3 original trial was tried a year and four or five
4 months after he was arrested. This case has been
5 tried. Evidentiary issues have been out.

6 THE COURT: Why in *Doggett* did the United
7 States Supreme Court not conclude that the defense
8 had not been impaired? What was shown in *Doggett* to
9 suggest otherwise?

10 MR. BELL: I'm trying to remember
11 *Doggett*. I read the case. If I remember correctly,
12 that's the one where there was an eight-year and they
13 found that there was impairment; that the eight years
14 had gone by, I thought, that did lead to that
15 somewhat.

16 But I think what theirs was, what they
17 hung their hat on in *Doggett*, though, was that the
18 government knew where he was, and while it wasn't
19 like gross negligence, that they could have gotten
20 him anytime and they just -- they just chose not to
21 for a while until it was easy for them.

22 THE COURT: Well, I mean, in *Doggett* the
23 man was even out of jail.

24 MR. BELL: I understand, yes, sir.

25 THE COURT: Why is that more compelling

1 than a person that is in jail for several years and
2 his liberty so restrained?

3 MR. BELL: Your Honor, I think that ---

4 THE COURT: At what point does the
5 government have to do something?

6 MR. BELL: Your Honor, I believe that the
7 government should do stuff as soon as it can, quite
8 honestly. In this case, the problem is, you know,
9 I'm kind of dealt an old hand and I'm trying to play
10 it, and I have to go back to the findings that have
11 already been made in that ---

12 THE COURT: Well, what does the speedy
13 trial provision protect?

14 MR. BELL: It protects -- I'll agree it
15 protects the liberty of the individual, also his
16 ability if he so chooses to defend himself, as well,
17 in court.

18 THE COURT: I mean, what in this case --
19 let's -- let's go step back for a second from your
20 perspective insofar as prejudice is concerned. What
21 are some of the factors insofar as the defense'
22 conduct at issue do you think warrants consideration
23 by the Court? Has the defense done anything to delay
24 this case, number one? Anything in this record?

25 MR. BELL: Not since August 2002, no, not

1 that I know of.

2 THE COURT: All right. In August 2002
3 what did they do?

4 MR. BELL: No, not since -- I mean, that
5 was the -- when the...

6 THE COURT: Okay. Repeat that?

7 MR. BELL: When the appeals were
8 finalized.

9 THE COURT: All right. There has been
10 no, like, intentional request for delay by the
11 defense or any request for delay by the defense that
12 you know of; is that correct? By formality, now.

13 MR. BELL: No, not that I'm aware of.

14 THE COURT: I'm double-checking my facts.
15 Did they ever make any motions for continuance?

16 MR. BELL: Not that I'm aware of.

17 THE COURT: And it's clear from the
18 record that they've made more than one request for
19 speedy trial?

20 MR. BELL: Two that I am aware of.

21 THE COURT: Two. So they've asserted
22 their position?

23 MR. BELL: Yes.

24 THE COURT: And in these cases that
25 support the state's position, oftentime that's not

1 done, and there's oftentime conduct of the defense
2 that the court latches onto to suggest that part of
3 the delay is attributable to the defense or to
4 tactics or strategy, or whatever it may be, which
5 happens all the time. Sometimes defense counsel
6 intentionally delay the case for reasons known best
7 to the defense.

8 But if I were to hang a decision upon
9 that type of reasoning that's normally -- that
10 normally accompanies the state's position, what would
11 I hang it on here?

12 MR. BELL: As to the defense's conduct?

13 THE COURT: Any of the type of things
14 that the court can look to, to say that the rights
15 have not been violated. I mean, what your argument
16 essentially is, from what I'm hearing now, is because
17 it was previously denied by the court?

18 MR. BELL: Well, Your Honor, the only
19 thing that I can do is -- I wasn't there in July of
20 2005, and ---

21 THE COURT: I don't attribute anything to
22 you insofar as bad conduct or negligence. When did
23 you get appointed?

24 MR. BELL: We got -- I can't tell you the
25 exact date. It was in September of 2005.

1 THE COURT: All right. You were
2 appointed in September. I was designated the trial
3 judge in, what, December, something like that.

4 MR. BELL: Late November.

5 THE COURT: End of November, beginning of
6 December. The last two weeks of December were
7 designated as a chamber's week, holiday week sort of,
8 and I definitely don't attribute anything to y'all
9 from that point, because I could not get up to speed
10 on that.

11 I understand Mr. Bruck's argument that
12 everyone has a responsibility for satisfying the
13 constitutional rights. I do agree with that concept.

14 But, look, what's here?

15 MR. BELL: Your Honor, I mean, I think
16 the main part is, is seeing if there was an
17 intentional delay on the state's part, number one,
18 which there is no evidence of.

19 THE COURT: Well, and there is no
20 evidence of intentional delay in *Doggett*.

21 MR. BELL: But I think the conduct -- I
22 think the conduct, though, in *Doggett*, if I recall
23 *Doggett* ---

24 THE COURT: Was there an intentional
25 delay in *Doggett*, Mr. Bruck?

1 MR. BRUCK: No. It was just ---

2 THE COURT: I thought they were going to
3 hinge their whole analysis on this concept of
4 negligence of the government by not doing things.

5 MR. BELL: Yeah, and I think the
6 negligence was a bit more in *Doggett*. And I don't
7 know that there's negligence here. I just think, you
8 know ---

9 THE COURT: Well, I think they mean by
10 "negligence," something that came to inaction, but
11 I'm not sure if that's completely, but the government
12 didn't do anything.

13 MR. BELL: But as I recall in *Doggett*,
14 and correct me if I'm wrong -- it's been a week since
15 I read it, and I didn't bring my copy with me -- it
16 seems like the government in *Doggett* somehow knew
17 where he was and just didn't go get him. If I
18 recall, one side knew where he was, and they didn't
19 go get him, and they just kept waiting until he came
20 to where they could get him, I guess is what -- is
21 what I recall.

22 THE COURT: But interestingly enough, to
23 me, is just that the facts in *Doggett*, on the face of
24 the opinion as compared to this case, seem less
25 compelling. Would you be somewhat inclined to agree

1 with that?

2 MR. BELL: I think it ---

3 THE COURT: I'm not asking you to concede
4 any position, but if we start with the proposition
5 that the speedy trial provision of the constitution,
6 its primary importance is derived from the concept of
7 liberty, and in *Doggett* he was not even
8 constrained -- he was not confined pretrial, as far
9 as I recollect. It's hard to see why they granted
10 that. Perhaps that's why the defense was so adamant
11 about -- I don't know -- about it. I might -- I
12 might be somewhat inclined to agree with the defense
13 in that case.

14 MR. BELL: Well, I just have a feeling in
15 *Doggett*, I think it seems to me what they really
16 latched onto in *Doggett* was eight -- the eight years,
17 regardless of whether he'd been confined or not, and
18 basically what the government did or didn't do was
19 just -- I mean, totally, they did nothing or they
20 knew of something that they should have done at that
21 point.

22 THE COURT: But at least in *Doggett*, like
23 the dissent argued, I mean, the man didn't even know
24 about it for most of the time. So you don't even
25 have -- aside from the prejudice that's assigned to

1 the concept of restrained liberty, this type of
2 prejudice assigned to anxiety provision impairment of
3 liberty, that did not even exist in *Doggett* either.
4 The person did not even know.

5 MR. BELL: That's true. But my question,
6 too, Your Honor, is if -- maybe I misspoke a little
7 bit. And the whole Sixth Amendment, as far liberty,
8 if it is liberty, then why does *Barker vs. Wingo* put
9 more emphasis on what the government has to do ---

10 THE COURT: Mr. Bruck, what happened to
11 the concept of liberty in *Barker vs. Wingo*? Where
12 did it get lost?

13 MR. BRUCK: Well, I don't know that it
14 gets lost. It's true that *Barker* talks about the
15 importance of impairment of defense as a form of
16 prejudice, but *Barker* is also the case that says that
17 no -- no single factor or subfactor is dispositive.

18 THE COURT: But does *Barker* lead itself
19 to a reading that a --- back to my question, back to
20 my question -- does it lend itself to this notion,
21 even consistent with the language in *Doggett*, that
22 the prejudice, whether -- whether it is linked to
23 incarceration or liberty, linked to pretrial anxiety,
24 or linked to prejudice in the defense, can all be
25 overcome, can be rebutted, if there is? That seems

1 to be consistent on their cases.

2 MR. BRUCK: Well, I suppose it can be
3 rebutted by evidence.

4 THE COURT: Well, how long was the delay
5 in *Barker vs. Wingo*, like five years?

6 MR. BRUCK: It was -- yes, but almost no
7 delay -- almost no demand. And, clearly, from the
8 record, Barker wanted most of the delay. It was in
9 his interest. He was hoping that the codefendant
10 wouldn't be convicted and wouldn't be made to roll
11 over and ---

12 THE COURT: So you think *Barker* is a
13 little different because the pretrial incarceration,
14 in part, hinged upon a tactical decision of the
15 defense?

16 MR. BRUCK: Well, the pretrial
17 incarceration was very brief. He was out on bond for
18 four years.

19 THE COURT: Yes.

20 MR. BRUCK: Secondly, the reason for the
21 delay was valid, that the prosecution had no case
22 against him until they convicted the codefendant, and
23 it required five trials to accomplish that.

24 THE COURT: Well, does that answer the
25 question from the state's perspective; that because

1 he was out for four years, that underlying the
2 opinion is this knowledge that he was -- although
3 they probably should have stated it, that although he
4 probably -- that he could have still had the pretrial
5 anxiety or stress, which I assume the record does not
6 demonstrate in *Barker vs. Wingo*.

7 MR. BRUCK: It's stated in *Barker*, and
8 the reason it ---

9 THE COURT: All right. Go ahead.

10 MR. BRUCK: The reason it rebutted it was
11 that the record was -- you could fairly infer from
12 the -- from the evidence in *Barker* that *Barker* didn't
13 want a trial. He was content to put up with the
14 anxiety. His only anxiety was that the government
15 would eventually get their ducks in a row, and he was
16 hoping against hope that the codefendant would be
17 acquitted and that would be the end of -- the end of
18 the case.

19 So that's a pretty good example of how
20 the government can rebut the first two types of
21 prejudice, that is, confinement, and not that it
22 didn't occur but that it shouldn't be given any
23 weight because the defendant made a conscious
24 decision to put up with that and to let the case drag
25 on in the hopes that time would be his friend.

1 THE COURT: All right.

2 MR. BRUCK: We sure don't have that here.

3 THE COURT: State's position?

4 MR. BELL: Well, Your Honor, to go back,
5 I mean, the language out of *Barker vs. Wingo* talks
6 about there's three -- there's three prongs of the
7 fourth factor, and it says of these the most serious
8 is the last, which is the impairment of defense. So
9 it doesn't go -- I mean, they're considering that. I
10 mean, if ---

11 THE COURT: That is an interesting
12 concept, Mr. Bruck. Why didn't they say the most
13 serious is the one that's constraining liberty,
14 impairment of liberty? That kind of occurs to me.

15 MR. BRUCK: I mean, this is all dictum,
16 that they are dealing with -- the Supreme Court deals
17 with the case before it, and there wasn't much
18 constraint on liberty, and where the defendant -- as
19 I just finished saying, and where the defendant
20 clearly was willing to bear the burden. He didn't
21 want a speedy trial until -- and then moved for one
22 intermittently one time and then let it lay again
23 until right at the last minute before it looked like
24 the jig was up, and now all of a sudden when the
25 state had their case and now he wanted it, now he was

1 worried about a speedy trial.

2 So, you know, the Supreme Court, when
3 they lay down these categories, it's -- in many ways,
4 it's influenced by the facts of the case before them.

5 If they meant that -- if by "most
6 important" they meant you can't win without it, as
7 Your Honor has just pointed out, *Doggett* would have
8 come out the other way.

9 THE COURT: All right. Go ahead.

10 MR. BELL: But, I mean, that's -- I mean,
11 I think that's the seriousness of prejudice to the
12 defense, Your Honor, and I think that's pointed out
13 again and again in the South Carolina cases even
14 where, you know, there isn't a lengthy pretrial
15 detainment. I mean, it certainly is a factor to be
16 considered in this case. It's one of the factors to
17 be considered, Your Honor.

18 And I just think that this is also a
19 unique case from the fact that the case -- and I keep
20 harping on it, but I think it's a very important
21 concept that this case has been tried before. And
22 even though it is now *de novo*, there is no doubt that
23 I think that that is overriding that there is no
24 pretrial impairment, impairment to the defense. I
25 think that's -- that and the fact that there can be

1 shown no -- shown no intentional delay or even a
2 negligent delay in this case, Your Honor.

3 Because we're trying to look at this case
4 in a vacuum when, you know, Lexington County, I mean,
5 just the docket that was put into evidence has a
6 thousand cases over more than 180 days. I mean, they
7 have terms of court, they have dockets to run, they
8 have death penalty cases that have been, you know,
9 found that they were existing. And I reference the
10 order as evidentiary, merely not as a finding.

11 But, you know, it's all part of the
12 system. And I know it goes -- it's a neutral part of
13 a decision that goes somewhat against the state, but
14 I think there can be no intentional delay found.

15 THE COURT: I still have some concern
16 that it may be the difference between *Barker* and
17 *Doggett* is that in *Barker* there pretty much was a
18 concession that the defendant did not want a speedy
19 trial.

20 MR. BELL: Your Honor, I mean, I can't
21 answer that. I mean, the problem is, again, in this
22 case is that -- that the judge is aware of it, the
23 motion was made, and the first motion that was put
24 on, I think, was held in abeyance and never formally
25 ruled on. And it finally came to a head in the

1 second motion, and that -- I mean, that is where we
2 -- where we are and...

3 MR. BRUCK: If I could correct one point.
4 The State has said that we made two motions for
5 speedy trial. We actually made, by my count, four
6 and perhaps five.

7 And there are two different things.
8 There is a demand for a speedy trial, and there is a
9 motion to dismiss for denial of a speedy trial.

10 The first demand for a speedy trial was
11 in August of 2003. There was another demand for a
12 speedy trial in February of 2005. There was a third
13 demand for a speedy trial in July, as well as a
14 motion to dismiss, and there is now yet a fourth
15 demand for speedy trial.

16 THE COURT: All right.

17 MR. BRUCK: So two, I think, understates
18 what Mr. Cooper has been trying to do.

19 THE COURT: Anything else?

20 MR. BELL: No, Your Honor.

21 THE COURT: Anything else?

22 MR. BRUCK: No, sir.

23 THE COURT: If in the alternative, do you
24 wish to address the Court about bond? I'm not sure
25 if -- I think I want to think about it a little bit,

1 but I might as well hear you out on the motion. Go
2 ahead.

3 MR. BRUCK: Well, if by a little bit, if
4 Your Honor is thinking about ruling today, perhaps we
5 should think about a bond. We have some witnesses.
6 Perhaps we should do that after lunch, depending what
7 the schedule is. I naturally hope it doesn't come to
8 that.

9 I'm struck, too, by the fact that if the
10 speedy trial motion is denied, we have no recourse
11 until after trial. And if Mr. Cooper is acquitted,
12 we have no recourse at all. It's a right without a
13 remedy. A speedy trial motion is --

14 THE COURT: Hold on just a second.

15 MR. BRUCK: Yes.

16 THE COURT: How many witnesses do you
17 have? We'll have to do this after lunch.

18 MR. BRUCK: Oh, it will be short.
19 Mr. Cooper's father and -- and two ladies who are
20 friends.

21 THE COURT: I'm trying to coordinate
22 scheduling.

23 MR. BRUCK: We can go forward now.

24 THE COURT: Well, either way, I have to
25 break for lunch. Either I'm going to do this or

1 something else. I think the next thing is still
2 firm.

3 MR. BRUCK: Judge, I just thought of one
4 other point, if I could, that I should have
5 responded.

6 THE COURT: Yes, sir.

7 MR. BRUCK: And that has to do with the
8 effect of Judge Keesley's order of July 12th,
9 providing and saying that we hadn't made out our
10 motion. At that point, there was -- he had already
11 given the state till the end of 2005. We did not
12 litigate the issue then like we did now. There was
13 no evidence. We didn't call witnesses. That was a
14 quick and dirty 20-minute argument in which he
15 basically decided to stick to the schedule that he
16 had -- that he had already decided on in February.

17 This is the first time that these issues
18 have really received a full airing, and I think ---

19 THE COURT: Well, I mean, it somewhat
20 troubles me that, you know, I have this order and...

21 MR. BRUCK: It's very clear that he -- he
22 intended this issue to be fully re-litigated.

23 If the Court -- I mean, the state for
24 whatever reason did not abide by an unambiguous order
25 to try this case in 2005, okay, for a whole grab bag

1 of reasons have not abided by his order.

2 And I feel sure Judge Keesley would be
3 the first to say that he intends this case to be
4 re-decided from the ground up and not -- and not just
5 sort of there'd be a six-month add on to what's
6 before you now.

7 THE COURT: Hold on just one minute.

8 (The Court leaves the bench and returns.)

9 THE COURT: All right. I juggled the
10 schedule around. If y'all can be back at 2:15.

11 All right. 2:15, we'll see y'all back then. Thank
12 you.

13 (A lunch break is taken at approximately
14 12:50 p.m.)

15 (The hearing reconvenes at approximately
16 2:25 p.m., the defendant being present with counsel,
17 and the following proceedings were had:)

18 THE COURT: All right. Are y'all ready
19 to proceed?

20 MR. BRUCK: Yes, sir.

21 MR. BELL: Yes, sir. The state is, Your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. BRUCK: The remaining matter is the
25 bond motion. I don't know if you want to proceed to

1 that right away?

2 THE COURT: Yes, sir. If I have some
3 more questions about it, I'll let you know at the
4 end.

5 MR. BRUCK: Thank you.

6 MR. DUNCAN: Your Honor, I'd call
7 Gene Tony Cooper, Sr.

8 THE COURT: The state have any witnesses
9 that you plan on presenting?

10 MR. BELL: No, Your Honor. We would --
11 we would go with what we put in our response and the
12 prior record.

13 THE COURT: All right.

14 THE REV. GENE T. COOPER, SR.,
15 being first duly sworn by the clerk, is examined and
16 testifies as follows:

17 THE CLERK: Please be seated. Sir, if
18 you would, please state your full name to the Court
19 and spell your last.

20 THE WITNESS: Reverend Gene T. Cooper,
21 C-double-O-P-E-R.

22 DIRECT EXAMINATION

23 BY MR. DUNCAN:

24 Q. Mr. Cooper, as I understand it, you're a
25 little hard of hearing?

1 A. Yes, sir, I am.

2 Q. Okay. Mr. Cooper, how old are you?

3 A. I'm 76.

4 Q. And you're the natural father of Tony Cooper
5 who is seated here at the table, correct?

6 A. Right.

7 Q. And Tony's mother passed away in 1992; is that
8 correct?

9 A. Yes.

10 Q. And you have since remarried Frances H. Cooper
11 who is in the back row?

12 A. Yes.

13 Q. All right, sir. Mr. Cooper, I understand
14 you're retired?

15 A. Yes.

16 Q. And you're retired from being a brick mason;
17 is that correct?

18 A. Yes.

19 Q. And your wife is retired from Wachovia?

20 A. Yes.

21 Q. Mr. Cooper, how long have you lived in
22 Lexington County?

23 A. Since I got out of the Army back in 1949, when
24 I come out of the Army, you know.

25 Q. Ever since that time?

1 A. Yes, sir.

2 Q. And Lexington County is where Tony was born?

3 A. Right, yeah.

4 Q. And you live, as I understand it, at 146
5 Tremount?

6 A. Yes.

7 Q. T-R-E-M-O-U-N-T?

8 A. Yes.

9 Q. Lane?

10 A. Yes.

11 Q. And that's in Gaston, G-A-S-T-O-N, area of
12 Lexington?

13 A. Right.

14 Q. And, Mr. Cooper, do you have a land line
15 telephone?

16 A. Yes.

17 Q. Okay. And you've lived in the house you and
18 your wife live in now for about ten years; is that
19 accurate?

20 A. Yes.

21 Q. Okay. And that house is paid for?

22 A. Yes.

23 Q. Now, Mr. Cooper, I'm not trying to embarrass
24 you or anybody, but neither you nor your wife have
25 any kind of criminal record, do you?

1 A. No.

2 Q. And if the judge were to consider a bond for
3 Tony and allow him to be released on bond, you would
4 have no difficulty with him staying in your
5 residence?

6 A. No. I've got a -- I've got a place ready for
7 him.

8 Q. All right, sir. And, of course, you'd
9 cooperate with any kind of restrictions that were put
10 on Tony?

11 A. Yes..

12 Q. And as I understand it, you would have no --
13 or let me back up, excuse me. As I understand it,
14 your residence has a fair market value of a little
15 under \$50,000?

16 A. Nine-forty (phonetic).

17 Q. All right, sir. So it's under \$50,000, and
18 you would have no difficulty in encumbering your part
19 of the residence if that were required?

20 A. Right.

21 MR. DUNCAN: Okay. Answer any questions
22 that Mr. Bell or the Court might have, please.

23 MR. BELL: No questions from the state.

24 THE COURT: All right. You may step
25 down, sir. Thank you. You may step down. Thank

1 you.

2 MR. DUNCAN: Mr. Cooper, you can step
3 down.

4 (The witness is excused from the witness
5 stand.)

6 MR. DUNCAN: Your Honor, also present in
7 the courtroom, and we just wanted to recognize them,
8 they're going to stand, Mrs. Betts Davis from Cayce
9 and Mrs. Nadia Knotts from St. Matthews who have been
10 visiting death row inmates for approximately the last
11 25 years and have known Tony ever since he was there.
12 They just wanted to be here to show their support.

13 THE COURT: All right. Anything else?

14 MR. DUNCAN: That's all, Judge, as far as
15 testimony.

16 THE COURT: All right. I'll be happy to
17 hear you out on argument.

18 MR. BRUCK: Well, Your Honor, a lot of
19 the arguments we've made, obviously, with respect to
20 dismissal for a lack of speedy trial, are equally
21 applicable on the equities of releasing Mr. Cooper on
22 bond.

23 THE COURT: Does he have three prior
24 escape charges ---

25 MR. BRUCK: From the ---

1 THE COURT: --- convictions?

2 MR. BRUCK: From the 1980's during a
3 prior incarceration.

4 (Mr. Bruck and the defendant confer.)

5 MR. BRUCK: I'm sorry. Two from the
6 seventies, he tells me.

7 THE COURT: The state brief says December
8 1977, September 1980, and March 1985.

9 THE DEFENDANT: I don't know where they
10 get that. It was about ---

11 THE COURT: Are there three, Counsel?

12 (Mr. Bruck and the defendant confer.)

13 MR. BRUCK: Three, Your Honor. Three in
14 all. My client advises me the most recent was
15 23 years ago.

16 THE COURT: Okay.

17 MR. BRUCK: And, of course, since that
18 time he was released from prison, and this charge
19 arose later. So he went to prison when he was
20 17 years old for a series of armed robberies. And
21 those escapes, all of those were at that time.

22 He has no -- nothing remotely resembling
23 that kind of behavior during the last 16 years of his
24 incarceration, either when he was at Lexington County
25 jail or at Lieber. Well, he was first at CCI, then

1 he was at Broad River, and then at Lieber.

2 Your Honor...

3 THE COURT: Go ahead.

4 MR. BRUCK: I mean, the average -- the
5 normal criteria that you would consider in releasing
6 a defendant on bond, including Mr. Cooper. He has
7 ties to the community. He has a place to live. His
8 father is going to put him up.

9 We obviously would have no problems
10 whatsoever with Mr. Cooper being required to wear an
11 ankle bracelet and being required to be basically put
12 on home arrest except for his looking for a job and
13 being able to go to work. And the Court, I'm sure,
14 is more experienced with restrictions of that nature
15 than I am, but it's done in Lexington County all the
16 time.

17 You heard the testimony that they have a
18 land line and can hook up a electronic monitoring
19 device to the telephone, so that we're not simply --
20 the choice is not simply to put Mr. Cooper totally at
21 large, but rather to recognize the fact that after so
22 many years of failing to try him, the equities
23 require that he be released pending trial. And we
24 still don't have a trial date, of course.

25 THE COURT: And we will talk about that

1 shortly in the event ---

2 MR. BRUCK: All right.

3 THE COURT: --- that I don't grant this
4 relief. Let me ask you back on the other matter.

5 MR. BRUCK: Yes, sir.

6 THE COURT: Is your request for relief
7 based solely on the fact -- let me rephrase. Is
8 there any consideration being given to the fact that
9 you wanted everything kind of postponed until 2002 to
10 get him all cleared up with collateral requests?

11 MR. BRUCK: No. No. And -- and he was
12 in a bind because of that. He had no realistic
13 choice; because if he had asked for the murder case
14 to be retried all by itself between 1994 and 2002,
15 that eight-year period, he would not -- of course, if
16 he'd been acquitted of murder, he wouldn't have been
17 released. He'd still be serving a very lengthy
18 prison sentence for the other charges, and then the
19 state would have another bite of the apple. They
20 would have been able to try him twice.

21 THE COURT: But for whatever reason, if
22 that -- be that for a tactical decision or otherwise,
23 should that be considered?

24 MR. BRUCK: Well, no. I mean, for one
25 reason not to consider it is that the gravamen of the

1 speedy trial motion is from 2002 on.

2 THE COURT: That's what I was asking.

3 MR. BRUCK: Right. Right. We're not --

4 I think the Court should take into account the fact

5 that this has been pending for sixteen years and

6 according to the judgment of the South Carolina

7 Supreme Court he has yet to have one constitutionally

8 fair trial, but -- but we're not saying as if it's an

9 unjustified delay of fourteen years. It's an

10 ~~unjustified delay of three and a half.~~ And to that

11 extent, yes, it should be taken into account.

12 Had we been asking for a speedy trial on
13 the single isolated count that was reversed first and
14 they had refused to call the case for trial, that
15 wouldn't ---

16 THE COURT: Well, I guess it's kind of a
17 corollary to the point or -- I don't know if that's
18 the proper word, but was there any attempt by the
19 prosecution to retry it ---

20 MR. BRUCK: No.

21 THE COURT: --- but for that delay?

22 MR. BRUCK: Absolutely not. Oh, you mean
23 the -- during the year and a half? No. No. That
24 was an additional part of the delay, actually, which
25 is attributable to simply the prosecution. There was

1 no -- and we filed. We realized that this would --
2 could be attacked and needed to be and filed. At
3 that time it was -- the first one was in '94. We
4 filed in '95.

5 THE COURT: But why is it not relevant,
6 though, you know, if they potentially could have gone
7 forward back then, and then all of a sudden they have
8 delayed eight years, and then "be ready" because the
9 defendant wants to go forward?

10 MR. BRUCK: Well, it's not that they held
11 off at our request. They had -- they had not the
12 slightest interest in going forward at any time.

13 THE COURT: Okay.

14 MR. BRUCK: From the day of his
15 conviction in 1991 until they were ordered to do so
16 by Judge Keesley and really until the case was handed
17 off to another office.

18 So it's not as though we have restrained
19 them in any way or asked them not to proceed.
20 Absolutely not.

21 It's worth keeping in mind that -- that a
22 lot of speedy trial cases, the speedy trial right
23 continues as a right even if the defendant isn't
24 making any demand, as you well know.

25 But this is certainly not anything to be

1 charged against Mr. Cooper. We did not ask the state
2 to hold off. They were content to hold off for
3 reasons of their own. And, of course, he was in a
4 bind because of the way that the Supreme Court
5 delivered -- granted partial relief and made us go
6 back and prove the rest of our case in
7 post-conviction.

8 THE COURT: But insofar as the failure to
9 allow him to speak, they made a determination that as
10 a-matter of-law that-was-reversible-per-se. As to
11 that, they did not say there was a reasonable
12 probability that the outcome would have changed in
13 the direct appeal.

14 MR. BRUCK: Only as to the murder because
15 they didn't reach that.

16 THE COURT: All right.

17 MR. BRUCK: But then we had to prove that
18 exact issue as to the armed robbery and the
19 kidnapping.

20 THE COURT: Because he chose -- because
21 it was PCR.

22 MR. BRUCK: Because it was PCR. And the
23 reason it had to be PCR was the court said that the
24 *in favorem vitae* rule only applied to the capital
25 count and not to the non-capital count, which is --

1 they had held that for the first time just within
2 weeks of that decision in *Bingham* (phonetic),
3 *Charping*, C-H-A-R-P-I-N-G, and then *Cooper*.

4 And what that meant was that we had to go
5 back and prove a regular garden variety effectiveness
6 claim -- which would have been equally true of the
7 murder case if we had had to prove it, but they
8 didn't make us prove it.

9 So it doesn't mean that there is any less
10 of a constitutional violation in the murder

11 conviction. It just means we were not required to
12 prove it yet. We had to prove it again later. It
13 was all in one trial, one series of charges. There
14 was no differentiation that could be made.

15 So when the state says, well, it was a
16 technicality that it was reversed, that is not true.
17 It was a violation of the Sixth Amendment right to
18 counsel, and we proved it. And they found prejudice
19 because they found the evidence wasn't that strong.
20 And the evidence of the other charges was exactly the
21 same evidence as the evidence of the murder. They
22 all stood or fell together.

23 THE COURT: Anything else you wish to
24 add, after lunch, on that issue?

25 MR. BRUCK: Well, the only -- in terms of

1 what the fairest way of proceeding on this, and I
2 realize that this -- I'd say, viewed most favorably
3 to the state it's a close call on -- on the speedy
4 trial question.

5 If you deny relief on the speedy trial,
6 Mr. Cooper has a right without a remedy, because he's
7 either acquitted and that's the end of it after a
8 trial that he never should have been forced to stand
9 or he's convicted at which point he can then appeal
10 the denial of a speedy trial, and if he was right, he
11 has been in prison for -- and endured a trial and so
12 on.

13 If you grant the speedy trial ---

14 THE COURT: Well, I mean, but if he's
15 convicted -- you mean if he's not convicted.

16 MR. BRUCK: If he's not convicted, he
17 can't ever appeal the fact that he was made to stand
18 trial ---

19 THE COURT: All right.

20 MR. BRUCK: --- when he shouldn't have
21 been. If he is convicted, he can appeal then; and if
22 he has a meritorious ground and he wins the appeal,
23 he has served who knows how much more time that he
24 shouldn't have served and he has been subjected to a
25 trial that he shouldn't have been subjected to.

1 If the Court grants the motion, the state
2 has an appeal which stays everything. It would be up
3 to the Supreme Court about whether he should be
4 released on a bond pending the state's appeal.

5 And it would not -- and I feel sure that
6 appeal could be expedited, and we would know very
7 quickly whether we're on solid constitutional footing
8 or whether we're on very soft ice in proceeding with
9 this matter.

10 Now, I don't for a minute suggest that
11 that should enter into your evaluation of the merits,
12 but it is an equity that is out there.

13 It seems like at this late date, at a
14 very minimum, the state ought to be the one before we
15 have this trial that ought to bear the burden to the
16 Supreme Court of showing that this did not violate
17 Mr. Cooper's speedy trial right.

18 If there was another case out there like
19 this that the state could point to, that would be one
20 thing, but -- but there isn't. And if this right
21 means anything, it's got to be enforced, and it's got
22 to be enforced in a way that means something and not
23 just as an academic exercise after the fact.

24 So I think that's a fair way of
25 proceeding, all things ---

1 THE COURT: Do they have the discretion
2 to hear it interlocutory?

3 MR. BRUCK: They have the duty to hear it
4 interlocutory if Mr. Bell -- they -- our court is the
5 most restrictive on interlocutory appeals in criminal
6 cases of any in the country. They don't recognize --
7 that our court will not hear double jeopardy appeals,
8 even though the United States Supreme Court has said
9 it's a matter of federal constitutional law it's
10 interlocutory-appealable. ~~So if you deny a double~~
11 jeopardy appeal, review this directly to the United
12 States Supreme Court from -- from your court. That's
13 how restrictive South Carolina is.

14 And so, no, there is no interlocutory
15 review of the denial of a speedy trial. We have to
16 wait and appeal if there is a conviction; and, of
17 course, if there is an acquittal, you know, we just
18 suck it up. That's how it works.

19 THE COURT: All right. Anything else on
20 that issue?

21 MR. BRUCK: No, sir.

22 THE COURT: Anything else from the state
23 on that issue?

24 MR. BELL: None from the state,
25 Your Honor.

1 THE COURT: All right. Make sure I don't
2 have more questions.

3 Did you state in your response it's going
4 to be difficult for you to track down all the
5 witnesses because of the age of the case?

6 MR. BELL: I may have indicated -- I
7 probably indicated that since it was there. I don't
8 know that I've...

9 THE COURT: But you don't know that to be
10 true?

11 MR. BELL: I do not know that to be true.
12 I know that we've started the process, and we've been
13 able to find some. So I do not know that to be true.

14 THE COURT: All right. Now, if I do not
15 grant this request -- I'm not sure. I want to think
16 about it some more. I have some concerns, some
17 serious concerns about some of the issues.

18 While I have you here, what are you
19 contemplating in terms of preparation for trial,
20 etc.? I can tell you what I was kind of thinking
21 about.

22 MR. BRUCK: Yes, sir.

23 THE COURT: I won't -- I'm not tying
24 anyone's hands. I mean, we're at -- it's February
25 now, and I was potentially thinking near the end of

1 May, like the week of May 22nd and May 29th.
2 Obviously, it takes a lot of juggling in schedules to
3 get terms changed, but it will probably take me a
4 couple weeks just to get that done.

5 What does -- and I tried to take into
6 consideration that you would be out of your class by
7 then, I assume?

8 MR. BRUCK: Yes, sir.

9 THE COURT: What do you think about that?
10 ~~Would everybody be ready to go by then?~~

11 MR. BELL: Yeah. Your Honor, I would. I
12 mean, we have discussed it a little beforehand, and
13 May was sounding like a pretty good time. As far as
14 I know, hopefully we'll be ready and just get
15 everything on a roll.

16 THE COURT: What about that, Mr. Bruck,
17 May 22nd, May 29th? I think there's a holiday
18 somewhere in that week, most liably, but...

19 MR. BRUCK: May 30th is Memorial Day.

20 MR. DUNCAN: It's the 29th this year.

21 THE COURT: Let me ask you, I never did,
22 how long do you think the case will take to try?

23 MR. BRUCK: I would think a little less
24 than two weeks.

25 THE COURT: Okay. Depending on how soon

1 we get the jury drawn.

2 MR. BELL: Yes, sir.

3 THE COURT: What about those proposed
4 weeks?

5 MR. BRUCK: That is enough time for us
6 unless -- I mean, obviously, if some -- if we make
7 some remarkable discovery, we can bring it to the
8 Court's attention and change that, but for now I
9 think we could be ready.

10 THE COURT: I'm just trying to do it as
11 soon as possible. At the same time, as you all know,
12 you have to get weeks changed, you have to notify the
13 Clerk of Court to have a larger jury pool, you know,
14 there's just a lot of arrangements to be made.
15 That's about, you know, two and a half months.

16 MR. BRUCK: Right. For family reasons,
17 the week of the 29th is -- and if it were up to me, I
18 would move it one week forward, but obviously the
19 Court came up with those dates for a reason, and I...

20 THE COURT: I think I also looked at --
21 even though it wasn't perfect, I looked at
22 Lexington's schedule as far as trying to juggle
23 around, looked at when they had General Sessions
24 weeks.

25 MR. DUNCAN: There are two weeks

1 scheduled, Judge, two concurrent terms the week of
2 Monday, May 15th.

3 THE COURT: May 15th?

4 MR. DUNCAN: Right. There are two weeks
5 then. The week of the 22nd there is no court
6 scheduled at the present time, and then the 29th
7 there is no court scheduled, other than second
8 appearances are scheduled at the courthouse on
9 Thursday, June 1st.

10 THE COURT: I'm not scheduled to be here
11 the week of May 15th. I'm scheduled on vacation that
12 week. Let's see. You're saying May 15th and
13 May 22nd? I might be able to change that. It's a
14 possibility.

15 MR. BRUCK: The problem is my wife has a
16 conflict on 5/29 and the following first week in
17 June, which would make it hard for both of us to be
18 gone. We have two high school age kids. Obviously,
19 everybody's got problems, and we can make
20 accommodations if we have to, but I would get a very
21 cold reception when I get back to Virginia if I do
22 not make that known to the Court.

23 Oh, I've been reminded, as well ---

24 THE COURT: What is your conflict the
25 week of the 29th?

1 MR. BRUCK: My wife has a two-week
2 program that she has tentatively committed to, to be
3 away from home.

4 THE COURT: That whole week?

5 MR. BRUCK: Two weeks, May 29th and June
6 -- I believe June 7th or 8th, which means that I'm
7 supposed to be a single dad those two weeks. On the
8 other hand, you know, obviously, no time is good for
9 anybody -- everybody in many respects, so I just...

10 I've also been reminded by my students
11 that I have a hearing in a Virginia death penalty
12 case on May 26th but, if need be, that I feel sure
13 the Court will work with us on that. It's on a
14 non-jury matter.

15 THE COURT: All right. Alternatively, I
16 was looking at the week of June 5th and June 12th. I
17 mean, obviously, I have to present a couple options
18 to the people in Columbia. I don't just get to
19 necessarily pick. What about the 5th and 12th?

20 MR. BRUCK: That is -- that presents me
21 with the same problem in terms of those. The last
22 week in May and the first week in June, that's when
23 my daughter's high school graduation would be pending
24 between the ---

25 THE COURT: I see.

1 MR. BRUCK: It's -- if this case had been
2 tried when I lived in South Carolina, it would be a
3 lot easier.

4 THE COURT: Well, I'm going to shoot for
5 May 22nd and 29th and possibly bump it up one week.

6 Did anyone say there was a conflict
7 during the 15th of May? My problem is I'm scheduled
8 off, and that's going to present them with a problem
9 to swap it around if they can't swap someone to my
10 slot. Did anyone say anything about the 15th?

11 MR. BRUCK: No, sir.

12 THE COURT: Do you have a preference as
13 to the 22nd and 29th or the 5th and 12th of June?
14 What would you prefer?

15 MR. BELL: Your Honor, the state will
16 plan on being ready either time.

17 MR. BRUCK: We really don't have any
18 preference.

19 THE COURT: All right. We'll look at
20 that block and see what they say.

21 All right. I want to think about the
22 other issues, and we'll let you know of my decision.
23 Thank you.

24 MR. BELL: Thank you, Your Honor.

25 MR. BRUCK: Thank you very much, Your

1 Honor.

2 THE COURT: Do y'all want to take care of
3 the copying of that file for Mr. Myers?

4 MR. BRUCK: However the -- I mean, I will
5 take custody of the exhibit if the Court wants to let
6 me have it.

7 THE COURT: Have you seen all the
8 documents in there?

9 MR. BELL: I can look through them, just
10 here, as well. Some of them are duplicates, too. We
11 can pull those.

12 THE COURT: How many pages are there?

13 (Mr. Bruck and Mr. Bell review exhibit.)

14 MR. BELL: Do you want us to copy it here
15 or...

16 THE COURT: How long is it?

17 MR. BELL: I count about 39 or 40 pages.

18 THE COURT: I mean, if you don't have any
19 objection to his copying it and getting that --
20 putting that in the record here with the clerk.

21 MR. BELL: I have no objection to that,
22 as long as Solicitor Myers gets his original file
23 back, sure.

24 THE COURT: I don't mind if you want to
25 substitute a copy for this defendant's exhibit one.

1 MR. BRUCK: Okay. Your Honor, and I
2 noticed as I went through it one more time, some of
3 them are duplicates. So I won't copy -- I'll copy --
4 make one copy of everything that's in there and
5 return the original. So what's in will be one set of
6 each.

7 THE COURT: All right. Okay. Well, tell
8 you what, I need to hold that for now. I need to
9 look at that. Once we make a decision, we can let

10 ~~you know.~~

11 MR. BRUCK: Okay.

12 THE COURT: Anything else that we can
13 take care of?

14 MR. BRUCK: Excuse me.

15 (Mr. Bruck and the defendant confer.)

16 MR. BRUCK: Oh. We have a matter
17 respecting appointment of counsel that we'd like to
18 take up *ex parte* if we can.

19 THE COURT: Okay.

20 MR. BRUCK: So if Your Honor...

21 THE COURT: Is there anything else while
22 he's here?

23 MR. BELL: Nothing from the state.

24 THE COURT: All right. Anything we can
25 do to make sure it gets ready for trial if I don't

1 grant the relief?

2 MR. BELL: Not right that this moment. I
3 just have to -- we've started the process of looking
4 at witnesses, and we'll be getting information from
5 the county and looking at those.

6 MR. BRUCK: I predict there are going to
7 be some unusually challenging Brady issues in this
8 case, given the nature of the key witnesses. I
9 served the state on that to see what we have to do.

10 I know there will be a pretrial motion
11 coming from us, which I think I told you in our
12 conference call, very shortly to allow us to have
13 access, if he's willing to talk to us, to include
14 Defendant Southerland.

15 His lawyers are refusing to allow us to
16 talk to him even though he previously had made
17 statements, both in court and out of court,
18 exculpating Mr. Cooper and taking all of the
19 responsibility on himself. So, clearly, our trial
20 preparation requires ---

21 THE COURT: You say there's a witness
22 that is claiming responsibility?

23 MR. BRUCK: Mr. Southerland, the
24 codefendant, exercised his Fifth Amendment right and
25 didn't say anything during his own trial, and then

1 shortly thereafter gave a statement that I took and
2 then another statement in open court in his own
3 post-conviction hearing in which he said that in fact
4 he committed this murder by himself, that some of the
5 preparations involved another individual, that
6 Mr. Cooper was not involved in the conspiracy and was
7 not present at the crime. So it's as exculpatory as
8 it can be.

9 Since that time, his lawyers have
10 directed that we not speak with him. So we can't
11 talk to him to see if he is a potential trial
12 witness.

13 THE COURT: But you said he made that
14 statement under oath?

15 MR. BRUCK: Yes. I'm not sure if he was
16 sworn, but -- he first made a statement to me. That
17 was the basis of Mr. Myers' attempt to -- this is
18 what happened.

19 THE COURT: But, I mean ---

20 MR. BRUCK: Yeah.

21 THE COURT: --- sometimes that type of
22 information is presented at a bond hearing. So if
23 you have statements from someone saying that he
24 didn't do it...

25 MR. BRUCK: It is actually -- it's in the

1 record of the case, and I think we'd be happy to make
2 a copy of it and...

3 THE COURT: I think I just had that
4 delivered.

5 MR. BELL: Not a copy of
6 Mr. Southerland's PCR. That's a copy of the...

7 THE COURT: Trial?

8 MR. BELL: Of Mr. Cooper's PCR, including
9 the entire trial transcript.

10 MR. BRUCK: Yeah. Mr. Cooper's PCR
11 includes as an exhibit to the original PCR
12 application a copy of Mr. Southerland's statement.

13 THE COURT: Do you want to look for it?

14 MR. BRUCK: I'm not sure if the
15 application is here.

16 (The Court and Mr. Bruck review
17 documents.)

18 THE COURT: Mr. Bruck, do you remember
19 what document that was in?

20 MR. BRUCK: It was an attachment to the
21 application for post-conviction relief. It should be
22 towards the back of the PCR appendices. I should be
23 able to find it pretty quickly.

24 THE COURT: While he's looking, are you
25 familiar with that?

1 MR. BELL: I'm familiar with the
2 statement that Mr. Bruck apparently took.

3 Honestly, I've read Southerland's PCR
4 transcript, and I don't recall him ever saying
5 anything in the transcript, but I can go back and
6 look, but I don't recall that. I was reading it with
7 interest to what he was saying, and he never really
8 said anything.

9 THE COURT: But that testimony was not
10 presented at the trial?

11 MR. BRUCK: No.

12 MR. BELL: This happened post-trial. All
13 of this happened post-trial.

14 MR. BRUCK: All post-trial.

15 THE COURT: So he hadn't made that
16 statement before trial?

17 MR. BRUCK: No.

18 MR. BELL: No.

19 MR. BRUCK: No. He took his Fifth
20 Amendment and he ---

21 MR. BELL: He made it after his trial
22 which was after Mr. Cooper's trial.

23 MR. BRUCK: No. He made -- he made the
24 statement exculpating Mr. Cooper at his own
25 post-conviction hearing. He didn't testify at his

1 own trial, and he didn't testify -- he took the Fifth
2 Amendment when Mr. Cooper tried to call him at his --
3 at his trial.

4 THE COURT: And you're planning on
5 subpoenaing him for this trial?

6 MR. BRUCK: Yes, we are, but, of course,
7 we need to talk with him. There is an ethical
8 prohibition which, of course, could be overridden by
9 the Court if Mr. Southerland says he's willing to
10 talk to us, and we -- years past, he was. It was
11 only the lawyer standing between. And so our Sixth
12 Amendment right to prepare for trial seems to ---

13 THE COURT: Okay.

14 MR. BRUCK: --- trump his lawyer.

15 THE COURT: And the lawyer sitting in
16 between, was that before the PCR case?

17 MR. BRUCK: Before and after.

18 THE COURT: Okay.

19 (Mr. Bruck further reviews documents.)

20 MR. BRUCK: I am sorry, this is taking a
21 little longer time than I thought it would.

22 (Mr. Bruck further reviews exhibit.)

23 THE COURT: That presents a little bit of
24 an interesting question to me. Has the delay in fact
25 assisted him?

1 MR. BRUCK: We think not. When the case
2 was on direct appeal, Mr. Southerland was willing to
3 be a witness for Mr. Cooper. Now he -- we are told
4 that he no longer is willing. We don't know that,
5 because we can't find out.

6 THE COURT: Okay.

7 MR. BRUCK: So, if anything, this may
8 well turn out to be evidentiary harm.

9 (Mr. Bruck further reviews documents.)

10 MR. BRUCK: Mr. Bell, do you have a
11 volume seven? It's not here?

12 MR. BELL: We marked part, part of volume
13 seven and...

14 MR. BRUCK: Do you have the rest of it?

15 MR. BELL: That's all I've got. That's
16 all that was in the box.

17 MR. BRUCK: Okay. Oh, well. That's what
18 we're looking for. And I did not bring everything
19 with me.

20 (Mr. Bruck and Mr. Bell review
21 documents.)

22 MR. BRUCK: This can be off the record.

23 THE COURT: We can be off the record.

24 (There was off-the-record discussion,
25 after which the following proceedings were had:)

1 MR. BRUCK: Thank you. We will get this
2 to you as quickly as we can. Would a PDF attachment
3 be...

4 THE COURT: Yes, that's fine.

5 MR. BRUCK: That's probably the easiest.

6 THE COURT: That's easiest. Send that to
7 Culver. Copy it to the other side.

8 MR. BRUCK: Yes, sir. Anyway, there was
9 -- and I hadn't realize it would consume so much
10 time, but I did want the Court to know that that
11 matter is on the summary. It is the first item on
12 our pretrial motions docket. I will be getting that,
13 if need be...

14 THE COURT: Okay.

15 MR. BRUCK: --- filed quickly. The other
16 thing, as far as pretrial motions go, that we
17 indicated in our papers that I really wanted to
18 stress is that it's not until the rubber hits the
19 road in preparing the case for trial that we're
20 actually going to encounter trial relief issues.

21 THE COURT: I understand.

22 MR. BRUCK: And if we encounter something
23 serious, we'll have to make the motion again and
24 allow the Court to pass on it ---

25 THE COURT: Well, let me ask you, is that

1 time too soon for you?

2 MR. BRUCK: I'm sorry?

3 THE COURT: Is the date that I picked too
4 soon?

5 MR. BRUCK: Well, it probably would
6 not...

7 THE COURT: There is kind of a box when
8 you ask for a speedy trial.

9 MR. BRUCK: Not if we were asking for a
10 speedy trial. It's a box when you want a speedy
11 trial.

12 THE COURT: Yes. I understand that.

13 MR. BRUCK: What I would prefer to do is
14 to have an early date, and if we have to ask you to
15 set it back a very short while...

16 THE COURT: Well, the only caution about
17 that, as you understand ---

18 MR. BRUCK: I understand.

19 THE COURT: I've had this come up before.
20 I get a case set and then someone says we need a
21 delay, and then it takes six months or so to pull
22 something out, you know, to get the scheduling change
23 done.

24 MR. BRUCK: Yeah.

25 THE COURT: Can you come see if this

1 might be it? We might have it.

2 (There was off-the-record discussion.)

3 (Mr. Bruck further reviews documents.)

4 MR. BRUCK: I took the statement, myself.
5 And, like, this is Southerland's statement. I might
6 cover that, as well. Then he also stood and either
7 made his unsworn statement or testified at his own
8 post-conviction hearing.

9 THE COURT: Oh, so we don't have the
10 post-conviction transcript in here.

11 MR. BELL: No, that's not the transcript.
12 That's just the....

13 THE COURT: Yeah.

14 MR. BRUCK: But that was -- that excerpt
15 was attached as an exhibit to Mr. Cooper's
16 post-conviction hearing. So it should be in the --
17 in the PCR record.

18 THE COURT: All right. I'll let you send
19 that to us.

20 MR. BRUCK: Okay. It needs to be
21 stapled.

22 (Mr. Bruck tenders document to the
23 Court.)

24 THE COURT: All right. Anything else?

25 MR. BRUCK: I don't believe so, no, sir.

1 THE COURT: All right. If for some
2 reason you find something else you want to add before
3 I actually rule, I'll let you do that, but I will not
4 when I rule on it. Okay?

5 MR. BRUCK: Okay.

6 THE COURT: Thank you.

7 MR. BRUCK: Thank you.

8 MR. BELL: Thank you, Your Honor.

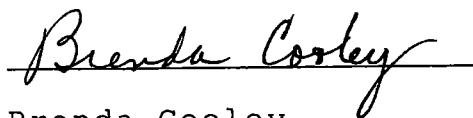
9 (Whereupon, the hearing is concluded at
10 approximately 3:00 p.m.)
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CERTIFICATE OF THE COURT REPORTER

I, the undersigned, Brenda Cooley, Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned case, pages 3 through 164, inclusive, relative to appeal, in the Court of General Sessions for Lexington County, Lexington, South Carolina, said hearing having been heard at the Court of General Sessions, Charleston County, Charleston, South Carolina, on the 8th day of February 2006.

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

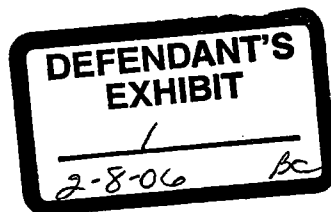
December 8, 2007



Brenda Cooley

Circuit Court Reporter

STATE v. Tony Cooper, JR.



State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

268

COUNTIES
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McCORMICK / SALUDA
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LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS
Solicitor

July 13, 2005

The Honorable Henry McMaster
South Carolina Attorney General
P. O. Box 11549
Columbia, SC 29211-1549

The State v. Gene Tony Cooper

Dear Henry:

After a hearing in the above capital case, Judge William P. Keesley issued the enclosed Order dated July 12, 2005, disqualifying my office from the re-trial. As the Order states, Deputy Solicitor Rick Hubbard was the law clerk for the presiding judge in the initial trial, and he was present and privy to in-camera and ex parte communications between the defense attorneys and the presiding judge which included attorney-client matters.

My office will certainly assist with files and documents being transferred to the new prosecutor. We need to be actively involved in the transfer of these materials since I will be prosecuting the co-defendant, Robert Southerland, at a later date and will need some of the same materials for that case.

Thanking you for your assistance and cooperation, I am

Very truly yours,

Donald V. Myers

DVM/mad
Enclosure

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

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DONALD V. MYERS

Solicitor

June 29, 2005

BETTY A. CARROLL
CLERK OF COURT
LEXINGTON SC

JUN 29 P 3:41

FILED

The Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

The Honorable Marc H. Westbrook
Judge, Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

RE: The State v. Gene Tony Cooper

Dear Judges Keesley and Westbrook:

I am uncertain which of you are authorized to hear pending matters in the above case, or if another judge has been assigned as the presiding judge. Therefore, I am writing both of you.

It has been brought to my attention that my office and I have a major conflict which would prevent us from being involved in the prosecution. Deputy Solicitor Rick Hubbard, whose office is next to mine and who is most closely associated with me and the operation of my office, was the law clerk for Judge Hubert Long who presided over the initial trial. Rick was present and actively assisted Judge Long in numerous in-camera and ex parte proceedings with the defendant's attorneys which included confidential and attorney-client discussions and strategies. Therefore, I certainly do not intend for my office to become

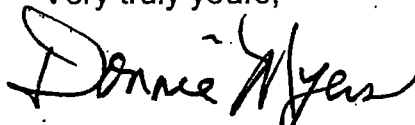
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[Signature]

Page Two
June 29, 2005

involved in an attorney-client issue, and I will officially disqualify the Eleventh Judicial Circuit Solicitor's Office at the next hearing.

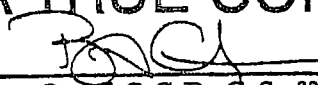
Very truly yours,



Donald V. Myers

DVM/mad
Cc: David I. Bruck, Esq.

A TRUE COPY



Lex. Co. C.C.C.P., G.S. & F.C.

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

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DONALD V. MYERS
Solicitor

August 23, 2005

The Honorable William P. Keesley
Administrative Judge
Eleventh Judicial Circuit
P. O. Box 10
Edgefield, SC 29824

RE: The State v. Tony Cooper

Dear Judge Keesley:

This is to advise you of the status of the above case. I have been informed that First Judicial Circuit Solicitor David Pascoe has been requested to assume prosecution of this case. However, I do not know whether he has made a decision concerning that request.

Your July Order directed my office directed my Office to transmit the file to the Attorney General's Office or the designated prosecutor. This is to inform you that we have delivered the file to the Attorney General's Office.

Very truly yours,

Donald V. Myers

DVM/mad

Cc: The Honorable Henry McMaster
The Honorable David Pascoe
Mr. David Bruck, Director, Virginia Capital Case Clearing House
Washington and Lee School of Law
Lexington, VA 24450

Dayton Riddle

From: David Bruck [BruckD@wlu.edu]
Sent: Tuesday, August 16, 2005 7:29 PM
To: Donald V. Myers
Cc: Dayton Riddle; stuart.andrews@nelsonmullins.com; duncan@pdlex.com; WKeesleyj@sccourts.org
Subject: State v. Tony Cooper

Donnie:

Since we have heard nothing further since Judge Keesley granted your motion to withdraw at the last hearing on July 12, 2005, I'm sending this to ask you to advise me who now represents the State in the Cooper matter.

All best,

David

David Bruck
Clinical Professor of Law
Director, Virginia Capital Case Clearinghouse
Washington & Lee School of Law
Lexington, Virginia 24450
540-458-8188 (direct)
540-460-8178 (cell)

8/23/2005

Kensley

Tues July 12, 2005

Speedy Trial Order

April 25

Bruck's e-Mail
Trial May-Aug

April 26

Kensley E-Mail
will speak to Wutthuk

April 27

DVM letter to Wutthuk
May-August No good

May 18

Motion to Enjoin D & C

May 18

Bruck Motion to Dismiss

May 27

DVM letter Kensley & Wutthuk
Sol has conflict

June 29

Bruck letter to Kensley

July 5

Hearing

July 12

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

274

COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
FAXES: (803) 785-8431 or (803) 785-8255



LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS
Solicitor

May 18, 2005

The Honorable Marc H. Westbrook
Eleventh Judicial Circuit Judge
205 E. Main Street
Lexington, South Carolina

RE: The State v. Gene Tony Cooper, Jr.

Dear Judge Westbrook:

As you know, Judge Keesley issued an Order (copy enclosed) directing my Office to speak with you to set a date for the trial of the above case in 2005. I respectfully suggest that a hearing be held as soon as it is convenient to discuss this issue as well as other matters.

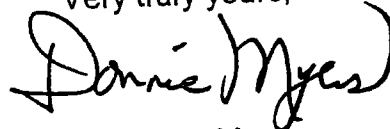
In an e-mail to Judge Keesley (copy attached), Mr. Bruck requested the case be set between May and August. As you know, another capital case is scheduled during that time. Also, this and other factors would make that time span impossible.

Further, enclosed is a Motion to Disqualify and Recuse Defendant's Attorneys and Agents which was filed today. You will recall that I raised this

Page Two
May 18, 2005

issue at a previous hearing at which Mr. Bruck objected because a formal written Motion had not been served.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donnie Myers", written in a cursive style.

Donald V. Myers

DVM/mad

Enclosures

Cc: The Honorable William P. Keesley
Mr. David I. Bruck

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	
THE STATE,	)	
	)	
-vs-	)	ORDER FOR SPEEDY TRIAL
	)	
GENE TONY COOPER,	)	Case Number: 1990-GS-32-0083
	)	1990-GS-32-0084
Defendant.	)	

The defendant has moved for a speedy trial. The case is to be heard before the end of 2005, or the defendant may move for bail or for dismissal of the charges.

Mr. Cooper had been convicted and sentenced to death, but was granted Post-Conviction Relief, which was affirmed by the South Carolina Supreme Court in 2002. A speedy trial motion was argued before The Honorable Marc H. Westbrook on August 18, 2003. Judge Westbrook needed to check the court's schedule and directed that a hearing be scheduled in a couple of weeks. A meeting was held in chambers on August 25, 2003, during which the State indicated that the case would be tried in the Spring of 2004. The case has not been called for trial yet.

The court directs that the Solicitor's office speak with the Judge assigned to this case and to the Chief Judge for Administrative Purposes and select a firm date for the commencement of the trial, which shall begin in 2005. Notice of that date is to be given to defense counsel within 30 days from today's date.

AND IT IS SO ORDERED.

15/ WILLIAM P. KEESLEY
 William P. Keesley
 Judge

April 25, 2005

Donald V. Myers

From: David Bruck [BruckD@wlu.edu]
 Sent: Tuesday, April 26, 2005 9:26 PM
 To: bcarrigg@lex-co.com; Donald V. Myers; Dayton Riddle; hfrick@lex-co.com; Rick Hubbard;
 WKeesleyj@sccourts.org
 Cc: MWestbrookj@sccourts.org; MWestbrookLC@sccourts.org
 Subject: Re: FW: State vs. Gene Tony Cooper (90-GS-32-0083 and 0084)

Dear Judge Keesley:

I realize that scheduling a trial to suit everyone is never easy, but since you invited us to advise if there were any problems, I have to say that there is one.

As I mentioned at the speedy trial motion hearing before you on February 15, 2005, I'm now a law professor at Washington & Lee, and am available to try this case from early May to early August. From mid-August to early December I am both teaching a lecture course and running the Virginia Capital Case Clearinghouse, a clinical program at W&L.

Normally such conflicts would be my problem and no one else's. But here my scheduling crunch is actually a result of the state's long delay in bringing this case to trial. Mr. Cooper is extremely anxious to have me defend him, and has been asking me for years not to hand over his case to anyone else. It does not seem fair for the state to force either a further delay of the trial into 2006 or else a change of counsel by, in effect, waiting me out. This is especially true considering Mr. Cooper's three motions for speedy trial, and considering the state's prior commitment, reflected in your order, to bringing the case to trial in the spring of 2004.

Under the circumstances, I must respectfully renew my request that this case be set for trial on or before August 1 of this year. This request is made so that Mr. Cooper will not be unfairly disadvantaged by the state's unjustified and (to me at least) unexplained delay in calling his case for trial.

Thank you for your understanding and assistance in this matter.

Yours truly,

David Bruck

From: Keesley, William P.
 Sent: Monday, April 25, 2005 2:25 PM
 To: 'bruckd@wlu.edu'; Myers, Donnie; Riddle, Dayton; Hubbard, Rick; Carrigg, Beth; Frick, Hope
 Subject: State vs. Gene Tony Cooper (90-GS-32-0083 and 0084)

Attached to this email is a copy of the Order entered in response to the defendant's motion for speedy trial. Please let me know if there are any problems. Thank you. [wpk]

David Bruck
 Director
 Virginia Capital Case Clearinghouse
 Washington & Lee Law School
 Lexington VA 24450
 540-458-8188

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
FAXES: (803) 785-8431 or (803) 785-8255



LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS

Solicitor

June 29, 2005

BETTY A. COOPER
CLERK OF COURT
LEXINGTON, SC

JUN 29 P 3:41

FILED

The Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

The Honorable Marc H. Westbrook
Judge, Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

RE: The State v. Gene Tony Cooper

Dear Judges Keesley and Westbrook:

I am uncertain which of you are authorized to hear pending matters in the above case, or if another judge has been assigned as the presiding judge. Therefore, I am writing both of you.

It has been brought to my attention that my office and I have a major conflict which would prevent us from being involved in the prosecution. Deputy Solicitor Rick Hubbard, whose office is next to mine and who is most closely associated with me and the operation of my office, was the law clerk for Judge Hubert Long who presided over the initial trial. Rick was present and actively assisted Judge Long in numerous in-camera and ex parte proceedings with the defendant's attorneys which included confidential and attorney-client discussions and strategies. Therefore, I certainly do not intend for my office to become

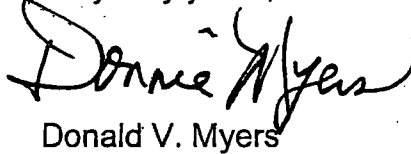
A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Page Two
June 29, 2005

involved in an attorney-client issue, and I will officially disqualify the Eleventh Judicial Circuit Solicitor's Office at the next hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donnie Myers", written over the typed name.

Donald V. Myers

DVM/mad
Cc: David I. Bruck, Esq.

A TRUE COPY


Lex. Co. C.C.O.P., G.S. & F.C.

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

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TELEPHONE: (803) 785-8352

DONALD V. MYERS

Solicitor

June 29, 2005

BETTY A. DAVIS
CLERK OF COURT
LEXINGTON SC

005 JUN 29 P 3:41

FILED

The Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

The Honorable Marc H. Westbrook
Judge, Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

RE: The State v. Gene Tony Cooper

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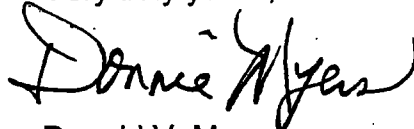
A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Page Two
June 29, 2005

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Very truly yours,



Donald V. Myers

DVM/mad

Cc: David I. Bruck, Esq.

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.

DAVID I. BRUCK
Attorney at Law

1247 Sumter Street, Suite 201
Columbia, South Carolina 29201

Mailing Address: P.O. Box 11744
Columbia, South Carolina 29211

Telephone: (803) 765-1044
Fax: (803) 765-1143
E-mail: bruckd@wlu.edu

July 5, 2005

Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
PO Box 10
Edgefield, SC 29824

Via E-mail and U.S. Mail

RE: The State v. Gene Tony Cooper, Jr.
90-GS-32-83, 90-GS-32-84

Dear Judge Keesley:

I have just received a copy of a letter from Solicitor Myers to you and Judge Westbrook, dated June 29, 2005 and postmarked June 30, 2005, advising of his office's intention to withdraw from the prosecution of this case due to a possible conflict.

While I appreciate and respect Mr. Myers' concern over the situation that has prompted this action, its timing creates a potential problem. Mr. Cooper has been awaiting retrial since August of 2002, and his successive motions for speedy trial have been pending for nearly two years. We are now one week away from a scheduled hearing before you on Mr. Cooper's motion to dismiss for lack of speedy trial or, in the alternative, for release on bond pending his retrial. I infer from Mr. Myers' letter that he plans to take no action at this hearing other than to "officially disqualify" his office.

Given the circumstances, it would be extremely unfair to deny or further delay Mr. Cooper's scheduled day in court due to the Solicitor's withdrawal. Therefore, I write to request that the state be prepared, with new counsel, to go forward as scheduled with the hearing on Mr. Cooper's pending motion on July 12.

Thank you for your kind assistance in this matter. Owing to the lateness of Mr. Myers' announcement, I am taking the liberty of sending this letter to you by e-mail as well as by mail.

Yours truly,

David I. Bruck

David I. Bruck

cc: Hon. Marc H. Westbrook
Hon. Beth Carrigg, Clerk of Court
Solicitor Donald V. Myers
Deputy Solicitor Dayton Riddle
Stuart M. Andrews, Esq.
John Earl Duncan, Esq.
Carson Sowell, Esq.
Tony Cooper

DAVID I. BRUCK
Attorney at Law

1247 Sumter Street, Suite 201
Columbia, South Carolina 29201

Columbia, South Carolina 29211

Mailing Address: P.O. Box 11744
Fax: (803) 765-1143
E-mail: bruckd@wlu.edu

Telep

July 5, 2005

Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
PO Box 10
Edgefield, SC 29824

Via E-mail and U.S. Mail

RE: The State v. Gene Tony Cooper, Jr.
90-GS-32-83, 90-GS-32-84

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David I. Bruck

cc: Hon. Marc H. Westbrook
Hon. Beth Carrigg, Clerk of Court
Solicitor Donald V. Myers
Deputy Solicitor Dayton Riddle
Stuart M. Andrews, Esq.
John Earl Duncan, Esq.
Carson Sowell, Esq.
Tony Cooper

LAW OFFICES OF
DAVID I. BRUCKDavid I. Bruck
Robert E. Lominack1247 Sumter Street, Suite 201 (29201)
Mailing Address: P.O. Box 11744
Columbia, South Carolina 29211Telephone: (803) 765-1044
Fax: (803) 765-1143
E-mail: david@brucklaw.com

August 7, 2003

Dayton Riddle, Esq.
Deputy Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse Annex
105 South-Lake Drive
Lexington, SC 29072

(Via Fax 359-8255)

RE: The State v. Gene Tony Cooper, Jr.
90-GS-32-83, 90-GS-32-84

Dear Dayton:

Please be advised that Judge Westbrook has scheduled a hearing on my Amended Motion for Speedy Trial at 2:30 p.m. today, August 7th, 2003 at the Lexington County Courthouse. I intend to waive my client's presence at this hearing. I look forward to seeing you at that time.

With all best personal regards, I remain,

Yours truly,



David I. Bruck

DIB/njh

cc: Hon. Marc H. Westbrook
Hon. Tom Comerford, Clerk of Court
Mr. Tony Cooper

LAW OFFICES OF
DAVID I. BRUCK

David I. Bruck
Robert E. Lominack

1247 Sumter Street, Suite 201 (29201)
Mailing Address: P.O. Box 11744
Columbia, South Carolina 29211

Telephone: (803) 765-1044
Fax: (803) 765-1143
E-mail: david@brucklaw.com

July 16, 2003

Dayton Riddle, Esq.
Deputy Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse Annex
105 South Lake Drive
Lexington, SC 29072

RE: The State v. Gene Tony Cooper, Jr.

Dear Dayton:

This is to followup on my telephone message of Monday, July 14th regarding the pending speedy trial motion in the above-referenced case. I would greatly appreciate your arranging for Mr. Cooper to brought to Court during the latter part of the week of August 4th, when Judge Westbrook is holding a term of General Sessions Court. I can argue the speedy trial motion on either Wednesday, Thursday or Friday of that week, whichever is most convenient for you.

I look forward to hearing from you shortly regarding the date and time for this motion hearing.

Thank you for your kind assistance in this matter.

Yours truly,

David I. Bruck

David I. Bruck

DIB/njh

cc: Hon. Tom Comerford, Clerk of Court

LAW OFFICES OF
DAVID I. BRUCK

David I. Bruck
Robert E. Lominack

1247 Sumter Street, Suite 201 (29201)
Mailing Address: P.O. Box 11744
Columbia, South Carolina 29211

Telephone: (803) 765-1044
Fax: (803) 765-1143
E-mail: david@brucklaw.com

July 11, 2003

Tom Comerford, Clerk of Court
Lexington County Courthouse
139 E. Main Street
Lexington, SC 29072

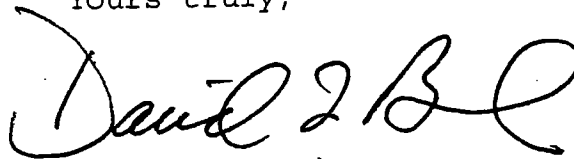
Dear Mr. Comerford:

Please find enclosed, with proof of service, the original and one copy of Defendant's Amended Demand for Speedy Trial.

Please replace the motion that was sent on July 10th with this amended motion. Please return a stamped copy to me in the enclosed self-addressed stamped envelope.

If you should have any question, please do not hesitate to contact this office.

Yours truly,

A handwritten signature in black ink, appearing to read "David I. Bruck", written in a cursive style.

David I. Bruck

enclosure

DIB/njh

cc: Dayton Riddle, Esq.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF LEXINGTON) 90-GS-32-83
) 90-GS-32-84

STATE OF SOUTH CAROLINA)
)
)
) Defendant's Motion No. 1
) DEFENDANT'S AMENDED
) DEMAND FOR SPEEDY TRIAL
)
)
 GENE TONY COOPER,)
)
) Defendant.
)
 _____)

TO THE HON. DONALD V. MYERS, SOLICITOR, -ELEVENTH JUDICIAL
 CIRCUIT:

You will please take notice that the defendant Gene Tony Cooper hereby moves, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90 (West 2003), a speedy trial of all charges now pending against him. In support of this motion, he would show:

1. In 1990, The defendant was indicted for kidnaping, armed robbery, conspiracy, and murder in connection with the death of Kimberly Quinn. He was convicted and sentenced to death on the murder count, and to terms of years for the other offenses, on February 22, 1991.

2. On January 10, 1994, the South Carolina Supreme Court reversed the defendant's murder conviction and remanded that

count for a new trial. At the same time, the South Carolina Supreme Court affirmed the defendant's other convictions and sentences. State v. Cooper, 312 S.C. 90, 439 S.E.2d 276 (1994).

3. On September 4, 1995, the defendant filed an application for post-conviction relief respecting his noncapital convictions. Counsel for the state and for the defendant informally agreed that the retrial of the murder charge should await disposition of his PCR challenge to the remaining counts.

4. The post-conviction court granted relief with respect to all of the defendant's remaining convictions on December 3, 1998, following an evidentiary hearing. The state appealed, and on August 12, 2002 the South Carolina Supreme Court affirmed the grant of post-conviction relief. Cooper v. Moore, 351 S.C. 207, 569 S.E.2d 330 (2002).

5. The state did not petition for rehearing, and the Clerk of the South Carolina Supreme Court sent down the remittitur to the Circuit Court for Lexington County on August 29, 2002.

6. Since August 29, 2002, the state has, to the defendant's knowledge, taken no action to bring him to trial.

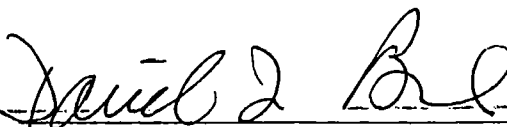
7. On June 23, 2003, Deputy Solicitor Riddle returned a telephone inquiry from defense counsel and advised that the state would respond to counsel's informal inquiry regarding a trial date in ten days. The ten day period elapsed on July 3, 2003. On July 11, 2003, Mr. Riddle returned counsel's call but advised

that the State was currently not in a position to propose a date certain for the trial of this case.

8. The defendant remains in confinement awaiting his retrial.

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper demands a speedy trial of all charges now pending against him.

Respectfully submitted,



DAVID I. BRUCK
P.O. Box 11744
Columbia, SC 29204
(803) 765-1044

ATTORNEY FOR GENE TONY COOPER

July 11, 2003

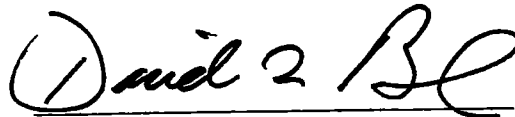
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	90-GS-32-83
	)	90-GS-32-84

STATE OF SOUTH CAROLINA	)	
	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
GENE TONY COOPER,	)	
	)	
Defendant.	)	
_____	)	

I do hereby certify that I have served upon counsel for the State defendant's Amended Demand for Speedy Trial, by first class mail, with postage prepaid and addressed to:

Dayton Riddle, Esq.
 Deputy Solicitor
 Eleventh Judicial Circuit
 Lexington County Courthouse Annex
 105 South Lake Drive
 Lexington, SC 29072

This the 11th day of July, 2003.


 David I. Bruck

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	
THE STATE,	)	
	)	
-vs-	)	ORDER REGARDING MOTIONS
	)	
GENE TONY COOPER,	)	Case Number: 1990-GS-32-0083
	)	1990-GS-32-0084
Defendant.	)	

Several motions are pending in this death penalty case. (1) The State's motion to remove defense counsel is denied. (2) The State's motion to have the 11th Circuit Solicitor's office disqualified is granted. (3) The defendant's motion to dismiss is denied. (4) The defendant's motion for bail is denied. To the extent that the defense is reasserting a motion for speedy trial, that issue is already covered in the Order of April 25, 2005, directing that the case be tried in 2005.

(1) REMOVAL OF DEFENSE COUNSEL

The State has moved to have defense counsel, David I. Bruck, Esquire, and his co-counsel and agents removed from the case based on allegations that he had unauthorized communications with a co-defendant, Robert "Bo" Southerland, without the knowledge or consent of Mr. Southerland's attorneys. While there may be issues related to this matter that have to be resolved by the judge assigned to handle this case or by those charged with enforcement of the rules of ethics, the motion is denied at this point. There has not been a sufficient showing to justify removal of defense counsel.

(2) DISQUALIFICATION OF THE SOLICITOR'S OFFICE

The State has also moved to have the Solicitor's Office of the Eleventh Judicial Circuit disqualified on the case due to a conflict of interest. A Deputy Solicitor, S. Richardson Hubbard, III, was serving as law clerk to the trial judge who presided over

Mr. Cooper's first trial. As such, the current Deputy Solicitor was privy to *ex parte* proceedings related to attorney-client matters. The court agrees that the Solicitor's Office for the Eleventh Judicial Circuit should be disqualified based on this conflict.

(3) DISMISSAL BASED ON FAILURE TO HAVE A SPEEDY TRIAL

The defendant was arrested on October 11, 1989. In February 1991, he was sentenced to death for murder and also received sentences for kidnapping, armed robbery, and conspiracy to commit armed robbery. The Supreme Court of South Carolina reversed his murder conviction in 1994. He was granted post-conviction relief (PCR) by this court on the other convictions in December 1998. The granting of PCR was affirmed in August 2002.

Mr. Cooper has been incarcerated on these charges for about 16 years. Since at least August 2002, he has repeatedly sought to have his case called for trial. There are several speedy trial motions. When the Honorable Marc H. Westbrook was Chief Judge for Administrative Purposes, he held hearings and status conferences in an attempt to get this case set for re-trial. At the last conference with Judge Westbrook, the State indicated that it intended to call the trial in the Spring of 2004. No formal Order was issued.

After the undersigned judge was designated as Chief Judge for Administrative Purposes, another speedy trial motion was heard, from which an Order issued on April 25, 2005. It directed that the case be called for trial in 2005, failing which the defense could move again for dismissal or speedy trial. One of the defense attorneys, Mr. Bruck, is now a full-time professor of law at Washington and Lee University in Virginia. Upon receiving the Order, he contacted the court and indicated that he needed to have the case tried before the school year resumed. Then, the Solicitor filed the motions to remove Mr. Bruck from the case and to disqualify the 11th Circuit Solicitor's office.

The court finds insufficient cause at this stage to dismiss the charges. Obviously, the court is troubled by the fact that the removal of the Solicitor's office from the case may result in a further delay of the trial. However, the court does not accept the

defense's assertion that this is part of an intentional pattern of delay. If the case is not heard by the end of 2005, the judge assigned to the case may consider whether the case should be dismissed or bail should be granted.

(4) REQUEST FOR BAIL

Defense counsel strenuously argued that the defendant should be released on bail. The motion is denied. If the case is not tried as directed in the April 2005 Order, the motion may be reasserted.

CONCLUSION

The court will probably not be able to accommodate Mr. Bruck's request that the case only be tried during periods when he is not involved in his professorial duties, while also trying to schedule the case at the earliest possible time. The court knows of 8 cases with death penalty notices in Lexington County, as well as several other cases which would have been pursued as death penalty cases but for the United States Supreme Court's determination that persons who were minors at the time of committing an offense cannot be executed.

One of the pending cases involving a minor has a defendant who has never been tried, despite spending 10 years in pretrial detention. That case is also one in which the Solicitor's office of this circuit has been disqualified. Today, a date was set for that trial to begin in November 2005. This court is willing to take extraordinary steps to move terms around to accommodate the trial of Mr. Cooper's case, even though there are also serious scheduling problems involving the backlog of civil court. If the newly assigned prosecutors can be ready to try this case in 2005, it is unlikely that it could be done around the calendar of the law school at Washington and Lee.

On the other hand, this court has frequently expressed its deep concern about the length of time that people accused of crimes are being required to sit in jail (in this case, on death row) awaiting trial. The court is aware that there are many reasons for this situation, including the explosive growth of this county. But, defense counsel is correct

in his protestations that the constitutions of the United States and South Carolina must mean something when they afford to everyone the right to a speedy trial.

The court has previously had communications with the Chief Justice about the need to schedule the large number of death penalty cases pending in Lexington County. Today, the court received a list of the pending cases, which will be forwarded to the Chief Justice. Notice is being given today to the Chief Justice, Court Administration, and the Attorney General's office about this decision and the need for expedited steps to bring this matter to trial.

The court directs that the Solicitor's office transmit its file to the Attorney General's office or the designated prosecutors immediately.

AND IT IS SO ORDERED.

William P. Keesley
Judge

July 12, 2005

jack

	Name	DOA	# of	Charges	ASOL	Def Atty	Disp	DI
1	Patterson, Raymond				DVM	Bill Toal	n	
2	cooper, tony gene				1st	Bruck	n	
3	Southerland, Rober				RKM		n	
4	charping, james				DVM		n	
5	Powers, Ted Benjar				CDR	D Holt	y	
6	Stinton, Joseph James	11/18/94	1		SHY		y	
7	gilbert, jacqueline	4/6/95	1		RWP		n	
8	Radwill, Calen John	11/3/95	6		7TH	DELGADO	y	
9	jamison, jamil	11/30/95	2		SRH		y	
10	kelly, william	1/10/96	4		DSG	KIRKLAND/Fullwood	n	
11	jones, jeffrey	2/6/96	5		CDR	MCCAULEY	n	
12	hutto, terry	3/19/96	2		CDR		n	
13	brown, toby	4/3/96	2		DVM		n	
14	Starnes, Norman E	5/27/96	2		16TH		n	

*There were only 31 pgs.
not 33.*

*This exhibit was
stoppled and showed
no signs of any
pages being torn
off.*

HF

**DEFENDANT'S
EXHIBIT**

2
2-8-06 BC

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Da
1	Patterson, Raymond	11/1/84	1		DVM	Bill Toal	n	
2	cooper, tony gene	10/11/89	3		1st	Bruck	n	
3	Southerland, Robert H	11/16/89	1		RKM		n	
4	charping, james	2/2/90	3		DVM		n	
5	Powers, Ted Benjamin	1/29/91	1		CDR	D Holt	y	
6	Stinton, Joseph James	11/18/94	1		SHY		y	
7	gilbert, jacqueline	4/6/95	1		RWP		n	
8	Radwill, Calen John	11/3/95	6		7TH	DELGADO -	y	
9	jamison, jamil	11/30/95	2		SRH		y	
10	kelly, william	1/10/96	4		DSG	KIRKLAND/Fullwood	n	
11	jones, jeffrey	2/6/96	5		CDR	MCCAULEY	n	
12	hutto, terry	3/19/96	2		CDR		n	
13	brown, toby	4/3/96	2		DVM		n	
14	Stames, Norman E	5/27/96	2		16TH		n	

**DEFENDANT'S
EXHIBIT**

2
2-8-06 BC

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dist Date
15	Rand, Thomas	9/26/96	9		CDR	DUNCAN	n	
16	Wise, Michael	11/18/96	1		RMM		n	
17	Todd, William A	11/23/96	1		MMM		y	
18	erving, david	7/14/97	6		SRH		y	
19	Smith, Clyde Arnold	10/10/97	1		RCC	wayne floyd	y	
20	dumey, walter	2/15/98	1		AG		n	
21	gentry, melvin	2/20/98	2		AG		y	
22	green, timothy	5/18/98	2		LGW	Tom Young	y	
23	forrest, joshua	6/8/98	2		DSG		y	
24	lott, nancy	6/17/98	7		LGW		y	
25	barnes, daniel	7/26/98	1		SHY	Carol McCurry	n	
26	Ward, Woodrow Anthony	8/21/98	4		KC		y	
27	Serra, Thomas Edward	10/22/98	2		LGW	Bob Mills	n	
28	Wilson, Carroll E	11/17/98	1		AG		n	
29	akrim, musa neelain	11/22/98	1		AG		n	
30	gadson, sheila	11/22/98	1		AG		n	
31	mccary, teresa	12/9/98	1		SJM	Sally Henry	n	
32	bolton, jennifer	2/12/99	1		PTI		y	
33	HUTTO, ROBERT B.	3/11/99	4		DSG		y	
34	haselden, jeffrey	5/16/99	1		DVM		n	
35	Thompson, Kevin Andrew	6/13/99	1		DBM		y	
36	mueller, douglas	7/1/99	2		RMM		y	
37	corley, lee	7/4/99	5		DVM		y	
38	harmon, jodie	7/13/99	1		LGW	Lisa McPherson	n	
39	hutto, garrett	7/24/99	5		LGW	Wayne Floyd	y	
40	Wood, Michael	8/3/99	4		AG		n	
41	bradwell, charles	8/30/99	6		AGA	Beth Fullwood	y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
42	Volious, Vance Edward	9/9/99	1		KYR		y	
43	Wright, Francis Lee	9/24/99	3		SHY	Wayne Floyd	y	
44	maroney, alisha	11/5/99	1		SHY		y	
45	Trotter, Marvin Richard	11/24/99	1		DSG	Sam Kramer	y	
46	Warren, Tony	12/1/99	2		SHY	Marlene Sipes	y	
47	adams, shedrick jr	12/6/99	1		KYR		y	
48	howell, annie	12/7/99	2		AGA	Lisa McPherson	y	
49	mitchell, sharon	12/9/99	2		AGA	Lawrence Simmons	n	
50	Pearson, Linda Ann	12/9/99	2		AGA	Sally Henry	y	
51	West, Andrew	12/24/99	4		SHY		y	
52	flott, julius	12/29/99	4		AGA	Dennis Bolt	y	
53	coston, john	1/15/00	1		DVM		y	
54	Stone, James Brian	1/19/00	3		SJM	Ralph Kennedy	y	
55	coward, denise	2/12/00	2		DVM		y	
56	elders, melvin	2/22/00	2		AW		y	
57	english, terry	2/22/00	2		DBM	wayne floyd	n	
58	Williamson, Latanya M	2/23/00	1		DVM		y	
59	johnson, chasity	3/9/00	3		FAB	Beth Fullwood	y	
60	Spivey, John Wayne	3/18/00	1		DSG	Jack Swerling	n	
61	michaels, edward	3/20/00	1		SJM		y	
62	jeffcoat, anthony	3/27/00	1		JM	Heath Taylor	y	
63	nelson, reginald	3/29/00	2		KC		y	
64	mccray, tabitha	4/7/00	2		LGW		y	
65	Wilson, Ryan Lee	4/9/00	1		SHY		y	
66	mcdaniel, harriete	4/11/00	3		KC	James Sarvis	y	
67	Reid, Connie Lynn	4/12/00	3		LGW	Neal Lourie	n	
68	moore, david	4/13/00	1		KC		y	
69	brown, robin	4/20/00	1		rcc	Theo Williams	n	
70	higgins, alex	4/27/00	1		LGW		y	
71	goodwin, alvin	4/29/00	2		DVM		y	
72	Watson, Alexander Jr	4/29/00	3		DVM	Cam Littlejohn	y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dist Date
73	barr, darrell	5/4/00	7		CDR	Beth Fullwood	n	
74	milam, justin	5/6/00	3		WJH		y	
75	corder, rex	5/9/00	1		SHY		n	
76	leaphart, al	5/12/00	1		LGW		y	
77	mosley, michael	5/12/00	3		LGW		n	
78	griffin, damien	5/17/00	3		AGS		y	
79	Reed, Byron K	5/26/00	4		SRH		y	
80	corley, tony	5/31/00	2		FAB		y	
81	Rowland, Deeanna Bray	6/5/00	1		LGW		y	
82	Welsh, William L	6/7/00	1		CGS		y	
83	Reese, Vincent D	6/11/00	1		AGA		y	
84	mincy, elijah	6/13/00	1		KYR		y	
85	nutter, christopher	6/13/00	1		SRH		y	
86	Hagins, woodrow	6/17/00	4		MMM		y	
87	Way, Ricky	6/25/00	4		LGW		n	
88	martin, timothy	8/6/00	2		RCC		y	
89	Scott, Tremaine	8/7/00	6		LGW	Adriane Falgione	n	
90	Toney, Matt Earl	8/7/00	6		LGW	Bob Mills	n	
91	hammond, cameron	8/9/00	1		SJM	Lisa McPherson	y	
92	chatman, calvin	8/22/00	6		SHY		y	
93	dantzler, maurice	8/22/00	1		LGW	Pro Se	y	
94	hammond, thomas	8/23/00	5		AGA		y	
95	Shakkori, Jasem Moham	9/1/00	1		CDR	Paul Reeves	n	
96	Thompson, Jamin Larry	9/2/00	1		LGW	James Corley	y	
97	Wade, Charles N	9/4/00	1		DBM	Sam Kramer	Y	
98	Price, Bobby Joe	9/11/00	2		SJM	Theo Williams	n	
99	butler, everett	9/15/00	3		AW	Sam Kramer	n	
100	johnson, james	9/27/00	5		AW	Kirk Morgan	n	
101	mims, scott	9/27/00	1		SCB		y	
102	jones, robert	10/4/00	1		LGW	Richard Breibart	n	
103	grant, christina	10/7/00	3		AHE		y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
104	montgomery, kawana	10/7/00	1		JM	Sally Henry	n	
105	Willis, Brandon Thomas	10/18/00	13		SJM		y	
106	blackstone, donald	10/31/00	1		WJH		y	
107	Stone, William Edgar	10/31/00	1		SHY		n	
108	keen, gloria	11/1/00	1		DVM		y	
109	langford, cal	11/7/00	1		LGW		y	
110	harrison, lisa	11/12/00	2		SHY		n	
111	disher, matthew	11/14/00	1		CDR		y	
112	Williams, Karen	11/18/00	1		RCC	Sam Kramer	y	
113	hopkins, michael	11/21/00	4		RMM		n	
114	dotson, mickey	11/22/00	2		AGA	Theo Williams	y	
115	murphy, pete	11/26/00	1		LGW	Lawrence Simmons	n	
116	cogdill, thomas	11/27/00	1		DBM	Steven Hudson	y	
117	brigman, timothy	11/30/00	1		LGW	Sam Kramer	y	
118	Talty, Brian F	12/6/00	2		JM		n	
119	gillings, don	12/7/00	1		AG		n	
120	hagler, charles	12/8/00	1		SJM		n	
121	padgett, billy	12/11/00	1		FAB		y	
122	Williams, Michael Curtis	12/11/00	2		SRH		n	
123	bickley, dianne	12/13/00	1		MMM		y	
124	Roen, Deborah Mae	12/14/00	1		LGW	Steve Soltis	y	
125	murphy, virgil	12/15/00	3		LGW	Lawrence Simmons	n	
126	childs, kenneth	12/18/00	1		KC		y	
127	hall, randell	12/21/00	1		SJM	Public Defender	y	
128	hook, jessica	12/30/00	1		MMM	Debbie Chapman	y	
129	Wrestler, Stacy N	1/5/01	2		SHY	Theo Williams	n	
130	martin, ronald	1/10/01	23		LGW		y	
131	hinson, ronald	1/15/01	1		KYR		y	
132	Robinson, John Daniel	1/17/01	1		CGS		y	
133	Walden, Detrina Denise	1/19/01	2		DVM		y	
134	austin, ray	1/30/01	3		KC	Wayne Floyd	n	
135	evans, danny	2/1/01	4		JM		y	
136	Spencer, Christopher	2/5/01	3		SRH		y	
137	kimbler, glenn	2/10/01	2		RMM		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Dat
138	Wood, Donald	2/11/01	1		AG		n	
139	inman, kristen	2/17/01	2		CDR	Keith Giese	y	
140	lewis, stephen	2/17/01	2		LGW		y	
141	harrison, christopher	2/18/01	2		LGW		y	
142	hughes, raymond	2/22/01	1		JES		y	
143	nelson, demetric	2/22/01	1		JM	Jack Duncan	n	
144	Pierce, Justin	2/22/01	5		SHY	Steve Soltis	n	
145	Spell, Ruffer	2/27/01	1		SHY		y	
146	Perito, William Frederick	2/28/01	4		LGW	Mike McMullen	y	
147	metcalf, jason	3/1/01	3		AGA	Mickey Ellisor	n	
148	Powell, Jack Arnold Jr.	3/5/01	2		LGW	Beth Fullwood	y	
149	mittchell, detrell	3/7/01	1		DVM		y	
150	Richardson, Donnie	3/25/01	6		AGA	Jack Swerling	n	
151	myers, harry	3/29/01	2		LGW	Hugh Roberts	n	
152	Sheppard, James Thoma	3/31/01	2		KC	Debbie Chapman	n	
153	hodge, thomas	4/13/01	5		SJM	Wayne Floyd	n	
154	mcdowell, sarah	4/13/01	1		AGA	Richard Breibart	y	
155	mintz, jerry	4/13/01	1		SJM		n	
156	Price, Bradford Scott	4/16/01	1		DBM		y	
157	Robinson, Iwantae Teren	4/20/01	3		SRH	John Potterfield	n	
158	graham, robin	4/21/01	1		CGS		y	
159	nguyen, hoang	4/21/01	1		SJM		y	
160	davis, timothy	4/28/01	1		DBM	Wayne FLoyd	n	
161	lemus, fernando	5/8/01	2		DSG	Richard Breibart	y	
162	Vixie, Stephanie	5/8/01	1		SHY		n	
163	Simmons, Christopher D	5/10/01	1		MMM		y	
164	grant, jason	5/17/01	3		SHY	Joseph Epting	y	
165	Scalf, Jason Allen	5/31/01	3		CDR	Mickey Ellisor	y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty.	Disp.	Dis. Dat.
166	bookman, willie	6/1/01	2		SHY	Sam Kramer	n	
167	harris, barron	6/1/01	5		LGW	Sally Henry	n	
168	Shannon, Daniel Allen	6/1/01	3		CDR	Lisa McPherson	n	
169	gibbs, brian	6/6/01	1		FAB		y	
170	cannon, michael	6/9/01	1		LGW		y	
171	Weston, Gregory	6/10/01	3		SHY	Joenathan Chaplin	y	
172	Pettus, Barry Orlando	6/15/01	2		SHY		y	
173	cooley, jackie	6/21/01	1		DBM	Sam Kramer	y	
174	karst, melissa	6/26/01	8		KC	Bill Rast	n	
175	Reisinger, Rose Marie	6/30/01	1		SCB		y	
176	murrel, quincy	7/3/01	3		CGS		y	
177	favor, jacqueline	7/7/01	1		SCB	Theo Williams	n	
178	Raybine, Nelson Eugene	7/9/01	5		FAB		y	
179	knight, christopher	7/17/01	3		AGA	Jack Duncan	y	
180	blair, stephen	7/19/01	1		SHY	Beth Fullwood	n	
181	martin, christopher	7/21/01	2		DVM		y	
182	mccall, darla	7/23/01	1		DBM	Lisa McPherson	n	
183	harmon, angela	7/24/01	1		AGA		n	
184	goudelock, joshua	7/25/01	1		SRH		n	
185	babb, patrick	7/27/01	1		AGS		y	
186	james, michael	7/29/01	7		RMM		n	
187	cyrus, cleveland	7/30/01	2		SHY		y	
188	Wilson, Charles Wesley	7/31/01	2		LGW		y	
189	baldwin, christopher	8/1/01	1		CDR	Steve Soltis	n	
190	Watford, Travis E	8/5/01	1		WJH		y	
191	joiner, ira	8/10/01	1		LGW	Theo Williams	y	
192	Williams, Marguita	8/11/01	3		CGS		y	
193	dyches, anthony	8/14/01	3		AW		y	
194	Tolen, Terry Louise	8/21/01	1		DVM		y	
195	hutchens, belinda	8/22/01	4		KC	Bill Rast	y	
196	gonzalez, jose	8/26/01	1		DVM		y	
197	boswell, robert	8/27/01	4		SRH		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Dat
198	jordan, paul	8/27/01	1		SJM		y	
199	Shuler, Stroman Lee	8/28/01	5		FAB		y	
200	garvin, timothy	8/29/01	1		LGW		y	
201	littlejohn, roberta	9/9/01	1		MMM		n	
202	Smith, Robert Anthony	9/12/01	3		SJM	JACK DUNCAN	n	
203	Smith, Jerry Wayne Jr	9/15/01	8		MMM		y	
204	Smith, Kenneth	9/17/01	4		MMM	P Holler	n	
205	maroney, michael	9/18/01	6		JM	Sam Kramer	y	
206	bish, sean	9/19/01	1		DVM		y	
207	culley, stephen	9/19/01	2		aw		y	
208	keller, hudie	9/19/01	10		mmm		n	
209	Wood, Fulton Otis	9/19/01	4		WJH		y	
210	hoff, lawrence	9/21/01	1		kc		y	
211	lyles, randy	9/21/01	1		DVM		y	
212	Watson, Jamie Elliott	9/22/01	2		DBM	Jerry Screen	y	
213	grissom, ronnie	10/3/01	2		kc		y	
214	Patrick, Howard C	10/3/01	1		SHY		n	
215	garrick, steve	10/4/01	2		SHY	PRO SE	n	
216	Stewart, James	10/4/01	1		JM		n	
217	gerald, gregory	10/5/01	5		dbm	Richard Breibart	n	
218	kimbler, alvin	10/12/01	1		AGA		y	
219	moelich, robert	10/12/01	3		RCC	THEO WILLIAMS	y	
220	Wise, Jerry Bradford	10/12/01	5		KC		n	
221	gillings, james	10/13/01	2		mmm		y	
222	menton, douglas	10/14/01	1		shy		n	
223	Schwartz, Kevin Barry	10/15/01	7		DVM		y	
224	Panter, Tyrone	10/18/01	3		DBM		n	
225	metze, mary	10/21/01	2		lgw		n	
226	morris, robert	10/21/01	1		shy		n	
227	Taylor, Lawrence Chris	10/21/01	2		SHY	THEO WILLIAMS	n	
228	kitts, david	10/23/01	1		SJM		y	
229	gentry, mark	10/25/01	1		SHY	THEO WILLIAMS	n	
230	mcDaniel, floyd	10/25/01	3		dbm		y	
231	Umbarger, Alonzo Richa	10/25/01	1		KC	Theo Williams	y	
232	Umbarger, Angie Denise	10/25/01	1		KC	Theo Williams	y	
233	brown, lawrence	10/26/01	2		CGS		y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
234	hanthorn, ryan	10/26/01	1		lgw		y	
235	Stevenson, Todd Lee	10/26/01	4		JM		n	
236	neal, christopher	11/1/01	1		aga	Ripley Timms	n	
237	gilmer, edward	11/4/01	2		lgw		n	
238	hamilton, william	11/5/01	2		MMM		y	
239	campbell, robert	11/8/01	1		mmm		n	
240	Saucedo, George	11/11/01	1		DSG		n	
241	mathews, joseph	11/13/01	1		SHY		n	
242	harrison, thomas	11/15/01	1		RCC	ROBIN ALLEY	n	
243	Preston, Michael Anthon	11/16/01	2		KC		y	
244	jones, charles	11/19/01	1		RMM		n	
245	Sanders, Danny Dwayne	11/19/01	3		CDR	Beth Fullwood	y	
246	ILDERTON, STEVEN	11/23/01	1		SCB		y	
247	lanham, anthony	11/24/01	2		mmm		n	
248	card, candida	11/27/01	2		lgw		y	
249	mullen, john	11/28/01	1		KYR		y	
250	Walker, Michael Anthony	12/1/01	1		SJM	CATHERINE HENDRI	n	
251	hayes, charles	12/3/01	1		CDR	H PAULING	n	
252	daniels, tyrone	12/6/01	3		WJH		y	
253	muller, james	12/11/01	5		kc		n	
254	Patrick, Jeffrey	12/12/01	5		SJM		y	
255	crum, edward	12/13/01	3		kc		n	
256	demarco, john	12/19/01	2		aw		y	
257	Vincellette, Andrew Paul	12/21/01	2		BWJ		y	
258	Quattlebaum, Jicousha T	12/24/01	4		AGA		n	
259	Panter, Charles Jack Jr.	12/26/01	1		SHY		y	
260	Sessions, Carol	12/30/01	1		SHY		y	
261	Tindal, George B	12/30/01	9		KC		n	
262	Stone, Charles Lee	12/31/01	1		AW		n	
263	Richardson, Donald	1/2/02	3		CGS		y	
264	West, James	1/2/02	1		SJM	THEO WILLIAMS	n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dist Date
265	bandlow, david	1/7/02	1		SHY	PRO SE	n	
266	foister, john	1/8/02	2		BWJ		y	
267	Pondexter, Joshuaaway jr	1/9/02	2		DBM		y	
268	frye, larry	1/10/02	2		SHY		y	
269	hutto, richard	1/10/02	1		SHY		y	
270	morris, phillip	1/10/02	5		SJM		n	
271	Williams, Sammie Lee	1/10/02	1		MMM		n	
272	Watson, Russell	1/11/02	3		AW		n	
273	Smalls, Steven Christoph	1/14/02	2		AGA		Y	
274	Thompson, Donny Orlan	1/15/02	2		LGW		n	
275	Robinson, James Edward	1/16/02	5		AW		y	
276	matthews, ardyth	1/17/02	1		BWJ		y	
277	kyzer, timothy	1/18/02	1		RCC		y	
278	Stone, Michael Mitchell	1/18/02	1		LGW		n	
279	Timmons, Richard	1/22/02	2		SRH		n	
280	Walczesky, Michael M	1/22/02	1		LGW		n	
281	morgan, ranji	1/24/02	1		SJM		n	
282	harsey, melissa	1/26/02	1		lgw		y	
283	deaton, melissa	1/27/02	1		lgw		y	
284	garcia, daniel	1/27/02	1		SJM		y	
285	ellison, larry	1/29/02	2		aw		y	
286	mcintosh, ronald	1/29/02	1		aw		y	
287	hutchins, joshua	2/1/02	2		dsg		y	
288	douglas, jeff	2/4/02	1		lgw	William Applegate	n	
289	gallashaw, tyrone	2/5/02	2		SJM		Y	
290	Williams, Jackson H	2/5/02	6		AGA		n	
291	hill, steve	2/6/02	1		CDR	JACK SWERLING	n	
292	mccary, carl	2/6/02	1		FAB		y	
293	metcalf, theron	2/6/02	5		lgw		y	
294	Stewart, Richard Patterse	2/7/02	4		RMM		n	
295	Willner, Jack A	2/7/02	1		SJM	WAYNE FLOYD	n	
296	Smith, Dalton L	2/8/02	7		KC	Theo Williams	n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
297	daniels, sherrline	2/11/02	1		CGS		y	
298	Shealy, Rodney Brandon	2/16/02	3		DSG		y	
299	mccoy, tony	2/21/02	1		DVM		n	
300	Wise, Richard Geddings	2/21/02	1		LGW		n	
301	Watson, John Edward	2/22/02	1		RMM		n	
302	Robinson, Thomas Dean	2/23/02	2		RCC		y	
303	harley, bobby	2/25/02	1		lgw		n	
304	johnson, erik	2/26/02	1		RMM		n	
305	Rabon, Hubert Randall	2/28/02	2		AGA		n	
306	frost, elias	3/1/02	1		SJM		n	
307	Rainwater, Troy	3/1/02	1		RMM		y	
308	blue, ricky	3/2/02	1		N/A		y	
309	Taylor, Jasper	3/2/02	1		SRH		y	
310	brimfield, kim	3/3/02	4		BWJ		y	
311	Thompson, Callie Lucille	3/4/02	1		SJM		y	
312	fordham, entwain	3/8/02	5		JM		y	
313	Ware, Larekos Marquette	3/9/02	1		SJM		n	
314	cam, brandon	3/14/02	6		jm		y	
315	cassidy, walter	3/15/02	1		srh		n	
316	kitchen, christopher	3/15/02	11		aga		n	
317	Seets, William Caldwell	3/16/02	1		CGS		y	
318	Phillips, Roger Dale	3/17/02	1		SJM	THEOWAYNE	n	
319	mathis, mike	3/19/02	3		RCC		n	
320	Spencer, Howard Dean	3/19/02	6		AGA		n	
321	mcgee, darren	3/20/02	8		JM	Heath Taylor	n	
322	cooper, samuel	3/21/02	1		AGA		y	
323	edwards, darrin	3/21/02	4		JM	Heath Taylor	n	
324	Rhodes, Ricky Frederick	3/23/02	1		SHY	DAVID TAYLOR	n	
325	Sibert, Charles Ashley	3/24/02	2		SRH		n	
326	martin, demetris	3/25/02	1		srh		n	
327	barnes, gregory	3/27/02	3		lgw		y	
328	berry, brian	4/1/02	4		AG		n	
329	Webster, Scot Dennis	4/2/02	1		LGW		y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Dat
330	berry, robert	4/3/02	1		AG		n	
331	gosnell, brett	4/10/02	4		jm	Keith Giese	y	
332	mims, derek	4/17/02	1		SHY		y	
333	omelas, gilberto	4/17/02	7		CDR	BILL RAST	Y	
334	Tessnear, Max Ricky	4/17/02	3		JM	Steve Soltis	y	
335	nelson, joseph	4/18/02	1		SJM		n	
336	Sieg, Sylvia Barbara	4/18/02	5		LGW		n	
337	lytes, letricia	4/19/02	2		lgw		n	
338	Riley, William Ray	4/21/02	1		SJM		y	
339	moses, michael	4/23/02	1		lgw		y	
340	blankenship, joy	4/24/02	6		kc		n	
341	brown, david	4/25/02	6		SJM		n	
342	dean, jimmy	4/25/02	1		SHY	Joenathan Chaplin	n	
343	Wilkes, Delbert Alexande	4/25/02	1		DBM		y	
344	bess, charlie	4/26/02	1		lgw	Neal Lourie	n	
345	jenkins, henry	5/1/02	1		jm	Will Bryant	y	
346	Simpson, Octavious J	5/1/02	10		RMM		y	
347	Smith, Thomasina	5/1/02	1		JM	Hugh ROberts	y	
348	Tucker, Lawrence	5/1/02	2		SJM		y	
349	hill, harriel	5/3/02	1		dvm		y	
350	howell, christopher	5/3/02	1		KYR		n	
351	mathur, sameer	5/3/02	2		AGA		y	
352	Phillips, Sharon Elaine	5/3/02	1		CGS		y	
353	Pike, Juston David	5/3/02	3		DBM	Richard Breibart	n	
354	culley, glenn	5/10/02	3		RMM	John Delgado	n	
355	mittchell, arthur	5/10/02	4		kc		y	
356	Senterfeit, Larry Bradley	5/10/02	2		RMM	Debbie CHapman	n	
357	Toole, Chad S	5/10/02	2		RMM		n	
358	millar, andrew	5/11/02	1		cgs		y	
359	haston, kevin	5/15/02	2		AGA		Y	
360	oree, claudiesha	5/16/02	2		kc		y	
361	mercer, kevin	5/17/02	4		DVM		n	
362	Thompson, Marcus Anto	5/17/02	3		DVM		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dist Date
363	Turner, Brenda Ann	5/18/02	1		JES		n	
364	dinkins, ronnie	5/21/02	2		aga		n	
365	Williams, Darrell Lasteve	5/21/02	12		AGA		n	
366	kriger, daniel	5/23/02	1		lgw		n	
367	Young, Richard Colin	5/23/02	8		KC		n	
368	moates, marianne	5/24/02	2		SJM		y	
369	baxter, richard	5/27/02	1		aw		y	
370	graham, kelly	5/27/02	1		aw		y	
371	lane, tadd	5/27/02	1		aw		y	
372	Watts, Gabrielle C	5/29/02	6		DSG		n	
373	howell, kenneth	5/30/02	1		RMM		y	
374	carter, terrence	5/31/02	3		jm		n	
375	Young, Donald Antonio	5/31/02	2		DBM		y	
376	Parker, Nancy Patricia	6/2/02	1		LGW		y	
377	holloman, kathy	6/5/02	1		FAB		y	
378	Williams, Donald E	6/5/02	1		SJM		y	
379	looney, jimmy	6/11/02	2		dbm	Ken Mathews	n	
380	Summers, Cynthia Irene	6/12/02	5		RMM	Harry Depew	n	
381	amaker, leroy	6/13/02	2		jm		n	
382	jones, michael	6/14/02	14		kc		y	
383	Rickard, Katashi	6/18/02	1		LGW		n	
384	burley, antonio	6/21/02	2		scb		n	
385	carter, renea	6/21/02	2		sjm		y	
386	jackson, jimmie	6/21/02	9		jm		y	
387	davis, felicia	6/25/02	1		jm		y	
388	dix, jason	6/25/02	4		mmm		n	
389	kelly, william jr	6/26/02	4		RMM		n	
390	Woodhouse, James Jeff	6/27/02	1		LGW		y	
391	Vereen, Bernard Leranz	6/28/02	3		KC		y	
392	Tyler, Jerica C	6/30/02	3		EJM		n	
393	lee, victor	7/2/02	2		AGA		y	
394	mosely, gina	7/2/02	1		aw		y	
395	brown, noris	7/3/02	3		jm		y	
396	furtick, stephanie	7/3/02	1		CGS		y	
397	goolsby, lisa	7/3/02	2		jm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disc Date
398	Prophet, Larry Lorenzo	7/5/02	6		LGW		y	
399	marsh, michael	7/6/02	1		JM		n	
400	harris, rodney	7/7/02	9		aw		y	
401	moody, melvin	7/8/02	1		kc		y	
402	fry, carolyn	7/9/02	1		JM		y	
403	oliver, michael	7/10/02	6		lgw		n	
404	anders, william david	7/12/02	1		sjm		n	
405	hawkins, chris	7/12/02	1		aw		y	
406	coble, rex	7/13/02	1		jm		n	
407	Romera, Ari	7/13/02	1		AW		y	
408	Strong, Ivera Natasha	7/13/02	1		AW		y	
409	brady, tony	7/18/02	1		sjm		y	
410	cox, joseph	7/18/02	1		aw		y	
411	mathis, patrick	7/18/02	1		SJM		n	
412	bookman, anthony	7/19/02	2		kc		n	
413	drafts, brian	7/20/02	4		mmm		n	
414	guillory, randall	7/20/02	2		sjm	Sally Henry	n	
415	davis, charles	7/21/02	1		aw		y	
416	Price, Roy Clinton	7/24/02	2		SJM		n	
417	jenkins, john	7/25/02	2		RCC		n	
418	Wilson, Marcus Antonio	7/25/02	3		DSG		y	
419	lewis, stanley	7/26/02	5		mmm		n	
420	montgomery, leroy	7/26/02	2		kc		y	
421	Senterfeit, Floyd Lee	7/28/02	1		JM		n	
422	Carroll, tiffany	7/29/02	1		KYR		y	
423	jeffcoat, susan	7/29/02	5		jm	Hugh Roberts	n	
424	mciver, jennifer	7/29/02	5		jm	Johnny Watson	n	
425	dewitt, joseph	8/1/02	1		sjm	Sam Kramer	y	
426	edmond, elijah	8/1/02	2		kc		y	
427	nabors, jacob	8/1/02	4		aga		n	
428	Simonn, Nadine	8/2/02	2		SJM		y	
429	goddard, anthony	8/5/02	1		kc	Theo Williams	n	
430	elrod, mark	8/7/02	2		FAB		y	
431	barnett, roger	8/9/02	6		sjm		y	
432	hendrickson, charles	8/9/02	1		sjm		y	
433	edwards, kevin	8/10/02	1		LGW		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp.	Disp. Date
434	lawson, joseph	8/11/02	3		kc		n	
435	choice, alphonzo	8/13/02	2		sjm		y	
436	Parker, Scott Douglas	8/13/02	5		DSG	Bill Rast	n	
437	Scott, Bryant Nathaniel	8/13/02	1		KC	Debbie Chapman	y	
438	Smith, Cory Benjamin	8/13/02	1		RMM		y	
439	batdorf, brent	8/14/02	1		SJM	Robert Hood	n	
440	jackson, marsha	8/14/02	1		aga		y	
441	Williams, Stan W	8/14/02	4		SHY		n	
442	goff, ernest	8/15/02	2		kc	Ken Mathews	n	
443	mclmore, terrence	8/15/02	4		SHY		y	
444	Robinson, Ricky Jelani	8/15/02	1		LGW		n	
445	Smith, Charles Edward	8/15/02	1		RMM		y	
446	Player, James Louie III	8/16/02	2		SJM		y	
447	griffin, edward	8/21/02	1		mm		y	
448	Wagner, Raeanne Renee	8/21/02	1		SJM		n	
449	morgan, robert	8/22/02	2		SJM		Y	
450	odom, marcelus	8/22/02	1		SHY		y	
451	hutto, angie	8/23/02	3		shy		n	
452	davis, jennifer	8/28/02	10		kc		y	
453	Stezler, Robby Clemson	8/29/02	1		DNP'd		y	
454	Ward, Lisa Michelle	8/29/02	1		SHY		y	
455	Rich, David William	8/30/02	1		Not assigned		n	
456	Walker, James J	8/30/02	1		DVM		y	
457	Sumter, Jason	9/3/02	1		MMM		n	
458	Taylor, Darryl Stephone	9/4/02	3		JM		y	
459	Smith, Andre L	9/6/02	1		SJM		y	
460	Venable, Nichole Renee	9/6/02	1		JM	Sam Kramer	n	
461	gary, jody	9/7/02	1		dbm		y	
462	Watsky, David Dennis	9/8/02	1		CGS		y	
463	Posey, Lillian E	9/10/02	2		DSG	Steve Soltis	n	
464	moore, ivan	9/11/02	7		mm	Chuck Brooks	n	
465	Taylor, Buddy	9/12/02	1		RMM		y	
466	coleman, kenny	9/13/02	1		SJM		y	
467	ford, corey	9/14/02	1		WJH		n	
468	brown, andre	9/17/02	2		jm		y	
469	mccrea, julius	9/17/02	4		lgw		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Any	Disp	Dis Date
470	Stroman, Chris Bryan	9/17/02	5		JES		y	
471	padgett, clarence	9/20/02	1		SJM		y	
472	Wells, Allan Floyd	9/24/02	1		MMM		n	
473	corley, stephen	9/25/02	10		aga	Wayne FLoyd	n	
474	frazier, carlos	9/25/02	2		aw		n	
475	gortman, jamille	9/25/02	1		RCC		y	
476	kelley, essence	9/25/02	3		CGS		y	
477	Starr, Melissa Arlene	9/26/02	1		DVM		n	
478	Rivera, Ignacio Cuadros	9/27/02	2		WJH		n	
479	Sexton, Jamie Eric	9/28/02	1		JES		y	
480	hatchell, joseph	10/1/02	1		lgw		n	
481	Sandish, Charles F	10/1/02	2		JM		n	
482	nguyen, duc	10/2/02	1		RMM	Jack Swerling	n	
483	leaphart, marvin	10/3/02	4		kc	Theo Williams	n	
484	Schofield, John William	10/3/02	2		KC		y	
485	cormier, jeff	10/4/02	1		SJM		y	
486	cheeseboro, nicholas	10/5/02	1		aw		n	
487	diaz, jorge	10/6/02	1		mmm		n	
488	milling, hannie	10/7/02	1		aw	Jay Elliott	n	
489	carson, tekela	10/9/02	3		mmm		n	
490	ford, gerald	10/11/02	1		sjm		n	
491	Reed, Samuel Walter	10/11/02	2		N/A		y	
492	Reeves, Freddie Lee	10/12/02	1		AW	Todd Rutherford	n	
493	barber, kelly	10/15/02	2		jm	Garry Wooten	n	
494	gohagen, lindward	10/19/02	4		kc	Steve Soltis	n	
495	Robinson, Marvin Lirico	10/19/02	1		JES		y	
496	Riple, Sean Lee	10/22/02	4		AW		y	
497	Smith, Brent Devin	10/22/02	2		JM	Murry Kinard	n	
498	dallas, edrice	10/25/02	5		AW		n	
499	manley, charles	10/26/02	3		JES		n	
500	mayzes, kimberly	10/26/02	5		JES		n	
501	Williams, Christopher	10/26/02	1		CGS		y	
502	gleaton, ricky	10/27/02	1		mmm		n	
503	fink, teresa	10/28/02	1		mmm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dist Date
504	bude, donald	10/30/02	1		RCC		y	
505	Rodrigues, Javiel	10/30/02	4		SCB		y	
506	Washington, Theoneous	10/31/02	2		MMM		n	
507	elders, ricky	11/1/02	13		RMM		n	
508	mcmahan, devin	11/1/02	1		MMM		n	
509	brant, william	11/2/02	1		LTC		n	
510	brown, jarrell	11/2/02	1		mmm		n	
511	morse, danial	11/2/02	2		sjm		n	
512	Williams, French L	11/2/02	1		MMM		n	
513	Staley, Cedric Dion	11/3/02	2		AW		y	
514	king, dustin	11/7/02	8		lgw		y	
515	Williams, Charles Jr	11/8/02	2		MMM		n	
516	jones, reggie	11/12/02	2		kc	Robert Mills	n	
517	brown, edmond	11/14/02	3		aw		y	
518	key, marvin	11/14/02	1		kc		y	
519	matzen, bobby	11/14/02	4		shy		y	
520	grice, angela	11/15/02	1		aw		n	
521	johnson, tracey	11/15/02	1		aw		y	
522	harvey, alfred	11/21/02	1		MMM		n	
523	Vaughn, Leroy	11/21/02	2		KC	Beth Fullwood	y	
524	martinez, abner	11/22/02	1		SJM		y	
525	Thompson, Yancey Rand	11/22/02	1		DSG		n	
526	Tucker, Brenda Brooks	11/23/02	1		MMM		n	
527	Smith, Frank Leonard	11/24/02	1		MMM		n	
528	Parker, Christian Francis	11/25/02	1		RMM		n	
529	Wise, Ricky Everett	11/25/02	1		MMM		n	
530	Roberts, Vicent Walter	11/26/02	5		WJH		n	
531	harvey, jamar	11/27/02	2		sjm		y	
532	leaphart, lindsay	11/30/02	1		kc	Theo Williams	n	
533	martin, andrea	11/30/02	1		aw		y	
534	Perry, Ira Travis	11/30/02	2		SHY		n	
535	Taylor, Marion Kristopher	12/1/02	1		JM		y	
536	coker, johnnie	12/3/02	2		sjm	Wayne Floyd	n	
537	corley, catherine	12/3/02	5		aga	Wayne Floyd	n	
538	damron, jason	12/4/02	3		jm	Mickey Ellisor	y	
539	krohn, keith	12/4/02	2		aga		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
540	Thompson, Montique Lev	12/4/02	1		JM	Beth Fullwood	n	
541	Walsh, Joseph James	12/4/02	2		KC	Lisa McPherson	y	
542	foguth, james	12/5/02	1		SCB		n	
543	knight, angela	12/6/02	4		SJM		y	
544	Patterson, Tehron	12/6/02	2		MMM		n	
545	dantzler, antoine	12/7/02	2		jm		y	
546	lawrie, thomas	12/9/02	2		cdr		y	
547	davis, michael	12/10/02	4		dsg	Adrian Falgione	n	
548	hall, sheldon	12/10/02	1		mmm		n	
549	Stoudemayer, Joann Sm	12/10/02	1		SJM		Y	
550	Toscano, Angela Mario	12/10/02	2		AW	Bill Rast	n	
551	brooker, anthony	12/11/02	4		jm		n	
552	cates, chris	12/11/02	6		dsg		y	
553	haltiwahger, george	12/11/02	1		JES		y	
554	Smith, Tiffany Danielle	12/12/02	3		AW		n	
555	Snelgrove, Ronald Steve	12/12/02	1		JM		n	
556	christle, robert	12/16/02	2		shy		y	
557	cook, worth	12/16/02	5		shy		y	
558	gallmon, henry	12/16/02	3		kc		y	
559	Peele, Brandi D	12/16/02	1		MMM		n	
560	Santana, Avelino Jacobo	12/16/02	1		RMM		n	
561	berry, steven	12/17/02	4		mmm		n	
562	gantt, henry	12/17/02	1		jm		n	
563	james. Stephanie	12/17/02	1		jm		n	
564	Richardson, Renee W	12/18/02	1		SJM		Y	
565	Sturkie, Renee Armstron	12/19/02	6		SCB		n	
566	jenkins, timothy	12/22/02	5		mmm		n	
567	conyers, charles	12/23/02	1		SJM		n	
568	clark, donnie	12/25/02	1		RMM	Bill Gorski	n	
569	culbreath, kevin	12/26/02	1		RCC		y	
570	amador, jose luis	12/29/02	1		MMM		n	
571	gainey, john	12/29/02	1		mmm		n	
572	kirby, angelo	12/29/02	1		dvm		y	
573	Roach, John Wesley	12/31/02	1		AW	Hugh Roberts	y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
574	mack, jason	1/1/03	1		kc		y	
	Whitaker, Sandy Lee	1/2/03	1		DBM	Wayne Floyd	n	
575								
576	Williams, Sheryl Lynn	1/2/03	1		KC		n	
577	hallman, kevin	1/3/03	1		MMM		n	
578	odom, kenneth	1/3/03	3		shy		n	
579	Portwood, Amber N	1/3/03	1		RMM		y	
580	Reed, Michael Deangelo	1/3/03	3		KC	Charlie J Johnson	n	
581	Smith, Wayne Clifford	1/3/03	1		LGW		n	
582	Wood, Charlie Jr	1/5/03	1		MMM		n	
583	cooper, ned	1/7/03	3		aw		n	
584	Robinson, Mark Anthony	1/7/03	2		LGW		n	
585	fair, russell	1/8/03	1		mmm		n	
586	knoppel, john	1/8/03	3		jm	Hans Pauling	n	
587	Quattlebaum, Joshua Alv	1/8/03	3		SJM		n	
588	hughes, stephen	1/9/03	4		sjm		n	
589	morant, joseph	1/9/03	5		mmm		y	
590	clark, homer	1/10/03	1		SJM		y	
591	jones, michael I	1/10/03	3		mmm		n	
592	karaniuk, donna	1/10/03	1		shy	Mark Calhoun	n	
593	caceres, manuel	1/11/03	1		shy		n	
594	larry, ranard	1/11/03	1		kc		y	
595	bennett, eric	1/12/03	1		dvm		y	
596	jones, reginald	1/12/03	1		mmm		n	
597	evans, swinda	1/13/03	1		mmm		n	
598	hall, calvin	1/13/03	2		mmm		n	
599	gordon, travis	1/16/03	1		mmm		n	
600	matthews, david	1/16/03	3		SJM		n	
601	blume, tony	1/17/03	3		jm		n	
602	murray, george	1/17/03	1		mmm		n	
603	Williams, Wilfred D	1/17/03	4		MMM		y	
604	curtin, david	1/18/03	1		mmm		n	
605	mills, thomas	1/18/03	4		mmm		n	
606	Richberg, Darryle Laquai	1/20/03	3		RMM		n	
607	Watkins, James Andrew	1/20/03	3		RMM		n	

	Name	DOA	# of Warrants	Charges	ASOL	Det Atty	Disp	Dis Date
608	Watkins, Jamie Madonna	1/20/03	3		RMM		n	
609	Smith, Amy G	1/22/03	1		CGS		y	
610	barrs, clayton	1/23/03	1		scb		n	
611	moseley, sidney	1/23/03	2		kc		n	
612	oswald, millard	1/23/03	2		kc		n	
613	dozier, marquez	1/24/03	3		dvm		n	
614	greenfield, jessin	1/25/03	1		jrm		n	
615	james. Lawrence	1/25/03	2		aw		n	
616	Wooten, Ricky O	1/26/03	2		AW		n	
617	Steelé, Kevin Randolph	1/28/03	1		CGS		y	
618	freeman, nathaniel	1/30/03	2		mmm		n	
619	hair, derrick	1/30/03	3		DSG		y	
620	jones, jacob	1/31/03	4		kc		n	
621	Turner, Christopher G	1/31/03	1		SJM		n	
622	Taylor, Adam Howard	2/1/03	2		JES		n	
623	Suber, Nathaniel Jason	2/2/03	3		LGW		n	
624	dell, kevin	2/3/03	1		FAB		n	
625	Roberts, Justin Antonio	2/3/03	2		KYR		n	
626	duckson, janice	2/5/03	1		mmm		n	
627	gaona, leobardo	2/5/03	6		dsg		n	
628	mcclinton, keith	2/5/03	1		dbm		n	
629	muller, brad	2/5/03	2		sjm		n	
630	addy, james franklin jr	2/7/03	4		kc		n	
631	bell, tavaris	2/7/03	5		dbm		n	
632	clark, bernard	2/7/03	1		KC		n	
633	Zaledzieski, William Jose	2/7/03	1		JES		n	
634	farrington, bmet	2/8/03	2		shy		n	
635	mcgee, ralph	2/8/03	2		kc		n	
636	Worrock, Justin S	2/8/03	4		SJM		n	
637	knotts, randall	2/10/03	9		aga		n	
638	leviner, claudia	2/13/03	1		sjm		n	
639	golson, ernest	2/14/03	3		aga		n	
640	jackson, william	2/14/03	2		mmm		n	
641	johnson, abra	2/14/03	1		kc		n	
642	Royal, Roger Mack	2/14/03	1		BWJ		n	
643	Welch, Dawn Rene	2/15/03	1		AW		n	
644	lee, grover	2/16/03	1		shy		n	
645	habighorst, charles	2/17/03	1		mmm		n	
646	burroughs, john	2/18/03	3		srh		n	
647	ferris, erika	2/18/03	1		aw		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Dat
688	meyer, halford	3/24/03	1		sjm		n	
689	Roberts, Jerusha Donaw	3/24/03	4		JM		n	
690	Swain, Marty	3/24/03	1		DVM		n	
691	crim, shondel	3/25/03	2		dbm		n	
692	Rumph, Jonathan Corey	3/25/03	4		JM		n	
693	Taylor, Charles F	3/25/03	1		Not assigned		n	
694	Staley, Gregory	3/27/03	1		SJM		n	
695	Thompson, Bruce Emanu	3/27/03	4		LGW		n	
696	kennedy, anthony	3/28/03	1		mmmm		n	
697	Villena, Alejandro E	3/28/03	2		RMM		n	
698	finley, gerald	3/29/03	1		mmmm		n	
699	Richardson, Willie James	3/31/03	2		AW		n	
700	hopkins, james	4/1/03	2		scb		n	
701	cates, brandon	4/2/03	2		aga	Richard Dolce	y	
702	Watts, Ernest Lee	4/2/03	2		SCB		n	
703	cobb, karen	4/3/03	1		mmm		n	
704	lindler, keith	4/3/03	1		mmm		n	
705	Ryan, Wade J	4/3/03	1		LGW		n	
706	bartsch, daniel	4/4/03	2		mmm		n	
707	gregory, edward	4/4/03	2		kc		n	
708	mittell, terry	4/4/03	2		kc		n	
709	Slitzer, Debra Jean	4/4/03	4		KC		n	
710	White, Latashia Denise	4/5/03	3		SCB		n	
711	Thurmond, Mikel	4/6/03	1		LGW		n	
712	cook, jamel	4/9/03	1		jm		n	
713	grant, benny	4/10/03	1		mmm		n	
714	Younce, Ronald Huston	4/10/03	1		Not assigned		n	
715	ketcham, troy	4/11/03	2		mmm		n	
716	kibler, albert	4/11/03	2		lgw		n	
717	mccorkle, charles	4/11/03	1		lgw		n	
718	Terry, Carl Patrick	4/11/03	4		JM		n	
719	clark, jimmy	4/12/03	1		lgw		n	
720	fulmer, michael	4/12/03	1		mmm		n	
721	chambers, joseph	4/13/03	2		kc		n	
722	Perez, Leonel Concha	4/15/03	1		Not assigned		n	
723	bostick, clarence	4/16/03	1				y	
724	bromell, brenda	4/18/03	1		lgw		n	
725	longoria, earl	4/18/03	1		kc		n	
726	Phillips, Debra Ann	4/18/03	1		KC		n	
727	Webber, Crystal Diane	4/18/03	1		KC		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dist Date
728	cranshaw, steve	4/21/03	1		jm		n	
729	barber, albert	4/22/03	2		rmm		n	
730	keith, johnny	4/22/03	6		kc		n	
731	Peyton, Lara Marie	4/22/03	1		LGW		n	
732	Saunders, Laura Sylvia	4/22/03	2		SCB		n	
733	chapman, laura	4/23/03	1		rcc		n	
734	davis, lamont	4/23/03	1		rcc		n	
735	frazee, raymond	4/23/03	1		aga		n	
736	gordon, anna	4/23/03	12		cdr		n	
737	moultrie, stanely	4/23/03	24		sjm		n	
	anderson, paul edward	4/24/03	12	murderx2, ARx2, etc.	CDR	Kimbrough, Lisa	n	
738								
739	Watkins, Jeffrey L	4/24/03	1		DVM		n	
740	Zaragoza, Esthela Blanc	4/24/03	1		SJM		n	
741	jackson, charles	4/25/03	2		lgw		n	
742	hook, william	4/26/03	6		lgw		n	
743	Perkins, Tommy James	4/29/03	1		LGW		n	
744	Perriel, Andrew	4/29/03	1		MMM		n	
745	herring, Stephen	4/30/03	4		sjm		n	
746	arcand, kyle	5/1/03	3		DSG		n	
747	drum, ralph	5/1/03	1		rmm		n	
748	duggans, annie	5/2/03	1		lgw		n	
749	dunn, leroy	5/2/03	1		mmm		n	
750	Phillips, Dustin Edwards	5/2/03	1		AGA		n	
751	Williams, Jamie Jeanette	5/2/03	2		LGW		n	
752	burke, ronald	5/3/03	2		lgw		n	
753	harris, patricia	5/3/03	1		lgw		n	
754	mclellan, timothy	5/3/03	2		lgw		n	
755	jones, robert n	5/4/03	1		scb	Richard Breibart	n	
756	hoffman, pamela	5/6/03	2		mmm		n	
757	Sweatt, Jason Thomas	5/6/03	1		SJM		n	
758	crumpton, kevin	5/7/03	2		N/A		n	
759	griffin, shana	5/7/03	1		aga		n	
760	harsey, james	5/7/03	2		sjm		n	
761	Young, Kenneth	5/7/03	1		MMM		n	
762	baker, kenneth	5/8/03	1		dvm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Date
763	jones, george	5/8/03	7		rmm		n	
764	jorgensen, kai	5/8/03	1		lgw		n	
765	gaines, louis	5/9/03	1		mmm		n	
766	johnson, author	5/9/03	2		n/a		n	
767	Todd, William Reed IV	5/9/03	2		FTA		n	
768	Washington, Isadore L	5/9/03	1		MMM		n	
769	bishop, barry	5/10/03	2		sjm		y	
770	heyward, leandre	5/11/03	1		lgw		n	
771	knight, carol	5/11/03	3		lgw		n	
772	gunter, michael	5/12/03	1		aga		n	
773	Still, Ricky	5/12/03	1		SJM		y	
774	Tweed, Ronald L	5/12/03	2		LGW		n	
775	butler, harveta	5/13/03	1		mmm		n	
776	Smith, Janon	5/13/03	2		MMM		n	
777	Shannon, Roger Lee	5/14/03	1		Not assigned		n	
778	daniels, darrell	5/15/03	1		mmm		n	
779	james, mary	5/15/03	1		dbm		n	
780	Roach, Brian L	5/15/03	2		MMM		n	
781	Taylor, Randall Melvin	5/15/03	1		LGW		n	
782	krause, john	5/16/03	2		mmm		n	
783	Register, Lisa Crim	5/16/03	1		SJM		n	
784	Watkins, Joseph	5/16/03	1		DVM		n	
785	Story, Alisha Laquanda	5/19/03	1		LGW		n	
786	bromell, derrick	5/20/03	1		mmm		n	
787	cornelius, christopher	5/20/03	1		sjm		n	
788	andes, christina	5/22/03	1		lgw		n	
789	kirby, demetra	5/22/03	1		kc		n	
790	mazes, kim	5/22/03	1		scb		n	
791	melvin, linda	5/23/03	1		dvm		n	
792	Sanders, Jonathan Kyle	5/23/03	1		DVM		n	
793	Shealy, William Terry	5/23/03	3		LGW		n	
794	Poole, Perry Kevin	5/24/03	1		RCC		n	
795	Shealy, Jacqueline E	5/24/03	3		LGW		n	
796	Taylor, Tanisha T	5/24/03	1		LGW		n	
797	kallgren, jonathan	5/25/03	1		lgw		n	
798	mattox, david	5/25/03	1		lgw		n	
799	mavins, charles	5/25/03	1		MMM		y	
800	Santana, James Harris	5/30/03	1		MMM		n	
801	mack, fred	5/31/03	2		N/A		n	
802	morton, willie	5/31/03	1		mmm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
803	davidson, chris	6/2/03	1		mmm		n	
804	lindsey, brad	6/2/03	2		N/A		n	
805	harlin, charles	6/5/03	4		mmm		n	
806	West, Bradley Gerad	6/5/03	4		LGW		n	
807	Williams, Jason Micheal	6/5/03	2		MMM		n	
808	hayes, tommy	6/6/03	1		mmm		n	
809	mccoy, philip	6/6/03	11		mmm		n	
810	james, roger	6/10/03	1		lgw		n	
811	Tolan, Ronald C	6/10/03	1		MMM		n	
812	kerns-lee, davon	6/11/03	1		mmm		n	
813	lundy, christian	6/11/03	2		lgw		n	
814	mccoy, oneal	6/11/03	3		mmm		n	
815	morgan, willie	6/12/03	3		rcc		n	
816	ezelle, scott	6/13/03	1		aw		n	
817	hydrick, john	6/13/03	3		cdr		y	
818	clark, albert	6/17/03	2		kc		n	
819	lee, anthony	6/19/03	1		lgw		n	
820	Toole, Eric K	6/19/03	1		MMM		n	
821	landrum, robert	6/20/03	5		shy		n	
822	Shealy, George Arthur	6/20/03	2		KC		n	
823	Watts, Brian Keith	6/20/03	2		KC		n	
824	Wymer, Thomas Claude	6/20/03	1		KC		n	
825	ball, wayne	6/21/03	1		lgw		n	
826	boyer, jacqueline	6/21/03	1		mmm		n	
827	koivo, royce	6/21/03	2		lgw		n	
828	newman, benjamin	6/21/03	2		mmm		n	
829	Smith, Patricia	6/21/03	1		SJM		n	
830	Poplin, Micheal S	6/22/03	1		MMM		n	
831	Richardson, Horace Den	6/22/03	1		LGW		n	
832	ellison, antonio	6/23/03	1		mmm		n	
833	hardin, ashley	6/24/03	4		cdr		y	
834	leaphart, christie	6/24/03	1		cdr		n	
835	Zeigler, James	6/24/03	1		LGW		n	
836	arcand, carter	6/26/03	2		DSG		n	
837	clark, david	6/26/03	3		lgw		n	
838	hayden, damon	6/26/03	1		sjm		n	
839	adams, ferlandus	6/27/03	1		mmm		n	
840	dick, joab	6/27/03	1		cdr		n	
841	Quinonez, Jose Alberto	6/27/03	1		PLED		y	
842	blackwell, adrienne	6/28/03	2		dvm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
843	gillie, theus	6/28/03	1		mmm		n	
844	jenkins, kathy	6/29/03	1		mmm		n	
845	Shoemaker, Brian Rober	6/29/03	3		RMM		y	
846	Taylor, Darryl Rodney	6/29/03	2		Not assigned		n	
847	hall, mary	6/30/03	1		mmm		n	
848	hawkins, michael	7/1/03	4		lgw		n	
849	Pontoon, Willie James Jr	7/1/03	2		LGW		n	
850	Simon, Louis B	7/1/03	2		DVM		n	
851	Shuler, Donald W	7/2/03	1		MMM		n	
852	Shuler, Linda Fay	7/2/03	2		MMM		n	
853	crow, mitzi	7/3/03	3		mmm		n	
854	dixon, calvin	7/3/03	3		sjm		n	
855	holmes, desiree	7/3/03	3		sjm		n	
856	Simmons, Anthony L	7/3/03	3		SJM		n	
857	johnston, timothy	7/4/03	2		dbm		n	
858	anderson, terry lee	7/5/03	2		aw		n	
859	jeffcoat, roger	7/5/03	1		N/A		n	
860	Sease, George Vernon	7/5/03	1		MMM		n	
861	hendrix, henry	7/6/03	3		sjm		n	
862	duncan, james	7/7/03	2		mmm		n	
863	Roland, Carlos Maurice	7/7/03	2		CDR		y	
864	Taylor, Christopher A	7/8/03	1		KC		n	
865	Rabon, Michael B	7/9/03	2		DVM		n	
866	Smith, Joel Ray	7/9/03	4		MMM		n	
867	millar, shannon	7/10/03	2		shy		n	
868	Yarborough, Robert Milt	7/10/03	1		LGW		n	
869	barnes, yolanda	7/11/03	1		jm		n	
870	hendrix, gary	7/11/03	1		jm		n	
871	kelly, william f	7/11/03	3		cgs		y	
872	Randolph, Marian Franci	7/11/03	1		JM		n	
873	burkheimer, robin	7/12/03	1		mmm		n	
874	gordon, tyrone	7/14/03	7		lgw		n	
875	Sims, Torreon A	7/14/03	5		DBM		n	
876	lebel, gregory	7/15/03	1		mmm		n	
877	Simpkins, Edward D	7/15/03	4		DBM		n	
878	mcmillian, detrick	7/16/03	4		dbm		n	
879	evans, robert	7/18/03	4		lgw		n	
880	felder, jessie	7/18/03	2		kc		n	
881	gardner, timothy	7/18/03	1		jm		n	
882	hutto, george	7/18/03	3		lgw		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Disp Date
883	Sutton, Henry A	7/18/03	1		MMM		n	
884	dobey, jimmie	7/19/03	1		dvm		n	
885	Rogers, Kim M	7/19/03	1		LGW		n	
886	Straws, Jabbar J	7/19/03	3		SJM		n	
887	hewitt, george	7/20/03	1		sjm		n	
888	Vanderlick, Michael	7/20/03	1		RMM		n	
889	Swindler, Christopher W	7/21/03	1		MMM		n	
890	davis, george	7/26/03	1		mmm		n	
891	gantt, jerome	7/30/03	1		lgw		n	
892	graham, quentin	7/30/03	1		lgw		n	
893	coffey, benjamin	7/31/03	1		lgw		n	
894	harper, ulysses	7/31/03	3		lgw		n	
895	mcelhaney, jessica	7/31/03	1		lgw		n	
896	carr, william	8/1/03	1		shy		n	
897	carter, david	8/1/03	19		aga		n	
898	finley, candice	8/1/03	1		scb		n	
899	jivers, sheree	8/1/03	1		dsg		n	
900	jumper, heather	8/1/03	1		sjm		n	
901	kyzer, christopher	8/1/03	2		aga		n	
902	blackwell, jerry	8/2/03	1		kc		n	
903	Street, Henry	8/3/03	2		AW		n	
904	Street, Lisa June	8/3/03	4		AW		n	
905	hopkins, james l	8/4/03	1		dbm		n	
906	burden, sasilana	8/6/03	1		mmm		n	
907	green, james	8/7/03	1		scb		n	
908	cohen, kaheli	8/8/03	2		lgw		n	
909	curtis, harold	8/8/03	1		lgw		n	
910	davis, theodore	8/8/03	4		srh		n	
911	finklea, ron	8/8/03	4		srh		n	
912	Walker, Rae Lynn	8/8/03	1		MMM		n	
913	Shumpert, Jeffrey Dean	8/9/03	2		MMM		n	
914	craft, william	8/12/03	1		mmm		n	
915	nelson, giho	8/12/03	6		rrm		n	
916	byrd, john	8/13/03	2		dvm		n	
917	garcia, jose	8/13/03	1		CGS		Y	
918	Smalls, Dian Albright	8/13/03	2		RMM		n	
919	Wilson, Ron	8/13/03	1		MMM		n	
920	norton, clinton	8/15/03	5		mmm		n	
921	hiltz, darlene	8/16/03	2		mmm		n	
922	Watts, Craig Michael	8/16/03	1		AW		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
923	Summers, Marion Durand	8/18/03	1		MMM		n	
924	Walters, Robert Edward	8/18/03	2		AW		n	
925	mcclinton, terrence	8/19/03	1		rmm		n	
926	Pierce, Virginia Ann	8/19/03	1		LGW		n	
927	baldwin, eddie	8/20/03	1		sjm		n	
928	brown, gary	8/20/03	1		rmm		n	
929	fennick, audrey	8/20/03	1		sjm		n	
930	harley, tameka	8/20/03	1		rmm		n	
931	mason, tray	8/20/03	1		kc		n	
932	Sims, Jonathan Darnell	8/21/03	2		SJM		n	
933	ingle, christopher	8/22/03	2		scb		n	
934	knight, michael	8/22/03	4		sjm		n	
935	Townsend, Adele Lynn	8/22/03	1		LGW		n	
936	Webb, Kenneth Charles	8/22/03	3		MMM		n	
937	Williams, Antonio D	8/23/03	5		KC		n	
938	palmer, james	8/24/03	2		N/A		n	
939	morris, jemmell	8/25/03	1		rmmm		n	
940	brown, edward	8/26/03	1		rmmm		n	
941	hopkins, chasity	8/26/03	1		N/A		n	
942	jenkins, john r	8/26/03	3		kc		n	
943	love, bobby	8/27/03	4		rmmm		n	
944	morales, victor	8/27/03	1		sjm		n	
945	Seboe, Brandon Charles	8/27/03	1		FAB		n	
946	holmes, levi	8/28/03	12		rmm		n	
947	barwick, james	8/29/03	1		rmmm		n	
948	brogdon, joseph	8/29/03	2		rmmm		n	
949	craven, michael	8/29/03	1		rmmm		n	
950	derrick, charles	8/29/03	1		rmmm		n	
951	goff, karen	8/29/03	1		rmmm		n	
952	malecki, mark	8/29/03	1		rmmm		n	
953	martin, john	8/29/03	3		sjm		n	
954	Wilson, Sharon R	8/29/03	1		MMM		n	
955	edwards, michael	9/3/03	1		lgw		n	
956	millar, anthony	9/3/03	1		jm		n	
957	Profit, Lonell Jeremiha	9/3/03	3		RMM		n	
958	folk, trenton	9/4/03	1		rmmm		n	
959	ketchen, ginger	9/5/03	1		lgw		n	
960	hernandez, fidel	9/6/03	1		rmmm		n	
961	miguel, jose	9/6/03	1		sjm		n	
962	alavez, simon	9/8/03	1		lgw		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
963	durham, amanda	9/8/03	2		lgw		n	
964	durham, josh	9/8/03	1		lgw		n	
965	Riddle, Angelicia M	9/8/03	2		DBM		n	
966	Riddle, John	9/8/03	9		DBM		n	
967	Stone, Bobby Joe	9/8/03	1		Not assigned		n	
968	geiger, alfred	9/9/03	1		dvm		n	
969	brailey, koshia	9/10/03	2		sjm		n	
970	duncan, betty	9/10/03	1		mmm		n	
971	favor, deandra	9/10/03	1		lgw		n	
972	Salley, Otis	9/10/03	2		SJM		n	
973	dreher, miko	9/11/03	1		sjm		n	
974	owens, charles	9/13/03	5		aw		n	
975	jeffcoat, jerry	9/14/03	1		mmm		n	
976	Wood, Wayne	9/14/03	1		MMM		n	
977	baker, jerome	9/15/03	1		kc		n	
978	dean, glenda	9/15/03	2		mmm		n	
979	jones, jimmie	9/15/03	1		kc		n	
980	Williams, Alfonso L	9/15/03	2		LGW		n	
981	jones, deonta	9/16/03	1		n/a		n	
982	adams, craig steven	9/17/03	1		mmm		n	
983	cunningham, jason	9/17/03	2		lgw		n	
984	howdyshell, robert	9/17/03	3		jm		n	
985	Peele, Lukan	9/17/03	1		LGW		n	
986	Smith, Patrick Leon	9/17/03	2		SRH		n	
987	brown, marty	9/18/03	2		kc		n	
988	morris, tyrone	9/18/03	7		lgw		n	
989	Taylor, Reginald D	9/18/03	4		DVM		n	
990	Walker, Joseph Clint	9/18/03	2		RMM		n	
991	glover, ronnie	9/19/03	1		mmm		n	
992	lawrence, karla	9/19/03	1		mmm		n	
993	milligan, desmond	9/19/03	5		aga		n	
994	murry, kenneth	9/19/03	1		jm		n	
995	mack, marion	9/20/03	1		kc		n	
996	Price, Frank	9/20/03	2		RMM		n	
997	Richardson, Edward L	9/20/03	1		AGA		n	
998	Secer, Peter	9/20/03	2		RMM		n	
999	guerrero, melodie	9/22/03	7		kc		n	
1000	dickerson, johnny	9/23/03	4		mmm		n	
1001	jackson, rose	9/23/03	1		mmm		n	
1002	Veronee, Kyle Dawson	9/23/03	2		MMM		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
1003	ames, ross jamal	9/25/03	1		lgw		n	
1004	Stroud, David Eugene	9/25/03	1		AW		n	
1005	davis, james	9/26/03	2		JM		n	
1006	finley, pam	9/26/03	6		kc		n	
1007	clark, billy	9/27/03	4		mmm		n	
1008	david, christopher	9/27/03	1		mmm		n	
1009	finley, michael	9/27/03	3		kc		n	
1010	Quattlebaum, John N	9/27/03	2		SJM		n	
1011	Watkins, Kenneth L	9/27/03	3		MMM		n	
1012	day, william	10/1/03	1		lgw		n	
1013	Rawls, Mariol Juante	10/1/03	2		SJM		n	
1014	Reynolds, Denise	10/1/03	3		LGW		n	
1015	dwyer, jackie	10/4/03	3		aga	Sam Kramer	n	
1016	panter, arnold	10/4/03	2		mmm		n	
1017	Watts, William Tony	10/4/03	1		LGW		n	
1018	Patterson, Gregory A	10/5/03	1		KC		n	
1019	Riley, Ronald Lewis	10/5/03	2		LGW		n	
1020	bynum, sammy	10/6/03	3		scb		n	
1021	alston, alvin darrell	10/7/03	1		aw		n	
1022	bouler, rejois	10/7/03	2		scb		n	
1023	hicks, michael	10/7/03	2		mmm		n	
1024	miller, cori	10/7/03	2		aw		n	
1025	brooker, darren	10/8/03	4		kc		n	
1026	areheart, jon	10/9/03	1		lgw		n	
1027	goodwin, otis	10/9/03	1		lgw		n	
1028	higgs, raymond	10/9/03	1		kc		n	
1029	Thompson, Shana	10/9/03	1		LGW		n	
1030	alexander, dianna dawn	10/10/03	2		kc		n	
1031	dockery, david	10/10/03	1		dsg		y	
1032	kennedy, kenneth	10/10/03	2		sjm		n	
1033	meetze, robert	10/10/03	1		mmm		n	
1034	berger, gina	10/11/03	1		mmm		n	
1035	neese, jeanette	10/11/03	3		kc		n	
1036	Smith, Brent Allen	10/11/03	1		KC		n	
1037	Slater, Charlton	10/13/03	1		SCB		n	
1038	Phelps, Christopher A	10/15/03	3		MMM		n	
1039	Varnadoe, Karla A	10/15/03	1		SHY		n	
1040	Weaver, Marc Anthony	10/15/03	12		CDR		n	
1041	duke, jesse	10/16/03	1		mmm		n	
1042	felts, bartow	10/16/03	2		jm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty.	Disp.	Dis. Date
1043	jordan, ray	10/16/03	1		lgw		n	
1044	Penny, Michael C	10/18/03	2		MMM		n	
1045	contreras, jose	10/19/03	2		N/A		n	
1046	kearse, william	10/20/03	1		scb		n	
1047	Templeton, James	10/20/03	1		RMM		n	
1048	Vest, Timothy Scott	10/21/03	1		LGW		n	
1049	dixon, lucious	10/22/03	2		mmm		n	
1050	jackson, marcus	10/22/03	1		mmm		n	
1051	Rivers, Curtis Lee	10/22/03	2		SCB		n	
1052	Stokes, Paul	10/22/03	1		LGW		n	
1053	Shepherd, Robert Ervin	10/23/03	1		KC		n	
1054	hipp, erma	10/24/03	1		sjm		n	
1055	Wells, Jimmy W	10/24/03	1		RCC		n	
1056	barfield, crystal	10/25/03	1		rcc		n	
1057	huggins, miles	10/25/03	1		mmm		n	
1058	moore, charles	10/26/03	1		lgw		n	
1059	jones, doyle	10/28/03	1		lgw		n	
1060	Ray, David Lee	10/28/03	1		LGW		n	
1061	Rivers, Andrianne C	10/28/03	1		Not assigned		n	
1062	Trapp, John Marion II	10/28/03	3		KC		n	
1063	carrillo, armando	10/29/03	1		scb		n	
1064	harris, kenneth	10/30/03	6		rmm		n	
1065	Temples, Charlie Waymo	10/30/03	1		MMM		n	
1066	lee, ronald	10/31/03	1		kc		n	
1067	Prater, Carey Vaughn	10/31/03	6		MMM		n	
1068	blackmon, leon	11/1/03	2		lgw		n	
1069	christie, wesley	11/2/03	1		mmm		n	
1070	Thomas, George J	11/4/03	1		SHY		n	
1071	foulks, ashley	11/5/03	1		kc		n	
1072	frazier, okareta	11/5/03	1		lgw		n	
1073	jamison, desmond	11/5/03	3		mmm		n	
1074	mack, marion j	11/5/03	1		lgw		n	
1075	Swilley, Melissa Lekelle	11/5/03	1		KC		n	
1076	chandler, corey	11/9/03	1		lgw		n	
1077	harden, robert	11/9/03	1		mmm		n	
1078	Pugh, Stafford	11/10/03	1		SHY		n	
1079	abney, aaron	11/12/03	1		mmm		n	
1080	caughman, thomas	11/12/03	1		rmm		n	
1081	jones, michael r	11/12/03	1		rmm		n	
1082	lance, randolph	11/12/03	1		rmm		n	

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA) INDICTMENTS: 1990-GS-32-0083
) 1990-GS-32-0084
-versus-)
) ORDER
GENE TONY COOPER,)
)
Defendant.)

Paul A. Carmon
Clerk of Court
Lexington, SC

FILED
2002 JUN 25 PM 2:15

This matter is before the court on the defendant's motion to dismiss his indictments due to violations of the defendant's right to a speedy trial guaranteed by the South Carolina Constitution, S.C. Const. art. I, §§ 9 & 14, the United States Constitution by the Sixth Amendment through the Fourteenth Amendment, and the Code of Laws of South Carolina 1976, S.C. Code §17-13-90. If the court does not grant his motion, he alternatively requests release on bond pending trial. For the following reasons the court denies both of the defendant's motions.

Background

The defendant was arrested in 1989 and tried and convicted of murder, armed robbery, kidnapping, and conspiracy to commit armed robbery, by the Eleventh Judicial Circuit Court in Lexington County in 1991. He has remained incarcerated since his original arrest¹. The Supreme Court reversed and remanded his murder conviction in 1994 due to the circuit court's failure to obtain an on-the-record waiver of the defendant's right to personally address the jury during the guilt phase of his trial. The defendant then applied for post conviction relief from his remaining convictions. On August 12, 2002, the South Carolina

¹ Mr. Cooper has now been incarcerated for approximately sixteen years.

Supreme Court affirmed his post conviction relief as to the non-capital charges. The Supreme Court held that the defendant had the right to personally address the jury regarding all of his charges and that his counsel provided ineffective assistance by failing to inform him of his statutory right to make a closing statement to the jury.

Mr. Cooper has been incarcerated without a valid conviction on his murder charge since 1994 and since August 12, 2002 on his other charges. The first of four speedy trial motions was made in front of the Honorable Marc H. Westbrook on August 18, 2003. Judge Westbrook did not directly rule on the motion. Instead, he took it under advisement to allow the state to move for dismissal of Mr. Bruck from the case, since granting that motion to set a trial date would be unduly burdensome on any new defense counsel. Additionally, Judge Westbrook expressed concerns about setting the trial for that November because that was the month tentatively scheduled for Lexington County to move into a newly constructed courthouse and there were a number of other pending capital cases on the court's docket. Following the hearing, an in chambers meeting was held with Judge Westbrook in which the state represented that it would call the defendant's case in the spring of 2004.

Due to the fact that the state did not call the case that spring as they represented that they would, the defendant filed another speedy trial motion on February 10, 2005. That motion was heard by the Honorable William P. Keesley on February 15, 2005. Judge Keesley issued an order on that motion which was filed on April 25, 2005. The order directed that Mr. Cooper's case "is to be heard



before the end of 2005, or the defendant may move for bail or for dismissal of the charges."

The defendant subsequently renewed his speedy trial motion in front of Judge Keesley. It was also denied in a July 12, 2005 order issued by Judge Keesley on the grounds that it was already covered by the order in April directing that the case be tried in 2005. The July 12, 2005 order also denied the state's motion to remove defense counsel, granted the state's motion to have the Eleventh Circuit Solicitor's office disqualified due to a conflict, and denied the defendant's motion for bail. As a result of the disqualification of the Eleventh Circuit Solicitor's Office, the First Circuit Solicitor's Office was appointed to the case in September of 2005. The Honorable Jean Toal, Chief Justice of the South Carolina Supreme Court, designated the undersigned judge to hear and dispose of the case in an order signed December 2, 2005.

The defendant filed his current motion to dismiss for denial of a speedy trial on December 29, 2005, because the state did not comply with Judge Keesley's April 25, 2005 order directing the case to be tried in 2005. In the alternative, the defendant requests that bail be set if the motion to dismiss is not granted. The issue this court must consider is whether the delay since the denial of the motion by Judge Keesley is justified.

Analysis

The Constitution of the United States guarantees that a defendant facing criminal charges "shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. In *Klopfer v. North Carolina*, 386 U.S. 213, 87 S.Ct. 988 (1967), the



United States Supreme Court established that the right to a speedy trial is fundamental and imposed by the Due Process Clause of the Fourteenth Amendment on the States. *Klopfer* at 223, 993. The right to a speedy trial is also guaranteed to the citizens of South Carolina by the state Constitution. S.C. Const. Art. I, § 14. In *Wheeler v. State*, the Supreme Court of South Carolina recognized that "[a] speedy trial is a part of the due process of law to which every person accused of crime is entitled under Article 1, Section 5 of the Constitution of South Carolina and under the Fourteenth Amendment to the Federal Constitution." *Wheeler v. State*, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966).

The United States Supreme Court has articulated the proper approach for a court to take when dealing with the right to a speedy trial: "[t]he approach we accept is a balancing test, in which the conduct of both the prosecution and the defendant are weighed." *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192 (1972).

A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Id.* at 530, 2192.²

The South Carolina Supreme Court has recognized the factors identified in *Barker* as the controlling considerations when dealing with speedy trial questions.

² Later in the opinion, the U.S. Supreme Court made clear that it regarded "none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution." *Barker* at 533, 2193.

State v. Chapman, 289 S.C. 42, 44, 344, S.E.2d 611, 612 (1986); *State v. Waites*, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978); see also *State v. Foster*, 260 S.C. 511, 513-514, 197 S.E.2d 280, 281 (1973); *State v. Monroe*, 262 S.C. 346, 350, 204 S.E.2d 433, 435 (1974). However, South Carolina jurisprudence is somewhat undeveloped on the topic, including the different forms of prejudice, and there has not been any state guidance on the issue since the United States Supreme Court issued its opinion in *Doggett v. U.S.*, 505 U.S. 647, 112 S.Ct. 2686 (1992).

LENGTH OF DELAY

The first factor that this court will analyze is the length of delay. "It has long been the rule that when a defendant obtains a reversal of a prior, unsatisfied conviction, he may be retried in the normal course of events." *U.S. v. Loud Hawk*, 474 U.S. 302, 313, 106 S.Ct. 648, 655 (1986). The defendant is not trying to assert that any portion of the eight-year span between when his murder conviction was reversed and his post conviction relief was affirmed should be taken into account in this speedy trial analysis. For all analytical purposes, Judge Keesley considered the time period from August 2002 until the end of December 2005, since a delay in trial was requested to pursue PCR relief. The undersigned is now considering the further delay since December 2005. Although delay alone is not dispositive, the total delay of at least forty four months is sufficient to trigger review of the other factors. See *State v. Kennedy*, 339 S.C. 243, 249, 528 S.E.2d 700, 704 (Ct.App.2000), *aff'd* 348 S.C. 32, 558 S.E.2d 527 (2002), (finding that a delay of two years and two months was

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troubling and sufficient to trigger inquiry into the other factors). Additionally, it should be noted that the state in the case at hand concedes that the length of delay is sufficient to trigger further scrutiny of the remaining factors. In *Doggett*, the Supreme Court suggested in dicta that a delay over one year is presumptively prejudicial. *Doggett v. U.S.*, 505 U.S. 647, 652, 112 S.Ct. 2686, 2691 (1992). This marks a point where courts may deem the delay unreasonable enough to trigger a *Barker* inquiry. *Id.*

REASONS FOR DELAY

The second factor in the analysis focuses on the reasons for the delay. "The constitutional guarantee of a speedy trial is protection only against delay which is arbitrary or unreasonable." *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978)(citing *People v. Hairston*, 46 Ill.2d 348, 263 N.E.2d 840 (1970)). This factor is construed in *Doggett* as probative of "whether the government or the criminal defendant is more to blame for the delay." *Doggett* at 651, 2690. The delay was not apparently part of an intentional scheme designed to prejudice the defendant. However, the court finds that the delay was to some degree the result of prosecutorial and governmental negligence, and partly justifiable. There were a variety of reasons offered by the Eleventh Circuit Solicitor's Office to show why the defendant's case had not been set for trial in a timely fashion. However, while none of these excuses alone are sufficient to justify such delay, in the aggregate they sufficiently justify the majority of the delay.

First, the state contends that Mr. Cooper's case is not only a very complex case, but it is over fifteen years old, and as such, will require a substantial amount of time to prepare for trial. However, according to the testimony of Eleventh Circuit Solicitor Donald Myers, nothing substantial had been done by his office to prepare for trial. It is not clear whether or not Judge Keesley weighed this factor in the state's favor prior to the case being assigned to the First Circuit. The delay since the First Circuit was assigned the case in September, 2005, is justified because "the case was clearly complicated and required substantial time to investigate and prepare." *State v. Kennedy*, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (2000) (justifying fourteen month delay post assertion of speedy trial right).

Secondly, the state argues that moving the Eleventh Circuit Solicitor's Office between the new and old Courthouse due to mold contamination hampered its ability to promptly dispose of an already overcrowded docket. It can account for several months of the delay. According to court records the last general sessions term in the old courthouse was November 13, 2003; during that term, the Northcutt case, a capital case, was tried. The first general sessions jury trial in the new courthouse was on April 4, 2004. However, starting January 8, 2004, general sessions pleas and civil trials were regularly being conducted. Despite the actual time there were no criminal jury trials being held, it would not be inappropriate to justify additional time for the solicitor's office to get settled into the new facility as was explained by the testimony of solicitor Myers. As to the overcrowded docket argument, the court found in *Kennedy* that the state's claim



of a loaded docket was a correct yet insufficient excuse alone for the delay. *State v. Kennedy*, 339 S.C. 243, 249, 528 S.E.2d 700, 704 (Ct.App. 2000)(the court was ultimately persuaded by the state's claim that the case was complicated and required a substantial amount of time to prepare). Therefore, even though the overcrowded docket argument was standing alone insufficient, it should still be considered.

Thirdly, there was apparently much confusion as to which judge if any had been assigned to the case prior to the appointment of the undersigned. Solicitor Myers believed that Judge Westbrook was the judge assigned to the case, when in fact no judge had been assigned. The delay in assigning a judge occurred because court administration was not notified of the state's intent to seek the death penalty. Solicitor Myers testified that the typical process is that the General Sessions Chief Judge for administrative purposes conveys that notice to court administration so that the Chief Justice of the South Carolina Supreme Court will assign a judge pursuant to her authority granted by the South Carolina Constitution in article V, § 4. However, that has not been the experience of this court. The solicitor has the duty of alerting court administration so that a judge will be assigned, and the consequences (insofar as delay is concerned) resulting from the postponement of this procedure is a burden the state must bear. Due to this delay, the undersigned was not given exclusive jurisdiction over this case until December 2, 2005, so that trying the case in 2005, as Judge Keesley's order directed, was virtually impossible due to the time necessary to summons a

larger jury pool, mail out questionnaires, etc., that normally is associated with a capital trial.

Furthermore, the state's ability to adhere to Judge Keesley's order was also substantially frustrated by the Eleventh Circuit Solicitor's Office's recusal of itself on July 12, 2005, preventing the First Circuit Solicitor's Office from being assigned to the case until September of that year. Generally, a reasonable delay attributable to recusal of the state is justified because the process of recusal is designed to protect the defendant's due process right to a fair and impartial trial.

This court finds that the reasons for the delay are unintentional and for the most part justifiable. Various reasons for a lag between indictment and trial are weighed differently. *U.S. v. Frith*, 181 F.3d 92, 1999 WL 387849 (C.A. 4(Va.)). For example, "[a] deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government." *Barker* at 531, 2193. "More neutral reasons, such as governmental negligence or an overcrowded court docket, are still weighed against the government (because it bears the ultimate responsibility for bringing a defendant to trial), but less heavily." *Frith* at 3 (citing *Barker*). It should be noted that there is South Carolina case law that indicates that the burden is on the movant to prove that the "delay was due to the neglect and willfulness of the State's prosecution." *State v. Dukes*, 256 S.C. 218, 222, 182 S.E.2d 286, 288 (1971)(emphasis added)(citing 21 Am.Jur.(2d), Criminal Law, Sections 251—253, 286; *State v. Hollars*, 266 N.C. 45, 145 S.E.2d 309 (1971)). It is not clear to this court whether such precedence requiring neglect and willfulness is in line with the jurisprudence of



the United States Supreme Court. Nonetheless, the court finds that the state's conduct in this instance was not apparently willful and was largely justifiable.

ASSERTION OF RIGHT

The third factor this court must weigh is the defendant's assertion of his right to speedy trial. "The constitutional right of an accused to a speedy trial is a personal one, which he may waive by his conduct. Such waiver is generally inferred: (1) where he has failed to make timely demand that he be either tried or discharged; (2) where a continuance has been granted on his motion or with his consent; or (3) where he has voluntarily entered a plea of guilty without raising the question of denial of speedy trial." *Wheeler v. State*, 247 S.C. 393, 401, 147 S.E.2d 627, 630 (1966); See also *State v. Sarvis*, 265 S.C. 144, 146, 217 S.E.2d 38, 41 (1975) ("The continuance of the case in order to convenience respondent's counsel and the failure to demand a trial constituted a waiver of respondent's right to a speedy trial.") "While the United States Supreme Court has rejected the demand-waiver rule as applied to the right to speedy trial, *Barker, supra*, the manner in which the defendant asserts his right thereto is an important factor to be considered. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (quoting *Barker v. Wingo*, 407 U.S. at 532, 92 S.Ct. at 2193); see also *State v. Foster*, 260 S.C. 511, 197 S.E. 2d 281 (1973). It cannot be argued that since 2003 the defendant ever failed to assert his right to speedy trial. In *Kennedy, supra*, even though Kennedy asserted his right to a speedy trial fourteen months before the trial

commenced, the court noted that lead defense counsel had only been counsel of record for nine months prior to the trial and the procedural history of the case outweighed any presumption of prejudice. *Kennedy* at 250, 704. In contrast, Mr. Cooper has been represented by his attorney for more than a decade. The state could contend that the defendant's attorney, Mr. Bruck, waived the defendant's right when he requested that the court try the case within a specific timeframe that would not interfere with his newly acquired educational responsibilities as a law school professor at Washington and Lee. However, this court finds that because Judge Keesley ruled in an order that the court would not be able to accommodate Mr. Bruck's request, it does not appear that Judge Keesley assigned any weight to this request in the denial of the motion³. Therefore, nothing in the procedural history of the case could support a finding that the defendant failed to properly assert his right to speedy trial. Logically this court weighs the delay accruing post assertion of one's right to a speedy trial more heavily against the state than the portion of delay that accrues prior to the assertion of that right.

PREJUDICE

The fourth and most important factor that this court must examine is the prejudice that the defendant suffered as a result of the delay. "Among the goals of the Sixth Amendment right to speedy trial is prevention of undue incarceration, minimization of the anxiety accompanying public accusation, and limitation of the possibility that long delay will impair the accused's ability to defend himself."

³ However, since being designated to preside over this case, this court did consider Mr. Bruck's faculty schedule for the time period from December 2005 to the present.



Waites, supra, at 107, 653. All of these goals have been recognized as forms of prejudice, not just the latter as has been more frequently seen in state jurisprudence. "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Kennedy* at 250, 704 (citing *Barker* at 532, 2192). However,

[t]he Sixth Amendment Right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by the passage of time; that interest is protected primarily by the due process clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." *U.S. v. MacDonald*, 456 U.S. 1, 8, 102 S.Ct. 1497, 1502 (1982).

In *State v. Brazell*, a delay of three years and five months was lengthy and the justification was unsatisfactory, but Brazell's right to a speedy trial was not denied upon balance of the *Barker* factors. *State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997). "The long delay was negated by the lack of prejudice to the defense. There is no evidence that the delay was willful or intentional." *Id.* at 76, 70-71. The most significant difference from the case at hand is that Brazell was already incarcerated on other charges so he was arguably not prejudiced by the delay in the form of pretrial incarceration. The defendant herein has not shown how his defense has been or will be prejudiced by the delay through the use of demonstrative evidence. Accordingly, this lack of proof in regard to trial prejudice will weigh against his claim to a violation of his right to a speedy trial.

In this regard it should be noted that the majority of South Carolina case law relies on a lack of demonstrable evidence of trial prejudice in the denial of

speedy trial motions. However, as pointed out in *Doggett*, demonstrable trial prejudice is not essential. *Doggett v. U.S.*, 505 U.S. 647, 655, 112 S.Ct. 2686, 2693 (1992). The defendant relies on the presumption that his defense was prejudiced by the passage of time. *Doggett* noted that "presumptive prejudice cannot alone carry a Sixth Amendment claim," but rather must be considered in context with the other factors; it also recognized that "affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Id.* at 655-56, 2693-94.

This court recognizes that the main prejudice Mr. Cooper has suffered from is pretrial incarceration⁴. In *Kennedy*, the delay and pretrial incarceration was twenty-six months, and Kennedy asserted his right to speedy trial fourteen months before his trial started. The state's reasons for delay were blamed on an overcrowded docket, complexity of the case, and the procedural history which the court found "outweighed any presumption of prejudice." *Id.* at 250, 704. The case at hand consists of a forty-four month delay as opposed to the twenty-six month delay in *Kennedy*. In *Kennedy*, the court found that the pretrial incarceration at issue was only "slight prejudice," and insufficient alone to carry the speedy trial motion. This court has not lost sight of the importance of a defendant's liberty, for it is that liberty which the speedy trial right was designed to protect. However, upon balance of the Barker factors, especially with this court heavily weighing the lack of demonstrable evidence of trial prejudice, the

⁴ However, recent developments have led Mr. Bruck to indicate that he desires to supplement his speedy trial motion while it was pending in order to demonstrate particular trial prejudice. While this order is being issued prior to the receipt of any such supplement, this court finds that upon receipt of the same, this issue may be revisited by a renewed motion if necessary upon discovery of such trial prejudice.

presumption of prejudice has been persuasively rebutted and as such, this court must deny the defendant's motion. *Doggett* at 658, 2694⁵. It also should be noted that the state recently withdrew their notice to seek the death penalty, and this could be construed as a benefit to the defendant that materialized from the delay.

Bond

The defendant's motion in the alternative to be released on bond if this court refused to grant the previously discussed motion for speedy trial is also denied. "Before conviction it is mandatory to grant bail, except for capital offenses when the proof is evident or the presumption is great." S.C. Const. art. 1 § 20. Moreover, this court finds that the heinous nature of the alleged offenses, and the fact that he has prior convictions for violent crimes makes him a potential danger to the community. Furthermore the defendant is a potential flight risk as evidenced by his prior convictions for attempted escape in December of 1977, escape in September 1980, and escape in March of 1985. For the aforementioned reasons, this court denies the defendant's motion to be released on bond pending trial.

Conclusion

Having considered the arguments of counsel and the record herein, the motions are hereby denied without prejudice. Judge Keesley had originally denied the speedy trial motion in the event the case was tried prior to the end of 2005. In the interim, a new prosecutor was assigned to the case and a judge

⁵ The United States Supreme Court specifically found in *Doggett* that while the government countered *Doggett's* efforts to demonstrate particularized trial prejudice, it had not, and probably could not have affirmatively proved that the delay left his ability to defend himself unimpaired. In the case at hand, the court finds that the state has proved that the delay has not impaired the defendant's ability to defend himself, contrary to the circumstances in *Doggett*.

1/18

was assigned to preside over this matter in December 2005; in addition, all persons involved needed at least a brief time to prepare for the anticipated trial from the date the undersigned was appointed. Further, since the deadline in Judge Keesley's order, this court considered the availability of trial terms, the time needed to prepare juror questionnaires, the need for a larger jury pool in a capital death penalty trial, as well as the faculty schedule of defense counsel.

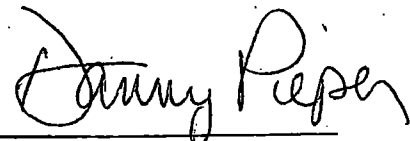
Accordingly, the record suggests that the further delay was justified from the period in which Judge Keesley had found that a speedy trial violation did not exist. Although not dispositive, to some extent, the defendant has benefited from the delay inasmuch as the State has now withdrawn its notice to seek the death penalty. The court has designated that the case be tried the weeks of May 22nd and May 29th, 2006. *DS*

Provided, however, the defense counsel has requested additional time to supplement the record with claims of trial prejudice in addition to the other form of prejudice previously asserted. Since the court indicated it would allow the defendant to supplement the record if needed, the defendant may renew his motion if he can articulate some trial prejudice in addition to the other form of prejudice previously asserted; the defendant may also separately renew his motion if the State fails to call the case as originally ordered the week of May 22, 2006. *DS* These renewed motions may be heard de novo by any judge presiding over this matter.

On another matter, South Carolina Court Administration has notified the undersigned that he no longer has exclusive jurisdiction over this case since it is

no longer designated as a death penalty matter. Notwithstanding, in no event should this delay the trial of the case. Two points should be noted in this regard. First, in Judge Keesley's order, he specifically put Court Administration and the Chief Justice on notice of the need for the necessary changes in scheduling to effectuate disposition of this case. Second, regardless of where such fault lies in the sequence of events, the protection of the constitutional rights of an accused is the duty of everyone involved in the judicial process. "The government and, for that matter, the trial court are not without responsibility for the expeditious trial of criminal cases. The burden for trial promptness is not solely upon the defense." *Barker v. Wingo*, 407 U.S. 514, 527, 92 S.Ct. 2182, 2190 (1972) (quoting *Hodges v. United States*, 408 F.2d 543, 551 (8th Cir. 1969)). As such, any governmental and/or prosecutorial negligence in not trying this case on schedule should weigh against the state in any renewed motion. The burden is certainly not on the defendant to facilitate his own prosecution.

IT IS SO ORDERED.

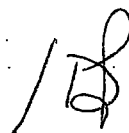


Judge Daniel F. Pieper,
9th Judicial Circuit

This 21 day of April 2006

Attorney for the defendant: David Bruck, Esquire
Jack Duncan, Esquire

Attorney for the state: David Pascoe, Esquire
Harrison Bell, Esquire



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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE

V.

GENE TONY COOPER

DEFENDANT.)

TRANSCRIPT OF RECORD

90-GS-32-083

90-GS-32-084

MAY 22, 2006

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DANIEL F. PIEPER, JUDGE; AND A
JURY.

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

B. HARRISON BELL, JR., ASSIST. SOLICITOR
THEODORE N. LUPTON, ASSIST. SOLICITOR
ATTORNEYS FOR THE STATE

DAVID A. BRUCK, ESQUIRE
JOHN E. DUNCAN, ESQUIRE
STUART M. ANDREWS, JR., ESQUIRE
ATTORNEYS FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

ORIGINAL

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1 **THE COURT:** All right. Thank you.

2 Anyone else? Anyone have any connection
3 whatsoever to any of those individuals?

4 (There was no response.)

5 **THE COURT:** Now, ladies and gentlemen, I'm just
6 going to tell you a little bit about the allegations
7 in this case just to see if any of you have any
8 knowledge or information about this case or have
9 heard anything about this case. Please remember any
10 time that an indictment is issued, they're just
11 allegations on the part of the State and the State
12 has an obligation to prove those allegations beyond
13 a reasonable doubt.

14 Now, in this case, the State charges that in
15 October 1989, the defendant entered into a
16 conspiracy to rob Kimberly Quinn. And the
17 indictments also charge the defendant with the
18 offense of kidnapping and murder. Now, the State
19 alleges that after she was killed, Ms. Quinn's body
20 was set on fire and her hands and feet were cut off
21 and thrown in a creek in Lexington County.

22 Now, does anyone have any knowledge or
23 information about this case or has anyone on the
24 panel read or heard anything about this case?
25 Again, those are just the allegations on the part of

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1 **MR. DUNCAN:** No, sir, Your Honor.

2 **THE COURT:** What's the next issue?

3 **MR. LUPTON:** Your Honor, if it please the
4 Court, I guess probably the biggest thing we have to
5 settle is the issue of Phillip Gary, also known as
6 Red Farmer.

7 Y'all have seen both of the affidavits.

8 **MR. DUNCAN:** We've only got one.

9 **MR. LUPTON:** Your Honor, if I can get these
10 marked and present them to the Court as Court's
11 Exhibits.

12 **THE COURT:** Yes, sir.

13 (Court's Exhibit Numbers 3 and 4,
14 affidavits, were marked for identification
15 purposes.)

16 **MR. LUPTON:** Your Honor, Court's Exhibit 3,
17 affidavit of James M. Frazier, the Third, Court's
18 Exhibit 4, affidavit of B. Harrison Bell. I believe
19 that you -- we gave you copies of those in chambers
20 so that you could read them ahead of time.

21 Your Honor, I think that we can primarily argue
22 this based on the affidavits. If you wish to have
23 supplemental testimony, we can certainly do that,
24 but I think this is primarily a matter of law.

25 Your Honor, the affidavits establish that once

1 the lead prosecutor, Mr. Bell, discovered the
2 precise date, once it was firmed up in March, he
3 began the process of trying to get Farmer brought in
4 to testify. The normal interstate subpoena, normal
5 out-of-state subpoena procedures were rejected by
6 the State of Texas under their laws. They would not
7 honor a South Carolina out-of-state subpoena.

8 They had a separate procedure, the rendition of
9 prisoners, according to the fact -- based on the
10 fact that we're not a signatory state in the Uniform
11 Rendition of Prisoners as Witness in Criminal
12 Proceedings Act that they're a signatory state of,
13 they required us to go through a special procedure.
14 Well, that procedure was initiated in March.

15 The initial steps were began in March,
16 background information had to be obtained,
17 identities of SLED agents that would transport the
18 witness, arrangements for transportation,
19 arrangements for secure housing, all of those
20 matters had to be arranged, all of that had to be
21 done. That was all done.

22 The paperwork was drawn up in April, submitted,
23 you signed it, had to be brought, signed by the
24 Clerk of Court here in Lexington, had to go to the
25 Governor's office, had to go to the South Carolina

1 Secretary of State, then to the Texas Governor's
2 office, the Texas Secretary of State and on to their
3 criminal justice department, basically their prison
4 bureau.

5 The procedure was initiated well in advance of
6 trial. I believe the Court is aware that normally
7 prisoners can be brought from out of state on a
8 normal subpoena within one to two weeks, often times
9 in less time than that. It's often that witnesses
10 are identified as being necessary and brought within
11 the same week. So one to two weeks would be a very
12 reasonable time frame.

13 The State in this case initiated the process
14 two months in advance, had the paperwork to the
15 Court a month in advance, had it to Texas well in
16 advance. The State acted in good faith and acted
17 reasonably in making the effort to get the prisoner.

18 That gets us to the legal standard for
19 declaring a witness unavailable under Rule 804(a)(5)
20 I believe it is.

21 Your Honor, the standard set by the Supreme
22 Court under (a)(5) is that -- is basically the lead
23 cases Page, which was cited by the defense as well,
24 Barber versus Page, 390 U.S. 1 -- excuse me -- 719.
25 Reading from that on page 724 through 725, In this

1 case, the state authorities made no effort to avail
2 themselves of either of the above alternative means
3 of seeking to secure Woods' presence at petitioner's
4 trial. And this was basically attempting to get a
5 witness transported from federal prison to a state
6 trial through requesting the Bureau of Prisons to
7 assist them.

8 The Court of Appeals majority appears to have
9 reasoned that because the State would have had to
10 request an exercise of discretion on the part of
11 federal authorities, it was under no obligation to
12 make any such request. Yet as Judge Aldrich,
13 sitting by designation, pointed out in dissent
14 below, quote, The possibility of a refusal is not
15 the equivalent of asking and receiving a rebuff.

16 The Court goes on to say, In short, a witness
17 is not unavailable for purposes of the foregoing
18 exception to the confrontation requirement unless
19 the prosecutorial authorities have made a good faith
20 effort to obtain his presence at trial.

21 Your Honor, in this case, the State did make a
22 good faith effort. The State did ask the State of
23 Texas to make its discretionary ruling and we were
24 rebuffed.

25 The State did this in a timely fashion. It

1 acted reasonably and it acted in good faith. The
2 case law is very specific that the standard is that
3 the State must act in good faith, must act
4 reasonably. Both of those actions were met in this
5 case. I don't think that there is any suggestion
6 that the State acted in bad faith in this case. I
7 don't believe that's a contention. Obviously, we
8 want him here as much as anybody.

9 As set out in the affidavits, this witness has
10 consistently testified against the defendant. He
11 was subject to cross-examination even after any
12 incentive he might have to cooperate with the State
13 was removed by his plea and double jeopardy barred
14 from any further prosecution regardless of what he
15 said in this case.

16 He was brought before a separate Court in
17 another trial, the trial of the codefendant, Bo
18 Sutherland, informed by the State and by the Court
19 in that case that he could not possibly be retried
20 for anything, that he could not face any further
21 punishment and he still testified consistent. So,
22 obviously, the State would like to have him.

23 We didn't act in bad faith and our actions were
24 reasonable. The State acted in four to eight
25 times -- left itself four to eight times the normal

1 amount of time required in order to get the witness
2 here.

3 Under the case law, the witness would qualify
4 for an 804(a)(5) unavailability. And once that's
5 established, his prior testimony under (b)(1),
6 804(b)(1), should be permitted to be read into
7 evidence. It was subject to cross-examination. It
8 was vigorously cross-examined.

9 The defense in the case in the original trial,
10 vigorously cross-examined him as to his incentive to
11 testify favorably in order to get a favorable deal.
12 That cross-examination wouldn't be available to him
13 at this point because he has no further incentive.
14 So they've had adequate confrontation.

15 **THE COURT:** Why did y'all arrange for SLED --
16 why did it take ten days to get SLED arranged to --
17 I mean, why didn't y'all just use two local
18 Lexington deputies?

19 **MR. LUPTON:** Your Honor, I believe because SLED
20 is essentially the lead investigation agency in this
21 case and the state law enforcement agency is my
22 understanding, I could be mistaken on that, but that
23 was why they were chosen.

24 **THE COURT:** Well, why did -- I mean, that took
25 ten days to get two agents assigned to the case?

1 **MR. LUPTON:** I think that part of the problem
2 was scheduling because this trial falls in between
3 Myrtle Beach Bike Week and Black Bike Week in Myrtle
4 Beach and I believe the Court's aware that SLED has
5 a significant manpower presence at the beach for
6 both of those events and they had trouble arranging
7 two agents.

8 **THE COURT:** Then that goes back to my question,
9 why weren't local agents -- officers used? I
10 certainly don't think bike week takes precedence
11 over this sort of proceeding.

12 **MR. LUPTON:** I agree, Your Honor. And I
13 certainly don't think that had this -- had this
14 paperwork been to Texas a week earlier, had they
15 given us an immediate turnaround, I don't think that
16 it would have made any difference because the judges
17 were unavailable for the month of May. So had the
18 paperwork been to them a week earlier, it still
19 would have been the same result. So I don't think
20 that matter would have affected it one way or the
21 other. But if you'll give me a second, I can ask
22 why SLED was used.

23 (Pause.)

24 **MR. LUPTON:** Your Honor, I'm informed it was
25 the fact that SLED was the -- is acting as the lead

1 prosecution agency and is the state law enforcement
2 agency. And when I say prosecution, they're
3 state -- they're the primary investigating agency in
4 this retrial and they are the state law enforcement
5 agency and they were the agency that we were in
6 contact with and were working with at that point.
7 And it was just a matter of this was the agency that
8 we were logistically connected to.

9 **THE COURT:** And when did you initiate that
10 conversation with SLED?

11 **MR. LUPTON:** Your Honor, Mr. Bell and my
12 understanding was that it was initiated in early
13 April, some time around the 10th, I believe.

14 **THE COURT:** April?

15 **MR. LUPTON:** 10th of April, yes, Your Honor,
16 requesting the two names and they were provided some
17 time, I believe, the 17th through the 20th,
18 somewhere in that time frame. And, at that time,
19 the paperwork was prepared. I believe you signed it
20 in approximately that time period. It went to the
21 Governor's office and then went to the Secretary of
22 State's office, then the Texas Governor's office,
23 Texas Secretary of State's office and, finally, to
24 the Texas Department of Criminal Justice.

25 **THE COURT:** Do you wish to respond?

1 **MR. BRUCK:** Yes, please. If the Court feels
2 that you need to hear from me, I think the showing
3 is inadequate on its face, but I'll be glad to
4 explain why we think that is.

5 **THE COURT:** Yes, sir.

6 **MR.-BRUCK:** Well, first, Your Honor, and please
7 stop me if I'm providing too much information, but I
8 would like to give a little background about Red
9 Farmer so that the Court is apprised of the real
10 state involved, the confrontation, Sixth Amendment
11 states that are at issue here.

12 Mr. Farmer is a classic unreliable witness. He
13 testified, he could have received a life sentence
14 for the conduct he admitted to and instead received
15 a five year sentence pursuant to a plea deal which
16 ended up being partially concurrent even though when
17 he was confronted in cross-examination at the last
18 trial in '91, he said it would be consecutive. He
19 served just, I don't know, two or three years as a
20 consequence of this -- or less, two years, as a
21 consequence of his admitted involvement or what he
22 claimed to have been his involvement in this crime
23 and was released.

24 He then went to Aiken where before long was
25 rearrested on multiple counts of drug trafficking.

1 He then made bond and absconded, a bench warrant was
2 issued. So he remains to this day wanted in Aiken.

3 These are all facts now that I'm relating from
4 the sentence he actually did, the time he actually
5 served, his behavior after that. None of this he
6 was cross-examined about because it all happened
7 after the 1991 trial. And we're to be satisfied
8 with the confrontation that occurred then.

9 So he skips out from Aiken and next turns up
10 charged with manufacturing methamphetamine in Texas.
11 He is in jail for a while in Texas, is released on
12 bond shortly before his trial and almost immediately
13 thereafter is rearrested for manufacturing
14 methamphetamine, with a large quantity of meth found
15 in a truck.

16 The transcript of his trial in Texas reflects
17 that, at that time, he tried to impress the
18 authorities with by knowing a lot more about
19 methamphetamine manufacturing then he claims he
20 really did so as he could work out some kind of
21 deal. In other words, the man is a classic
22 sociopathic manipulator of the criminal justice
23 system and we have the transcripts and the evidence
24 to show that.

25 **THE COURT:** Well, none of that was brought out

1 earlier?

2 MR. BRUCK: No, because it's all subsequent to
3 1989 and '91. This is all new impeachment that
4 we're not able to confront him with if we're stuck
5 with a piece of paper instead of the man himself.

6 He testifies at his own sentencing hearing and
7 under oath having presumably placed his hand on the
8 Bible, gives a very different version of his
9 involvement in this very case minimizing his own
10 role and making it sound as though he was charged
11 with conspiracy merely because he hadn't reported
12 some things he had heard Tony Cooper say or have
13 people say about Tony Cooper, rather than that he
14 was, according to the State's theory, the linchpin
15 of this whole conspiracy.

16 So we have him in effect committing perjury
17 about this case in a transcript with which we were
18 fully prepared to confront him in this courtroom.

19 He then goes to jail. He is interviewed by an
20 investigator from us in 2003, says that there's
21 absolutely no way in the world he intends to testify
22 at Mr. Cooper's retrial, tells a whole series of
23 different kinds of things that -- about he claimed
24 at the original trial and now continues to claim
25 that he was beaten by the West Columbia Police

1 Department.

2 The record already reflects that he gave
3 various versions. He was uncooperative. He lied.
4 And then he eventually, after being held over here
5 and, he says, coerced in various ways, came up with
6 this statement implicating Mr. Cooper.

7 We more recently reinterviewed him just a few
8 weeks ago in Texas. He again said that there was no
9 way he was going to testify. I don't doubt for a
10 moment he said the exact opposite as has been
11 related to you by the State. He'll tell anybody who
12 is talking to him anything. The man has absolutely
13 no conception of what telling the truth might
14 involve.

15 He again told a -- he did allow as how the
16 State could arrange his transfer to South Carolina
17 that he might be willing to serve out his Texas life
18 sentence for drugs that he might be willing to
19 cooperate with them. So he didn't completely rule
20 the door out, but always the same threat that
21 Mr. Farmer testifies depending on what's in it for
22 Mr. Farmer.

23 **THE COURT:** What happens when you have a
24 situation where you have prior testimony and the new
25 opportunities develop for cross-examination as you

1 would allege? I mean, has that exception ever been
2 carved out that you had the original opportunity to
3 cross and now you really didn't because you became
4 aware of information later? I mean, you only get
5 the benefit of that because of the new trial.

6 **MR. BRUCK:** Well, I know, but it still goes to
7 the believability of this man. I mean, there are
8 two ways to approach it. One is that he has -- our
9 position is that we have not had, now that we know
10 fully how dishonest and unreliable a witness this
11 is, we have not had an opportunity to confront him.
12 And he should not -- the transcript is not enough
13 even though we had the opportunity at the time.

14 It's just like -- it's like after discovered
15 evidence, it wouldn't be a fair trial if you just
16 arbitrarily said, no, that evidence has come up too
17 late, it can't be used.

18 I recognize that there is a middle ground,
19 which is to allow us to call witness after witness
20 with new impeachment evidence, documentary and from
21 the people who have interviewed him. And we have
22 someone standing by in Nevada, an investigator who
23 has since moved out there, who's ready to get on a
24 plane and come down and relay her interview with
25 Mr. Farmer and on and on and on.

1 But, of course, the jury would have a very hard
2 time evaluating any of this because they don't get
3 to see Mr. Farmer. They don't get to see him come
4 face-to-face with Mr. Cooper and they don't see him
5 cross-examined as to any of these --

6 **THE COURT:** Not coming face-to-face with him is
7 not per se the standard.

8 **MR. BRUCK:** Well, that is the right of
9 confrontation as we well know.

10 **THE COURT:** I understand the right.

11 **MR. BRUCK:** But the constitutional standard is
12 whether or not reasonable efforts have been made to
13 secure his attendance and if it hasn't and there has
14 been a prior --

15 **THE COURT:** I mean, because the discussion
16 already assumes there's not going to be the
17 face-to-face examination.

18 **MR. BRUCK:** Right. That's correct. And unless
19 there is a showing that the State has made a
20 reasonable effort under all of the circumstances,
21 and it's very hard to compare this with any other
22 case for reasons I'll get into in a moment, then the
23 face-to-face confrontation and the opportunity for
24 live cross-examination prevails and the transcript
25 can't be used.

1 And this is not simply a rule of evidence. We
2 know from the U.S. Supreme Court cases, Mancusi
3 versus Stubbs and Barber versus Page, that this is
4 part of the Sixth Amendment right.

5 And as recently as Crawford versus Washington,
6 the Court in passing reaffirmed the holding of
7 Barber versus Page, said Crawford was a case about
8 opportunity to cross-examine, but the Court said,
9 don't forgot that even when there's been an
10 opportunity to cross-examine, you still can't use a
11 transcript under the Sixth Amendment unless there
12 has also been -- unless the State has also been
13 reasonably unable to obtain the physical presence of
14 the witness. And that's where we are now.

15 **THE COURT:** Do you feel that the State did not
16 act in good faith in trying to procure his presence
17 here?

18 **MR. BRUCK:** The issue is not good faith. The
19 issue is the reasonableness of their efforts under
20 all of the circumstances.

21 **THE COURT:** Well, how is reasonableness
22 defined?

23 **MR. BRUCK:** I mean, it's one of those things
24 which in the end is a judgment that Your Honor has
25 to make.

1 I'd like to layout why we don't think the
2 effort was reasonable in this case going back to the
3 beginning. Of course, for reasons that need not be
4 belabored, this case has been waiting around a long,
5 long time. And when I talk about the State, it's
6 hard to, you know, we need to keep in mind that
7 there is only one State of South Carolina. This has
8 nothing to do with the professionalism or the good
9 faith of any particular lawyer. And we don't
10 quarrel with Mr. Bell's sincerity in all of this.

11 The point is what the State, which is a single
12 party to this proceeding, did looking all the way
13 down, because that's all that matters to the rights
14 of the accused is how he has been treated at the
15 hands of the State.

16 **THE COURT:** Well, in the case -- did you submit
17 the Barber case?

18 **MR. BRUCK:** Yes.

19 **THE COURT:** In Barber, they said --

20 **MR. BRUCK:** They made no effort.

21 **THE COURT:** Pardon?

22 **MR. BRUCK:** There they made no effort at all.

23 **THE COURT:** But they used the language that the
24 witness is not unavailable for purposes of the
25 foregoing exception to the confrontation requirement

1 unless the prosecutorial authorities have made a
2 good faith effort to obtain his presence at trial.

3 **MR. BRUCK:** Right, but the -- I mean, that's in
4 shorthand. They're not going to differentiate
5 between good faith and reasonableness. Obviously,
6 if --

7 **THE COURT:** Well, I mean, if you -- I assume
8 that if you claim that they acted in good faith,
9 then does it necessarily follow that their efforts
10 were reasonable?

11 **MR. BRUCK:** No. Good faith in the sense that
12 we do not contend that this was part of a
13 manipulative effort to ensure that Mr. Farmer would
14 not be present, that would be bad faith. Anything
15 other than that is good faith, but it's still not
16 reasonable under the circumstances.

17 **THE COURT:** If we were just analyzing it from
18 the reasonable perspective as that word is used in
19 the rules, what more do you believe the State should
20 have done? Perhaps that's the way to look at it.

21 **MR. BRUCK:** Well, to get to the end of the
22 story, 11 days ago the State found out that they
23 couldn't have Mr. Farmer. There was not -- it was
24 casually mentioned during a meeting for another
25 purpose with counsel when -- I think only because

1 two of Mr. Cooper's lawyers were down looking at
2 discovery that we've run into a problem with
3 Mr. Farmer.

4 We heard about this on Friday a week, ten days
5 ago. In all of the time between then and now, the
6 Court has not heard one word about this until this
7 morning. And most tellingly, there was no motion
8 for a continuance.

9 Now, that, to me, ends the inquiry because one
10 of the things obviously that the State could have
11 done, you could have denied it, you could have
12 granted it, but that goes to the reasonableness of
13 their effort. And, instead, the jury was sworn,
14 this case has started and now they want, in effect,
15 a cross-examination light where this witness who is
16 as I have described will never set foot in this
17 courtroom. And Mr. Cooper will be tried based on a
18 transcript of what he had to say back in 1991
19 supplemented by what will be a confusing miasma of
20 documents and testimony and records and claims and
21 counterclaims, all of which are in his absence.

22 **THE COURT:** Why didn't the State bring this to
23 the Court's attention prior to this morning?

24 **MR. LUPTON:** Your Honor, with regards to the --
25 I think this goes to his motion for a continuance

1 argument. I was not present. I've only been
2 involved in this case for approximately ten days. I
3 got involved on the Thursday before they discovered
4 that -- we found out about it on Thursday, they were
5 told on Friday.

6 **THE COURT:** Well, I mean, the fact that you
7 came in recently is not going to be dispositive.
8 Mr. Bell was handling this case.

9 **MR. LUPTON:** I understand that. I'm just
10 saying that to say that I was not present at the
11 February conference regarding the speedy trial
12 motion, but it is my understanding that the Court's
13 ruling then explained in March was very firm in that
14 this case was going to go to trial this week, that
15 -- I believe it was some confusion in February, but
16 it was firmed up in March this trial was going to go
17 forward, and pardon the language, but I believe the
18 Court at one point said, Come hell or high water
19 this week.

20 In fact, if you'll recall, when you were
21 getting ready to swear the jury, both Mr. Bell and I
22 approached the bench and we asked the Court to delay
23 that and the Court refused saying that we were going
24 forward. Based on that, there was --

25 **THE COURT:** Just stop for a second. Listen to

1 my question, okay, because all of that is
2 meaningless what you've just said. If you think
3 this issue is going to turn on the fact that you
4 approached and didn't want the jury sworn today,
5 you've got a problem, okay.

6 My question was, why didn't you bring this
7 matter to the Court's attention prior to today?
8 When everyone knew we were ready to go forward with
9 this case and all, why wasn't I told there's an
10 issue about a witness? That's the question.

11 **MR. LUPTON:** Your Honor, for that, we have --

12 **THE COURT:** It has nothing to do with swearing
13 the jury, okay?

14 **MR. LUPTON:** For that, we have no excuse other
15 than to say that it was our impression that the
16 Court was not going to entertain any motions to
17 continue the trial no matter what our problems were.
18 Based on that, we felt that we were going to be
19 required --

20 **THE COURT:** When did the Court say that? When
21 we went back to chambers after the Court swore the
22 jury, I said, We're going forward with this case.

23 **MR. LUPTON:** And, Your Honor, again, if the
24 State misunderstood your --

25 **THE COURT:** Any time prior to today, did the

1 Court indicate it would not entertain any motions on
2 the part of the State? At the pretrial conference,
3 did the Court not ask is there any kind of motions?

4 **MR. LUPTON:** Your Honor, all I can say is that
5 it was our understanding that -- and it could have
6 been wrong, you know, we concede that and we
7 certainly aren't trying to imply that there was
8 anything wrong with the Court's position or our
9 belief in the Court's position. We simply felt that
10 the Court wanted this trial to go forward today.
11 There had been speedy trial motions. It was our
12 understanding that the Court's denial of the speedy
13 trial motion was partially contingent that we were
14 going to go forward with this now and that --

15 **THE COURT:** Well, at no point, did the Court
16 say it would not entertain your motions. If that's
17 your belief, you're wrong. Not only did I not
18 transmit that thought to you, I specifically said,
19 Maybe the issue about this witness is premature
20 because you might be able to go back and still get
21 this witness here; did I not?

22 **MR. LUPTON:** Yes, Your Honor. And we are still
23 trying to do that.

24 **THE COURT:** So, again, that suggests that we
25 can deal with this issue. Secondly, the fact that I

1 said we're starting the trial doesn't mean we would
2 not stop at some point and wait to see if we can get
3 this witness and pick up at the appropriate time.
4 Again, none of those communications indicate that
5 the Court would deprive you of requesting any relief
6 you deemed appropriate.

7 Let's just be honest, there was never any
8 desire in your mind to convey to me that you wanted
9 a continuance. I'm asking you that as an officer of
10 this court, was that what you wanted to convey to me
11 today?

12 **MR. LUPTON:** Your Honor --

13 **THE COURT:** Because I know what I see and hear.
14 I've been in this business a long time. Now, you
15 tell me, as an officer of the court, that's what you
16 really wanted to convey before you try to pin that
17 on the Court, tell me that.

18 **MR. LUPTON:** Your Honor --

19 **THE COURT:** Answer the question. Was that your
20 intent?

21 **MR. LUPTON:** Your Honor, it was never my intent
22 to ask for a continuance based on the fact --

23 **THE COURT:** Ever?

24 **MR. LUPTON:** -- it was my understanding that
25 that was not an option. And I apologize if I was

1 wrong. I mean no disrespect to the Court.

2 **THE COURT:** You were coming here today to
3 request a continuance because of that witness issue?

4 **MR. LUPTON:** Your Honor, if I had thought it
5 was an option, then that would have been my
6 preference. I'm not the lead prosecutor.

7 **THE COURT:** Mr. Bell, was that your intention?
8 Have you ever had it in your mind to ask for a
9 continuance to deal with this witness issue?

10 **MR. BELL:** No, sir, I have not.

11 **THE COURT:** You better think carefully about
12 what you're telling this Court because I know the
13 people I've been dealing with in this case and I
14 never got a clue that there would be any desire to
15 continue this case from anyone here today.

16 I bet, based on my experience on this bench,
17 that you came here today just assuming that you're
18 going to either not have that testimony or go
19 forward with the transcript from the prior trial; is
20 that correct, Mr. Bell?

21 **MR. BELL:** Your Honor, my understanding with
22 this was that we were going to try one or two
23 options and if we weren't able to get them, we would
24 go forward without the --

25 **THE COURT:** Exactly. That's what I assumed

1 everything was based on. Now, why is your thought
2 different than the lead prosecutor?

3 **MR. LUPTON:** Your Honor, I'm telling you as an
4 officer of the court, it was my understanding that a
5 continuance was not an option. And I am basing what
6 I'm telling you on my understanding. If I was
7 wrong, I apologize to the Court. I never meant any
8 disrespect to the Court.

9 **THE COURT:** I didn't say you're disrespecting
10 the Court. I'm just saying I never got a sense from
11 any of you that you were going to ask for a
12 continuance.

13 **MR. LUPTON:** Your Honor, again, I have not been
14 involved in this very long. And if my understanding
15 of the situation was wrong, then I apologize.

16 **THE COURT:** If you're not the lead prosecutor,
17 how are you going to ask for a continuance if
18 Mr. Bell was not?

19 **MR. LUPTON:** Exactly. That's -- my
20 understanding was that we were not -- that that was
21 never on the table. And I apologize. And, again, I
22 stress that I was never intending to mislead the
23 Court or act in disrespect towards the Court when I
24 explained my understanding. You simply -- that was
25 my understanding, right or wrong.

1 **THE COURT:** All right. Let's just leave it at
2 that. The point I'm trying to make is you were
3 suggesting that the mere fact that we swore the jury
4 precluded you from requesting a continuance or based
5 on the Court's indication we were going forward with
6 the trial. I just want the record to be
7 specifically clear that the fact that I said we
8 would start has no bearing whatsoever on any request
9 that you make. I have never indicated in any way I
10 would not entertain any motions.

11 If it comes to the point that we have to stop
12 this trial, I've made it clear to everyone involved
13 in this case that we'll do whatever we have to do.
14 If we have to stop at Wednesday of the second week
15 to wait another week to finish, that's what we will
16 do, but that has nothing to do with starting the
17 trial. So you make whatever motions you deem
18 appropriate.

19 **MR. LUPTON:** And I certainly did not mean to
20 convey any sense that I was trying to blame the
21 Court or disrespecting the Court. And I apologize
22 if that was accidentally conveyed. It was never my
23 intention.

24 **THE COURT:** All right. Now, let's go back to
25 my original question before we got off on that

1 tangent. My question was, why was I never notified,
2 prior to this day, that there was a problem with
3 this witness?

4 **MR. LUPTON:** Your Honor, I cannot offer any
5 excuse for that. It was discovered. It was
6 conveyed to the defense the next day. It was not
7 something that -- I can't speak for Mr. Bell, but it
8 was not something that I thought personally was the
9 kind of thing that we needed to come straight to you
10 and tell you pretrial, that it was something that
11 would be handled in the pretrial motions as to
12 whether or not what relief you were going to grant.

13 And, again, if my belief on that was wrong or
14 inappropriate, I apologize to the Court, but there
15 was never any intent to conceal it from anyone. The
16 defense was told. I didn't -- I didn't have a
17 belief that it was something that I -- that was
18 appropriate to bring to your attention immediately.

19 **THE COURT:** Well, I mean, at the last hearing,
20 we went over all pending motions. And other than
21 routine -- other than telling me we may have some
22 routine motions, there was no other motions to be
23 considered. Why would that have not flagged --
24 raised a flag in your eyes, Mr. Bell, about bringing
25 this to my attention?

1 **MR. BELL:** Your Honor, number one, I'm sorry.
2 Of course, at the back of that hearing, we had no
3 idea and I apologize. I was just under the
4 assumption, and it's my fault, that the State had
5 very -- a low margin for any continuances and I
6 figured -- I believed that we had to go ahead
7 regardless of what had happened and that is my --
8 based on my -- because based on the prior speedy
9 trial motion, I was trying to minimize the State's
10 responsibility for any further delay in this case
11 and that was my call. That's my responsibility.

12 **THE COURT:** Well, when we called -- when this
13 case started today, I asked you are you ready to
14 call your case; did I not?

15 **MR. BELL:** Yes, sir, Your Honor.

16 **THE COURT:** That was before any discussion
17 about when you thought that I thought we were going
18 forward or not.

19 Secondly, the order on the speedy trial, what
20 did it say at the end? If the State did not call
21 this case today, then the defense could renew that
22 motion. Again, it put the burden on you to make
23 that decision to call this case; did it not?

24 **MR. BELL:** Yes, sir, Your Honor.

25 **THE COURT:** You had the ability to say we're

1 not ready to call this case; did you not?

2 MR. BELL: Yes, sir, Your Honor.

3 THE COURT: Because once it was out of the
4 death penalty realm, then it was just another case
5 on the roster, correct?

6 MR. BELL: That's correct, Your Honor.

7 THE COURT: And that's how we proceeded ever
8 since the death penalty notice was removed. That's
9 why I put that language in that order because it
10 then became your duty to call that case. Although,
11 I do believe it raised -- could raise some
12 significant concerns if you didn't call it, that
13 option was still there.

14 MR. BELL: Your Honor, and I'm still ready to
15 proceed with my case regardless of what happens. I
16 mean, I'm ready to go. So we were just...

17 THE COURT: I was pretty confident of that when
18 I staked my robe on what I thought the situation
19 was, Mr. Bell. Tell me what you're doing to try to
20 get this witness here.

21 MR. BELL: Your Honor, I think we've called --
22 I'm sorry.

23 MR. LUPTON: Your Honor, I've spoken today with
24 Texas Department of Criminal Justice, have not heard
25 back from them as to the earliest opportunity for

1 getting this hearing scheduled, but I've asked them
2 to please call us as quickly as possible. I've
3 stated that the Judge has started the trial and has
4 requested this information. I stated that you
5 personally wanted to know to hopefully get a little
6 bit faster action to get a judge some information
7 than just us.

8 **THE COURT:** Do you have any feedback on the
9 period of time that this routinely takes once a
10 judge gets the application?

11 **MR. LUPTON:** In Texas, no, Your Honor.

12 **THE COURT:** Is that something y'all could
13 inquire about?

14 **MR. BELL:** Your Honor, I think once the judge
15 signs it, he's ready to go.

16 **THE COURT:** I mean, is it almost akin to when
17 you submitted the paperwork in the first place like
18 to me?

19 **MR. BELL:** Yes, sir. I mean, we have to do --
20 we haven't asked them if we have to resubmit all of
21 that paperwork. Again, since the dates have
22 shifted, I mean, that was to have him here the 18th.

23 **THE COURT:** Do you actually have to appear in
24 Texas?

25 **MR. BELL:** No, I do not. The people from the

1 Department of Criminal Justice down there appear.
2 We just have to have somebody there ready to pick
3 him up when they're ready to release them.

4 **THE COURT:** So they do that kind of like ex
5 parte?

6 **MR. BELL:** Yes, Your Honor. I think what their
7 -- what they do, their whole concern with is when a
8 prisoner is traveling from Texas to whatever state
9 has requested, their whole thing is to make sure
10 that the prisoner is not served with any civil
11 judgments or any other arrest warrants and all of
12 that and that's kind of the agreement is what it is.
13 And I think the court has to make that finding that
14 all of that's been put in place and then they sign
15 off on it is my understanding of the process from
16 Texas, Your Honor.

17 **THE COURT:** And how long do you expect your
18 part of the case to last?

19 **MR. BELL:** Your Honor, it could go-- I mean,
20 it depends. When we get together, we might be able
21 to agree on some witnesses. It might go fairly
22 quickly from the State's perspective. I mean, we
23 might be able to finish up most of our witnesses,
24 depending on cross-examination, maybe in the
25 Thursday realm I would expect, so.

1 **THE COURT:** All right. Now, Mr. Bruck, what
2 would your position be on -- I have two options --
3 well, I have three, but if I were to wait to see
4 what they could do with procuring this witness'
5 testimony, would you be opposed to their reopening
6 or taking that person out of sequence per se if you
7 go ahead and start your witnesses?

8 **MR. BRUCK:** Your Honor, I mean, we feel like
9 everyone was told to be ready today. I haven't gone
10 through the chronology, it's very hard to piece
11 together from these two affidavits, but I don't
12 think there's anything reasonable about what's
13 happened until today.

14 And we really oppose -- I mean, I just cannot,
15 for this man who's been waiting for his trial for so
16 long, agree to any further accommodation for the
17 State to make up for the fact they don't have their
18 witnesses lined up. If the defense don't have their
19 witnesses, that's the end of it. You do without.
20 You argue and charge. And I think that's where we
21 are in this case.

22 This case, in the normal course, probably
23 should go to the jury on Thursday or possibly Friday
24 based on what we know and it might even be sooner
25 than that. Going back to, I mean --

1 **THE COURT:** Well, wait a minute. Both sides
2 indicated to me that they thought it was going to be
3 in both weeks, take both weeks.

4 **MR. BRUCK:** As capital case, yes, but not when
5 we picked the jury in an hour. I always felt it
6 would be --

7 **THE COURT:** I thought y'all were both having
8 communications with one another even after the
9 capital issue was withdrawn about perhaps even doing
10 motions the first couple of days and then going into
11 next week; is that incorrect?

12 **MR. BRUCK:** That is incorrect. I didn't expect
13 that.

14 **MR. BELL:** Nor as I -- I don't know that we
15 expected that as well, Your Honor.

16 **THE COURT:** All right. And y'all didn't send
17 e-mails out about that?

18 **MR. BRUCK:** I don't believe so.

19 **MR. BELL:** I don't recall any.

20 **THE COURT:** I'll look into that. That's
21 irrelevant anyway. Go ahead.

22 **MR. BRUCK:** I should say, you know, I mean, it
23 should have become obvious by now, the State doesn't
24 need this witness. I don't mean to suggest he's
25 unimportant. He is important, but they tried and

1 convicted Sutherland without him. In fact, he was a
2 defense witness in Sutherland. So he is not an
3 absolute indispensable witness to get to the jury.

4 **THE COURT:** Well, let me ask, why do you need
5 this witness?

6 **MR. LUPTON:** Your Honor, he is not as important
7 in State versus Sutherland. He is very important in
8 this case because he is the one who initiates the
9 conspiracy with Mr. Cooper. He's the one who gets
10 the information concerning the victim getting an
11 insurance settlement. He communicates that to the
12 defendant. And the defendant communicates
13 statements and admissions to him, basically a
14 confession.

15 The defendant -- or Mr. Farmer would testify
16 that the defendant told him after the murder that
17 the witness' intelligence was wrong, that she did
18 not have \$2800, that he did get paid, but it wasn't
19 as much as expected, that he completed the
20 construction job and burned everything -- burned the
21 excess material, which Farmer testified he
22 understood to mean that he had robbed her, killed
23 her and burned her body. So he is the initiator of
24 the conspiracy. He communicates directly with this
25 defendant and he received a confession from the

1 defendant. I think that --

2 **THE COURT:** Well, I guess, I'm just at a loss.
3 If Mr. Bell is saying he's ready to go forward one
4 way or another, how are you planning on approaching
5 this if they were critical?

6 **MR. BELL:** Your Honor, I mean, I can approach
7 it from other witnesses mainly --

8 **THE COURT:** Well, then that's going to be my
9 next question. Are other witnesses available that
10 can communicate the same thing?

11 **MR. BELL:** They can communicate parts of it,
12 but they can't communicate the meat of it. We can
13 hit around it and we can communicate that degree.
14 And like I said, I was prepared to go forward with
15 or without him.

16 **MR. BRUCK:** The Court should know that the
17 State, first of all, has an alleged eyewitness who
18 claims to have seen everything. He testified in the
19 Sutherland case. They could call him again to say
20 that he saw it all and this is what happened.

21 Alternatively, the State has indicated today
22 they plan to call Mr. Sutherland himself as a
23 prosecution witness to say that he was there and saw
24 everything. That is inconsistent with the first
25 witness' version. So I assume they have these two

1 road tested versions and they'll call one or the
2 other, but they have two different ways of
3 prosecuting Mr. Cooper for this crime that do not
4 require Mr. Farmer.

5 Now, I don't mean to suggest that Mr. Farmer's
6 testimony is unimportant. Obviously, it is
7 important, but it is -- they can get to the jury
8 through one of two different alleged eyewitnesses
9 without anything from Mr. Farmer or anything from
10 anyone else at CCI. This, to them, is something
11 they want for their case.

12 And because they wanted it, I mean, we found
13 Mr. Farmer in Texas in 2002 and the State, I assume,
14 has known for almost as long or maybe even longer
15 that that's where he was, you would think that the
16 first thing they would do is call Texas and say,
17 What do we have to do to get him here, he's an
18 important witness, we need him. That apparently
19 wasn't done, they used the wrong process.

20 The beginning of this process seems to be very
21 slow. As Your Honor knows, this date was penciled
22 in the 22nd of May or the 29th of May. On February
23 the 3rd or February the 4th, the hearing we had, the
24 speedy trial motion hearing in Charleston, that was
25 the latest time at which the State should have

1 initiated this process. They should have been ready
2 to go. As soon as they had a date, they should have
3 already known what to do, but they didn't.

4 **THE COURT:** Were these two proceedings, were
5 they initiated at the same time in Texas or did you
6 start one after you got rejected on the subpoena
7 part?

8 **MR. BELL:** Which two proceedings?

9 **THE COURT:** I mean, the two approaches in
10 Texas.

11 **MR. LUPTON:** My understanding was that the
12 subpoena approach was inquired about and we were
13 told that that was not -- that they would not honor
14 a subpoena. And then they gave us the proper
15 procedures to follow in March and that the proper
16 procedures were initiated in March as far as
17 gathering the background information that was needed
18 and that the paperwork was processed in April and
19 submitted in April and that the paperwork was
20 received in Texas at the beginning of May, processed
21 in Texas. And, ultimately, we were informed on May
22 11th that he would not be made available to South
23 Carolina during the month of May.

24 **THE COURT:** Well, did y'all follow up -- it
25 seems kind of strange that they would let only two

1 judges do it and then have both judges be
2 unavailable for any -- for a whole month, that they
3 didn't have some kind of backup procedure or a judge
4 that could fill in while those two judges were not
5 available.

6 **MR. BELL:** Your Honor, all I can say is I was
7 aware of their process that they had a judge that
8 would come in like a week or every other week, but I
9 had no idea that there was no judge available for
10 May until they called and said we can't do it.

11 **THE COURT:** Is there any kind of emergency
12 procedure that they have?

13 **MR. BELL:** I asked if they could go to another
14 judge. I asked if he could waive it without having
15 -- and just have a judge sign off of it. He said,
16 no -- they said, No, these judges must do it and
17 these are the only two judges that are designated to
18 do it. I asked all kinds of options about the
19 judges, Your Honor.

20 **MR. BRUCK:** I can respond to that briefly, Your
21 Honor. The paperwork the State has provided shows
22 that they received this -- Texas received the
23 paperwork on May the 10th, 12 days before a trial
24 that has been pending for four years and months
25 after this date was set and two months after it was

1 set in stone or in six weeks.

2 As far as the procedure not being what the
3 Solicitor thought it was, the State of South
4 Carolina is on notice that the State of South
5 Carolina is not a signatory to this Uniform Act. It
6 all comes back to the fact that -- I mean, these are
7 hardly qualified excuses. I mean, if you want to
8 call it bad faith, if you want to call it lack of
9 due diligence, if you want to call it an
10 unreasonable effort, you can call it any of those
11 things constitutionally.

12 Recall that this entire period from January
13 1st, 2006 is overtime from Judge Keesley's order
14 requiring that this case be tried by the end of
15 2005. And this sort of comedy of errors all
16 occurred after the expiration of a speedy trial
17 deadline. And that is also a factor that ought to
18 be weighed in in deciding reasonableness. This is
19 all time that the State wasn't entitled to,
20 according to Judge Keesley back in April of 2005,
21 and now we're, you know, we're in double overtime
22 and they say that, well, it's close enough.

23 **MR. LUPTON:** Your Honor, in regards to the
24 date, May 10th is the date that Mr. Frazier received
25 it. It was received in the Texas Governor's office

1 on May 5th.

2 I think the focus -- they're trying to focus
3 this back on the issues. There's been a lot of talk
4 about the cross-examination issues that I think are
5 not really the key that this Court has to look at.
6 Those come in to be decided after the issue of
7 whether or not the witness is unavailable. The
8 issues of cross-examination go to how to impeach.

9 And we're certainly -- we certainly understand
10 that he's entitled to impeach with after occurring
11 incidents, after occurring conduct and convictions.
12 However, as far as the initial issue, the threshold
13 issue is, does this witness meet the Rule 804(a)(5)
14 definition of unavailable. And in deciding that
15 issue, the Court has to look at whether or not the
16 State acted in bad faith or unreasonably. And the
17 case law does not support that we've done that.

18 We asked for the State of Texas to render this
19 witness. And the State of Texas has refused that
20 act. We acted in adequate time.

21 Based on the information that was given by
22 Texas, this should not have become an issue. He
23 should have been rendered. In the normal course of
24 events, this would not have come up. The paperwork
25 was started well ahead of time.

1 In the Court's experience, and you can take
2 your experience into account, numerous cases where
3 witnesses are brought from --

4 **THE COURT:** Again, let's not back pedal on
5 that. I mean, there's no reflection on you or
6 anything. The only reason I had that discussion is
7 you suggested by-the comment that I went ahead and ---
8 swore the jury that you were being precluded from
9 doing something you would have done. And my gut was
10 telling me all along that if I heard the motion and
11 just said we're proceeding, that would have been the
12 end of it, Mr. Bell was proceeding.

13 I mean, that is what my gut was telling me and
14 that's what he's confirmed. It had nothing to do
15 with the decision to go ahead and swear the jury.
16 That's all I was trying to convey to you.

17 **MR. LUPTON:** I'm sorry. I'm talking about the
18 issue of the amount of time it normally takes to get
19 a prisoner from another state to South Carolina to
20 testify. I'm talking about in your experience,
21 you've tried many murder trials, many other trials.
22 You have an understanding of the normal procedures.
23 You've undoubtedly had many cases where you have
24 signed out-of-state subpoenas for other states.
25 You're aware of --

1 **THE COURT:** I agree with you it's generally
2 routine. I agree with that. It's never presented
3 an issue. It generally doesn't present an issue.

4 **MR. LUPTON:** The State expected this to go
5 through. We acted with due diligence. We acted
6 reasonably. We acted in good faith. And the
7 efforts of the State were frustrated by the actions
8 of Texas, another sovereign state in the United
9 States over which this state has no authority and no
10 power. This witness is, at this time, unavailable
11 to the State of South Carolina within the meaning of
12 Rule 804(a)(5).

13 **THE COURT:** Let me ask you, are you always in a
14 state -- a static state once you have the
15 opportunity to cross-examine no matter what may
16 develop after the fact? Or, do you not get a clean
17 slate once the retrial is granted to consider all of
18 the circumstances at that time to decide whether or
19 not there was a meaningful opportunity to
20 cross-examine?

21 **MR. LUPTON:** I think that the -- I think that
22 those present two separate issues. I think that the
23 -- within the meaning of whether or not there has
24 been an opportunity to cross-examine, that is static
25 at the time that the original hearing is conducted.

1 If there was an adequate and meaningful
2 cross-examination at that time, then within the
3 meaning of the Constitution, there has been an
4 adequate opportunity to cross-examine, adequate
5 confrontation.

6 If this person has passed away, then the fact
7 that there were additional impeachment issues that
8 had arose after the original testimony would not
9 make the person any less unavailable, if the Court
10 follows what I'm saying. For purposes of whether or
11 not a witness is unavailable and has been subjected
12 to meaningful cross-examination in the past, that
13 issue was set at the time of the original hearing.

14 Now, certainly on a retrial --

15 **THE COURT:** Then there's no leeway for the
16 Court to ever consider anything that develops?

17 **MR. LUPTON:** Again, I'm talking about in terms
18 of the constitutional issue of whether or not there
19 was a meaningful confrontation at the time, that is
20 set at the time of the original hearing. I believe
21 that certainly once you have a retrial, the defense
22 is entitled to cross-examine a witness that comes in
23 on anything that has occurred prior to that
24 cross-examination and that's a separate issue. They
25 would be allowed to impeach.

1 **THE COURT:** How do you deal with that then in
2 deciding whether or not --

3 **MR. LUPTON:** I think that that would be a
4 matter of discretion for the Court. You could --
5 certainly the State's willing to stipulate to
6 convictions and certain things as that that are
7 subject to verification. Anything that they have
8 that wouldn't be subject to our verification, they
9 would be entitled to present evidence to impeach a
10 witness same as they would in any other case.

11 **THE COURT:** Well, when you've heard some of the
12 examples cited by Mr. Bruck, how would you deal with
13 those?

14 **MR. LUPTON:** Your Honor, trying to focus in on
15 this case, they talked about investigators who have
16 interviewed the witness since the last trial, I
17 think that they would be entitled to present
18 evidence concerning inconsistent statements or
19 things of that nature, things that would be
20 impeachment material, they would be entitled to
21 present that within the rules of evidence.

22 Now, I think that if you look at this as if
23 this person were deceased, we would -- you can see
24 that the issue of whether or not there was a
25 meaningful confrontation has to be fixed at the time

1 of the original confrontation because if you leave
2 it as an open issue, then any time somebody is
3 meaningfully cross-examined at one date, say the
4 year 1990 just to have a date, if they are
5 cross-examined in 1990, then in '95 they commit some
6 crime, in '96 they die and you want to retry them in
7 the year 2000, if you're trying to say that they
8 can't be -- they're not unavailable because they did
9 something after the original trial that could be
10 potential impeachment material, you would basically
11 eviscerate the whole unavailable witness rule.

12 **THE COURT:** Well, a conviction is not the same
13 as a statement, that's a little bit of a different
14 example. A certified conviction would be different
15 than a statement that can't be tested.

16 But, Mr. Bruck, give some specific examples
17 that you're referencing, we'll see how the State
18 would suggest that you could deal with that.

19 **MR. BRUCK:** Well --

20 **THE COURT:** Insofar as what's changed since the
21 time -- if I were to allow in his testimony from the
22 prior trial, what more would you ask him that can't
23 be rectified in another way.

24 **MR. BRUCK:** Well, if we had to basically attack
25 a pile of paper that was the witness against us, his

1 prior testimony, we would call two interviewers, one
2 from 2003, one from 2006, who would relay a series
3 of statements which constitute impeachment material,
4 all different sorts of things, how he was given the
5 run of six different jails, how he has thrown in
6 effect a pizza party, applauded when his testimony
7 was over.

8 **THE COURT:** Okay. So that's not necessarily
9 inconsistent with what the State would suggest you
10 could do. Why would you need the person here, the
11 witness here? I mean, it says interviewers that
12 will add context to that scenario not witness.

13 **MR. BRUCK:** Well, part of what we would miss is
14 the witness acknowledging the truth of these
15 statements. It would just be somebody that works
16 for the defense claiming this and claiming that.

17 We can confront the witness. He might very
18 well say, yes, that's true, and give us a cynical
19 smirk about how he got over on the system, which is
20 what we think we would get out of him. And that is
21 very, very different. That's the difference between
22 cross-examination and a stack of paper. And so
23 there, you know, there we are. The same when we
24 confront him with his prior testimony at his own
25 sentencing.

1 And through all of this, we really think that
2 the State -- that the jury would perceive, as we
3 confronted him with this, they would perceive a
4 narcissistic manipulator because that is really why
5 we need the confrontation. We can't do that on
6 paper. We can't do that by people --

7 **THE COURT:** Well, I mean, but that's always the
8 case. That's always the case when you don't have
9 the witness here. If that were the per se rule, the
10 analysis would be so easy. It would just be the
11 witness has to be here.

12 **MR. BRUCK:** Right. It all comes down to
13 whether or not they have made a reasonable effort to
14 have him here. It's true that the Constitution is
15 satisfied with that rather unsatisfactory
16 alternative.

17 **THE COURT:** Well...

18 **MR. BRUCK:** The question is --

19 **THE COURT:** But how are they to -- why should
20 they be accountable for the fact that all of a
21 sudden the only two judges in the state that do
22 these things are not going to do them for May?

23 **MR. BRUCK:** If you get your paperwork for a
24 case that has been pending this many years and has
25 had a date certain for this many weeks and for

1 whatever reason, South Carolina gets its paperwork
2 to Texas 17 days before the case starts, you've got
3 to expect and you should reasonably expect that it
4 may not go smoothly. It's too bad. They waited too
5 long. They did not use due diligence.

6 If they had called Texas and said, when do you
7 need the paperwork, what's the latest we can get it,
8 all of this is the most elementary things that you
9 do when you're organizing a trial and for --

10 **THE COURT:** Well, aren't they making that
11 statement? Aren't they saying that we've done these
12 things and it's usually enough time to do these
13 things?

14 **MR. BRUCK:** First of all, from the time that we
15 pencilled in this date, there was about two weeks to
16 two months of dead time from February to April where
17 nothing was happening from the State's own
18 representation. We have no way, of course, of
19 giving you our own version because this is -- we
20 simply have to rely on this rather vague --

21 **THE COURT:** Do you have the transcript from
22 that February hearing?

23 **MR. BRUCK:** I don't.

24 **THE COURT:** Does anybody?

25 (There was no response.)

1 **THE COURT:** Okay. Go ahead.

2 **MR. BRUCK:** I mean, at that point, the State
3 was on notice to contact Texas and say, we're
4 looking at a trial at the end of May, beginning of
5 June, what do we have to do. But none of that was
6 done. And it wasn't -- this was just a
7 lackadaisical approach.

8 Now, is it the same as no effort at all? No,
9 it's not the same as no effort at all. This case is
10 not on absolute all fours with Barber versus Page,
11 but it's pretty close.

12 The question and the rule is whether Farmer's
13 presence could not be obtained. And it could have
14 been obtained if they had just started reasonably
15 earlier.

16 And for all of this to occur so long after the
17 last date that Judge Keesley had allowed this case
18 to be tried and for this still to be the way the
19 State is proceeding, I'm not going to call it bad
20 faith, but it certainly is lackadaisical and it's
21 not fair.

22 And the issue before Your Honor is who should
23 pay for that, who bears the burden of this mistake,
24 whose mistake it is? It is the State's mistake.
25 The State should bear the burden. Tony Cooper, who

1 has been waiting so long for a trial, should not be
2 the one to bear the results of the State's error.
3 That's all this comes down to and just fair is fair.

4 **THE COURT:** Well, I mean, no one is saying that
5 he has to bear that burden, that Mr. Cooper would be
6 bearing that. If the case starts and we proceed,
7 you know, there is that possibility if I consider --
8 if I have some feedback from the State of Texas
9 indicating that that prisoner can be transported,
10 yeah, I would consider a temporary delay, but
11 nothing in any kind of substantial way, but the
12 trial will be underway at the time. But it just
13 depends on where we're at in the proceeding.

14 It may be able to be accomplished in the normal
15 course of this trial without any further delay. I
16 don't know. It just depends on the status of the
17 witnesses, that's why I set it originally first
18 thing this morning, but perhaps I need to wait to
19 see what could happen.

20 **MR. BRUCK:** I have to say, Judge, I just had --
21 ten days ago was the 30th anniversary of my being
22 sworn into the bar and I have never, in those 30
23 years, had a trial where if I didn't get a witness
24 there on time, the judge just recessed until I could
25 get him there. And so we have notice of when the

1 trial is and time to go.

2 Of course, if they get him here before the end
3 of the trial, that's fine. We don't think that we
4 should all go back and let's send the jury home and
5 ask them, please don't read anything until we call
6 you back, to accommodate this error and the case can
7 go forward. The State still has a case. It will
8 get to the jury with or without Mr. Farmer.

9 And it's -- to say that this case is ready to
10 be tried is the understatement of the month. I just
11 think we should go forward as is. And we've stated
12 our position.

13 **THE COURT:** All right.

14 **MR. LUPTON:** Your Honor, may I briefly respond?

15 **THE COURT:** Yes.

16 **MR. LUPTON:** Your Honor, I think that trying to
17 frame this as that the State should have done
18 something years ago is a little bit inaccurate in
19 the sense that I think that the relevant dates for
20 this issue are the dates that the trial date was
21 set. Once the date was set, the State was able to
22 begin the process of getting the witness here for
23 that date.

24 **THE COURT:** I think all he's saying is you
25 should have done it in March.

1 **MR. LUPTON:** And the process was begun -- the
2 process was begun in March. The paperwork was given
3 to Your Honor in April.

4 **THE COURT:** Well, why was it given to me in
5 April? That's the big thing. I don't necessarily
6 understand that. Why wasn't it given to me in
7 March?

8 **MR. LUPTON:** Your Honor, as best we could,
9 we've explained those delays. And, Your Honor, all
10 I can say is that while obviously any time something
11 doesn't work out, it is always possible to go back
12 and look at it and say, if this were done
13 differently, if that were done differently, perhaps
14 we would have had a different result.
15 Unfortunately, we don't have the ability to do that.
16 We're stuck with where we're at.

17 And I think that the issue becomes, given where
18 we're at, did the State act in bad faith or act
19 unreasonably. And I don't think that we did because
20 once we had a firm date, the process was begun, the
21 paperwork was completed in April, it was provided to
22 the Court in April, provided to the Governor's
23 Office, South Carolina Secretary of State, went to
24 the Texas Governor, Texas Secretary of State, Texas
25 Department of Criminal Justice, the Texas Department

1 of Criminal Justice Representative.

2 The member there, I believe it was their
3 general counsel or a member of their general
4 counsel's office, an attorney over there, had told
5 Mr. Bell that the judges were available every week
6 or every other week.

7 **THE COURT:** Is that the case, y'all were told
8 that they would be available?

9 **MR. BELL:** Back in April or March, late March
10 or early April when I talked to him.

11 **THE COURT:** Said that they would be available
12 every week?

13 **MR. BELL:** Either every week or every other
14 week and that's looking forward perspectively from
15 -- I believe I talked to them in middle to late
16 March it seems to me.

17 **MR. LUPTON:** And, Your Honor, based on that,
18 the State prepared the paperwork, got it to you, ran
19 it through the channels, got it to Texas. This
20 should have been adequate. The State may have
21 failed in its efforts, but it acted in good faith
22 and it acted reasonably.

23 And I believe that the talk about who should
24 bear the burden, I think that the ultimate issue is
25 the jury is the ones who are supposed to get the

1 relevant, probative evidence and the system of
2 justice should not be required to bear the burden.

3 **THE COURT:** I agree with that. I mean, that
4 may very well be Mr. Bruck's experience that you've
5 got to be ready to go and that's the end of the
6 discussion. That's not my experience.

7 I mean, I don't mean that in a way that
8 everyone's not doing that. I do agree with his
9 statement that that happens quite frequently, but my
10 philosophy has always been that I want everybody to
11 have their day in court and then a fair and just
12 decision rendered and I do whatever I can to
13 accomplish that. That's just my philosophy. I'm
14 sure it's everyone else's in their own way.

15 But I'll think about it. No reference to Mr.
16 Farmer's prior testimony until I decide.

17 What else?

18 **MR. BELL:** Your Honor, I think the only other
19 thing -- other things are some housekeeping, some
20 other unavailable witnesses that I think we
21 discussed. We have Sharon Freeman Clonts, now is
22 her last name, who died. And we have a certified
23 copy of her death certificate for a court's exhibit
24 if --

25 **THE COURT:** Do you have any issues as to the

1 deceased individual?

2 **MR. BRUCK:** No.

3 **THE COURT:** All right.

4 **MR. BELL:** And I think the only other
5 individual that was unavailable was Mr. Jim Springs,
6 who was a SLED agent. And I think I provided them
7 with a copy of a doctor's letter that was dated, I
8 believe, May 7th. It stated, he did the crime scene
9 where the body was found, that he underwent some
10 major surgery or had a major illness and was not
11 able to testify for six weeks, that I can provide
12 for the Court as well if I need to.

13 **THE COURT:** Any issues with that?

14 **MR. BRUCK:** No, we're fine with that.

15 **THE COURT:** All right. Any other motions from
16 the State?

17 **MR. BELL:** The only other motion, we may,
18 during the course of the testimony -- of course, we
19 haven't discussed -- we probably need to sit down
20 and talk with the defense counsel to kind of see
21 what they're willing to stipulate to before we
22 potentially have any other evidentiary motions, Your
23 Honor, I think would be the way to proceed.

24 **THE COURT:** Well, what would they pertain to?
25 I mean, that's why we have the jury out today.

1 **MR. BRUCK:** I don't think we're really talking
2 about motions, are we? We're just talking about
3 things that we can stipulate to.

4 **MR. LUPTON:** I think that we can streamline
5 ~~this trial by~~ there's a lot of -- there was a lot of
6 testimony in the original trial by people that I
7 don't think are disputed. For example, there was a
8 bank teller that cashed the check that was stolen
9 from the victim and I don't think that there's any
10 dispute that she cashed the check the next morning,
11 things like that that I think we can stipulate to so
12 that we move the trial along without having to
13 present unnecessary witnesses.

14 **MR. BELL:** I just won't know until we have a
15 chance to sit down and discuss with them from there.

16 **MR. LUPTON:** And there might well be issues
17 from the defense that they want to put up that we
18 can stipulate to and speed things along and exhibits
19 for both parties that we can agree to ahead of time.
20 And the more we can do tonight before the jury comes
21 back tomorrow, you know, while withstanding these, I
22 think the faster we can make this trial go.

23 **THE COURT:** Anything else from the defense?

24 **MR. BRUCK:** No, sir.

25 **THE COURT:** All right. See y'all tomorrow.

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1 **THE COURT:** Before he starts, ladies and
2 gentlemen -- sorry, counsel -- one other thing,
3 you'll often see me -- I try to remember to do this
4 in my opening statements, jurors will often ask me,
5 Why are you staring at your screen so much? I can
6 actually see all of the testimony as it's presented.
7 It's just a way for me to remember everything that I
8 need to remember and I can actually mark things
9 insofar as my job and what I have to do in the case.

10 Go ahead.

11 **MR. BELL:** Mr. Foreman, ladies and gentlemen of
12 the jury, back on the early morning of October 6th,
13 1989, a little five, six-year-old girl came to her
14 neighbor's house with a simple question, basically,
15 Where's my mommy?

16 That question led to the start of an
17 investigation that day by SLED and the West Columbia
18 Police Department which ended up in finding the dead
19 body of her mother, Kimberly Quinn, on October 8th,
20 1989 by a pond where it had been burned. She'd been
21 shot. She'd been shot, burned and her arms and feet
22 had been cut off.

23 That investigation, ladies and gentlemen, led
24 to charges against the defendant, Tony Cooper,
25 seated over there. He's charged with murder, armed

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1 robbery, kidnapping and conspiracy to commit armed
2 robbery and that is why we're here today.

3 Ladies and gentlemen, my name is Harrison Bell.
4 Seated at the table with me is Ted Lupton. I'm a
5 Senior Assistant Solicitor in the First Judicial
6 Circuit, that's Orangeburg, Calhoun and Dorchester
7 Counties. Mr. Lupton, who's helping me, is from
8 across the river in Columbia. He's from Richland
9 County.

10 We're prosecuting this case because your
11 Solicitor has been -- had a conflict of interest and
12 could not try this case, so we were called in by the
13 Attorney General. My boss, Solicitor Pascoe, was
14 passed the case and he handed it to me, that's why
15 we're here, that's why we have the honor of being
16 here in Lexington County. It's sometimes good to be
17 out of our home circuits and see other places and
18 we're happy to be here. Unfortunately, we're not
19 happy for the circumstances.

20 Ladies and gentlemen, we both represent the
21 State of South Carolina. As you'll hear throughout
22 the trial, as you've heard from His Honor and what
23 you'll hear at the end of this trial, is we, as the
24 State of South Carolina, have the burden of proof.
25 We must prove the defendant guilty of those charges.

1 We must prove each element of those crimes beyond
2 all reasonable doubt as the Judge stated. Let me
3 kind of go through with you briefly with what these
4 charges entail.

5 Murder simply is the killing of another, the
6 unlawful killing of another with malice aforethought
7 either expressed or implied. What malice is, it's a
8 kind of -- it's one of those terms that you can't
9 give a good definition in the law. It's called a
10 term of art. It basically means ill will. It means
11 hatred. It means reckless or wanton disregard for
12 human life, those kind of things.

13 Expressed and implied don't mean two different
14 kinds of malice. It simply means two different ways
15 you can infer malice because sometimes it's hard,
16 sometimes you don't have somebody that will---
17 you'll have testimony that said, I'm going to kill
18 that person, sometimes you have to infer that from
19 the facts of the case what their intentions were.
20 And expressed malice is direct malice, that is, a
21 person actually does say, I'm going to kill so and
22 so.

23 Implied malice, as I stated, is from the facts,
24 you gather from the facts. If somebody's laying in
25 wait or ~~if~~ they are using -- the use of a deadly

1 weapon, those kind of things, their acts before
2 that, were they planning it together, those things
3 can imply that the malice occurred aforethought.

4 And the malice must be aforethought.
5 Aforethought means it simply was in existence before
6 the crime occurred no matter how short a time. It
7 could have been a split second before that time.

8 Armed robbery is simply stealing with force or
9 threats while armed with a deadly weapon. That's
10 very simply, it's just taking the property of
11 another by force or threats while armed with a
12 deadly weapon.

13 Kidnapping is abducting. Kidnapping, taking
14 somebody's freedom away and keeping it, taking them
15 away by force, abducting them. It's not necessarily
16 you're holding them for ransom, just the fact that
17 you grab them and take them away and hold them,
18 that's kidnapping in the law of the State of South
19 Carolina.

20 And, finally, the conspiracy, the criminal
21 conspiracy, simply means that two people, two or
22 more people get together, they form an agreement or
23 a combination to commit an unlawful act. They must
24 agree, that's the big part of it, they must agree on
25 it and then they do something to try to carry it

1 out.

2 Now, ladies and gentlemen, throughout this
3 case, ~~the~~ State will present several -- large number
4 of evidence. We'll have physical evidence from the
5 scenes, from evidence that we've gathered from a
6 vehicle. We'll have some direct testimony about
7 putting the defendant involved in this murder.

8 I'm not going to go into specifics. You'll
9 hear it from the stand throughout the course of the
10 trial. But leave it to say that we'll present more
11 than enough evidence that you can find the defendant
12 guilty on each and every count.

13 Now, what's your job, ladies and gentlemen?
14 The Judge touched on it pretty well in his opening
15 remarks to you and I'm going to go into it a little
16 bit more.

17 Your job is to find the facts in this case,
18 first of all. That's your first job. And you're
19 going, Well, how do I do that? Well, I can only
20 suggest to you and state that you hear witnesses
21 from the stand. You observe any exhibits that are
22 produced, any stipulations that might be entered
23 into. You have to judge the credibility of the
24 witnesses that come to that stand.

25 And you're going, Oh, my gosh, how do I do

1 that? Well, I can't tell you that either. All I
2 can say is this, each of you have lived your lives,
3 you know when you talk to friends, family, strangers
4 by looking at them, hearing what they say, hearing
5 how they say it whether they're telling the truth or
6 whether you feel they're telling the truth and I
7 simply say, use that method here.

8 Just because you walked in this courtroom
9 doesn't mean you've thrown out your life
10 experiences. I urge you to listen to that. I urge
11 you to listen to every witness up there carefully
12 because it's an important day.

13 Now, ladies and gentlemen, I will also say, and
14 Judge Pieper touched on this, that he is the judge
15 of the law in this case. You have taken an oath and
16 that oath basically said that how he tells the law
17 -- what he tells you the law is, you must follow the
18 law. Regardless if you have problems with it, if
19 you disagree with it, the law that he gives you is
20 the law of the State of South Carolina and you have
21 taken an oath to follow that law.

22 But, ladies and gentlemen, there's another
23 judge in the courtroom, the 12 of you individually
24 and as one. And as he said, you're the finders of
25 the facts. You are the judges of the facts. And

1 nobody in this courtroom can tell you how to find
2 those facts. It's very simple.

3 All can I do, ladies and gentlemen, is ask you
4 to listen carefully to all of the testimony, observe
5 the exhibits very carefully.

6 Now, ladies and gentlemen, you were told that
7 the State must prove the defendant guilty beyond all
8 reasonable doubt. I will further tell you that all
9 reasonable doubt does not mean every doubt, to 100
10 percent doubt, to the exclusion of every single
11 reasonable doubt, it's beyond all reasonable doubt.
12 And that simply means that nothing in life is
13 certain, except one thing in life is certain.

14 Now, ladies and gentlemen, the State will
15 present a number of witnesses. This trial may last
16 two, three days. It's an important day for the
17 State of South Carolina as it is for the defendant.
18 We're here to enforce and uphold our law. We're
19 here to get justice for the family of Kimberly
20 Quinn. And we ask that you listen carefully to the
21 evidence. And in the end, that the State will
22 produce enough evidence, show you enough evidence to
23 find the defendant, Tony Cooper, guilty of murder,
24 armed robbery, kidnapping and criminal conspiracy.
25 Thank you.

1 **MR. BRUCK:** May it please the Court.

2 **THE COURT:** Yes, sir.

3 **MR. BRUCK:** Good morning, Mr. Foreman, ladies
4 and gentlemen. I think I've introduced myself, but
5 I'll do it again. I'm David Bruck. With me is Jack
6 Duncan and Tony Cooper is next to Jack and Stuart
7 Andrews.

8 Jack and I were appointed to defend Tony Cooper
9 a long, long time ago. And we've been doing that to
10 the very best of our ability ever since. I think I
11 had dark hair when I started working to defend Tony.
12 Mr. Andrews has volunteered his time to help us out
13 with this trial. So that's who we are.

14 There's no mystery about what happened to
15 Amanda Quinn's mom. We know who did it, a man named
16 Robert H. Sutherland did it and we can all agree on
17 that. And you will hear the State present evidence,
18 and from what I understand, even call Mr. Sutherland
19 to give a new version that he's now decided to tell
20 within the last few weeks about how this happened.
21 That part's clear. Mr. Sutherland was convicted of
22 this a long, long time ago.

23 The question in this case is whether someone
24 did it with him. And if someone did, do we know
25 beyond a reasonable doubt that that someone was Tony

1 Cooper. That's what we're having this trial for.
2 That's why we're here.

3 Now, you'll hear when Mr. Sutherland testifies
4 that one of the stories that he's told over the
5 years and this is the story that he's told for many,
6 many years is that the plan to kidnap and rob Kim
7 Quinn had an escape hatch plan, what to do if things
8 started to go bad and that was to -- where it went
9 with the blame, who they were going to blame for
10 this. And that's something if you're going to
11 commit a crime like this, you need to think about,
12 what happens if people start talking and the police
13 get after you, well we better have a story. And the
14 story was to blame it on Tony Cooper and that's what
15 he did.

16 Originally, when he started putting that part
17 of the plan into effect, it was all he didn't know
18 anything about it, Tony Cooper just told him some
19 things. The evidence will show that Bo Sutherland
20 is the person that led the police to most of the
21 evidence in this case, to the severed hands and feet
22 of Kimberly Quinn, he knew where they were. But his
23 story was that he didn't put them there, he wasn't
24 there when they were put there, Tony Cooper told
25 him, but that was the story then.

1 Then later on he told anyone who would listen
2 that he committed this crime by himself, that Tony
3 wasn't involved. And within the last few weeks,
4 from what I understand, he now has a version that
5 they sort of did this together, but Tony Cooper did
6 pretty much everything. And that is what you are
7 expected to sort out and to decide whether this
8 evidence, along with what else the State can
9 present, proves beyond a reasonable doubt that the
10 killer of Kim Quinn, Robert Sutherland, was assisted
11 by Tony Cooper. That's what this is all about.

12 Now, I'm going to tell you some things, the
13 Judge told you about objections. And lawyers often
14 times object when bad information, unfavorable
15 information comes -- is about to come in from the
16 witness stand about their client, I object, that's
17 irrelevant, that's inflammatory, that's prejudicial,
18 and, you know, you know that from T.V., you know
19 that from real life.

20 One of the things lawyers often object to is
21 anything that shows about the prior record of their
22 client, they don't want the jury to know about that.
23 Well, y'all need to know everything and we are not
24 going to object to the warrants and the things in
25 Tony Cooper's background that are relevant to your

1 job. So we're not going to object.

2 And we want you to know and we'll tell you
3 right now that when Bo Sutherland was a career
4 criminal in his early 30's, he committed a long
5 series of crimes and he had along with him a
6 17-year-old kid named Tony Cooper. And they both
7 went to prison together. And they both got out in
8 1988. And thereafter, Tony married and had an
9 instant family of four children, his wife's
10 children, working as a contractor doing roofing and
11 different types of jobs like that trying to get a
12 new start in life.

13 But he had his buddy, Bo Sutherland. He
14 allowed Bo Sutherland to have his car, which was a
15 Cougar, I think, a 1979 I believe. There will be
16 pictures of it in evidence. And so Bo Sutherland
17 was driving the car that was registered to Tony
18 Cooper. And they were together a lot. They had
19 known each other in prison and they still knew each
20 other and they did some work together.

21 And that is where this involvement of Tony
22 Cooper really begins because on the day before
23 Kimberly Quinn was abducted in the middle of the
24 night, someone saw the Cougar with Bo Sutherland in
25 it. In fact, three people identified Bo Sutherland

1 watching her house from an apartment across the
2 street, from the parking lot of an apartment across
3 the street.

4 And one of those three people thought they
5 identified, later from a photograph, a picture of
6 Tony Cooper as the other person in the car and that
7 witness took down the license number. So the police
8 when they had to do -- when they began the
9 investigation of this crime, quickly have the
10 license number of Tony Cooper.

11 Now, if you've ever wondered how an innocent
12 person gets convicted, this case will give you a
13 pretty good case study. You get a detail, the
14 license plate and one out of three people make an
15 identification and then tunnel vision sets in,
16 they've got their suspect, Sutherland, which, in
17 fact, was the right guy, and Tony Cooper. Now,
18 that's why we're in court. That's why these charges
19 have been laid.

20 Then the question for you is, Well, what else
21 have you got? Do you have any real proof or are we
22 left finally with suspicion? Are we left with guilt
23 by association? They're peas in a pod. Birds of a
24 feather flock together. If Sutherland did it,
25 Cooper must have done it. Now, that's the way we

1 think in normal life. We need to use shortcuts,
2 common sense just to make snap decisions about
3 things to guide us all through our daily life.

4 But in a court of law, birds of a feather flock
5 together and peas in a pod is not proof, that's not
6 how we convict a man of murder, kidnapping and armed
7 robbery. You need a lot more than that.

8 I mention that to you because there will be a
9 strong temptation to say, Well, if it's Sutherland,
10 it must be then Cooper. I ask you now, as you hear
11 the evidence, to guard against that because that is
12 the sort of shortcut that can allow a terrible
13 mistake to be made. It will not do justice to the
14 family of Kimberly Quinn to convict the wrong person
15 as a second member of whoever committed this crime.
16 That is not justice, that does not help anybody.

17 Now, Judge Pieper told you a moment ago about
18 the presumption of innocence. And he told you in
19 the words that are used by the Supreme Court to
20 explain that legal term. If I may, I'd like to
21 break that down into something from our everyday
22 experience to give you what I think the presumption
23 of innocence really means.

24 Someone tells you that your best friend's son
25 has committed a horrible crime, a murder, rape,

1 what's your reaction? Now, I dare say that your
2 reaction is not going to be -- and you don't know
3 this kid well, but you know him well enough you have
4 a good opinion, you always thought well of him, you
5 know the family, he's from a good family. You're
6 not going to say, I do not believe that, that did
7 not happen. I know for a fact he could not have
8 done that because I know him and I know the family.
9 That's not the reaction you're going to have.

10 Because, you know, we all know that there are shocks
11 in life. There are things we don't expect. But you
12 are going to have a reaction to be very skeptical.

13 The way you respond to that, wouldn't you, is
14 you'd be shocked and you'd think that doesn't sound
15 right. I'm not going to believe that unless they
16 can show me that that really happened. I think
17 there's been a mistake. That doesn't sound like the
18 kid I know. It doesn't sound like the family. I
19 want to see the proof and it better be good and,
20 otherwise, I'm going to believe that they've made a
21 mistake, that he didn't do this.

22 That, ladies and gentlemen, is the presumption
23 of innocence. That's what it feels like when you
24 are following the instruction that Judge Pieper just
25 gave you.

1 Now, Tony Cooper is not a friend of yours.
2 He's not someone you know. You don't know his
3 family. You have no reason to think -- well, even I
4 just told you that he did a stint in the
5 penitentiary, so it's not natural to have that
6 reaction when you hear of a charge like this against
7 Tony Cooper, but it is your duty, it is what you
8 swore to do. You judge him like you have a bias in
9 his favor, that is the presumption of innocence and
10 that is the job of the jury.

11 You also have to judge credibility. Now,
12 Mr. Bell told you they were -- of course, they're
13 going to call witnesses. And one of the witnesses,
14 as I've just told you, that we expect that they'll
15 be relying on is a man named Robert Sutherland.

16 Now, if Mr. Bell called a witness and the
17 bailiff marched him in and put him on the witness
18 stand and took out his service-revolver, the
19 courtroom deputy, and as the witness testified, if
20 the deputy held the gun to his head and if the Judge
21 said, All right, Mr. Witness, you can answer
22 questions, and throughout his testimony a loaded,
23 cocked service revolver, a gun, was held at his head
24 and he answered questions in that condition, what
25 would you think of his testimony?

1 Wait a minute, I don't believe this. This man
2 is being coerced. We don't know -- he may be
3 telling the truth, he may not be, but how do we
4 know, he has a gun to his head.

5 Well, surprising as this may seem, Mr.
6 Sutherland's testimony is going to be like that.
7 There won't be a gun, but you will hear that Mr.
8 Sutherland has been sentenced to death for this
9 crime. The sentence has been, at least temporarily,
10 taken off. He's facing resentencing. He doesn't
11 have a thing in the world to recommend it given his
12 prior record, life of crime and the facts of this,
13 so he has a very good chance of being resentenced to
14 death.

15 But on April 21st of 2006, 16 and a half years
16 after this crime, Mr. Sutherland had a meeting with
17 the prosecution and said, I'm ready now to tell the
18 story that puts most of the guilt on Tony Cooper.
19 And in exchange for this, the State said, Okay, you
20 can live. We won't ask for the death penalty
21 against you.

22 Now, there will be other examples of those
23 sorts of things, but I give you this example because
24 the -- to underscore that the job of the jury is not
25 simply to listen to the words that come out of the

1 mouths of the witnesses and if the words add up to
2 what the State has charged, then the person is
3 guilty. Your job above all, anybody can do that, a
4 computer can do that, the reason we have a jury is
5 for you to say -- to look at who's saying it and why
6 is he saying it and can we trust him, is he saying
7 it because it's true or is he saying it to help
8 himself. And that will be another very large part
9 of your job. And you will get no help from anyone
10 else. The Judge, as he told you, he stays out of
11 it. This is your job.

12 Can we prove that Tony Cooper didn't do this?
13 No, we cannot. The trail has long since gone cold.
14 This happened 16 and a half years ago. All we will
15 ever be able to do is to show you reasons to
16 hesitate, to stop, to wonder maybe this is true,
17 maybe it's not, but the State has not proven it
18 beyond a reasonable doubt and, therefore, your
19 verdict must be not guilty. That is the most that
20 we can possibly do, that anyone can do. This is the
21 most that anyone could do who is not guilty.

22 You have a hard job and it's going to be made
23 harder by one last thing I want to mention and that
24 is that a case like this arouses powerful emotions.
25 And Mr. Bell very skillfully invoked that in the

1 first words he said to you picturing little
2 six-year-old Amanda Quinn waking up and her mother
3 wasn't there. And the very first witness you're
4 going to hear is the now grown-up Amanda Quinn and
5 she is going to say what it was like on the first
6 morning of her life when her mother wasn't there
7 anymore.

8 Now, you cannot be a human being and not be
9 affected by that. Emotion creates the temptation to
10 forget about what the actual issues are in the case.
11 The issue being not this is a terrible thing, of
12 course, it was a terrible thing, the question is who
13 did it and are we sure beyond a reasonable doubt
14 that we know who the second person, if there was a
15 second person, was. That's the issue in the case.

16 But one of the difficult things about being a
17 jury -- a juror -- about being on a jury is that you
18 have to steer yourself to avoid the -- a natural
19 sympathy that any of us would feel, should feel,
20 have to feel when faced with a crime like this and
21 I'm sure you will. Thank you very much.

22 **THE COURT:** Call your first witness.

23 **MR. BELL:** Thank you, Your Honor. The State
24 would call Amanda Vaughn to the stand.

25 **THE COURT:** Counsel approach, please.

1 (Whereupon, a bench conference was held off
2 the record, in the presence of the jury, but out of
3 the hearing of the jury.)

4 AMANDA K. VAUGHN,
5 having been duly sworn, testified as follows:

6 **THE CLERK:** Have a seat in the witness box and
7 state your full name for the record, please.

8 **THE WITNESS:** Amanda K. Vaughn.

9 DIRECT EXAMINATION

10 BY MR. BELL:

11 **Q** Could you state your name again for the record?
12 Speak up, all the jurors need to hear you back here.

13 **A** Amanda K. Vaughn.

14 **Q** Ms. Vaughn, who is your mother?

15 **A** Kimberly Quinn.

16 **Q** And how old were you back in October of 1989?

17 **A** Six.

18 **Q** What's the last thing that you remember with
19 your mother?

20 **A** Not good memories.

21 **Q** Let me go back to the -- do you remember when
22 she went missing?

23 **A** Yes, sir.

24 **Q** Let me ask you about the day before, which I
25 think would have been October 5th, 1989. Do you

1 remember back that day?

2 A Yes, sir.

3 Q Do you remember what you kind of did that day?

4 A I remember that night we watched a movie and my
5 mother was sick.

6 Q Do you remember anything that happened during
7 that day other than watching a movie with your mom?

8 A Not really.

9 Q And y'all stayed at home that night?

10 A Yes, sir.

11 Q Do you recall -- did you eventually go to bed?

12 A Yes, sir. My bed was in the living room.

13 Q Excuse me?

14 A My bed was in the living room.

15 Q Your bed was in the living room?

16 A Uh-huh.

17 Q Why was your bed in the living room?

18 A Because I had been in a fire and my mother was
19 real protective and wanted me at the door.

20 Q Do you recall what time you went to bed, went
21 to sleep?

22 A No, sir. I just fell asleep.

23 Q You just fell asleep?

24 A Uh-huh.

25 Q Do you recall if it was dark when you fell

1 asleep?

2 **A** Yes, it was dark.

3 **Q** Do you recall if it was early or late that
4 night when you fell asleep?

5 **A** I believe it was late.

6 **Q** What do you remember next?

7 **A** Someone knocking at the door.

8 **Q** Do you have any idea how long that was since --
9 did it wake you up?

10 **A** Uh-huh.

11 **Q** Do you remember how long it was?

12 **A** No, sir.

13 **Q** What happened when you heard that knock?

14 **A** My mother answered the door.

15 **Q** What happened then?

16 **A** Two men was trying to come in and she didn't
17 want them to come in.

18 **Q** Did they come in?

19 **A** Uh-huh.

20 **Q** How were they acting?

21 **A** Loud, it was real loud and I was trying to
22 sleep.

23 **Q** And how -- by loud, how were they acting loud?

24 **A** Just loud, noisy, talking really loud and I
25 can't recall what they were saying or anything.

1 Q Let me ask it this way. Was it like a mean
2 loud?

3 A Uh-huh.

4 Q Or just loud, boisterous loud?

5 A It was mean loud.

6 Q Okay. What do you remember next?

7 A Well, I tried to go back to sleep, but it was
8 so loud, I couldn't go back to sleep.

9 Q Okay. What do you remember next?

10 A The last thing I remember that night was I
11 tried to go to sleep and I had rolled over and
12 someone told me to roll back over or they was going
13 to do to me what they was doing to my mother.

14 Q Did you go to sleep then?

15 A Uh-huh.

16 Q What do you remember next?

17 A I woke up and she wasn't there.

18 Q What did you do?

19 A I started looking for her.

20 Q Where did you look?

21 A Everywhere. The door was open, so I went
22 outside and she wasn't outside.

23 Q Was it dark or light?

24 A It was dark.

25 Q What did you do when you went outside?

1 A I looked around and I didn't see her, so I went
2 next door and told them I couldn't find my mother.

3 Q Do you recall who lived next door?

4 A I know it was a friend -- I had a little boy
5 that lived next door and I played with him so I knew
6 to go there. I can't remember names.

7 Q What happened when you went over to next door?

8 A I told her that I couldn't find my mother and
9 she sat me down. And I believe she called someone
10 for me.

11 Q Was it her house or your house?

12 A Her house.

13 Q When you were outside, do you remember seeing
14 anything?

15 A Uh-huh.

16 Q What do you remember seeing?

17 A I seen my mother's purse laying on the ground,
18 in the dirt.

19 Q Where did you see that?

20 A We had like a little driveway with dirt and it
21 was right there at the dirt.

22 Q Let me show you what's been marked as State's 9
23 and ask you if you recognize that?

24 A Yes, sir.

25 Q What is that?

1 **A** It's my mother's purse.

2 **Q** Is that the purse that you saw in the driveway
3 that night?

4 **A** Yes, sir.

5 **MR. BELL:** Your Honor, this is into evidence.

6 **Q** What happened next; do you remember?

7 **A** Not really. I remember I believe they took me
8 to the police station or something and waited on my
9 grandmother.

10 **Q** Let me ask you this. The part about the men
11 coming in, have you ever told anybody about that?

12 **A** Yes, I did.

13 **Q** Who did you tell?

14 **A** My -- Mickey, my Aunt Mickey, that's what I _____
15 call her.

16 **Q** Have you ever testified to that in a prior
17 trial?

18 **A** No, sir.

19 **Q** Why not?

20 **A** I was scared.

21 **Q** Why were you scared?

22 **A** Because he told me that, you know, that night
23 if I rolled over, he would do to me what he was
24 doing to her.

25 **Q** How many men was it; do you remember?

1 **A** Two.

2 **Q** Let me ask you this. In remembering your
3 mother, did she have any jewelry?

4 **A** Uh-huh, rings.

5 **Q** What kind of jewelry did she have?

6 **A** I know she had rings. She always wore a lot of
7 rings.

8 **Q** How many rings would she wear?

9 **A** A lot, usually all fingers or most of them.

10 **Q** All four fingers or five fingers?

11 **A** Sometimes even her thumb. She always had
12 rings, always.

13 **Q** Did you ever see her without the rings?

14 **A** Huh-huh.

15 **Q** And based on your memory, would your mother
16 leave you alone like that?

17 **A** No, no, sir.

18 **MR. BELL:** One moment, Your Honor.

19 (Pause.)

20 **MR. BELL:** Thank you, Amanda. Please answer
21 any questions the defense counsel may have for you.

22 CROSS-EXAMINATION

23 **BY MR. BRUCK:**

24 **Q** Good morning, Ms. Vaughn.

25 **A** Good morning.

1 Q I am so sorry. I only have a couple things I
2 need to ask you about.

3 A Okay.

4 Q You were six years old when this happened?

5 A Uh-huh.

6 Q And you've testified twice before today, right?

7 A Uh-huh.

8 Q The first time you testified you were eight?

9 A I believe so.

10 Q Okay. And you were asked then -- you testified
11 then that you were watching T.V. with your mom and
12 you fell asleep, right?

13 A Uh-huh.

14 Q And you testified that the next thing you
15 remember was waking up and your mom was gone, right?

16 A Uh-huh.

17 Q And nothing about men coming in and talking?

18 A No, sir.

19 Q And then about a year later, you testified a
20 second time, right?

21 A Uh-huh.

22 Q And then you were nine years old; is that
23 right?

24 A Yes, sir.

25 Q And you were no longer living in this area,

1 were you?

2 **A** No, sir.

3 **Q** You were living up in Union with your
4 grandmother?

5 **A** My grandmother.

6 **Q** And once again, you were asked the last time
7 you saw your mom, right?

8 **A** Uh-huh.

9 **Q** And what did you say?

10 **A** At this point, I really don't remember.

11 **Q** Well, would it be right if I asked you whether
12 you testified that you were watching T.V. with your
13 mom?

14 **A** Uh-huh.

15 **Q** And you fell asleep?

16 **A** Yeah.

17 **Q** And the next thing you knew, you woke up and
18 she wasn't there?

19 **A** Uh-huh.

20 **Q** And once again, you didn't say anything about
21 hearing noises, hearing talk?

22 **A** I was scared.

23 **MR. BRUCK:** Can you bear with me just a minute?

24 **THE WITNESS:** Uh-huh.

25 **MR. BRUCK:** Thank you.

1 (Pause.)

2 **MR. BRUCK:** Thanks so much, Ms. Vaughn. That
3 is all I have to ask you.

4 **THE COURT:** Anything else?

5 **MR. BELL:** Nothing further, Your Honor.

6 **THE COURT:** All right. You may step down,
7 ma'am.

8 **MR. BELL:** The State will call Shirley Powell.

9 SHIRLEY LOUISE POWELL,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** If you'll have a seat over here and
12 state your full name for the record, please.

13 **THE WITNESS:** I'm Shirley Louise Powell.

14 DIRECT EXAMINATION

15 BY MR. BELL:

16 **Q** Ms. Powell, where do you live?

17 **A** 1419 Platt Springs Road, West Columbia.

18 **Q** How long have you lived there?

19 **A** Right now? About 29 years.

20 **Q** So my next question is kind of stupid. You
21 were living there back in October of 1989?

22 **A** Yes, sir.

23 **Q** Back in October of 1989, who lived beside you?
24 I think there are two houses beside you, one on each
25 side; is that correct?

1 **A** Okay. Yes. On the right side, was the
2 Hudsons, and on the left side, was Kimberly Quinn.

3 **Q** Do you remember how long she had lived there in
4 October 1989?

5 **A** Probably about a year and a month.

6 **Q** And who lived with her; do you remember?

7 **A** Her daughter, Amanda.

8 **Q** Did you know Amanda?

9 **A** Yes, sir.

10 **Q** How did you know Amanda?

11 **A** She played with my son. They were schoolmates.

12 **Q** How old was your son back then?

13 **A** He was five.

14 **Q** Do you remember the time that your neighbor,
15 Kimberly Quinn, went missing?

16 **A** It was -- when I first realized, it was like
17 early in the morning. It was probably like Friday
18 morning.

19 **Q** Okay. And how did you -- how did you realize
20 it?

21 **A** Amanda came to my house.

22 **Q** And how did you know that she came to your
23 house?

24 **A** She was knocking at the front door.

25 **Q** Okay. And what happened when you opened the

1 door?

2 **A** She was upset, crying. And she just told me,
3 she said, My mommy's not there at the house.

4 **Q** Okay. And what did you do as a result of that?

5 **A** I just brought her on in the house.

6 **Q** Okay. And did you try to -- did you try to
7 find her mom?

8 **A** Not at that time I didn't.

9 **Q** How long did she stay with you?

10 **A** Till about early dawn.

11 **Q** Okay. And what did you do then?

12 **A** My son and her, I stood there at the yard, and
13 they went next door and they got a phone number to
14 call a friend named Betty. And I called Betty and
15 told her what was going on and she came over.

16 **Q** And what happened when she came over?

17 **A** She went inside and looked around. And after
18 that, she took Amanda with her.

19 **Q** And that was the last you saw of Amanda?

20 **A** Yeah, that was the last time I saw her.

21 **MR. BELL:** Your Honor, can I ask the witness to
22 step down, please?

23 **THE COURT:** Yes, sir.

24 You may step down.

25 (Witness leaves the witness stand.)

1 BY MR. BELL:

2 Q And I'm referring to State's 1 that's in
3 evidence. Do these pictures and this diagram look
4 somewhat familiar to you?

5 A Yes.

6 Q And what is that a diagram of?

7 A That's Lyngate Apartments across the street.
8 And this is -- that's her house, Kimberly Quinn's
9 house.

10 Q And can you step kind of aside so the jury
11 can --

12 A Right there is Kimberly Quinn's house. And my
13 house is right there (indicating).

14 Q Okay. And that's how it appeared back in
15 around 1989?

16 A Yes, sir.

17 Q It's changed since then, hasn't it?

18 A Yes, sir.

19 Q How has it changed?

20 A They've put a four lane highway through.

21 Q Okay. And if you can -- I know this isn't
22 drawn in scale. Could you show on the diagram which
23 house was yours?

24 A I'm going to say this is my house and this is
25 the Hudsons and this is Kimberly Quinn's house. And

1 then Lyngate Apartments is across the street.

2 **Q** And you can see Lyngate Apartments from your
3 house?

4 **A** Yes, sir.

5 **Q** Thank you, ma'am. You can...

6 **A** (Witness resumes the witness stand.)

7 **Q** And after that you really had no other
8 involvement with Amanda or anything in this case?

9 **A** No, sir.

10 **MR. BELL:** One moment, Your Honor.

11 **THE COURT:** Yes, sir.

12 (Pause.)

13 **MR. BELL:** Thank you, Ms. Powell. Please
14 answer any questions they may have.

15 CROSS-EXAMINATION

16 BY MR. BRUCK:

17 **Q** Good morning, Ms. Powell.

18 **A** Good morning.

19 **Q** Just a couple things. When Amanda came over to
20 your house that day, that early morning or middle of
21 the night really, she said that her mom -- she
22 didn't know where her mom was?

23 **A** She didn't know where her mother was.

24 **Q** Okay. Did she tell you anything else about
25 what had happened?

1 A No, sir.

2 Q Did she tell you that there were -- men had
3 come to the house?

4 A No, sir.

5 Q That anyone had threatened her?

6 A No, sir.

7 Q That anyone had ordered her to go back to
8 sleep?

9 A No, sir.

10 Q Nothing like that?

11 A No, sir.

12 Q Okay. And she was upset?

13 A Yeah, she was upset. She was crying.

14 Q Okay. Did -- at this time, did Kimberly Quinn
15 have a boyfriend named Craig Gilmore?

16 A At one time.

17 Q Okay. And he had been living in this house
18 with her?

19 A At one time.

20 Q Right. And then he moved out, correct?

21 A He moved out.

22 Q But he still would come over and spend time
23 with her?

24 A Yes, sir.

25 Q Right up until this time?

1 **A** Well, I would say so, but I didn't see him
2 around in October.

3 **Q** Okay. But as far as you know that --

4 **A** Yes, sir.

5 **Q** Did there tend to be a lot of coming and going
6 from --

7 **A** Yes, sir.

8 **Q** A lot of people coming at different -- very
9 late at night?

10 **A** Yes, sir.

11 **Q** Men and women?

12 **A** Yes, sir.

13 **Q** All right. A lot of traffic?

14 **A** Yes, sir.

15 **MR. BRUCK:** That's all I have -- excuse me.
16 I'm sorry. Bear with me a moment.

17 (Pause.)

18 **Q** I don't know whether you remember -- have any
19 reason to notice this or not, but during the year or
20 so before this occurred in October of 1989, did you
21 ever happen to see Gene Love Plumbing doing work at
22 the apartments across the street?

23 **A** I might have, but I don't recall.

24 **MR. BRUCK:** Thank you. That's all I have.

25 Thank you so much.

1 **THE COURT:** Any follow-up.

2 **MR. BELL:** One question, Your Honor?

3 REDIRECT EXAMINATION

4 BY MR. BELL:

5 **Q** Do you recall what time Amanda came to your
6 door that morning, approximately?

7 **A** I'm going to say between maybe 3:30, four
8 o'clock. I'm not real sure.

9 **Q** In the morning, in the a.m.?

10 **A** Yes.

11 **MR. BELL:** Thank you, ma'am. I have nothing
12 further.

13 **THE COURT:** You may step down. Thank you.

14 **MR. BELL:** Your Honor, we'd ask that the
15 witness be excused.

16 **THE COURT:** Any objection?

17 **MR. BRUCK:** No objection.

18 **THE COURT:** You may be excused, ma'am.

19 **MR. BELL:** The State will call Elizabeth Quinn
20 (sic).

21 ELIZABETH LOUISE GRIFFIN,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** If you'll have a seat and state
24 your full name for the record.

25 **THE WITNESS:** I'm Elizabeth Louise Griffin.

1 DIRECT EXAMINATION

2 BY MR. BELL:

3 Q Ms. Griffin, I'm going to ask you to speak up
4 so all of these jurors can hear you, okay? Speak as
5 loud as you can into the microphone. Could you say
6 your name again, please?_____

7 A Elizabeth Louise Griffin.

8 Q Ms. Griffin, where are you currently located?

9 A Right now I'm at Lieber Correctional
10 Institution.

11 Q Why are you there?

12 A For distributing charges.

13 Q Distributing what?

14 A Crack cocaine.

15 Q And how long ago did that happen?

16 A A year ago.

17 Q A year ago, okay. Let me take your memory back
18 to 1989. Do you remember back then?

19 A Some of it, yes, sir.

20 Q Do you remember a person named Kimberly Quinn?

21 A Yes, I do. She's my best friend.

22 Q How long did you know her?

23 A About eight years.

24 Q Did she have any children?

25 A She had two.

1 Q And who were they?

2 A Allen Williams and Amanda Quinn.

3 Q And do you remember when she moved to Platt
4 Springs Road?

5 A Yes.

6 Q Do you know how long about she lived there?

7 A Not long, four or five months, maybe.

8 Q Did you do anything with her daughter back
9 then?

10 A I took her daughter to school.

11 Q Did you have children as well?

12 A Yes. I have two boys.

13 Q And would you take them all to school?

14 A Yes, sir.

15 Q And were you employed at the time?

16 A Yes. I worked for Southern Air.

17 Q Did Kim have a job back then?

18 A No.

19 Q How did she get around?

20 A Well, she had a car up until the time we had a
21 car accident, me and her was together. And then we
22 used my car after that.

23 Q Okay. Now, you said you had a car accident,
24 when did that happen?

25 A In '89.

1 Q What part of '89; do you remember?

2 A Probably in September of '89, something like
3 that.

4 Q Did -- were y'all -- did y'all seek legal
5 counsel in regards to that accident at some point?

6 A Yes, we did.

7 Q And were you going to get some money --
8 insurance money or something out of that?

9 A We both were.

10 Q Did y'all have the same attorney?

11 A No, but I went with Kim on several times to her
12 attorney.

13 Q All right. After the accident, how did you say
14 she would get around, go places?

15 A My vehicle.

16 Q Now, Ms. Griffin, let me ask you about this.
17 Do you remember around when she disappeared?

18 A Yes.

19 Q Do you remember the day before she disappeared?

20 A Yes, sir.

21 Q What happened on that day as you can remember,
22 starting as early as you can remember?

23 A I picked up Amanda with my two children and
24 took her to school.

25 Q Do you remember about what time that was?

1 **A** About 7:30 in the morning.

2 **Q** Okay. And then?

3 **A** I dropped her -- Kimberly's child off, Amanda,
4 and then I took my two boys to school. And then, I
5 think, Kim had got the car and my son had got sick.
6 She picked me back up to pick my son up and then I
7 had the car. And then --

8 **Q** What time was that?

9 **A** Probably about 12, one o'clock. And then I
10 went back to work. Then when I got off work, I
11 picked the kids up around 3:15.

12 **Q** And then where did you go from there?

13 **A** Back to Kim's house.

14 **Q** Okay. What happened when you went back to
15 Kim's house at that time?

16 **A** I was fixing to leave and a car had pulled up
17 behind mine and I had to ask the lady to move her
18 car.

19 **Q** Okay. And did you get a good look at her at
20 that time?

21 **A** Yes, sir.

22 **Q** Let me show you what is State's 8 in evidence.

23 **MR. BELL:** Your Honor, may I approach?

24 **THE COURT:** Yes, sir.

25 **BY MR. BELL:**

1 Q And ask you if you recognize what State's 8 is?

2 A Yes, that's her.

3 Q That's the woman you saw?

4 A Uh-huh. Her name was Brenda.

5 Q And what happened when you -- she pulled in
6 behind you?

7 A Uh-huh.

8 Q And how did you get out of the driveway?

9 A She came out and moved her car to the side of
10 the road where I could back out.

11 Q So she went in the house when she pulled in
12 behind you?

13 A She was going in the house. When I left, she
14 was going in the house.

15 Q Were you coming out of the house or --

16 A Uh-huh.

17 Q Okay. As you were going out, she was coming
18 in?

19 A Uh-huh.

20 Q And then you asked her to move the car or she
21 came out to move it. How did that work?

22 A She came out and she moved the car to right on
23 the roadway. And I back -- she was going back up
24 into the house when I was pulling out.

25 Q Okay. What's the next thing that you remember?

1 Did you talk with Kim anymore that day?

2 A I talked to her about 6:30 and she was --
3 wasn't feeling good. And she was going to ask the
4 next-door neighbor for a glass of milk to settle her
5 stomach. And then I talked to her again at 11
6 o'clock. She called me and I was on the phone with
7 my husband. And I -- she still wasn't feeling good,
8 but she was feeling better. That was the last time
9 I talked to her.

10 Q What's the next thing you remember having to do
11 with Kimberly Quinn?

12 A About 6:30 that morning, the next-door neighbor
13 called from Kim's house and told me Amanda was there
14 and couldn't find her mother.

15 Q What did you do as a result of that?

16 A I went and got Amanda.

17 Q You went to Kim's house or the next-door
18 neighbor's house?

19 A I went to the next-door neighbor's house.

20 Q Okay. Did you stay around there or did you
21 take Amanda somewhere or what did you do?

22 A Me and Amanda walked over to where they lived.
23 We went through there. Kim wasn't there and I took
24 her back home with me. I called a friend of mine
25 and then she was going to the house and we all went

1 back to the house.

2 Q What did you do once you went back to the
3 house?

4 A I called West Columbia Police Department.

5 Q Okay. Did you look around?

6 A Uh-huh.

7 Q Let me show you --

8 MR. BELL: Your Honor, if I may approach the
-9 witness again.

10 THE COURT: Yes, sir.

11 BY MR. BELL:

12 Q Let me show you what's been marked as State's 9
13 and ask if you recognize that?

14 A Yes, I do.

15 Q How do you recognize that?

16 A That belongs to Kim.

17 Q Okay. Can you look at it for a second and look
18 in it?

19 A It's the same I.D. that was in it that morning,
20 but there was -- there was a piece of paper in here.

21 Q Was there any money in it that morning?

22 A No.

23 Q Was that unusual?

24 A Yeah.

25 Q Kim usually had money in her wallet?

1 **A** Yes.

2 **Q** And you saw that on numerous occasions?

3 **A** Yes, sir.

4 **Q** Did you -- in knowing Kim, did she have any
5 jewelry?

6 **A** Yes. She always wore jewelry on her hand.

7 **Q** What kind of jewelry?

8 **A** She had a turquoise ring that was two shades of
9 turquoise. She had a hammer ring that had a C on
10 it. She had a black onyx ring with a diamond that
11 was at the very end -- the bottom of it that I
12 remember.

13 **Q** How many rings would she wear; do you recall?

14 **A** On one hand, I think they were all -- they had
15 rings on all of them.

16 **Q** All five or just the four fingers or would she
17 have something on her thumb?

18 **A** She had on four I would say.

19 **Q** How about on the other -- I mean, on both hands
20 or one hand?

21 **A** Mainly on just one hand that she wore all the
22 time.

23 **Q** Did you go in the house at all?

24 **A** Yes.

25 **Q** Okay. Did you notice anything in the house?

1 **A** There was a basket full of beer cans that
2 wasn't there the day before.

3 **Q** And let me go back. Did you have an
4 opportunity to go in the house the day before,
5 before she went missing, when you brought Amanda --

6 **A** Yes.

7 **Q** Did you notice anything in there when you went
8 in the house?

9 **A** A welfare check sitting on the T.V. set, I
10 noticed it. The beer cans wasn't there at that
11 point. Other than that, no.

12 **Q** Now, the next day when you went in the house,
13 did you see that check?

14 **A** No, sir.

15 **Q** Okay. Did you do anything in regards -- did
16 you take -- did you go get Amanda? What did you do
17 with Amanda?

18 **A** I took her home with me. And then I called
19 another lady that we all knew, Norma Campbell, and
20 asked her where Kim was at. If she knew where she
21 was, that she needed to come home. And she said she
22 was going to Kim's house. And I told her I would
23 meet her there. So we both went back to Kim's house
24 and that's when I called West Columbia.

25 **Q** Did West Columbia police come right out there?

1 **A** No.

2 **Q** Do you recall if any police officer or any law
3 enforcement came out there?

4 **A** SLED did.

5 **Q** They did. How long was that?

6 **A** I'm not quite sure of the time. It was that
7 morning, I believe, about 10:00 or 11:00 maybe. I'm
8 not sure.

9 **Q** And did you talk with -- and you talked with
10 them?

11 **A** Uh-huh. I talked to Ron Cook and Tyndal,
12 Officer Tyndal.

13 **Q** Okay. And just told them what you knew at that
14 time?

15 **A** Yes, sir.

16 **MR. BELL:** Your Honor, if I may have a brief
17 moment. I have another exhibit that I forgot about
18 that I want to show her. And I apologize. If I can
19 have a brief moment.

20 **THE COURT:** All right.

21 (Pause.)

22 **BY MR. BELL:**

23 **Q** Now, you said about the jewelry on the hand.
24 Which hand did she favor wearing the jewelry on, if
25 you remember?

8 **MR. BELL:** And we're just waiting on this
9 exhibit.

10 (Pause.)

11 **MR. BELL:** Your Honor, I apologize. Can we
12 have a brief break?

13 **THE COURT:** Ladies and gentlemen, I'll send you
14 to the jury room. Do not discuss this case in any
15 way whatsoever. Thank you very much.

16 (The jury retires to the jury room.)

17 **THE COURT:** Ma'am, you may step down during the
18 break. You may not discuss your testimony with
19 anyone; do you understand?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** We'll take a short break.

22 (Brief Recess.)

23 (State's Exhibit Number 15, jeans, were
24 marked for identification purposes.)

25 **THE COURT:** Are y'all ready?

1 **MR. BELL:** Yes, sir, Your Honor.

2 **THE COURT:** You can bring the jury in, please.

3 (The jury returns to the courtroom.)

4 **THE COURT:** We're ready to proceed, ladies and
5 gentlemen.

6 Go ahead.

7 **MR. BELL:** Thank you, Your Honor. May I
8 approach the witness, Your Honor?

9 BY MR. BELL:

10 **Q** Ms. Griffin, I'm going to show you what's been
11 marked as State's 15 and ask if you recognize these?

12 **A** Yes.

13 **Q** How do you recognize these?

14 **A** Because of the yellow paint that's on them.

15 **Q** Where is the yellow paint on them?

16 **A** These are paint marks where we painted her
17 kitchen.

18 **Q** And whose jeans are these?

19 **A** Kimberly Quinn's.

20 **Q** No doubt about it?

21 **A** No doubt.

22 **MR. BELL:** Your Honor, this is in evidence I
23 believe. Your Honor, I don't know if we had offered
24 it.

25 **THE COURT:** Any objection to State's 15?

1 **MR. BRUCK:** No. I think we should make sure
2 the jury understands that the cloth that's been
3 removed from the crotch area was done for testing.

4 **MR. BELL:** Yes. That will be by a later
5 witness.

6 **THE COURT:** All right. No objection?

7 **MR. BRUCK:** No objection.

8 **THE COURT:** All right. Is that State's 15?

9 **MR. BELL:** Yes, Your Honor.

10 **THE COURT:** All right. State's 15 in evidence.

11 (State's Exhibit Number 15, jeans, admitted
12 into evidence.)

13 **MR. BELL:** Your Honor, may I approach the
14 witness again?

15 BY MR. BELL:

16 **Q** Again, let me refer to State's 15 again. I'll
17 kind of hold them like this so you can see it and
18 the jury can see it. Now, down at the bottom on the
19 left leg, there was some damage. Was that damage
20 present the last time you saw them?

21 **A** No.

22 **Q** Okay. And then, of course, this hole right
23 here in the middle, that wasn't present?

24 **A** No.

25 **Q** Now, let me show you what's been marked as

1 State's 2 and ask if you recognize that picture?

2 A That's where Kim was living.

3 Q And then State's 3 and ask if you recognize
4 that picture?

5 A That's her driveway.

6 MR. BELL: Okay. Thank you, Ms. Griffin.

7 Please answer any questions the defense counsel has
8 for you.

9 CROSS-EXAMINATION

10 BY MR. BRUCK:

11 Q Good morning, Ms. Griffin.

12 A Good morning.

13 Q Just a couple things. You said you were Kim
14 Quinn's best friend?

15 A Yes, I was.

16 Q So you knew what she was up to, what she was
17 doing?

18 A Yes, sir.

19 Q Mr. Bell asked you about her employment.
20 Wasn't she working up to a few weeks before this
21 with Norma Campbell?

22 A Not to my knowledge, Norma Campbell, no.

23 Q Okay. She did have a job a few weeks before
24 she disappeared, didn't she? Not a regular job, but
25 a job, didn't she?

1 **A** Yeah.

2 **Q** And what was that?

3 **A** She worked at an escort service.

4 **Q** She worked at an escort service?

5 **A** Yes, sir.

6 **Q** You don't know whether Norma Campbell worked
7 there, too?

8 **A** No, I don't.

9 **Q** Okay. Did she say why she needed some milk to
10 settle her stomach that night?

11 **A** No, she didn't. She just said her stomach was
12 upset.

13 **Q** She didn't tell you anything that she had taken
14 or anything that she was doing that caused her to be
15 sick?

16 **A** No.

17 **MR. BRUCK:** That's all. Thank you.

18 **THE WITNESS:** Thank you.

19 **MR. BELL:** Nothing further, Your Honor.

20 **THE COURT:** You may step down, ma'am.

21 **MR. BELL:** Your Honor, at this time, if it
22 please the Court, we would like to read into the
23 record a stipulation that has been agreed to by both
24 the State and the defense the testimony of Peter
25 Tony Demos, D-E-M-O-S.

1 **THE COURT:** All right. Ladies and gentlemen, a
2 stipulation is just an agreement between each side
3 as to certain facts. You should accept those facts
4 and use those facts as you deem appropriate in your
5 determination of the issues in this case.

6 Go ahead.

7 **MR. BELL:** Thank you, Your Honor.

8 The following stipulation is that the State and
9 the defendant have agreed that on the morning of
10 Friday, October 6th, 1989, shortly after 7:00 a.m.,
11 Peter Tony Demos went to the victim's residence
12 along with Ms. Norma Campbell in order to help look
13 for the victim, Kimberly Quinn. While there, he
14 found the victim's wallet laying on the ground at
15 the edge of the grass in her driveway. The wallet
16 was recovered and contained her South Carolina
17 driver's license, but not her South Carolina
18 identification card. Additionally, there was no
19 cash in the wallet when recovered.

20 Parties also further stipulate that the wallet
21 in evidence is the wallet he found that morning.
22 That's the...

23 **THE COURT:** All right.

24 **MR. BELL:** Your Honor, we've put that as a
25 Court's Exhibit as well.

1 (Court's Exhibit Number 5, stipulation,
2 marked for identification purposes.)

3 **MR. LUPTON:** Your Honor, the State would call
4 Mike Hutchins.

5 **MIKE HUTCHINS,**
6 having been duly sworn, testified as follows:

7 **THE CLERK:** State your full name for the
8 record, please.

9 **THE WITNESS:** Mike Hutchins.

10 **DIRECT EXAMINATION**

11 **BY MR. LUPTON:**

12 **Q** Good morning, Mr. Hutchins. Would you tell the
13 jury what it is that you did back in October of
14 1989?

15 **A** I was a forest ranger technician and an
16 investigator with the State of South Carolina.

17 **Q** And what kind of background and training did
18 you have for that job?

19 **A** I'm a graduate of South Carolina Criminal
20 Justice Academy. I'm also a certified arson
21 investigator with the State of South Carolina.

22 **Q** And what kind of -- how long did you work for
23 -- as a forest ranger?

24 **A** Twenty-three years.

25 **Q** And you were employed in that capacity in

1 October of 1989, correct?

2 **A** That is correct.

3 **Q** And with regards to that, did you have occasion
4 to be called to -- well, let me back up. What kinds
5 of duties did you have as a forest ranger?

6 **A** I was in charge of all of the wild fire
7 activities in Lexington and Calhoun County for a
8 while too, supervised the people that actually fight
9 the fires and so forth.

10 **Q** And in that capacity, did you have occasion to
11 be called to investigate a fire related to this
12 case?

13 **A** I did.

14 **Q** And what date, if you recall, did you get that
15 notice, that call for the fire?

~~16 **A** Around lunchtime on October the 6th.~~

17 **Q** And, specifically, do you recall or do you have
18 notes that reflect what time the call was called in?

19 **A** I don't have anything with me, but it was
20 around lunchtime I remember that.

21 **Q** Does 12:50 p.m. sound --

22 **A** That would be close, yes, sir.

23 **Q** And do you recall where the fire was?

24 **A** The fire was off of Beckman Road back down
25 through some planted pines.

1 **Q** Is that here in Lexington County?

2 **A** Yes, sir, it is.

3 **Q** And show you what's been marked, Court's
4 permission, State's Exhibit 4. I ask if you can
5 come down and explain what this is?

6 **A** (Witness leaves the witness stand.)

7 **MR. LUPTON:** I believe this has already been
8 offered into evidence without objection.

9 **MR. BRUCK:** No objection.

10 BY MR. LUPTON:

11 **Q** And can you tell the jury what that is?

12 **A** It's a sketch of where the fire was started and
13 all this. Beckman Road is actually back over this
14 way and this was --

15 **COURT REPORTER:** Can you have him turn around
16 please? I'm having a hard time hearing him.

17 **THE COURT:** Swap sides, counsel.

18 BY MR. LUPTON:

19 **Q** So you say that this here, this sort of
20 tan-colored area leading to what's labeled on the
21 chart, is parking area?

22 **A** That is correct.

23 **Q** That that is a logging road?

24 **A** Yeah. It was pretty much grown up when we went
25 in there.

1 Q Could you describe the condition of that road?

2 A Just an old road cut down through planted
3 pines.

4 Q Was it a paved road?

5 A No. It was just all dirt. Like I said, just
6 back down through the woods. Looked like it was
7 usually used for a logging road or maybe access to
8 this house at one time, but it was grown over a
9 little bit.

10 Q Would it be the kind of road that a normal
11 sedan type car would be traveling on a regular
12 basis?

13 A No, sir.

14 Q Would it be -- what kind of vehicle would you
15 normally use to drive on that type of road?

16 A I have a four-wheel drive pick-up truck.

17 Q And would it be a road consistent with that
18 type of vehicle?

19 A Yes, sir.

20 Q Now, you say you got called out to the fire?

21 A That's correct.

22 Q And that was on what date?

23 A The 6th of October.

24 Q And that was a Friday?

25 A Yes, sir.

1 Q And when you got to the location, can you
2 explain to the jury what you did?

3 A I was called out there by one of my employees
4 that actually operates a bulldozer that fights the
5 fire just to -- I actually go out and confirm
6 everything he did to make sure the fire is under
7 control and so forth and that's what I did. At that
8 time, the fire -- I didn't really investigate it
9 that close. Lexington County was running about a
10 thousand fires a year at that time. So I just went
11 out and everything looked good. I was out there for
12 an hour or so with my employee and then we left.
13 The fire was under control. Wood fires you don't
14 put it out, you just get them under control. It's
15 too big an area to actually put it out.

16 Q About how big an area was this that was
17 actually burned?

18 A It was less than two acres if I remember right.

19 Q And these picture that are on the chart as
20 well, does that reflect the area that the chart
21 depicts?

22 A Correct. You can't tell a whole lot about the
23 fire from the pictures, but, yes.

24 Q And that's how it appeared back then?

25 A That is correct.

1 Q 1989. And can you show on the pictures
2 themselves approximately what area was burned?

3 A Right in here on the right hand -- looking at
4 the picture this right-hand side. This is actually
5 a fire break that was cut in on this side, cutting
6 back into the woods. You can't see it when it gets
7 back into the woods because it was under big pine
8 trees and all. This is actually a fire break right
9 here on this side.

10 Q Because ~~that's how you~~ -- you cutting the fire
11 breaks was how the fire was controlled?

12 A Correct. We removed the fuel to put the fire
13 out.

14 Q You said that somebody else did that?

15 A That is correct.

16 Q Working under your supervision. Y'all were
17 there for I believe you said about an hour or an
18 hour and a half?

19 A Yes, sir.

20 Q Did you conduct any investigation as to the
21 cause of the fire that day?

22 A Not at that time I did not.

23 Q And would that be routine?

24 A With as many fires as we had going on, that is
25 routine for us. The fire really didn't do any

1 damage just burned a few woods up under the trees
2 and all. So we would just go in and look at it and
3 everything is under control and leave.

4 Q And I guess you can tell by the chart, but did
5 it do any damage to the structure that was out
6 there?

7 A No, sir. This is our fire break right here,
8 the drawing shows between the structure and what
9 burned back in this area here.

10 Q So all it did was burned some woods. So y'all
11 controlled it and left; is that accurate?

12 A Yes, sir.

13 Q Now, were you ever called back to the location?

14 A Yes, sir. On Sunday afternoon, I was called
15 back to it to investigate further.

16 Q All right. And, at that point, did you
17 investigate the fire?

18 A Yes, I did.

19 Q And were you able to determine where the fire
20 had started?

21 A Yes, sir. The fire actually started in this
22 area here (indicating) where a body was. The fire
23 started from there and moved up the hill.

24 Q So there's -- on this chart, there's a B. Does
25 that indicate where the body was found?

1 **A** That is correct.

2 **Q** And is that where the fire started?

3 **A** Yes, sir, it is.

4 **Q** And you -- describe how it burned?

5 **A** It was pretty bad mutilated and all. It looked
6 like there was some type of accelerant.

7 **Q** Well, going to the fire itself, I'll let
8 somebody else talk about the body, but talking about
9 the fire, can you describe how it progressed?

10 **A** Sure. The fire was -- it had burned for quite
11 a while because it was a nighttime fire it looked
12 like because this area down here (indicating) did
13 not burn up completely. It actually had pine straw
14 and stuff that had not burned and it had scattered
15 around, so that indicates a lot of moisture still on
16 the ground or dew at night. And then what happened,
17 that afternoon when the wind got up a little bit,
18 the fire actually pushed up this hill and that's
19 when the fire was discovered was later on in the day
20 when we actually had enough wind and the ground got
21 dry enough and the fuel got dry enough for the fire
22 to move on in this direction here.

23 **Q** So, basically, you can tell by the burn pattern
24 that it had been started at night; is that correct?

25 **A** That is correct.

1 Q And had it just sort of burned low or
2 smoldered?

3 A Yeah.

4 Q Is that -- am I understanding you correctly?

5 A This is not real accurate right here. The fire
6 didn't actually burn all the way to the pond. It
7 actually burned itself out because of the moisture
8 on the ground back on this side here. And there
9 were several areas in here that were skipped, too,
10 where there was still pine straw and stuff that was
11 not burned, that indicates moisture on the ground.
12 When the wind got up, all of this up here was
13 consumed by the fire as far as degrees on the ground
14 because you had low moisture and the wind pushing it
15 up the hill.

16 Q So that would have taken place the next morning
17 after daylight after the ground had dried?

18 A That is correct.

19 Q And then that's when the fire was discovered
20 and called in; is that correct?

21 A That's correct.

22 Q You can return back to the stand. Thank you
23 very much.

24 A (Witness resumes the witness stand.)

25 MR. LUPTON: Thank you, Your Honor. Nothing

1 further.

2 CROSS-EXAMINATION

3 BY MR. BRUCK:

4 Q Mr. Hutchins, just one thing. You said the
5 road, the best vehicle would be a four-wheel drive
6 or a pick-up truck, right, to go on that road?

7 A You could access it with a car. The question
8 he asked me, Would that be the normal vehicle, a
9 sedan or something going down it, I wouldn't think
10 so.

11 Q You just answered my actual question. You
12 could drive a sedan on that road?

13 A Yes, sir.

14 Q And get through. It's not a problem?

15 A Yes, sir.

16 MR. BRUCK: All right.

17 THE COURT: Anything else?

18 MR. LUPTON: Nothing further.. Your Honor, the
19 State would ask this witness be excused.

20 THE COURT: Any objection?

21 MR. BRUCK: No objection.

22 THE COURT: You may be excused.

23 MR. BELL: The State would call Andrew Baldwin.

24 *****

25 *****

1 ANDREW SCOTT BALDWIN,
2 having been duly sworn, testified as follows:

3 **THE CLERK:** If you'll have a seat and state
4 your full name for the record, please.

5 **THE WITNESS:** Andrew Scott Baldwin.

6 DIRECT EXAMINATION

7 BY MR. BELL:

8 **Q** Mr. Baldwin, I'm going to ask that you keep
9 that voice up so all of the jurors can hear you,
10 okay?

11 **A** Okay.

12 **Q** All right. Mr. Baldwin, are you employed at
13 this time?

14 **A** Yes.

15 **Q** Generally, what do you do?

16 **A** Custom stone work.

17 **Q** How old are you today?

18 **A** Twenty-seven.

19 **Q** And back in 1989, how old would you have been?

20 **A** Ten or 11 years old.

21 **Q** Do you remember where you lived back in 1989?

22 **A** Yes.

23 **Q** Where was that?

24 **A** We were living on Scenic Drive.

25 **Q** Where is that located?

1 **A** Just outside of South Congaree.

2 **Q** What's the main highway through there?

3 **A** Highway 302.

4 **Q** And are you familiar with a road called Beckman
5 Road?

6 **A** Yes.

7 **Q** And where is that in relation to where you
8 live?

9 **A** It was a side street right off of Beckman.

10 **Q** Scenic -- where you live, Scenic Drive, was?

11 **A** Yes.

12 **Q** And who did you live with at that time?

13 **A** My father and my stepmother.

14 **Q** Was anybody else living there?

15 **A** Yes, my sister and my three stepbrothers.

16 **Q** Okay. And do you recall something significant
17 happening back in October of 1989?

18 **A** Yes, sir. Me and my brother we went fishing.

19 **Q** And who's your brother?

20 **A** Rob Turner, stepbrother.

21 **Q** Stepbrother?

22 **A** Yes, sir. We went fishing one day. He cut out
23 kind of early. I stayed and I happened to run
24 across a brain.

25 **Q** Do you remember what day of the week that was?

1 **A** It was a Saturday.

2 **Q** And when you saw that, what did you do?

3 **A** I just kind of got spooked a little bit, went
4 home, told my brother. And he said, We'll just go
5 back tomorrow and take a look at it. It was dark,
6 so.

7 **Q** And where were you at when this occurred?

8 **A** I'm not understanding the question.

9 **Q** Where were you when you found what you said was
10 a brain, where were you?

11 **A** We were at an abandoned pond house off of
12 Beckman Road.

13 **Q** And so you -- did you immediately go home when
14 you saw that or did you look around?

15 **A** I believe at the point I was more interested in
16 finding fishing bait.

17 **Q** And what time did you go home?

18 **A** It was getting close to dark.

19 **Q** And when you went home, you said you told your
20 brother?

21 **A** Yes, sir.

22 **Q** Did you tell anybody else?

23 **A** The best of my recollection, we told my parents
24 at the supper table later on that evening.

25 **Q** And did they do anything when you told them

1 that?

2 **A** They just kind of blew it off. I mean, they
3 didn't -- they didn't see it, so I guess they -- it
4 would be natural for them to just not even worry
5 about it.

6 **Q** Was your curiosity aroused at this time?

7 **A** Definitely.

8 **Q** So did you go back out to the pond any time
9 after that Saturday night?

10 **A** The following morning.

11 **Q** What time about, as best you can remember?

12 **A** I believe it was about 6:30, seven o'clock in
13 the morning, somewhere in that time frame.

14 **Q** What -- let me ask you this, to go back with
15 what you found. What did you think -- you said it
16 was a brain, did you think it was any particular
17 type of brain?

18 **A** Yeah. I thought it was an animal brain of some
19 sort, large animal, maybe a horse or, you know,
20 something that size because -- I mean, it was just
21 too small to be a small animal -- I mean, too large
22 to be a small animal.

23 **Q** So you said the next time you went out was
24 early the next morning?

25 **A** Yes, sir.

1 Q And what day was that?

2 A It was on Sunday.

3 Q Okay. And did anybody go with you?

4 A Yes.

5 Q Who?

6 A My stepbrother, Rob Turner.

7 Q And, again, I may have asked you, but about
8 what time did y'all leave out?

9 A It was about 6:30, seven o'clock in the
10 morning.

11 Q And where were you going?

12 A We were heading back out there to do some more
13 fishing and show him what I had found.

14 Q And so you went over back to the same pond?

15 A Yes, sir.

16 Q And what did you do when you got there? What
17 did both of you do?

18 A Just started looking around trying to gather
19 live bait and, you know, he -- he -- my brother just
20 started snooping around to see what he could find
21 while I was fishing.

22 Q Okay. And what happened -- did you start
23 fishing?

24 A Yes.

25 Q And did anything happen while you were fishing?

1 **A** Yes. My brother just started freaking out. He
2 was -- he was very upset. And he yelled something
3 and jumped on his bike and just left. I could not
4 catch him. I didn't understand what was going on.

5 **Q** I mean, what did you do?

6 **A** I chased after him. I tried to find out what
7 was wrong. And I never did catch up with him. He
8 just totally left me in the dust.

9 **Q** Do you know where he went?

10 ~~**A** He went straight to our house.~~

11 **Q** And did you eventually show back up there at
12 your house?

13 **A** I never did make it all the way to the house.
14 My dad came and picked me up in the truck and asked
15 me to take him where we just came from.

16 **Q** Okay. And where did you go?

17 **A** Took him down to that abandoned pond house.

18 **Q** And what did y'all do when you got down there?

19 **A** My dad asked me to point him to where Rob was
20 at when he just started, you know, getting upset and
21 yelling and stuff like that and I just pointed to
22 the direction. And my dad asked me to stay there.
23 And I did until I saw what he was looking at and
24 then I, you know, I walked closer and I saw.

25 **Q** And what did you see when you walked closer?

1 **A** I saw a badly charred, mutilated body.

2 **Q** Did you notice anything else about it?

3 **A** Hands and feet were missing. The head was
4 detached and it was just very, very horrific.

5 **Q** And what happened after that?

6 **A** My dad asked me to go to the truck. And he, I
7 guess, stayed for just a second to kind of gather
8 his thoughts and we left, called the authorities.

9 **Q** And who called the authorities?

10 **A** My father.

11 **Q** And as a result of that call, who showed up?

12 **A** I'm not remembering who all was involved at
13 that point. I was blind sided by the whole thing.
14 I was just upset, nervous, completely shaken. I
15 wasn't aware of much else after that.

16 **Q** And how do you remember it after 16 years so
17 vividly?

18 **A** When you see something like that, you just
19 can't forget it. It's like somebody taking a
20 picture. I just see snapshots of everything that I
21 saw that day.

22 **Q** Now, Mr. Baldwin, if I can, if you could step
23 down please and come to this diagram.

24 **A** (Witness leaves the witness stand.)

25 **Q** If you'll step on this side so the court

1 reporter can hear you and all of the jurors can hear
2 you. I'm referring to State's Exhibit 4. Does that
3 look familiar to you?

4 A Yes.

5 Q And what is that a diagram of, the big diagram,
6 what is that a diagram of?

7 A This is a diagram of the pond area that we were
8 fishing at.

9 Q Okay. And then there are three pictures across
10 the top. Do you recognize those pictures?

11 A Slightly different from an aerial view, but,
12 yes, I do recognize that definitely.

13 Q And could you point out for the jury where you
14 were fishing?

15 A We were fishing right along this bank right
16 here (indicating), kind of close to the gazebo.
17 There were some shrubbery right here, you know, good
18 source of bait, so I stuck close to that area.

19 Q What kind of bait were you looking for?

20 A Crickets, grasshoppers, worms.

21 Q Okay. And then where did you -- can you point
22 out where you found the brain?

23 A Um --

24 Q As best you remember?

25 A Somewhere right along this fire break area. It

1 was pretty close to that fire break.

2 Q Pretty close to where that X is marked on
3 there?

4 A Right here?

5 Q Yes.

6 A Yes, somewhere a little close to there.

7 Q And did you notice the burned area at all over
8 there?

9 A Yes. We just -- I mean, it was just pretty
10 much like burning debris, like somebody had just
11 tried to burn off some debris. That's how it
12 appeared.

13 Q And why did you say it just appeared that
14 somebody had just burned off?

15 A Just like logs and wood, you know, mattresses,
16 stuff like that. It just looked like somebody had
17 just tried to burn some stuff and get rid of it.

18 Q Okay. You can have a seat back on the stand.

19 A (Witness resumes the witness stand.)

20 Q You hadn't forgotten that day, have you?

21 A No, sir.

22 MR. BELL: Thank you, Mr. Baldwin. Please
23 answer any questions the defense attorney has for
24 you.

25 MR. BRUCK: I appreciate you being here. We

1 have no questions for you. Thank you so much.

2 **THE COURT:** You may step down. Thank you.

3 **MR. BELL:** We call Rob Turner to the stand,
4 please.

5 **ROBERT DENNIS TURNER,**
6 having been duly sworn, testified as follows:

7 **THE CLERK:** Have a seat and state your full
8 name for the record, please.

9 **THE WITNESS:** Robert Dennis Turner.

10 **DIRECT EXAMINATION**

11 **BY MR. BELL:**

12 **Q** Mr. Turner, first of all, I don't think we're
13 going to have any problem for the jury to hear you,
14 speak in that voice and you'll be good, okay?

15 **A** Okay.

16 **Q** Mr. Turner, are you employed?

17 **A** Yes, I am.

18 **Q** And are you related to Andrew Baldwin?

19 **A** He's my stepbrother.

20 **Q** And I'm going to ask you, back in 1989,
21 specifically October, where were you living at that
22 time?

23 **A** I was living on Scenic Drive.

24 **Q** And is that near Beckman Road?

25 **A** Very close, yes, sir, next street over.

1 Q And what's the main road that goes through that
2 area?

3 A Highway 302.

4 Q And let me ask you this. If you go -- how do
5 you get to 302 from where you lived at that time?

6 A Well, you could either go up to Beckman Road
7 and turn right or you could just come out of Scenic
8 Drive and you were on 302.

9 Q And if you come out on Beckman Road and take a
10 right, where does that lead you to?

11 A 302.

12 Q Is there a road across from Beckman Road?

13 A Sure is, Canterbury Lane.

14 Q Okay. Was there a road across 302 from Beckman
15 at that point?

16 A I think Greenwood. Yes, Greenwood Drive.

17 Q Now, back in October 1989, do you recall
18 something that sticks out in your mind?

19 A Absolutely.

20 Q What do you recall? Do you recall something
21 happening with Andrew?

22 A Yeah. He discovered a brain. You know, we
23 were living on Scenic Drive, he discovered a brain.
24 He told me about it. We were all curious, you know,
25 very young, went back the next morning going fishing

1 and I got to snooping around. That's when I
2 discovered the body of a lady.

3 Q How did you discover it?

4 A Smelled smoke, followed the burn trail and she
5 was there under a pile of brush and just kind of,
6 you know, that's about all I remember.

7 Q Did you notice anything about the area, how it
8 was -- can you describe the area that you saw?

9 A Pretty burnt, you know, vandalized a little
10 bit. You know, we had been back there previously
11 and it wasn't that way. Trees were knocked over and
12 stuff like that.

13 Q Was there still any fire going on that you
14 know?

15 A Smoke, it was still smoldering.

16 Q And whereabouts --

17 A The body.

18 Q Okay. When you saw that, what did you do?

19 A I went -- I left the scene. Me and my brother
20 went straight back home. I told my father about it
21 and notified the police, Lexington County, I
22 believe.

23 Q And is this an area that you, you and your
24 brothers and family, hung out at?

25 A Yes, sir.

1 Q What would y'all do down there?

2 A Fish.

3 Q Do anything else down there?

4 A Not a thing.

5 Q How far away was the pond from your house?

6 A Maybe five minutes by bicycle.

7 Q How would you get down to it?

8 A Bicycle.

9 Q I mean, was there a road or anything?

10 A Yeah. There was a road cut. If you were to
11 take Beckman down Canterbury, you cut right to the
12 left and there's like a fire break road, led you
13 straight back to it.

14 Q Okay. And did you have to wind your way back
15 around there?

16 A Sure did.

17 Q And do you recall any law enforcement coming
18 down there after your father...

19 A Oh, yeah. Yeah, they had to take me back down
20 there. I mean, it was tons of police.

21 Q And how old were you back in this time?

22 A I believe I was ten years old.

23 Q Let me ask you if you can step down please and
24 come to this diagram. If you can stand on this side
25 so the court reporter can hear you and the jury can

1 hear you.

2 A (Witness leaves the witness stand.)

3 Q And that's, again, State's Exhibit 4. Does
4 that look familiar to you?

5 A Every bit of it.

6 Q And so this is the pond that y'all were down
7 to?

8 A Uh-huh. This is the way we came in.

9 Q That road right there?

10 A Yeah. And we would park our bikes right by the
11 little dock going out.

12 Q And what was Andrew doing when y'all --

13 A He was already on the dock fishing. You know,
14 the brain was, I believe, over in here right off the
15 front of the house. The body I saw -- that's when I
16 saw the burn, because he didn't see the burning the
17 night before.

18 Q Okay. So --

19 A And that's -- I immediately saw it.

20 Q And where did you find the body?

21 A Right here.

22 Q Where that B is and that X?

23 A Yeah, right there.

24 Q Inside the burned area?

25 A Yes, sir.

1 Q Okay. You can have a seat.

2 A (Witness resumes the witness stand.)

3 Q And what was your reaction?

4 A I was a little freaked out, scared. You know,
5 I was ten, never seen a dead body before, you know.

6 Q And what did you do?

7 A I went home and I told my parents. And Andrew
8 didn't see it at the time.

9 Q Did he go home with you?

10 A He -- I left him in the dust, man. I was gone.
11 I couldn't speak.

12 MR. BELL: Thank you, Mr. Turner. Please
13 answer any questions the defense has for you.

14 MR. BRUCK: Mr. Turner, we've got no questions
15 for you. Thanks for coming.

16 THE COURT: You may step down. Thank you.

17 MR. BELL: The State would call Dana Harley.

18 DANA HARLEY,
19 having been duly sworn, testified as follows:

20 THE CLERK: Have a seat and state your name for
21 the record.

22 THE WITNESS: My name is Dana Harley.

23 DIRECT EXAMINATION

24 BY MR. BELL:

25 Q Mr. Harley, where are you employed now?

1 A Wil Lou Gray Opportunity School in West
2 Columbia.

3 Q And what do you do there?

4 A I'm a teacher.

5 Q And 16 years ago, 16 and a half years ago,
6 1989, where were you working?

7 A I was working for L.D. Harley Properties who
8 was my uncle. I was doing maintenance and clean up
9 on his apartments in West Columbia near Platt
10 Springs Road.

11 Q And what are the names of those apartments?

12 A Lyngate Apartments.

13 Q Would you spell that, please?

14 A I'm not sure if it's one N or two N's,
15 L-Y-N-G-A-T-E, I believe.

16 Q And exactly what were you doing for your uncle
17 there at those apartments?

18 A Doing clean up, maintenance. That day I was
19 doing apartment A-1, which is right on the end on
20 the bottom floor, cleaning up an apartment after
21 somebody moved out.

22 Q Okay. Do you recall what day that was?

23 A It was near the end of the week. It was a
24 Thursday I believe.

25 Q And these apartments, again, they're located

1 where?

2 **A** Right on Platt Springs Road in West Columbia
3 right before you get into Tri Angle City.

4 **Q** And what county is that in?

5 **A** Lexington County.

6 **Q** And what time did you start work on this
7 particular day, you were talking, of A-1?

8 **A** 8:00 a.m.

9 **Q** Okay. And what were you doing exactly with
10 that apartment?

11 **A** I was cleaning it. You know, after somebody
12 moved out, I would get it back into good shape
13 enough for somebody to move back in.

14 **Q** And did something catch your attention some
15 time that morning?

16 **A** Yes, sir. There were two men in a white
17 Mercury Cougar who kept coming in and backing into
18 the space right in front of the window where I was
19 working.

20 **Q** And why did that catch your attention?

21 **A** I'd worked there a good two and a half years by
22 then and had -- I knew who was supposed to be in the
23 area and who wasn't. So they were acting odd, just
24 kind of pulling in and sitting in the car for ten,
25 15 minutes. So I observed them a good bit that

1 time.

2 Q And how did they pull in?

3 A They'd backed into the space and it would be
4 pointed across towards Platt Springs Road where you
5 could see all the way down Platt Springs Road a way.

6 Q And what did they do while they were there?

7 A Usually they just kind of mulled around in the
8 car. Another time the passenger got out of the car.
9 But most of the time they would just sit there, look
10 back and forth and around. So I was very suspicious
11 of them.

12 Q And did you focus your attention on this
13 vehicle and the occupants?

14 A Yes, sir. I watched it pretty much
15 continuously from then on, kind of took me away from
16 my work just making sure they weren't breaking into
17 an apartment or doing something they shouldn't be
18 doing, you know, at my uncle's apartments.

19 Q So what time did they show up the first time?

20 A It was around 9:30 or so and pulled in for
21 about 15 minutes.

22 Q And then you said they just mulled around in
23 the vehicle that time?

24 A Yes, sir.

25 Q And they -- when they left, where did they go?

1 A Back up towards Platt Springs Road and turned
2 and left.

3 Q Turning left?

4 A Yes, sir.

5 Q Is that --

6 A Back towards Tri Angle City.

7 Q That's toward the center of town I guess?

8 A Yes, sir.

9 Q Okay. Now, did you see that vehicle again?

10 A Yes. It came back a little later around --
11 about 45 minutes later. They came in, pulled up.
12 And this time the passenger got out. They pulled up
13 for just a second and then the passenger got out.

14 Q How many people were in this vehicle?

15 A There were just two again, the same two.

16 Q Same two?

17 A Yes, sir. I was able to observe them as they
18 drove in and out, so I pretty much knew it was the
19 same two that had been there the first time.

20 Q So when they pull in, you saw the driver's
21 side?

22 A Yes, sir.

23 Q And then when they pull out, you see the
24 passenger side?

25 A That's correct.

1 Q Okay. And you said the passenger this time got
2 out?

3 A Yes, sir. He got out and came and sat directly
4 on the steps at A-1 which led into a breezeway that
5 led to the apartment downstairs. And you could go
6 up the stairs to the apartment upstairs.

7 Q Okay. Now, the steps were out by the parking
8 lot?

9 A Yes, sir, you -- no, the steps were actually in
10 the breezeway and you could come into the breezeway.
11 And you would have to walk directly on the sidewalk,
12 then into the breezeway, then up the steps.

13 Q Now, let me ask you this. When you're looking
14 out, where are you in the apartment?

15 A If you're looking out the window towards -- you
16 can look out the peephole of the door and see
17 somebody sitting there on the steps.

18 Q And when you were looking at the car, what were
19 you looking out to see?

20 A I was looking out the living room window. It's
21 a big four-by-four window and I could observe
22 anything going on outside the window pretty good.

23 Q Did you have your face up next to the window
24 looking out?

25 A No, sir. I had the lights down inside. I

1 could stand back and observe out there without
2 having to worry about anybody actually being able to
3 see inside too well.

4 Q Were you trying to act so they couldn't see
5 you?

6 A Yes, sir. I was trying to be a little bit
7 undercover myself, so.

8 Q Did you turn the lights off for a purpose?

9 A Yes, sir.

10 Q What was that purpose?

11 A I knew they were suspicious. And each time
12 they'd drive up, I'd immediately turn off the lights
13 and stand back a little bit from the window and
14 observe.

15 Q Okay. Now, going back to the second time when
16 the passenger got out.

17 A Yes, sir.

18 Q You said he got on the steps in the breezeway;
19 is that correct?

20 A That's correct, yes, sir.

21 Q And where did you observe that person from?

22 A He was mostly just sitting there just kind of
23 looking back and forth across the road or across,
24 you know, just looking around and he was smoking.

25 Q And you said looking across the road, is that

1 Platt Springs Road?

2 A Yes, sir. He was looking out mostly towards
3 across the road.

4 Q Did he just sit there the whole time?

5 A Yes, sir. He sat there the whole time until
6 the other driver came back in a few minutes to get
7 him.

8 Q How long did he stay there before the car came
9 back?

10 A It was a good ten minutes, maybe 15.

11 Q When the car left after dropping him off, after
12 he got out, which way did it go?

13 A Back towards Tri Angle City again.

14 Q And when the car came back, what direction did
15 it come from?

16 A From the Tri Angle City area.

17 Q And how long were you looking at him through,
18 you said, the peephole in the door?

19 A Yes, sir. I would sit there, pretty much stand
20 there and kind of look out just to make sure he
21 wasn't going up the stairs. So I observed him a
22 good bit of that 15 minutes he was there so, to make
23 sure he wasn't going up into the stairs or anything
24 like that.

25 Q Okay. And then going back to when he got out,

1 did you -- where were you when you saw him get out?

2 **A** He walked directly towards me. I was inside
3 the window. So when he got out of the passenger
4 side door, he walked directly towards the sidewalk
5 which ran parallel to the windows. And when he got
6 out, he walked directly towards me. And then he
7 turned and went towards the breezeway and sat down
8 on the steps.

9 **Q** Did you get a look at his face?

10 **A** Yes, sir, a good look.

11 **Q** How long did you get to see his face?

12 **A** Probably five to six seconds, maybe a little
13 bit more from there.

14 **Q** And plus seeing him when the car would go back
15 and --

16 **A** Yes, sir. By then, I had a pretty good picture
17 in my head.

18 **Q** Now, they left -- about what time did this
19 vehicle leave?

20 **A** It was before lunch, 11:30 or so, and they
21 left. He came and picked him up and they rode back
22 out and went down Platt Springs towards Tri Angle
23 City.

24 **Q** Okay. Now, did you stay there at the
25 apartments past that?

1 **A** Yes, sir. After lunch, I was there. They came
2 back about 3:00 or so. And I was -- noticed that
3 this time, you know, they came in and stayed just a
4 few minutes again and just parked the same way into
5 the spot, backed in.

6 **Q** And backed in?

7 **A** Yes, sir.

8 **Q** Okay. Now, at one point, you got a good look
9 at the vehicle, right?

10 **A** Yes, sir. There was -- I got the tag number
11 and I wrote it down on the window sill. There was a
12 Clemson sticker on the -- I'm a Carolina fan, so I
13 always notice that, but a Clemson sticker on the
14 back window. So I noticed, you know, it had a green
15 vinyl top and, you know, just on the back half of
16 the car, of the top that is. So I wrote the tag
17 number down, which is UGD 865, and wrote that down
18 and gave it to my uncle later.

19 **Q** And you wrote it down on the window sill?

20 **A** That's correct.

21 **Q** Now, let's go back to the next time you saw the
22 vehicle. When was that?

23 **A** That was close to 3:30. I was kind of gearing
24 up to get off, so I -- they came in again. This
25 time they just drove through and drove down to the

1 end of the apartment complex, turned around and came
2 back out and then sat at Platt Springs Road right at
3 the end towards, looking across the street for
4 probably, it was two or three minutes, maybe more
5 than that.

6 Q And was there anybody else in the complex at
7 this time?

8 A Yes. I had spoken to Ms. Freeman who lived in
9 J-1, which is directly across from my window. We
10 had spoken, had mentioned about the suspicious
11 characters coming in and out of the apartment
12 complex that day.

13 Q When did you speak to her about that?

14 A Just before that, I believe, probably two
15 o'clock or so.

16 Q And you said at 3:30, they kind of rode through
17 or --

18 A Yes, sir. They just rode through the apartment
19 complex, went to the end of -- came all the way back
20 out towards Platt Springs Road and stopped.

21 Q Okay. How many people were there?

22 A The same two.

23 Q Same two. Did you see that vehicle there at
24 any other time besides 9:30 in the morning, about
25 11:00 in the morning and 3:30 in the afternoon?

1 A No. There was four times.

2 Q When was the other time?

3 A It was right at one o'clock, that's the time
4 whenever they just came through.

5 Q One o'clock was when they rode through?

6 A No. I believe it was the very last time, three
7 o'clock.

8 Q Okay. When -- and when did you talk to Ms.
9 Freeman?

10 A It was in between those two times.

11 Q The one o'clock and the three o'clock?

12 A Yes, sir. It was around 2:00 or so when I
13 spoke to her.

14 Q The same individuals?

15 A The same individuals, yes, sir.

16 Q Okay. Could you tell the jury -- can you kind
17 of describe the two individuals?

18 A The driver was a little -- kind of a robust,
19 maybe a little overweight guy, he had a round face,
20 beard, long hair, it was blondish, high cheeks, real
21 puffy, reddish like. The passenger had black hair,
22 a black mustache, shoulder length hair maybe, a
23 little stringy in the front maybe, I wouldn't know
24 if you'd call that bangs or what. And he was
25 probably six -- five eight to six foot or so.

1 Q And is that the individual that got out of the
2 vehicle and sat on the stoop?

3 A That's correct, yes, sir.

4 Q Mr. Harley, if I could get you to come down.

5 A (Witness leaves the witness stand.)

6 Q And put State's Exhibit 1 up here. And if you
7 could stand on this side so the court reporter can
8 hear you. Do you recognize these photographs?

9 A Yes, sir, I do.

10 Q Okay. And the map kind of, I know it's not to
11 scale, but...

12 A Right. This would be -- these are actually
13 single townhouses. I would be in this apartment
14 right here on the bottom floor (indicating). A-1
15 was right here in this bottom apartment. The
16 gentleman would come in and pull in here right at my
17 window where I was working in the living room area
18 here of A-1 and would back in each time here and
19 look across the road this way.

20 Q And what are these four individual things that
21 are over there?

22 A These?

23 Q Yes.

24 A These are the townhouses. This was J-1. This
25 was where Ms. Freeman lived.

1 Q Now, the pictures, let's look at the picture
2 down here on the, as the jury's looking at, at the
3 right bottom.

4 A Right. This is the apartment I was working in
5 here on the bottom. I was most of the time in this
6 window right here and that's where they would back
7 in directly in front of that window.

8 Q Okay. And then where's the breezeway you were
9 talking about?

10 A The breezeway is right here. And the suspect
11 got out of there and then went into that breezeway.

12 Q And then the top two pictures, could you
13 describe what that shows?

14 A This is looking out of the breezeway. Each one
15 of these are looking out of the breezeway across
16 Platt Springs Road. They would basically park one
17 space up from here and back into the window where I
18 was observing.

19 Q And, I mean, is that the view -- there's two
20 pictures of the breezeway, is that about where the
21 doorway is to A-1?

22 A That's correct. The doorway to A-1 would be
23 right here on each one of these pictures.

24 Q Thank you. You can have a seat back.

25 A (Witness resumes the witness stand.)

1 Q What was the weather like that day; do you
2 recall?

3 A It was very nice that day.

4 Q And do you recall the date that you saw these
5 people?

6 A Yes, sir. I'd come to work that morning and
7 had, you know, a lot to do that day in the apartment
8 and clean, but, you know, things kind of took my
9 mind off of that a little bit, so.

10 Q What was the date, if you can remember it?

11 A It was a Thursday, the 5th of October I
12 believe.

13 Q 1989?

14 A Yes, sir, in '89, maybe the 4th. I can't
15 remember.

16 MR. BELL: Your Honor, if I may approach the
17 witness?

18 THE COURT: Yes, sir.

19 BY MR. BELL:

20 Q Mr. Harley, I want to show you this picture and
21 ask if you can identify that?

22 A Yes, sir. That's the car that was backing in
23 in front of me at the apartment complex that day.

24 Q And that's the same license tag?

25 A That's it, yes, sir, with the Clemson sticker

1 here.

2 Q And I want to show you another picture from a
3 different angle and ask if that's --

4 A That's the same car, yes, sir.

5 Q And that's the sticker?

6 A That's correct, yes, sir, that's it.

7 MR. BELL: Your Honor, we'd offer these into
8 evidence. We have not previously. I don't think
9 they have any objection.

10 THE COURT: Any objection?

11 MR. DUNCAN: No, sir, Your Honor.

12 THE COURT: What are those numbers?

13 MR. BELL: It will be 16 and 17, Your Honor.

14 THE COURT: State's 16 and 17 in evidence
15 without objection.

16 (State's Exhibit Numbers 16 and 17,
17 photographs, admitted into evidence.)

18 BY MR. BELL:

19 Q Now, Mr. Harley, you stated that during that
20 afternoon between the third and the fourth visit of
21 that vehicle, you talked with Sharon Freeman?

22 A Yes, sir, that's correct.

23 Q What was the substance of the conversation, not
24 what exactly everybody said?

25 A She had young children and, of course, she was

1 concerned about what may be going on around. So we
2 spoke and I told her then that, you know, I was
3 watching the situation also just to reassure her
4 that, you know, somebody was there with her. And
5 she said she had observed the same --

6 **MR. DUNCAN:** Objection, Your Honor.

7 **THE COURT:** Yes, sir.

8 **MR. DUNCAN:** I object on the basis of hearsay.
9 He's reporting a direct conversation he indicates he
10 heard.

11 **THE COURT:** Do you wish to respond?

12 **MR. BELL:** I'll withdraw that part of it.

13 **THE COURT:** All right. Go ahead.

14 BY MR. BELL:

15 **Q** Now, you stated that you gave the license
16 number. What did you do with that? Did you write
17 that down on another piece of paper or what did you
18 do?

19 **A** Yes, sir. I wrote it down on the window sill
20 until the next morning whenever the policemen were
21 across the street. Then I wrote it down for them.

22 **Q** Did you ever tell -- did you tell your uncle
23 about it?

24 **A** Yes, sir. I reported to my uncle about the --
25 what was going on. And I gave him a piece of paper

1 with the tag number, I believe, that day. And he
2 was going to call West Columbia Police Department to
3 have them come down there and see if there was some
4 suspicious stuff going on. And I don't know if they
5 ever came down there or not.

6 Q Okay. Now, the next day, which would have been
7 October the 6th, did you notice anything -- excuse
8 me -- did you go back to the apartments that day?

9 A Yes, sir. I went back that day. And when I
10 got to work that morning, there was a big commotion
11 on Platt Springs Road at a house. I saw multiple
12 policemen and all over there, so.

13 Q And what did you do when you saw that?

14 A Well, I knew something had, undoubtedly, had
15 gone down that night, so I went ahead and walked

16 across the street and spoke to detective -- well, at
17 that time, Lieutenant Tyndal.

18 Q And what did you tell him?

19 A I had told him about the suspicious characters
20 at the house -- at the apartments the day before.
21 And I told him that I had taken down the tag number.
22 So he asked me to go back across the street, write
23 the tag number down and bring it to him.

24 Q And you did that?

25 A Yes, sir, and I did that.

1 Q Okay. Did you do anything else with the police
2 that day?

3 A Yes, sir. I believe later on, it was a little
4 while later when I went down and gave them a
5 statement. I'm not sure if it was that day or the
6 next. I'm not clear on that. I think it was that
7 day.

8 Q And some time after that, they -- or however
9 long it was, did the police come see you again?

10 A Yes, sir. They brought a lineup of people on a
11 piece of folder.

12 Q Did they come one time or did they come more
13 than one time?

14 A They came twice that day, about three or four
15 hours apart I believe.

16 Q When they came the first time, do you recall
17 that?

18 A Yes, sir. They came the first time and had a
19 picture, a lineup of six different men on a piece of
20 folder of pictures. All of them, you know, kind of
21 looked a little alike. And they asked me to pick
22 them out of there. So I went ahead and picked the
23 first suspect out.

24 Q Okay. Do you recall -- was that the driver or
25 the passenger?

1 A It was the passenger the first time.

2 Q Okay. And which officers came to see you?

3 A Detective Hall or -- I believe he was Chief
4 Hall at that time, and Fred -- I can't remember
5 Fred's last name.

6 MR. BELL: Your Honor, may I approach the
7 witness?

8 Q Mr. Harley, I want to show you this. There's a
9 cardboard part and a piece of paper stapled to it
10 and ask if you recognize these items?

11 A Yes, sir. This is the first lineup sheet they
12 brought to me.

13 Q Okay. And how did they present that to you?

14 A They presented -- just presented it to me and
15 asked if there was anything on there I saw was
16 familiar or had seen the day before.

17 Q Did they indicate that any of these men could
18 be on that?

19 A No, sir, they did not.

20 Q Okay. Did they tell you which picture to pick
21 on that?

22 A No, sir. After I did pick the picture, they
23 didn't even indicate whether I'd picked the one that
24 they thought was right.

25 Q And which picture did you pick on that?