

23918

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED
MAR 28 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TERRENCE O'NEIL FRAZIER,

APPELLANT

APPELLATE CASE NO 2015-002464

RECORD ON APPEAL

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THE FOLLOWING IS ON FILE WITH THIS COURT:
THE AUDIO RECORDING OF THE
PRELIMINARY HEARING HELD SEPTEMBER 1, 2015

1 go to trial, but they won't go to trial, and I sit over here
2 and I deal with this. I hear this every day, but I decide
3 to represent myself because I got a little knowledge about
4 the law, know wrong from right, especially common sense. If
5 you got common sense, it's -- you may need a little help in
6 certain areas, you may be right, but if you got common
7 sense, the law is common sense. And if you know the law
8 contradicts itself. And when they try to make -- when they
9 try to enhance the law and cover up this way where you won't
10 get out of this way, they cover up another loophole where
11 you can get out another way. And they figure out, well,
12 they keep slipping out this way, so we are going to break
13 this way, and it's to perform another loophole. If one of
14 them got any one of these charges, you don't think they got
15 a loophole so they can get out of it? You best believe they
16 do.

17 A bunch of time. We can make it for our self and
18 probably get a conviction. We won't. Plus publicity and to
19 establish a solid foundation in the solicitor's office. And
20 media attention, once this is published in the papers, they
21 make a name for their self. They can get a name themselves.
22 They get a conviction, they can get the publicity, the
23 attention, everything they need. "Oh, we did it. It's in
24 the papers. He did it. He's guilty." Don't matter if the
25 person is not guilty. They just want to look -- they just

1 want the media attention. How it look around here that we
2 got a conviction on this. "Well, I got a solid foundation
3 in the solicitor's office now. I'm ready for a higher
4 position. I'm going to go to my boss man. Well, since I
5 got that conviction, can I be head solicitor, or head
6 assistant solicitor, or the head assistant solicitor in
7 charge?" Maybe so. All right. "You did win that case, so
8 maybe I'll give you that position." That would make them
9 look real good, but I'm going to give you more than
10 reasonable doubt to prove that I'm not guilty and they are
11 lying. More than reasonably. More reasons than any reason.

12 Published in the paper so they can live up to an
13 image wearing nice suits and ties with popularity. A name
14 and a --

15 MR. MORONEY: Your Honor, can we approach?

16 THE COURT: Hang on.

17 Mr. Frazier, I have kind of let you go on and
18 comment on the prosecutors. Their job is to advocate for
19 the State. Your job is to advocate for yourself. Let's
20 confine --

21 MR. FRAZIER: Away --

22 THE COURT: -- your summary to the facts
23 presented.

24 MR. FRAZIER: Okay.

25 THE COURT: I will let you have that, but let's

1 move onto something else.

2 MR. FRAZIER: Okay.

3 THE COURT: The next topic.

4 MR. FRAZIER: All right. Yes, sir.

5 I'm basically saying it's not about all that.

6 Okay. I told the jury from day one I was going to
7 prove that they are lying and making false allegations to
8 try and get a conviction as is their duty to prosecute. And
9 I feel I have proved that by them and also people that took
10 the stand to get a prosecution. I feel I have done that.
11 And I have done good so far, and I will continue to do so as
12 I explain things and break it down.

13 I feel I deliver my word making me a man of my
14 word. I feel I have earned your respect and I feel now that
15 I have earned -- I have the right of your respect to believe
16 in what I'm saying. And as jurors I ask in your head you
17 hold them to the same standard or prosecutors should have to
18 also.

19 The next thing we are going to talk about the
20 county, the police, the law enforcement that's in charge of
21 all these things of this case, carjacking and all these
22 drugs. Okay.

23 THE COURT: You need to confine your comments to a
24 summary of what was presented at the trial, not for
25 something -- do you remember I told the jury what you need

1 to decide this case you will hear and being told in the
2 courtroom. That's kind of where you are limited. What's
3 going outside the courtroom is not important to this trial.
4 What this jury has been told is evidence and witnesses is
5 what you could summarize.

6 MR. FRAZIER: Okay.

7 Well, it's clear that a lot of people lied under
8 oath on that stand. They took the oath and they lied.

9 Okay. I'm not going to speak on what happened,
10 but it's a lot of stuff that's going on within law
11 enforcement outside of this case. All right.

12 It's clear to see the victim is and has lied under
13 oath with perjury -- which is perjury, and I will prove.

14 It's clear that witness Mary Kate C. , the
15 girl from Chick-fil-A, got up here and stated she do not
16 know what the suspect looked like. She cannot point him
17 out. All she know is the suspect was a black male. So,
18 therefore, that's not a clear identification of the
19 defendant or who pushed Ms. Chatos. So she can't state that
20 and she didn't state that Terrence Frazier, or "I seen
21 Terrence Frazier push Ms. Chatos down." She said -- she
22 said Ms. Chatos went down and then she said Ms. Chatos --
23 she believed Ms. Chatos went down, but she said she thinks
24 they seen a push. So where her saying that, that's not for
25 sure, and she's not certain about what she seen, and she

1 cannot properly identify the suspect or say that Terrence
2 Frazier pushed Ms. Chatos down. She also admits that Ms.
3 Chatos got out of her vehicle and approached the suspect.

4 Mary Kate C. was not asked to be added as a
5 witness by the prosecutor to me or notified me of her being
6 a witness until the day of trial and is not on the witness
7 list, and stated all she seen was a black male, which proves
8 she can't identify the suspect or say the alleged suspect
9 committed this crime.

10 The witness Brian Whitaker, the owner of
11 Chick-fil-A, stated he did not see use of force. He did not
12 see a push. He only seen suspect pulling off in the truck.
13 He stated under oath he did not see a push. He did not see
14 any use of force. He's the owner of Chick-fil-A. He only
15 seen the truck pulling off. If he didn't see no use of
16 force and she can't identify the suspect, who is there to
17 say that any force happened? She's not for sure. She's
18 uncertain. He didn't see any use of force or a push. He
19 didn't see a suspect or a defendant use any violence towards
20 her. So with that being said, I don't see how the State can
21 claim or establish any force or violence.

22 Also Ms. Chatos said she don't know what was
23 throwed at her vehicle. It could have been a rock fell from
24 anywhere, anything. I'm not saying that's what it was, but
25 it could have been, but at the same time she could have

1 avoided the problem. She could have avoided any problems
2 that was -- that occurred or that's alleged or claimed in
3 this incident.

4 With Mr. Whitaker saying that he didn't see any
5 force or any violence or anything, he just seen the truck
6 pulling off.

7 And the camera showed the victim got out of her
8 truck willingly. Not by force. She got out of her truck
9 willingly. She was angry. She stopped the truck and got
10 out of her truck willingly. Nobody forced her out of the
11 truck. Nobody used violence to get her out of her truck.
12 Nobody intimidated her out of her truck. She stopped her
13 truck willingly, threw it in park, got out and went toward
14 the suspect. And in the victim's statement, which you will
15 hear today, she admitted to getting out of her truck and
16 that she was very angry, cussing at the suspect, and she
17 attacked suspect, so that, in fact, proves that she wasn't
18 intimidated or scared.

19 She didn't say -- here today, jury, you ever
20 bought a car and you done look up the car facts and it might
21 have messed up thirty days or something later, or you might
22 have been over there at the car lot and he is trying to tell
23 you all these things and you don't understand that, you
24 don't understand, and then you think oh, he's give me a good
25 deal, he's giving me a good deal, and then later on you

1 experience well, no, he didn't. Somebody said, "well, look,
2 this man got you. He really got you." He is like that was
3 not a good deal. You shouldn't have did that. That's what
4 they are trying to do today, sell you a bad idea, sell you a
5 lie, sell you a false statement.

6 I have not finished. I have some more to say.

7 Hey, can I, Your Honor?

8 THE COURT: His computer running?

9 MR. FRAZIER: Okay. As you can see, jury, you see
10 somebody walking around right there. Okay. Look at there.
11 Ms. Chatos, she clearly got out of her truck. You see
12 somebody stepped back. It looks like, you know -- okay, you
13 see Ms. Chatos right there at the back of the truck.

14 Y'all have seen this video before. All of the
15 sudden you don't see nothing. You just see -- look at Ms.
16 Chatos. She's not pushed down. She's not -- she's -- it
17 don't show no use of force. She's walking away, like
18 nothing is wrong with her. She's normal. She looks like
19 she is a little angry, but it don't show her being pushed
20 down or none of that. Okay. You seen that.

21 Now, let's play the other two angles.

22 Okay. Here is where the truck leaves around.
23 Okay. And the next angle the truck leaves into the road.
24 There goes the truck. It leaves. Takes off in the road.
25 Now, it's clear that no force was used in that. In fact --

1 Okay. Now I want to let you listen to Ms. Chatos
2 statement.

3 THE COURT: Listen to what incident? What do you
4 want them to listen to?

5 MR. FRAZIER: Let them listen to Ms. Chatos
6 statement.

7 THE COURT: You can comment on the testimony. You
8 can summarize whatever she testified to, but I don't think
9 her statement or other statements of the witnesses --

10 I have explained to the jury, the witnesses
11 testify. Their testimony is recorded and they can listen to
12 their testimony again during deliberations, and you can
13 summarize her testimony in your closing summary now, but I
14 don't believe her statement to any of the law enforcement
15 was presented for the jury's consideration because she was
16 here, which is --

17 So y'all understand, if the State only had to
18 present a recorded statement, we could play it for y'all and
19 y'all hear her statement and Mr. Frazier wouldn't be allowed
20 to ask her what about this. You can't cross-examine a
21 statement. That's why they don't come in. You make the
22 witness come and testify and then allow cross-examination.
23 That's why it doesn't come in. So it's not what's hiding
24 it, but if it were just as easy as handing out statements
25 and letting y'all read them, that's how a trial would be,

1 but that's not how it's done. It's live testimony question
2 and answer, cross-examine question and answer, so you can
3 see a full presentation of what she remembers, if she has a
4 bad memory, poor eyesight, whatever. That's why the
5 cross-examination is allowed and the statement is not used.
6 So we understand. That's why it wasn't admitted. They
7 never are.

8 MR. FRAZIER: Okay. Well, it clear --

9 THE COURT: But -- now, I want to tell them again
10 if y'all want to hear any witness' testimony replayed, y'all
11 can hear the questions asked of the State and Mr. Frazier.
12 Y'all get to rehear that, if you would like.

13 So, Mr. Frazier, that is available, but for them.

14 MR. FRAZIER: For them to listen to after.

15 THE COURT: You summarize it.

16 MR. FRAZIER: I get what you are saying.

17 THE COURT: Okay.

18 MR. FRAZIER: Let's see, let's move -- okay. I'm
19 going to stick at the carjacking.

20 All right. Carjacking. It states person
21 willfully and unlawfully take or attempt to take a motor
22 vehicle from another person by force and violence or by
23 intimidation while the person was operating the vehicle or
24 while the person was in the vehicle.

25 Okay. Now, in Mr. Whitaker's statement he stated

1 he didn't see no force, but Ms. Mary Kate C. , she
2 can't identify the suspect or the suspect who did this, or
3 she say it was a push, but she can't identify Terrence
4 Frazier pushing or doing anything to Ms. Chatos. The video
5 showed that Ms. Chatos clearly wasn't pushed. She wasn't
6 forced out of her truck. And if somebody threw something at
7 your truck and you get out, you can't be intimidated. So
8 you are intimidated, why didn't Ms. Chatos keep going? You
9 are scared, why didn't you keep going, but Ms. Chatos chose
10 to get out of her vehicle. And Mr. Whitaker's statement
11 stated that he didn't see no force, nothing. Okay. So if
12 Mr. Whitaker didn't see no force, how can he -- how can the
13 State say that Mr. Whitaker -- that Ms. Chatos was pushed
14 down?

15 If you go back to what the State's first
16 impression, they said that Ms. Chatos was snatched out of
17 her truck, pushed down to the ground, and her truck was
18 taken from her and left. It's clear Ms. Chatos wasn't on
19 the ground. It's clear that Ms. Chatos wasn't snatched out
20 of her truck. It's clear that Ms. Chatos wasn't threw to
21 the ground. It doesn't show Ms. Chatos even being on the
22 ground. All it shows is her truck pulling off and she
23 walking away. She is not appeared to be hurt. She is not
24 appeared to be injured. It's no proof of carjacking.

25 Okay. No proof of intimidation, because the

1 victim could and should have kept going. Ms. Chatos could
2 have kept going and avoided the problems. She could avoided
3 any problems, but instead the victim stated she was angry by
4 something hitting her truck. Not by intimidation or
5 intimidator. So she wasn't intimidated. Something hitting
6 your truck doesn't intimidate you. You have a right -- you
7 have the right, your own free will to keep going.

8 Ms. Chatos stated she was angry of something
9 hitting her truck. She was angry, so she wasn't
10 intimidated. So she stopped her truck, threw it in park,
11 got out of her truck willingly; then approached the suspect
12 in a rage and angered manner, cussing the suspect with cuss
13 words with the intention like she was in attack mode. If
14 you are cussing the suspect, if you are cussing the person,
15 your intention is like you are angry, like you are ready to
16 attack, use physical harm towards the person. Cussing the
17 suspect with cuss words with intention like she was in the
18 attack mode or wanting to fight or do physical harm to
19 suspect.

20 Then started -- Ms. Chatos then started a verbal
21 altercation with suspect. Ms. Chatos started a verbal
22 altercation, not the suspect, not the defendant. If anyone
23 was intimidated, it was the suspect or the defendant.

24 Then she attacked the suspect by grabbing suspect
25 around the neck with hands and ripping shirt in a physical

1 aggressive rage and anger. In a physical aggressive rage
2 and anger manner. She did all this out of anger, rage.
3 Physical. Nobody physically touched her. It shows that.
4 She physically touched the defendant who she said stole her
5 truck. So if any violence or force was used or established
6 was or from by the victim Ms. Susannah Chatos. She admits
7 to all of this. She grabbed the person around their neck
8 and she tried to choke him and jerk and snatch him out of
9 their car. That was the force. She used physical force,
10 not the suspect.

11 I also don't see this happening. A man my size,
12 135 pounds soaking wet, if that pushing down or pulling out
13 or snatched out to the ground or thrown to the ground by
14 physical force and getting into their truck and pulling off
15 with stealing it, a nice sized woman like Ms. Chatos.
16 Nothing against a nice sized woman, or any sized woman, but
17 I just don't see a person 135 pounds and a nice sized woman
18 like Ms. Chatos -- Ms. Chatos looked like she got a little
19 stamina to her. She looks like she can be very aggressive
20 and mean and she looked like she can protect herself. In
21 fact, I think she can, because she approached like she
22 could. Ms. Chatos' size will make a 135 pound man think
23 twice or wish he hadn't of tried what he did. It's clear.

24 So it's clear that Ms. Chatos wasn't carjacked
25 because she wasn't removed from her vehicle by or with

1 violence, force, or intimidation, nor was her vehicle taken
2 from her by or with violence, force, or intimidation, and
3 nor was she scared of or feared the suspect. Ms. Chatos'
4 actions was clearly out of anger and rage. Ms. Chatos was
5 not inside or operating the vehicle, which video would
6 clearly show and prove. Okay. That's on the carjacking.

7 We are going to move on to leaving the scene of an
8 accident. Also if you remember yesterday, I think it was,
9 it's Bessie Edie Williams. Do you remember correctly she
10 stated that her car was a total loss? She could not get no
11 reimbursement from her car because of uninsured vehicle.
12 That means Ms. Bessie Edie Williams lost her car completely
13 and had to get a new car because no insurance.

14 It's clear if you look at the blue ticket and the
15 warrants or the blue ticket and the supplemental report, Ms.
16 Susannah Chatos had two different number tags on her truck.
17 So that's clear that's an unregistered vehicle on the road,
18 uninsured, is the reason why Ms. Bessie Edie Williams could
19 not get no reimbursement for her car. So, therefore, Ms.
20 Chatos was, in fact, breaking the law at the time she was on
21 the road in that vehicle.

22 THE COURT: Let's keep to the testimony that was
23 provided. There was no --

24 MR. FRAZIER: Now --

25 THE COURT: Hang on. There was no testimony about

1 insurance on any of the vehicles except the testimony from
2 Ms. Williams that her claim was dealt with by the insurance
3 company, and insurance, its coverage, the terms of the
4 policy are not before the jury. That's not a question for
5 the jury to resolve, because that's not an issue for them to
6 resolve. All right?

7 MR. FRAZIER: All right. Leaving the scene of an
8 accident.

9 Okay. It's clear that they are saying this truck
10 was wrecked into Ms. Bessie Edie Williams. Okay. Leaving
11 the scene of an accident, the truck was wrecked into Ms.
12 Bessie Edie Williams. Hit her car. The truck come in
13 Frank's Car Wash and hit her car.

14 Okay. Now, we got to look at was it the suspect
15 or the defendant was found driving in the truck? Was he
16 there when the police got there at the scene of leaving the
17 scene of an accident? Was it Terrence Frazier there in that
18 truck? Okay. Ms. Bessie Edie, they all pointed out and say
19 they seen me in the truck.

20 Leaving the scene of the accident. All right.
21 But we got to look at the facts of this. Ms. Bessie's car
22 was totaled. Ms. Susannah Chatos got her car back the same
23 day. In fact, of all the things that's regarding in the
24 past.

25 Also lack of investigation. The police officers

1 never took no pictures. They never took no pictures. They
2 put crime scene tape up, but they didn't take no pictures of
3 the vehicle, didn't take no pictures of Ms. Bessie's car
4 that was wrecked. They didn't take no pictures of nothing,
5 so how do we even know that these cars are wrecked? It's no
6 proof, other than them saying that. Okay.

7 Now, as it's the police officers duty to protect
8 and serve, I think they should have taken pictures of the
9 scene, of the crime scene. Any proper investigator or
10 police officer who do his job in a proper manner, he's going
11 to do it all. He's going to lay down the marks to show
12 this. He's going to take pictures of the scene. He's going
13 to put his tape up to keep people out from around it. He's
14 going to do every procedure that he's supposed to. You can
15 clearly see that something is not right because they are
16 trying to keep something back because they are not showing
17 everything that they are claiming.

18 And also you have the witnesses. Now, I'm not
19 going to say that the witnesses are lying. I'm not going to
20 say that the witness is lying. I'm not going to say that
21 they are telling the truth, but I can tell you one thing,
22 what the law enforcement is doing is not adding up and they
23 are not doing their proper investigation and procedures like
24 they are supposed to.

25 So leaving the scene of an accident with Bessie

1 Edie Williams losing her car on this.

2 Also Ms. Chatos stated that she was transported to
3 EMS. That video never shows nothing about no EMS pulling up
4 there at Chick-fil-A. You do not see no EMS pull up there
5 at Chick-fil-A.

6 It's proof with the solicitor's office provided me
7 with through the motions that Ms. Bessie -- I mean Ms.
8 Chatos was in the hospital. It was not the day of that. In
9 fact, I wish I could, but I cannot show, because it
10 wasn't -- but it's not that day that Ms. Chatos went to the
11 hospital to the EMS. It's no medical record stating to
12 whether Ms. Chatos had any injuries. They have pictures of
13 Ms. Chatos, but the day that Ms. Chatos went to the hospital
14 was 7-31. 7-31. It was not 7-9-15. That's over twenty
15 some days later. So it's clear to see that something is
16 kind of fishy with that. Why you didn't go to the hospital
17 that day? Why didn't you even go to the hospital that day?
18 Why is this picture saying 8-26 when it was printed and you
19 are in the hospital on 7-31? It's clear that Ms. Chatos
20 didn't go to the hospital that day. Ms. Chatos even stated
21 that her truck was released from the police officer, brought
22 to the hospital by her family. She rode home with a family
23 member. The truck was took home after and went to the
24 hospital. She rode home with the family member. The truck
25 was then drove back to her house. The next day they state

1 they found a magazine. Ain't the investigator or these
2 people who found this truck should have searched this check
3 then? And you mean to tell that they didn't take pictures
4 of the items that was inside the truck? They didn't take
5 pictures of this food that was all throwed around everywhere
6 in this truck? So -- and then -- and then after that they
7 let this truck be released. No pictures.

8 I'm sure when the investigator or police officer
9 have the accident and they put up tape and they do all this,
10 they should search the inside of the vehicle for any items
11 or any extra things or any damage to anything inside the
12 vehicle, take pictures; you know, do a thorough
13 investigation. It's clear that they didn't do a thorough
14 investigation.

15 They are saying "oh, I didn't search the vehicle,
16 but I looked inside of it." Okay. Well, what if something
17 was tore up on the inside of the truck? You didn't take a
18 picture of it. Oh, you just looked in there. Okay, that's
19 fine. They look all right. Well, I ain't going to worry
20 about that. I'm going to focus on this right here. No, you
21 are supposed to do the whole nine yards. Do a thorough
22 investigation.

23 Okay. The witnesses is saying -- and so -- saying
24 that they seen this. You heard them testify yesterday. And
25 after this Ms. Bessie's car was a total loss.

1 Ms. Susannah Chatos truck had some scratches on
2 it, the officers stated, but didn't take no pictures, and
3 then it was released back to her family, which they drove to
4 the hospital.

5 Now, let's go to the next day when this magazine
6 was found. Okay. This magazine was found the next day.
7 Ms. Susannah Chatos said she called a police officer to have
8 her car searched because she think there may be drugs in it
9 or to be searched for drugs. The officer stated he came the
10 next day. He found a magazine in the middle of the truck,
11 like in the console, like by the console of the truck.
12 Okay. You remember -- let's go back to Ms. Susannah Chatos
13 where she stated the magazine -- where she found the
14 magazine that morning. She say she found the magazine on
15 the right side of the truck by -- like on the right
16 passenger's side of the truck. The officer stated he found
17 the magazine in the middle of the seat. Something -- it's
18 either one or the other. The officer stated he took the
19 magazine from -- he searched her car. Okay, if she called
20 him about a magazine in her car, what's the big deal? Okay,
21 I'm going to come out here. All right, I got the magazine.
22 Thank you. Why would you search her car? Why -- you mean
23 to tell me your family rode around the whole time with food
24 all scattered around in the truck and they didn't clean it
25 out and they didn't look at this magazine or find this

1 magazine and say what is this doing in here? I don't -- so,
2 evidently, boom, this magazine could have been in their car.
3 In fact, her family could have had any other food in there.

4 Now, let's go to Ms. Susannah Chatos -- Ms.
5 Susannah and the calling the police officer. The officer
6 states he found the magazine here. The magazine was gotten.
7 What does drugs got to do with the magazine or her car being
8 searched for drugs got to do with the magazine? It has
9 nothing to do with the magazine. The officer got the
10 magazine, retrieved it, put it in evidence, but you didn't
11 do an incident report. You didn't do no kind of
12 establishment or claim that you went here and found this and
13 this is part of this or that -- this and that -- I mean, or
14 this case is part of this is evidence from this case. You
15 didn't put it in evidence and say well, this is from this
16 case. I'm going to do an incident report on this for
17 supplemental or none of that. You just took this evidence
18 for -- okay, I'm just going to put this in evidence right
19 here under this case without making an inventory report of
20 it? I was never notified of none of this. Never notified
21 of no magazine or nothing. So this police officer clearly
22 stated that he felt like it wasn't a need. So that day you
23 came to work you just felt like you didn't want to do your
24 job. That's basically what you are saying. You came to
25 work that day, you felt like you didn't want to do your job.

1 Well, if I like what I'm doing every day I come to work, I'm
2 going to do my job. I'm going to put everything I got into
3 it. I'm going to dedicate myself to it and make sure that
4 everything is done right. So that shows you a careless or
5 they care how much they care about their job. How much they
6 care about this going the way it's supposed to be and
7 everything being in the right manner. Okay. So that tells
8 you the officer didn't do his proper job.

9 How come this magazine was not reported by Ms.
10 Susannah Chatos family? How come they didn't notify her
11 when they got to the hospital that this was in her car?
12 Ain't no way you rode in this car, drove it to the hospital
13 and then went back home and didn't notice these items in
14 this truck.

15 Okay. Also, the officer did that. The magazine
16 was put in. He didn't do his job. The next day -- I mean
17 after that that's the end of leaving the scene of an
18 accident. So it's clearly the police didn't do what he
19 needed to do.

20 Now we are going to move to auto breaking. Auto
21 breaking. Let's see what the warrant states.

22 THE COURT: Do you want the indictment?

23 MR. FRAZIER: Yes.

24 THE COURT: It's right here.

25 MR. FRAZIER: Yes.

1 Auto breaking. Auto breaking is did willfully,
2 unlawfully break, or attempt to break, into any motor
3 vehicle or any compartment thereof in the daytime or in the
4 nighttime with intent to steal same or anything of value
5 from, or attached, or connected thereto.

6 Okay. It's clear it said break. Clearly it said
7 break. Break means when something is dysfunctional,
8 impaired, or is not in the same function or level that it
9 was.

10 Ms. Gwendolyn Callaham, which is the owner of the
11 vehicle, stated nothing was broke on her car. They said on
12 dispatch they got a call suspect was attempting to break in
13 a window.

14 Also it said a person attempts to break. If you
15 attempt to break, I think you would have to have some tools
16 or something trying to get in here or some kind of tools and
17 break something. Nothing was broke on Ms. Gwendolyn
18 Callaham's car. All she said was the defendant opened up
19 the back hatch and looked around. Opened up the front door,
20 looked around. Okay. Nothing was broke. She said the
21 suspect didn't take nothing out of her car. Nothing was
22 taken. Nothing was broken. So I would take that as that's
23 not auto breaking.

24 I would think auto breaking would mean that you
25 have to break something on a vehicle or take something from

1 the vehicle. It says with intent to steal or go into a
2 car's compartment.

3 Ms. Gwendolyn also stated she could not see what
4 the suspect was doing. He appeared to be like he was
5 looking around. That's not a for sure. That's not a
6 guarantee that the person was looking for something or
7 appeared to be looking around.

8 Also she stated the suspect went to pulling up his
9 shirt, like he had a weapon or something and then suspect
10 urinated. Now, I think that's kind of rough there. Now --
11 but you say you thought he might have had a gun. Might or
12 thought is not a for sure. It's not a for certainty. It's
13 not a guarantee.

14 She said the police responded that instant right
15 afterward. Okay.

16 Ms. Gwendolyn Callahan also stated that she got
17 out of her car the same time the suspect exited the other
18 car. She stated -- she said the suspect said "where is my
19 money?" She said "what are you talking about," and ran in
20 the World Finance and they locked the door.

21 Okay. You pay attention. I want y'all to go back
22 and listen to these statements.

23 And she said she ran in the door. She said that
24 the person went in the back and then -- he went in the back
25 of her car, opened it up, looked around, and he went in the

1 front and then he ran up to the door. She stated also
2 nothing was taken. Again, nothing was broken. So I don't
3 feel like there is no auto breaking. Nothing was taken from
4 her vehicle. Nothing was broken. Clear.

5 Now we have I think --

6 It is trafficking methamphetamine, Your Honor?

7 THE COURT: Yes, sir, got it right here.

8 I want you to start getting finished up because we
9 have been going about an hour. I don't want to cut you off.

10 MR. FRAZIER: Okay.

11 THE COURT: But the jury is getting a break here
12 shortly. I was hoping to get you done so we could have a
13 break while I instruct them.

14 MR. FRAZIER: Okay.

15 Trafficking methamphetamine.

16 THE COURT: You can just argue the facts because
17 we have all told them -- you told them and the solicitor
18 told them and I have told them three times I'm going to
19 instruct the law.

20 MR. FRAZIER: Trafficking methamphetamine.

21 On the warrant Officer McAllister, the arresting
22 officer, said drugs were found on the suspect or defendant
23 person at World Finance. He admitted that. That he typed
24 the warrant, that -- that's what the warrant said.

25 MR. MORONEY: Your Honor, we would object.

1 THE COURT: The warrant says the warrant for the
2 person. The warrant is not in evidence. The indictment is
3 in evidence. The indictment is actually not in evidence.
4 The indictment is the charging instrument that provide
5 elements of the case.

6 Confine your comments to the testimony of Captain
7 McAllister.

8 MR. FRAZIER: Okay.

9 Did willfully, unlawfully, knowingly traffic in
10 methamphetamine, in that the said defendant was in actual or
11 constructive possession or more of more 10 grams, but less
12 than 28 grams of methamphetamine.

13 Okay. In possession. The warrant says
14 possession.

15 McAllister also admitted that he is not the
16 arresting officer. No drugs were found by the arresting
17 officer also.

18 Mr. McAllister states he took possession of the
19 drugs weighed 21.09, field tested positive for
20 methamphetamine from Officer Trotter.

21 He says -- he also -- he says that it field tested
22 positive for methamphetamine, and he tested it at city
23 police department.

24 If you can go forward a little bit, the person who
25 gave -- once he put the drugs in evidence, the lady admitted

1 Officer McAllister is not qualified field testing those
2 drugs.

3 MR. MORONEY: Your Honor, we object. I don't
4 believe that's in the record of the testimony.

5 THE COURT: All right. You can argue the facts
6 and testimony, but I'm not certain that's what she said.
7 You have got a -- the evidence custodian said that she had
8 possession of the drugs while they were in the evidence
9 locker and that she took them to SLED and retrieved them
10 from SLED.

11 MR. FRAZIER: I also asked her was Mr. McAllister
12 qualified to test drugs and she stated no.

13 THE COURT: Move on.

14 MR. FRAZIER: Okay.

15 McAllister, he -- he -- he said he did the initial
16 report, which is the incident report, but -- he says he did
17 the initial report. And he says -- in his initial report he
18 says warrants were signed, served, bond was set on July
19 10th. He stated under oath warrants -- stated they were
20 signed, served July 11th, but I can -- the suspect did, in
21 fact, go in front of the judge on the 10th.

22 He admitted to typing warrants and making errors
23 on the warrants and the supplemental report. States -- his
24 supplemental report states that drugs were found at the
25 hospital during the search of Donald Trotter -- during the

1 search of the suspect -- or defendant by Donald Trotter.
2 Donald Trotter stated he did not find any drugs on the
3 suspect, that he didn't search the suspect, and that the
4 security officer found the drugs. The security --

5 So basically what we got here is one saying "oh, I
6 found drugs here." Then he turned around and said "oh, no,
7 drugs were found at the hospital by this person." The other
8 person said "no, I didn't search him. I didn't find no
9 drugs on him." Oh, then they throw it on the next person,
10 "well, no, it was the people at the hospital, the security
11 officer at the hospital." Nobody wants to own up to who did
12 what and this and that and they are trying to throw it on
13 the next person, throw it on the next person, and something
14 ain't right about that.

15 Officer Trotter stated he found an ID in the
16 defendant's back pocket. Then Officer Trotter stated he
17 only patted the defendant down, but he didn't search him,
18 and he didn't find nothing on the defendant or in his
19 pocket. Trotter booked the defendant in and admitted to it
20 being leaving the scene of an accident only. Nothing else.
21 Trotter didn't do an incident report or a supplemental
22 report on what happened at the hospital and states he didn't
23 find the drugs. Officer Trotter states he didn't search me.
24 He only patted me down in order to find -- he only patted me
25 down. In order to find the ID in the defendant's back

1 pocket you have to reach your hand in the back pocket,
2 remove the ID from the pocket, which confirms a search.

3 Female officer Kenya Griffin stated that she --
4 states that she only -- stated that she and an alternate are
5 the only ones who have access or keys to open or remove
6 evidence. And that once evidence is entered, that her or
7 the alternate has to be there to remove evidence -- remove
8 evidence or items. But evidence report shows Officer
9 McAllister entering and removing items himself multiple
10 times. Also other officers, including Kenya Griffin.

11 Officer Caughman, when he got on the stand he
12 stated he did the initial report and not the supplemental
13 report, but his name is on both the reports he admitted,
14 which he admitted -- Officer Caughman, which he admitted,
15 Officer Caughman also stated that he don't know who did the
16 supplemental report, but it wasn't him, but the supplemental
17 report is different from the incident report. And he also
18 explained the difference between the incident report and the
19 supplemental report, but his name is on both of them, but
20 you didn't do it. Again, somebody not wanting to take blame
21 for errors, mistakes.

22 It's a bunch of error mistakes all through this
23 case. It's clear to see that something is just not adding
24 up. If you put two and two together and you get three,
25 something ain't right. It's clear to see that it's the

1 drugs went through multiple hands from -- from persons said
2 he found them here, to a search at the hospital, to -- from
3 the security guard hand, to Officer Trotter's hand, to Mr.
4 McAllister's hand, to Kenya Griffin's hand, which is in
5 evidence, to out of evidence, back into evidence. Supposed
6 to be sent to SLED. It wasn't sent that day. They waited
7 later on. Back out of evidence. Back into evidence. And
8 then sent to SLED twenty days later. These drugs were
9 supposed to be entered on the 10th. He claims he found
10 these drugs on the 9th.

11 The locker -- she said it was nineteen lockers.
12 The drugs that -- when Officer McAllister put the drugs in
13 the locker, she stated it was no locker number put down. So
14 how do we know that these drugs were put in what locker, in
15 particular.

16 It's just clear that everybody is telling a lie
17 and they did it under oath. That's what makes it so bad.
18 It's clear. Nobody is wanting to take -- tell the truth.
19 Nobody is wanting to take up ownership or responsibility for
20 what is going down because they don't want to get in trouble
21 and lose their job, or get suspended, or have to resign.
22 It's clear that this is not adding up. These drugs went
23 through too many hands. Too many lies are saying. This
24 person is saying that. Another person is saying something
25 else. Another person put it on this person and that person

1 put it on that person. Can somebody please tell the truth
2 and own up to what really happened?

3 They don't -- they don't maintain custody. I can
4 understand that one person had these drugs and he took them.

5 THE COURT: Okay.

6 MR. FRAZIER: He did that.

7 THE COURT: Let's get to the end.

8 MR. FRAZIER: But it's clear to see and thank you.

9 I ask y'all to look in your hearts. Common sense, and I
10 know y'all are pretty intelligent brilliant people. Thank
11 you, and that's it.

12 THE COURT: Thank you, sir.

13 All right. Well, I want y'all to step in the jury
14 room. Take a quick break. When you are in there decide if
15 y'all want to go eat lunch real quick and come back and get
16 my instructions. You can't discuss the case now. The clerk
17 can order us lunch. It takes longer to go get it and bring
18 it back, or y'all can go and maybe eat quick and come back
19 in 45 minutes. Y'all decide if you want to go and come
20 back. That would suit me if it suits you.

21 (The following takes place outside the presence of
22 the jury panel)

23 THE COURT: We will stand at ease for about ten
24 minutes while they make that decision of whether they are
25 going to go eat and come back and get instructions, or

1 receive instructions while food is ordered.

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 (\$20 Bill marked as Court's Exhibit No. 1 for
5 identification)

6 THE COURT: All right. We had an informal jury
7 instruction conference.

8 On the carjacking, at the request of the defendant
9 I'm also going to charge the lesser included grand larceny.
10 The carjacking would be --

11 MR. MORONEY: I was just looking up the different
12 statutes, Your Honor, use of vehicle without permission. I
13 was just looking at that. I didn't look at the grand
14 larceny.

15 THE COURT: Well, I have already decided grand
16 larceny.

17 He also asked for use of vehicle without
18 permission on that. It's a lesser included of the grand
19 larceny. I have not decided on that one yet.

20 MR. MORONEY: Yes. What was your decision with
21 respect to the grand larceny?

22 THE COURT: I'm going to charge carjacking and
23 then lesser included grand larceny.

24 He also requested on the grand larceny indictment
25 to charge the lesser included money amount, the two to

1 10,000 range also.

2 MR. MORONEY: Yes, sir.

3 THE COURT: So more than ten, two to ten would be
4 the lesser included of that one.

5 MR. MORONEY: Okay.

6 (Whereupon, both Assistant Public Defender
7 Patricia Bolen and Assistant Public Defender Elizabeth Able
8 at the table with defendant at this time).

9 THE COURT: I don't think the facts presented can
10 be considered an unlawful -- a use without owner permission
11 of a car. I don't see it.

12 MR. MORONEY: And I agree. I think, particularly
13 with the Blockburger Test that should be applied. There is
14 an additional element with unlawful use -- or the use of
15 vehicle without permission. You got the intent to defraud
16 there and that's just clearly not something that's in the
17 carjacking. It's got an additional element.

18 And I think similarly if we go back to grand
19 larceny, I know you are inclined to charge the lesser
20 included of grand larceny, I think under the same argument
21 for the Blockburger Test, grand larceny additionally has
22 more elements that are not included in the carjacking and
23 wouldn't meet the Blockburger Test as a lesser included.

24 The grand larceny, as you know, Your Honor, simply
25 addresses larceny of goods, chattels, instruments, or other

1 persons be valued in excess of \$2,000 the grand larceny.

2 Carjacking clearly reads, it's pretty short,
3 guilty of the felony of carjacking takes, or attempts to
4 take a motor vehicle from another person by force and
5 violence or by intimidation while the person is operating
6 the vehicle and while the person is in the vehicle.

7 THE COURT: Well --

8 MR. MORONEY: You got an additional element --

9 THE COURT: There's a factual question of whether
10 or not she was in the vehicle and force was used. Those are
11 absent than taking of someone else's property with intent to
12 deprive would meet those tests. I'm going to charge it.

13 MR. MORONEY: Okay.

14 THE COURT: Anything else we need to put on the
15 record before we give these instructions, because my intent
16 would be to instruct the jury, let them begin deliberating
17 as lunch comes in. They can interrupt them and go ahead.

18 MR. BLACK: Your Honor, while we took a break, I
19 know you mentioned the \$20 bill. We actually marked that as
20 Court's Exhibit No. 1. We did do that while we were on the
21 break.

22 THE COURT: Good deal. That's in.

23 MR. BLACK: Not in evidence. It's just --

24 THE COURT: Right, as a Court's Exhibit.

25 MR. BLACK: Right.

1 THE COURT: All right. Is there any objection by
2 you, Mr. Frazier for --

3 MR. FRAZIER: Yes.

4 THE COURT: No, no, no, that's not my question.
5 Not any objection. I want to ask a specific question.

6 Any objection to when I describe the indictments
7 to say the indictment for carjacking is within regard to Ms.
8 Chatos's vehicle? The lesser included of grand larceny is
9 her truck.

10 The grand larceny of the Chrysler is Mrs.
11 Whomever -- what her name was. I have the indictments with
12 specificity so the jury is not confused as to which charge
13 and which incident we are talking about, because there are
14 five incidents. There is the taking of the white truck, yes
15 or no.

16 There is the leaving the scene of the accident
17 with the Mercury -- I mean with the Lincoln.

18 There is taking of the red car.

19 There is the drugs.

20 And then what was the other one? The breaking and
21 entering into Mrs. Callaham's vehicle at the very end.

22 So as I go through the individual indictments to
23 reflect back with regard to Ms. Callaham's vehicle, in
24 regard to Ms. Williams vehicle, Ms. Searles vehicle. The
25 indictments have it in there and I want the jury to know the

1 ladies/victims names that testified so that they can kind of
2 compartmentalize the facts.

3 Y'all did it in y'all's arguments. He argued each
4 incident and you argued each incident as it happened through
5 time. I mean, y'all did that.

6 MR. FRAZIER: Your Honor, I object because I
7 didn't get to argue grand larceny.

8 THE COURT: What grand larceny?

9 MR. FRAZIER: The grand larceny of the Frank's Car
10 Wash with Ms. Searles.

11 THE COURT: You argued that earlier on. You did.

12 Now, you argued an hour and five minutes. You had
13 ample time and wide latitude. I timed you. You were
14 allowed to argue a long time. Ms. Bolen, she had to step
15 out momentarily and she missed some of that, but you did
16 argue the grand larceny of that car. Now, not as
17 extensively as you did some of the others, but you commented
18 on it.

19 MS. BOLEN: Your Honor?

20 THE COURT: Yes.

21 MS. BOLEN: I just had to step out for a minute.
22 I just want to make sure that he has question for me and I
23 want to make sure I'm in the right part of the proceeding.
24 Had Your Honor already decided which lesser included you are
25 going to be instructing on, or does he have a chance to talk

1 to you about that?

2 THE COURT: Well, I'm -- we discussed it at side
3 bar.

4 MS. BOLEN: Okay.

5 THE COURT: Here is the lesser included.

6 MS. BOLEN: Okay.

7 THE COURT: The grand larceny of Ms. Searles car.
8 The lesser included of the value, two to ten.

9 He asked for petit larceny and I'm declining that.
10 I do not believe there is facts to consider a petit larceny
11 a lesser included of the 2014 model car. A car that's less
12 than two years old that runs is worth more than \$2,000.
13 Absolutely. There was no comment the car was in bad shape.
14 The cleanup guy said it was top shape, so I don't see any
15 facts in the light most favorable to Mr. Frazier's argument
16 that it would constitute a value of less than \$2,000. I
17 can't fathom that.

18 The carjacking, he asked for a grand larceny
19 charge on that, or a use of vehicle without owner's
20 permission. I'm inclined to give a grand larceny charge as
21 a lesser included of the carjacking on that one.

22 On the trafficking he asked for a lesser included
23 possession or possession with intent type charge. I do not
24 believe, since this is a threshold of weight, which would be
25 inference, that he's not entitled to any other charge other

1 than trafficking. Nothing lesser included.

2 MS. BOLEN: Your Honor --

3 THE COURT: And then lastly the breaking into
4 motor vehicle, he asked that -- for an unlawful entry,
5 maybe, and I don't believe that's appropriate. I think
6 unlawful entry is into a home and not to a personal vehicle.
7 I'm not certain to that.

8 I'm -- I think I named them all. Did I miss any
9 of them or do y'all have any further requests, since you
10 have heard my summary of our conversation at the side bar?

11 MS. BOLEN: Your Honor, he may want to -- he may
12 want to object, Your Honor, argue.

13 THE COURT: He can.

14 MR. FRAZIER: Your Honor, on the -- on the -- the
15 carjacking to a use of -- unlawful use of vehicle, he was
16 saying that it does not -- it was like -- it does not state
17 deprived with intention -- the intention to deprive. I'm
18 reading section -- Section 16-21-60 (a), "it is unlawful for
19 a person not entitled to possession of a vehicle to take,
20 use, or drive a vehicle without the consent of the owners
21 and with the intent to deprive him temporarily or otherwise
22 of the vehicle or its possession."

23 Your Honor, okay, I want to argue on that because
24 that's basically no force, no intimidator, no -- no
25 violence, and that's basically saying that she didn't give

1 consent to use the vehicle. It wasn't my vehicle. I don't
2 own the vehicle, and basically her vehicle was taken. She
3 didn't give permission and it was taken and -- it was
4 taken without her consent.

5 THE COURT: That may be a better lesser included
6 than the grand larceny, because there was no testimony of
7 the value of her vehicle.

8 MR. FRAZIER: Yes, sir.

9 THE COURT: Y'all got any objection to that?

10 MR. FRAZIER: I would like to use that on both the
11 grand larcenies, Your Honor.

12 THE COURT: No, one grand larceny, there is a lot
13 of testimony about it. This is the one that's not.

14 MR. MORONEY: Well, judge, to be clear, you are
15 suggesting to include the use of vehicle without
16 permission --

17 THE COURT: As a lesser.

18 MR. MORONEY: In lieu of the --

19 THE COURT: In lieu of the grand larceny.

20 MR. MORONEY: Grand larceny as a lesser included?

21 THE COURT: Yes.

22 And the grand larceny on Ms. Searles car, the
23 lesser included as to the value. That goes in. I'm good on
24 that, but the carjacking, the lesser included only being a
25 use of vehicle without permission, and no instruction on

1 Mrs. Chatos' vehicle as a grand larceny.

2 MR. FRAZIER: Your Honor?

3 THE COURT: Yes.

4 MR. FRAZIER: I also would like to object on
5 the -- on the -- on the grand larceny for Mr. Searles car
6 is that -- for them to prove their intention was to deprive
7 the owner from her vehicle permanently.

8 THE COURT: They provided testimony. She came out
9 and claimed she said "you got my car. Don't take my car,"
10 and it was driven off. That's --

11 MR. FRAZIER: The State is not going to be able to
12 prove the intention.

13 THE COURT: Those are the facts to show that they
14 used, okay?

15 MR. FRAZIER: There is still no intention proven
16 there, Your Honor.

17 THE COURT: Well, that's the State's burden to
18 prove beyond a reasonable doubt and the State presented
19 testimony.

20 MR. FRAZIER: Your Honor, I would like to argue to
21 you on simple larceny.

22 THE COURT: No, I'm not -- I'm not charging simple
23 petit larceny. You can argue that one more time, but I'm
24 not going to do it. There's not one single word --

25 MR. FRAZIER: Your Honor, there is no proof --

1 THE COURT: -- in this trial that shows that
2 vehicle was worth less than \$2,000. Not one.

3 MR. FRAZIER: Your Honor, there's also no proof as
4 far as to the value of Ms. Searles car too.

5 THE COURT: The red Chrysler?

6 MR. FRAZIER: There's no proof, no actual proof.

7 THE COURT: She testified. She is the owner. She
8 can testify to the value.

9 MR. FRAZIER: She is not the owner of the vehicle
10 also, Your Honor.

11 THE COURT: I have ruled on that. If I'm wrong
12 you can appeal me, but we have already -- I have crossed
13 that bridge. I determined in court that she was competent.
14 She was qualified. The jury can take notice of the value
15 the car. That's in. That's -- that's a directed verdict
16 motion. I denied it. The jury heard it. They can decide
17 whether they believe her, but you are arguing directed
18 verdict motion on that grand larceny now and that's not
19 appropriate now. We are talking about jury instructions.

20 MR. MORONEY: Your Honor, I would just like to
21 clarify, just put on the record here with respect to
22 Blockburger v. U.S., "for the same act constitutes a
23 violation of two distinct statutory provisions, the test to
24 determine whether these are two offenses or one is whether
25 each provision requires proof of additional facts that the

1 other does not."

2 Your Honor, it's the State's position that the two
3 offenses you are considering are the grand larceny and the
4 use of vehicle without permission both contain additional
5 elements and need additional proof that is needed for the
6 carjacking.

7 THE COURT: I'm not charging the grand larceny on
8 the carjacking. I'm not going to charge it.

9 MR. MORONEY: And --

10 THE COURT: I have backed off of that. I'm
11 thinking --

12 MR. MORONEY: So then this argument is with
13 respect also then to the use of vehicle without permission.
14 Use of vehicle without permission does contain an additional
15 element of proof and that would be in violation of the
16 Blockburger Test.

17 THE COURT: What is the additional element?

18 MR. MORONEY: The additional element here --

19 THE COURT: Took a car from a person.

20 MR. MORONEY: Unlawful person not entitled to
21 possession; not entitled to possession of arguably not
22 included there in the carjacking.

23 THE COURT: You presented facts to support that.

24 MR. MORONEY: To take --

25 THE COURT: Your witness testified "you are taking

1 my property. I'm going to grab you around the neck."

2 Certainly --

3 MR. MORONEY: Okay. And I'm just going down the
4 line here. To take, use, or drive a vehicle without the
5 consent of the owner.

6 Again, this is the large issue we have is with the
7 intent to deprive them temporarily or otherwise. The intent
8 element is an additional element and --

9 THE COURT: They do that -- they do that from the
10 circumstances. That general charge on criminal intent, they
11 do that from the general intent of circumstances there.
12 That's not --

13 MR. MORONEY: But, Your Honor --

14 THE COURT: You have got intent that the defendant
15 took by force or intimidation the vehicle from another
16 person while they were operating it.

17 MR. MORONEY: There is no intent element here in
18 the carjacking statute, Your Honor, and --

19 THE COURT: Oh, yes, there is.

20 MR. MORONEY: -- it says to take, or attempt to
21 take, a motor vehicle from another person by force and by
22 violence or by intimidation while the person is operating
23 the vehicle, while the person is in the vehicle. It's
24 just -- it's just the act is raised. There is no intent
25 element and the use of vehicle without permission requires

1 that.

2 THE COURT: Well, we have been through this. If
3 y'all want to appeal me on the intent again, have at it.
4 You can take two of them up, but I'm charging intent on
5 everything. A serious crime, carries twenty years, has
6 intent, in my opinion. Y'all can argue that mens rea that
7 it's just the act. An act of violence or intimidation is
8 intent. You can argue it and if y'all want to appeal it,
9 take it up again. Have two of them up there. That's cool
10 with me.

11 MR. MORONEY: I mean, we are not trying to get
12 into that all that. I was just looking solely at the
13 Blockburger Test and the additional elements of proof and --

14 THE COURT: He's representing himself. I'm going
15 to give him the benefit of the doubt. All right.

16 MR. MORONEY: We understand, Your Honor.

17 THE COURT: Okay.

18 MR MORONEY: We appreciate your time.

19 THE COURT: All right, are we ready to go?

20 MS. BOLEN: Just one minute, judge.

21 THE COURT: That's about what I'm going to take.

22 (Off the record)

23 (Back on the record)

24 (The following takes place in the presence of the
25 jury panel).

1 (Whereupon, at 12:42 p.m. the court instructed the
2 jury panel)

3 THE COURT: All right, folks. I'm going to read
4 you my instructions, or get lunch?

5 What I'm going to try to do is tell you the
6 general law and then as we get to the individual indictments
7 we will address those a little more succinctly.

8 So Ms. Dillashaw and ladies and gentlemen of the
9 jury, the State has brought five indictments against Mr.
10 Terrence Frazier. He's pled not guilty and by that plea it
11 requires the State to prove all the elements on each of the
12 indictments. They all stand individually. They must prove
13 those elements to the standard of proof called beyond a
14 reasonable doubt.

15 You bear in mind that his plea is that he has
16 denied all the charges in the indictments.

17 Mr. Frazier comes into court presumed innocent.
18 He is entitled to this presumption throughout the entire
19 case, unless and until it's dispelled by the State of
20 evidence satisfying you that they have proved the case and
21 all the elements beyond a reasonable doubt. They must prove
22 each element beyond a reasonable doubt.

23 Our Constitution makes me the instructor of the
24 law and it makes you also the finders of facts.

25 Now, since I am the sole and only instructor of

1 the law, we have discussed this earlier, is that you as a
2 group would have to accept the law as I am instructing it to
3 you. And if you have an understanding of what the law is,
4 you heard on the television, the radio, read on the
5 Internet, you must disregard that understanding and accept
6 the law as I am instructing it to you.

7 Now, if I make an error in the instruction of the
8 law or of any evidentiary ruling during the trial of the
9 case, there is another time and there is another place where
10 that error could be considered and, if necessary, corrected.
11 For our purposes here today you must accept the law as I am
12 giving it to you.

13 Now, I told you the State has the burden of
14 proving the guilt of Mr. Frazier. Mr. Frazier has no burden
15 whatsoever, as he's presumed innocent, so the State must
16 prove its case to the standard of proof called beyond a
17 reasonable doubt.

18 You as the judges of the facts in considering this
19 most importantly are the judges of the credibility and the
20 believability of the witnesses who have testified in the
21 case. I tell you that you can use your every-day
22 experiences and your common sense in evaluating the
23 credibility of the witnesses who have testified. You can
24 also consider their manner and the appearance of each of the
25 witnesses who testified. You can consider whether a witness

1 was straightforward, whether the witness was hesitant in
2 answering. You can consider how a witness came to know the
3 facts to which he or she testified, what was their ability
4 to know these facts. You can consider whether there was
5 some reason a witness would want to give testimony which
6 would help or hurt one side or the other. In other words,
7 were any of the witnesses either biased or prejudiced. Was
8 the testimony of a witness strengthened or weakened by other
9 testimony or other evidence.

10 You as the jury can consider or believe as much or
11 as little of each witness' testimony as you deem
12 appropriate. You can believe the testimony of a single
13 witness against that of many, or just the opposite. You can
14 believe part of a witness' testimony and disbelieve the
15 rest.

16 The fact that testimony is not controverted does
17 not mean that you must accept it as true and undisputed.
18 You must still gauge the credibility of the witness who
19 testified in the case.

20 Now, I observed you as a group listening closely
21 to the evidence presented. As you go to the jury room you
22 will be weighing this evidence and weighing evidence is
23 entirely a mental process. You must weigh the evidence
24 using your good judgment and your common sense.

25 Additionally, the evidence presented are generally

1 presented in two types. There is direct testimony and
2 circumstantial evidence.

3 Direct evidence is testimony of a person who
4 asserts or claims to have actual knowledge of certain facts,
5 such as an eyewitness. They can testify as to what they
6 saw, heard, smelled, observed.

7 Circumstantial evidence, on the other hand, is a
8 proof of a chain of facts and circumstances indicating the
9 existence of another fact.

10 Our law makes no distinction between the weight or
11 value to be given to direct evidence or circumstantial
12 evidence, nor is there a greater degree of proof required of
13 circumstantial evidence than that of direct evidence.

14 I tell you you should just weigh all the evidence
15 that you heard and consider in this case.

16 To the extent the State relies on circumstantial
17 evidence, all of the circumstances must be consistent with
18 one another and when taken together point conclusively to
19 the guilt of the accused beyond a reasonable doubt.

20 Now, if these circumstances are able to portray
21 the defendant's behavior is suspicious, then the State's
22 proof has failed. However, after weighing all the evidence,
23 whether it's direct evidence or circumstantial evidence, or
24 any combination of the two, if you are convinced of the
25 guilt of the defendant beyond a reasonable doubt, you must

1 find him guilty.

2 And if you are not convinced of his guilt beyond a
3 reasonable doubt, you find him not guilty.

4 Reasonable doubt. What is a reasonable doubt? A
5 reasonable doubt is the kind of doubt that would cause a
6 reasonable person to hesitate to act. Reasonable doubt may
7 arise from evidence which is in the case, or from a lack or
8 absence of evidence in this case.

9 Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the defendant's guilt. It is
11 the kind of doubt which one can assign a reason, if the
12 assignment can be done reasonably and convincingly.

13 Now, a defendant in every case is entitled to
14 every reasonable doubt that may arise in the case. And what
15 that means is if you have any doubt about anything, you
16 would be required to resolve that doubt in the defendant's
17 favor. However, I tell you that the very fact that you as a
18 group engage in a full and free discussion of the issue of
19 guilt or innocence does not automatically create a
20 reasonable doubt. You as a group of twelve make the
21 determination of whether or not a reasonable doubt exists as
22 to his guilt.

23 All right. Specifics. I'm going to start with
24 indictment 16 -- I'm looking at the wrong numbers. Y'all
25 bear with me.

1 Indictment 1603, which is for leaving the scene of
2 an accident. Mr. Frazier is charged with leaving the scene
3 of an accident causing damage to a vehicle which was driven
4 or attended by a person.

5 In order to sustain a conviction the State must
6 prove beyond a reasonable doubt that Mr. Frazier was driving
7 a vehicle and that the vehicle was involved in an accident;
8 the accident caused damage to a vehicle which was driven or
9 attended by another person; the defendant did not stop or
10 failed to return or remain at the scene; and the defendant
11 failed to give his name, address, registration number, and,
12 if asked, he failed to show his driver's license.

13 So the State must also prove beyond a reasonable
14 doubt that the defendant knew, or should have known, that
15 the accident happened. This may be shown by evidence and
16 circumstances and conditions which would cause an ordinary
17 reasonable person to believe that the vehicle had been
18 involved in an accident resulting in damage to the vehicle
19 which was driven or attended by the other person.

20 Indictment 1604, trafficking in methamphetamine.

21 In order for the State to sustain a conviction on
22 trafficking in methamphetamine, the State must prove beyond
23 a reasonable doubt that Mr. Frazier knowingly sold,
24 manufactured, cultivated, delivered, purchased, brought into
25 this state, provided financial assistance, or otherwise

1 aided, abetted, conspired to sell, manufacture -- hold on --
2 cultivate, deliver, bring into this state, and was knowingly
3 in actual or constructive possession, knowingly attempted to
4 become in actual or constructive possession of
5 methamphetamine.

6 The State must prove beyond a reasonable doubt
7 that the amount or the weight of methamphetamine was more
8 than 10 grams, but less than 28 grams, for a trafficking
9 methamphetamine charge.

10 And I tell you the State must prove those two
11 grounds beyond a reasonable doubt of each of those elements.

12 Indictment 1605, which is the grand larceny
13 indictment. This is the grand larceny alleged in the
14 indictment of the vehicle owned or operated by Ms. Kimberly
15 Searles, which was the Chrysler.

16 Mr. Frazier is charged with grand larceny of a
17 motor vehicle. In order to sustain a conviction beyond a
18 reasonable doubt Mr. Frazier took a motor vehicle that
19 belonged to someone else against the will or without the
20 consent of the other person. The slightest removal of the
21 motor vehicle or the complete possession of the motor
22 vehicle even for an instant by the defendant is enough to
23 show a taking and carrying away of the motor vehicle.

24 The State must also prove beyond a reasonable
25 doubt that the defendant intended to permanently deprive the

1 owner of the vehicle.

2 And, finally, the State must prove the value of
3 the motor vehicle was taken was \$10,000, or more.

4 Now, if the State failed to prove the value of the
5 vehicle was more than \$10,000, you can consider whether or
6 not Mr. Frazier or the State proved Mr. Frazier is guilty of
7 grand larceny of a motor vehicle between the values of 2,000
8 and \$10,000.

9 The elements are the same. The State must prove
10 that a motor vehicle belonged to someone else and he took
11 the vehicle against the will and without the consent of that
12 person. The slightest removal of the vehicle or complete
13 possession of the motor vehicle is enough to show the taking
14 and carrying away of the vehicle.

15 The State must prove value of the vehicle was more
16 than 2,000, but less than 10,000 to sustain a conviction for
17 that lesser included grand larceny charge.

18 And the State must prove those elements all beyond
19 a reasonable doubt.

20 Indictment 1606, which is the breaking and
21 entering -- I'm sorry, breaking into a motor vehicle. This
22 is in regard to Ms. -- the vehicle owned alleged in the
23 indictment is Ms. Gwendolyn Callahan.

24 On that indictment the State must prove to obtain
25 a conviction beyond a reasonable doubt that Mr. Frazier

1 broke, or attempted to break, into a motor vehicle or its
2 compartment with the intent to steal the vehicle, or
3 anything of value from within the vehicle, or anything
4 attached to the vehicle, or anything used in connection with
5 the vehicle.

6 Now, breaking is any act of physical force,
7 however slight, by which any obstruction to entering the
8 vehicle is forcibly removed. The breaking does not need to
9 be by means of great force, because any force which is
10 necessary to make an opening sufficient is sufficient. For
11 example, if a car door is closed, even though it is not
12 locked, an opening of that door would constitute a breaking
13 under this statute.

14 Intent means intending the result which actually
15 occurs, not an accidental or involuntary act.

16 Intent may be shown by the acts and conduct of the
17 defendant and any other circumstances which may naturally
18 and reasonably infer intent.

19 Lastly Indictment 1632, which is the carjacking
20 indictment. The State has indicted Mr. Frazier on that
21 offense.

22 In order for the State to prove carjacking, the
23 State must prove beyond a reasonable doubt that Mr. Frazier
24 took, or attempted to take, a motor vehicle from another
25 person by force and violence or by intimidation while the

1 person was operating the vehicle or while the person was in
2 the vehicle.

3 Now, if the State fails to prove those elements
4 that the vehicle was taken by force or intimidation while
5 the person was operating the vehicle, you may consider
6 another lesser included offense of the unauthorized use of a
7 vehicle.

8 In order for the State to sustain a conviction for
9 unauthorized use of a vehicle, or use of a vehicle without
10 permission, the State can prove beyond a reasonable doubt
11 that Mr. Frazier took or used or drove a vehicle which he
12 was not entitled to possess and he did not have the consent
13 of the owner and he had the intent to deprive the owner of
14 its possession.

15 Intent may be shown by acts and conduct from which
16 the defendant and other circumstances which you may
17 naturally and reasonably infer intent.

18 Now, I have discussed intent. Criminal intent is
19 a necessary element of the crimes which must be proven by
20 the State beyond a reasonable doubt. Criminal intent is
21 always a matter for the jury to determine from the
22 circumstances surrounding the situations.

23 There is no way to prove intent to a mathematical
24 certainty. There is no way medical science can dissect a
25 person's brain and determine what he or she had in mind, so

1 our law states that criminal intent may be inferred from the
2 circumstances shown to have existed both before and after
3 the fact. This is how you, the jury, make the determination
4 of whether or not the element requiring intent was present
5 or not.

6 Criminal intent is a state of mind that operates
7 jointly with an act or an omission in the commission of a
8 crime. Criminal intent is a mental state of conscious
9 wrongdoing.

10 It is you, the jury, your job to determine what
11 the defendant intended to do based upon the circumstances
12 shown to have existed.

13 The State must prove criminal intent beyond a
14 reasonable doubt on the indictments as elements of the
15 charges I just explained to you.

16 I instructed you preliminarily, and I instruct you
17 again, that the fact that Mr. Frazier chose not to testify
18 is not a factor to be considered by you in any way in your
19 deliberations. The question and consideration of his guilt
20 or innocence must be considered by you based upon the
21 evidence and proof offered by the State. The fact he chose
22 to exercise the right to remain silent may not be considered
23 by you in any manner whatsoever. A defendant has a
24 Constitutional right to remain silent and his assertion of
25 his right is not to be used against him.

1 So under your oath you are to draw no conclusion
2 whatsoever from the fact that he exercised his right and
3 chose not to testify. The fact that he chose not to testify
4 should not even be discussed in the jury room. The burden
5 of proof is upon the State and the defendant is not required
6 to prove his innocence. The burden of proof remains upon
7 the State to prove his guilt.

8 Now, Ms. Dillashaw, members of the jury, as y'all
9 begin to retire and start your deliberations I want you to
10 be mindful of the importance of your job. You are not
11 called very often to serve as jurors, but you and I are
12 acting for the community in this state. It is my job to
13 make certain this trial has been conducted fairly. It is
14 your job to make certain your verdict is fair and just.

15 Now, it's improper for me to comment on any facts
16 during the case. It's your job to make determinations of
17 facts. My job is to instruct you on the law. I hope by
18 none of my rulings or none of my comments during the trial,
19 that you not consider those in any manner whatsoever in
20 either party's favor. You must consider the testimony and
21 the evidence presented by the parties, reviewing it, make
22 determination of those facts, weighing it fairly and
23 impartially and reaching a unanimous verdict on each of the
24 indictments.

25 I tell you that each indictment stands

1 independently. So the first indictment, up or down, guilty
2 or not guilty. All five do not have to be consistent. All
3 are to be considered individually. All five can be the same
4 one way or the other. You can have one and four, four and
5 one, two and three. It does not matter. You are to
6 consider them individually.

7 Now, the indictments are done so that you can
8 understand the lesser included offenses, for there are
9 several indictments which have lesser included offenses. My
10 law clerk has prepared a verdict form for you to see, and so
11 the one -- or the indictment that has the lesser included,
12 it would be on the verdict form for you to see.

13 Now, if y'all need to see the indictments, the
14 indictments will come back, but the verdict form is what I
15 guess you can use as a guide to consider the charges which I
16 have instructed.

17 Now, I told you earlier and told the lawyers and
18 Mr. Frazier that if y'all need to hear any testimony a
19 second time, write it on a note "we would like to hear the
20 testimony of the Chick-fil-A owner," so and so, whomever.
21 Mike can get it together, but he's got it on a recorder.
22 He's got to cue it up so you can't come in here and say
23 start playing it because it will catch him off guard. Now,
24 you send me a note out and within five or six, seven minutes
25 he can probably have it found on his record and can replay

1 it for you.

2 If y'all want to see the videos, let me know. I
3 can bring you in here and let y'all mess with the videos, or
4 I can direct my law clerk to manage the computer so y'all
5 can see the video that you want, if that's your choice.

6 My instructions are kind of lengthy somewhat.
7 They are simple to me, but I do this all the time. If you
8 want the instructions on any element of any of the law or
9 any of the elements of any of the charges in the
10 indictments, "judge, will you please re-instruct us on the
11 elements of the charge" and I'll try to do that. In some
12 cases I can send you a written portion of the instructions I
13 have just given you and maybe I can submit that back, but if
14 you send me notes saying "we would like to hear testimony,"
15 or "can you re-instruct us on some element," it helps me
16 explain to the lawyers what you are asking for and what I
17 can give you.

18 Now, once y'all start your deliberations y'all are
19 working on your time. When lunch comes in Mr. Willingham
20 will interrupt and say lunch is here. Y'all can eat through
21 lunch, if you want to.

22 Is the other room open, the big room?

23 THE BAILIFF: 200, I think so, yes, sir.

24 THE COURT: Tables over there?

25 THE BAILIFF: Yes, sir.

1 THE COURT: Okay. That room has no windows. If
2 y'all want to go to the other room, Mr. Willingham will set
3 y'all up over there. It's a little bigger. Y'all can eat
4 and deliberate. Sometimes I feel like the small room.

5 Now, there is no bathrooms in the other room.
6 That's the advantage to this one, but here is the deal.
7 Y'all can deliberate for twenty minutes, or hour, whatever.
8 If you need a break, somebody needs to step outside to go to
9 the bathroom, stop deliberations. One person wants a break,
10 the whole team takes a break, but I'm kind of offering up
11 the bigger room if y'all would rather have it. Okay?

12 Now, y'all decide whether y'all want to be in that
13 room or not at first. I'm going to put you in here and
14 y'all decide whether y'all are going to make do in here, or
15 you want to go over there. I need to talk with the lawyers
16 and Mr. Frazier to make certain my instructions were
17 complete, so I'm going to tell you to step in there and let
18 me talk to them and ask were my instructions sufficient.
19 They can make comments on them. Then once I hand you the
20 verdict form and the evidence, that's when you start your
21 deliberations.

22 So y'all decide whether y'all want to stay here
23 and make do, or go across there and make do, because there
24 is advantages to both rooms. The bathrooms being here are
25 very convenient. The room over there being a little bit

1 bigger, so we will go over there. So y'all step in the
2 room. Don't start your deliberations quite yet.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: All right, folks, any comments on the
6 instructions? I was looking at my verdict form and Robert
7 had some details on it I want to show y'all.

8 MR. MORONEY: Just one minor issue, Your Honor. I
9 wanted to draw your attention to the trafficking charge, in
10 that long litany of everything to consider, I was just
11 reading along and I believe you added an and before with
12 knowingly in actual or constructive possession. I think
13 that additional and article adds -- makes it kind of he
14 needs to -- you know, we must prove all of that litany of
15 items of manufacture, deliver, and being in possession,
16 where I think without that and, you know, just being in
17 actual possession.

18 THE COURT: I may have said that, but I don't -- I
19 may have said that unintentionally, but I try to read and
20 then I talk.

21 MR. MORONEY: I understand.

22 THE COURT: That is very possible that I said
23 that.

24 MR. MORONEY: But that is the only thing that I
25 wanted to bring up.

1 THE COURT: Okay. Let me clear that up with them.

2 MR. MORONEY: Okay.

3 THE COURT: Ms. Bolen, I want you to -- you can
4 comment on these jury instructions. You are advising him.

5 MS. BOLEN: Your Honor, I didn't -- I didn't hear
6 anything that I would advise him to object to.

7 THE COURT: In my charge, I'm going to briefly
8 read it. The State must prove beyond a reasonable doubt
9 that the defendant knowingly sold, manufactured, cultivated,
10 delivered, purchased, brought, provided assistance, aided,
11 abetted, attempted, or conspired to sell, manufacture,
12 cultivate, or bring into this state; was knowingly in actual
13 or constructive possession; or, knowingly attempted to
14 become in actual or constructive possession. That's what
15 you are commenting on is there is or's rather than and's?

16 MR. MORONEY: That's right, Your Honor.

17 THE COURT: Okay.

18 Let's find out where they want to go first and
19 then we will bring them back in here and I'll clear that up.

20 (Off the record).

21 (Back on the record).

22 THE COURT: There is only two pieces of evidence?

23 MR. MORONEY: That's right, Your Honor.

24 THE COURT: The disk and the report -- the drugs I
25 mean.

1 THE BAILIFF: They are going to stay.

2 THE COURT: All right.

3 Bring them back in here real quick. I want to
4 clear this up.

5 (The following takes place in the presence of the
6 jury panel)

7 THE COURT: All right, folks, on my instruction on
8 the trafficking, I want to be clear. There was a long list
9 of verbs the State must prove in order to prove trafficking.

10 Let me get back up here. Bear with me.

11 They must prove beyond a reasonable doubt that a
12 defendant knowingly sold, manufactured, cultivated,
13 delivered, purchased, brought into this state, provided
14 financial assistance, or otherwise aided, abetted, or
15 attempted, or conspired to sell, manufacture, cultivate,
16 deliver, purchase, or bring into this state, or was
17 knowingly in actual possession or constructive possession,
18 or knowingly attempted to become in actual or constructive
19 possession.

20 Everything in there is or's. I may have said and,
21 but those verbs are a long string of verbs. So the drugs
22 were -- any one of those elements, but the State must prove
23 those elements, the weight, and the knowing actual
24 constructive possession. The State must prove those beyond
25 a reasonable doubt.

1 All right. With that said, Ms. Dillashaw, I will
2 show you the verdict form.

3 These are the indictments. I'll give them to you
4 too. Y'all can read those, if you would like. They can go
5 back, but this is kind of sequentially how I gave you the
6 instructions.

7 Now, y'all are welcome to the two pieces of
8 evidence. There is only two things submitted. There was
9 the State's Exhibit No. 4, which is the -- this one, and
10 then the disk. So y'all can take those back.

11 In order to play the disk, you will have to say
12 "we would like to see the disk" and come back and ask us and
13 we will play it out here.

14 These are the only two?

15 MR. MORONEY: Yes, Your Honor.

16 THE COURT: If you need any further instructions,
17 you have got any questions --

18 Do they have pads back there?

19 THE BAILIFF: Yes, sir.

20 THE COURT: If you need to.

21 JURY FOREPERSON: Will we get this?

22 THE COURT: No, that's your -- that's why you are
23 foreperson. You get in charge of the list. If you want
24 more copies of it, sure, we can do that.

25 Will you copy this verdict form? Give me about

1 five copies of it. It will be a few copies around so y'all
2 can kind of go down, or do you want twelve?

3 JURY FOREPERSON: Twelve.

4 THE COURT: All right. Bring me twelve, please.

5 All right, while I'm doing that, y'all step in the
6 jury room.

7 You are my alternate?

8 THE BAILIFF: Yes, she is.

9 THE COURT: You stay right there.

10 ALTERNATE JUROR: Okay.

11 THE COURT: But did you order lunch?

12 ALTERNATE JUROR: Yes.

13 THE COURT: You get to stay and eat lunch.

14 ALTERNATE JUROR: Okay.

15 THE COURT: I'm about to separate you from the
16 other twelve friends.

17 ALTERNATE JUROR: Okay.

18 (Whereupon, at 1:10 p.m. the jury panel retired to
19 the jury room to begin deliberations)

20 THE COURT: We are going to stand at ease. It's
21 1:10. When lunch gets here we will interrupt and let them
22 have that.

23 You just stay out here with us.

24 ALTERNATE JUROR: Okay.

25 (Whereupon, at 1:12 p.m., proceedings were

1 recessed pending the verdict of the jury panel)

2 (Jury Note marked as Court's Exhibit No. 2 for
3 identification)

4 (Whereupon, at 2:58 p.m., proceedings were
5 reconvened)

6 THE COURT: The bailiff has told me the jury has a
7 verdict. Someone may be in the restroom right now, but as
8 soon as they are ready we will have them in.

9 (Whereupon, at 3:00 p.m., the jury panel returned
10 to open court to render its verdict)

11 THE COURT: All right. Ms. Dillashaw, have y'all
12 reached a verdict?

13 JURY FOREPERSON: We have.

14 THE COURT: Was it unanimous?

15 JURY FOREPERSON: Yes, sir.

16 THE COURT: You may publish the verdict.

17 THE CLERK: State of South Carolina, County of
18 Greenwood, versus Terrence O'Neil Frazier, as to the charge
19 of leaving the scene of an accident, we, the jury, find the
20 defendant guilty.

21 As to the charge of trafficking in
22 methamphetamine, we find the defendant guilty.

23 As to the charge of grand larceny of motor
24 vehicle, we, the jury, find the defendant guilty.

25 As to the charge of breaking into a motor vehicle,

1 we, the jury, find the defendant guilty.

2 As to the charge of carjacking, we, the jury, find
3 the defendant --

4 (Off the record).

5 (Back on the record).

6 THE COURT: Read this one and then I'll make a
7 statement on the record for that.

8 THE CLERK: Use of vehicle without permission, we,
9 the jury, find the defendant guilty.

10 Signed by Donna Dillashaw, foreperson.

11 THE COURT: All right. Ms. Dillashaw, on the
12 charge of carjacking, there was no verdict rendered. Would
13 you need to step in the jury room to represent the verdict
14 unanimous on that one, or can you represent that that
15 verdict was unanimous, one way or the other, since you found
16 a verdict on the other?

17 JURY FOREPERSON: We found him not guilty of the
18 carjacking.

19 THE COURT: All right.

20 JURY FOREPERSON: I failed to check it. I'm
21 sorry.

22 THE COURT: We are going to amend that. And that
23 would be consistent with the conviction on the lesser
24 included.

25 Now, since Mr. Frazier is unrepresented, I'm going

1 to ask the clerk to poll the jury as to the five verdicts,
2 and not individually, but all five together.

3 What that means is the clerk is going to ask you a
4 question, Ms. Dillashaw, is that your verdict and is it
5 still your verdict individually, because normally an
6 attorney would advise Mr. Frazier he would have that right.
7 The court is going to impose that motion on his behalf.

8 So please poll the jury in that fashion as to
9 conclusive, all five verdicts, "are those your verdicts and
10 still your verdicts."

11 THE CLERK: Jason Watts, is this your verdict and
12 still your verdict?

13 JUROR NUMBER 133: Yes.

14 THE CLERK: Emily Temple, is this your verdict and
15 still your verdict?

16 JUROR NUMBER 123: Yes.

17 THE CLERK: Daci Johns, is this your verdict and
18 still your verdict?

19 JUROR NUMBER 56: Yes.

20 THE CLERK: Renea Williams, is this your verdict
21 and still your verdict?

22 JUROR NUMBER 141: Yes.

23 THE CLERK: Lisa Holloway, is this your verdict
24 and still your verdict?

25 JUROR NUMBER 37: Yes.

1 THE CLERK: Thomas Wiley, is this your verdict and
2 still your verdict?

3 JUROR NUMBER 139: Yes.

4 THE CLERK: Lynn McClurkin, is this your verdict
5 and still your verdict?

6 JUROR NUMBER 77: Yes.

7 THE CLERK: Dorian Freeman, is this your verdict
8 and still your verdict?

9 JUROR NUMBER 34: Yes.

10 THE CLERK: James Hedrick, is this your verdict
11 and still your verdict?

12 JUROR NUMBER 46: Yes.

13 THE CLERK: Brett Weeks, is this your verdict and
14 still your verdict?

15 JUROR NUMBER 134: Yes.

16 THE CLERK: Mark Kornet, is this your verdict and
17 still your verdict?

18 JUROR NUMBER 65: Yes.

19 THE CLERK: And Donna Dillashaw, is this your
20 verdict and still your verdict?

21 JUROR NUMBER 27: Yes.

22 THE COURT: All right. The jury has been polled.

23 I'm going to speak to the jury briefly, but Ms.
24 Bolen, helping Mr. Frazier, is there any other issues for
25 the jury since they have been polled?

1 MS. BOLEN: No, sir.

2 THE COURT: All right. Very well.

3 Y'all step back in the jury room. I'm going to
4 come in and tell y'all what's next.

5 (Whereupon, at 3:05 p.m., the jury panel was
6 discharged).

7 (Whereupon, proceedings were recessed).

8 (Whereupon, proceedings were reconvened)

9 (Certified Indictment marked as Court's Exhibit
10 No. 3 for identification)

11 (Letter, dated 10/29/15 marked as Court's Exhibit
12 No. 4 for identification)

13 THE COURT: All right. We are ready to proceed
14 with sentencing, Mr. Moroney?

15 MR. MORONEY: Yes, Your Honor.

16 THE COURT: Mr. Frazier, are you ready?

17 MR. FRAZIER: Yes, sir.

18 THE COURT: All right. Come on up. Come around
19 here right in front of the clerk. Come right here in the
20 center.

21 Before we -- I know a little bit about his prior
22 record.

23 Mr. Frazier, tell me, you have been incarcerated
24 since the 9th of July of --

25 MR. FRAZIER: Yes, sir, since the 9th of July.

1 THE COURT: So you are due credit for all those
2 days on any of these indictments.

3 All right, solicitor, tell me just a little bit
4 about his prior record. I know the facts of the case. You
5 don't need to get into that. Tell me about his prior record
6 and --

7 MR. MORONEY: Yes, Your Honor.

8 THE COURT: -- then we will hear from Mr. Frazier.

9 MR. MORONEY: Starting back in December of 2008,
10 Mr. Frazier was convicted of assault of a high aggravated
11 nature. He received a 560 day sentence in reference to
12 that.

13 THE COURT: Is that the old ABHAN?

14 MR. MORONEY: That's what it looks like, Your
15 Honor.

16 THE COURT: Okay.

17 MR. MORONEY: He's got a simple possession of
18 marijuana. He was convicted back in August 2009, where he
19 was convicted and sentenced to 30 days.

20 Also in August of 2009, sentenced by Your Honor
21 for possession of cocaine, first offense. Convicted and
22 sentenced to six months.

23 He has a minor charge of possession of beer or
24 wine by a minor. The court date shown conviction
25 November 2010.

1 Also a simple possession, first offense,
2 November 2010.

3 Previously convicted of unlawful carrying of a
4 weapon, 2011. It looks like the date on that would be
5 September of 2011.

6 Driving with an expired vehicle license, convicted
7 October 2011.

8 Pointing and presenting firearms at a person. He
9 was convicted. It appears that date of conviction is
10 October of 2014. Convicted, sentenced to one year. The
11 sentence was suspended to 181 days of time served and two
12 years probation.

13 That's what he's on probation for now? Are you on
14 probation now.

15 MR. FRAZIER: Uh-uh.

16 THE COURT: Mr. Williams says that he is.

17 MR. MORONEY: That's what he's on probation for.

18 THE COURT: Come up here, Mr. Williams.

19 How much time has he got hanging over his head?

20 MR. MORONEY: I believe it's the remainder of a
21 year. So 181 days has been served. That's the balance of
22 the year.

23 THE COURT: Okay, 179 days.

24 MR. FRAZIER: Yes, sir.

25 THE COURT: That's all he's got looking at?

1 PROBATION AGENT: Yes, sir, we were just going
2 to --

3 THE COURT: That ain't no big deal. You have got
4 credit to that already in the bank.

5 MR. FRAZIER: Uh-huh.

6 THE COURT: All right. The biggest problem I
7 heard was the drug case, which was back in August of '09.

8 MR. FRAZIER: '08, sir.

9 THE COURT: August 27th of '09 is when I signed
10 the sentencing sheet. Do you remember that?

11 MR. FRAZIER: (Shaking head no).

12 THE COURT: You don't remember pleading in front
13 of me?

14 MR. FRAZIER: Uh-uh.

15 THE COURT: I don't see the prosecutor. He was in
16 here a minute ago, Mr. Andrews.

17 Anyway, that could be used against you. I'm
18 pretty certain that was told to you, which means the
19 trafficking case is a second offense, which carries a bigger
20 range than the first offense.

21 MR. FRAZIER: Uh-huh.

22 THE COURT: Tell me what's going on. I mean, I
23 heard your trial. Several people encouraging you, including
24 your sister and your brother, or your friend. I don't know
25 who this gentlemen was. Is he a brother or friend?

1 MR. FRAZIER: My brother.

2 THE COURT: Okay.

3 Both your siblings were in here. They care about
4 you a lot, and you mentioned your family several times.

5 MR. FRAZIER: Uh-huh.

6 THE COURT: What's going on?

7 MR. FRAZIER: Nothing.

8 THE COURT: Okay. What do you think would be a
9 fair sentence, considering what the jury has convicted you
10 of?

11 MR. FRAZIER: I can't tell you that, Your Honor.
12 It's up to you.

13 THE COURT: Okay. Fair enough.

14 MR. MORONEY: Your Honor, the victims are not able
15 to be here today due to previous engagements. They wanted
16 to relay that they felt that a considerable active sentence
17 would be appropriate, given the facts of this case.

18 I understand -- I have met with Mr. Frazier on
19 previous occasions, numerous occasions, and I understand
20 this incident was likely fueled by his ingestion of a
21 considerable amount of methamphetamine that day. However,
22 that does not negate the fact of what took place and the
23 victims whose lives were affected that day and will forever
24 be affected.

25 Ms. Chatos has an injury that she still is getting

1 treated now. She was already disabled at the time of this
2 incident and is now dealing with the shoulder injury and the
3 cracked rib and so on, and the fear that he put the
4 remainder of the victims in.

5 Just briefly, Your Honor, with respect to the
6 methamphetamine, I know you see this a lot, the amount in
7 this case is well above that threshold limit of 10 grams and
8 to me is indicative of strongly trafficking weight. This
9 was not a personal use amount, solely to be used for
10 personal use.

11 THE COURT: All right. Mr. Frazier, I'm going to
12 revoke the balance of the 179 days you owed on probation.
13 That case would be ended.

14 There is restitution asked for by three victims.
15 I'm inclined to ask you would you agree to these restitution
16 amounts to be converted to civil judgments and not placing
17 you on probation?

18 MR. FRAZIER: It's at your discretion, Your Honor.

19 THE COURT: Okay. All right, that's what I think
20 I'm going to do with the restitution. I'm going to consider
21 it, but I'm going to convert it to civil judgments so it can
22 start drawing interests today, but these victims are very
23 unlikely to get paid, considering how long you will be
24 incarcerated.

25 On leaving the scene, sentence is 12 months.

1 That's indictment 1603.

2 1632, use of vehicle without permission,

3 36 months.

4 1606 and 1605, both 60 months.

5 On the trafficking in methamphetamine, the
6 sentence is 20 years.

7 You get credit for the days since July 9th of '15.

8 I'm converting those restitution amounts to the
9 three victims to a civil judgment.

10 Good luck.

11 MR. FRAZIER: All right.

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenwood County, South Carolina, on the 16th, 17th, 18th and 19th days of November, 2015.

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

December 10, 2016



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 575

COUNTY OF Greenwood
STATE VS. Terrence O'neil Frazier

09GS24-0646

INDICTMENT/CASE#: 2009 -GS- 24 - 646AKA: _____
Race: BLK Sex: M Age: 19
DOB: _____ SS#: _____
Address: Shirley Road
City, State, Zip: Hodges, SC
DL# _____ SID# _____A/W#: M075212
Date of Offense: 2008-02-26
S.C. Code § 44-53-370
CDR Code #: 2011

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: POSS. COCAINE, 1ST (0-24RS AND/OR 50-51K)in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 2011☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lowd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the StateATTEST: 71681 Demetri Andrews Solicitor Terrence Frazier Defendant [Signature] Attorney for Defendant SC Bar # _____WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 6 days/months/years or under the ☐ Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Current incarceration☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Since April 12, 2009☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211 (A) (1) (Conv. Surcharge)	\$100
§14-1-211 (A) (2) (DUI Surcharge)	\$100
§56-5-2995 (A) (2) (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942 (J) (Vehicle Assessment)	\$40/ea
3% to Country (If paid in installments)	\$50
§90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____
Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ paid to the Public Defender Fund

Other: _____

COURT'S
EXHIBIT

3

ATTEST: TRUE COPY

ANGELA WOODHURST

☐ Appointed PD or appointed other counsel, \$35.93 TP AND GS
☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 8-27-09

Clerk of Court/Deputy Clerk

Court Reporter: J Webster

The State of South Carolina



OFFICE OF THE SOLICITOR
EIGHTH JUDICIAL CIRCUIT

864/942-8800
FAX 864/942-8830

Abbeville
Greenwood
Laurens
Newberry

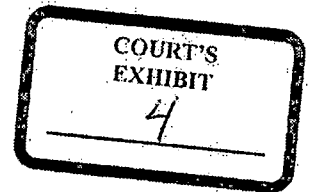
DAVID M. STUMBO
SOLICITOR

Suite 203, Park Plaza
600 Monument Street
Post Office Box 516
Greenwood, SC 29648-0516

October 29, 2015

ATTN: TERRENCE O. FRAZIER, HAND DELIVERY
STATE'S OFFER FOR PLEA AGREEMENT

Greenwood County Detention Center
528 Edgefield Street
Greenwood, SC 29646



Mr. Frazier:

This letter is to notify you of the State's offer for a plea agreement in reference to your pending Greenwood County General Sessions charges. The offer is as follows:

Defendant enters a plea of guilty to the two offenses of Strong Arm Robbery and Trafficking Methamphetamine 1st Offense (10g or more but less than 28g) for a negotiated cap of 10 years.

Due to your previous conviction for Possession of Cocaine on August 28, 2009, your charge of Trafficking Methamphetamine is enhanced to a 2nd Offense, which carries a penalty of 5-30 years. However, Trafficking Methamphetamine 1st Offense carries a lesser penalty of 3-10 years. Strong Arm Robbery carries a penalty of 0-15 years.

In consideration of this plea, the State will agree to nol-pros (not prosecute) your pending charges of Carjacking (Take or Attempt to Take a Vehicle by Force), Use of Vehicle without Permission with Intent to Deprive, Theft of a Controlled Substance x 2, Financial Transaction Card Theft, Petit Larceny, Breaking into a Motor Vehicle, and Hit and Run. and Grand Larceny @ TF

Sincerely,

Brian J. Moroney
Assistant Solicitor

Eighth Circuit Solicitor's Office, Greenwood County, South Carolina

I received a copy of the above letter on October 29, 2015.

Signed: Terrence Frazier

WITNESSES

Mitch McAllister
Greenwood Police Department

WARRANT NUMBER

2015A2420100542

Foreman of the Grand Jury

Date: 11-13-15

VERDICT

True Bill

Foreman

Anna Lillabau
Verdict Guilty

11-19-15

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24- 1606

THE STATE

vs.

Terrence O'Neil Frazier

INDICTMENT FOR

BREAKING INTO MOTOR VEHICLE
§ 16-13-0160

CDR: 0258

FILED IN GENERAL SESSIONS
83 COURT HOUSE
GREENWOOD, SC

2015 NOV 24 AM 10:20

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

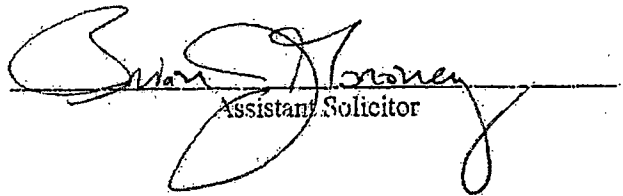
BREAKING INTO MOTOR VEHICLE

§ 16-13-0160

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did willfully and unlawfully break or attempt to break into any motor vehicle or any compartment thereof, in the daytime or in the nighttime, with intent to steal the same or anything of value there from or attached or annexed thereto, the said vehicle being owned by Gwendolyn Callahan, in violation of Section 16-13-160 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

FILED GENERAL SESSIONS
COURT CLERK
GREENWOOD, SC

2015 NOV 24 AM 10:20

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24-1605

1605

WARRANT NUMBER

DIRECT INDICTMENT

2015D2400100132

THE STATE

vs.

Terrence O'Neil Frazier

Foreman of the Grand Jury

Date: 11-13-15

INDICTMENT FOR

GRAND LARCENY

§ 16-13-0030

VERDICT

CDR: 3421

True Bill

Foreman

[Signature]
Anna Pullastan

Verdict: Guilty

Anna Pullastan

11-19-15

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

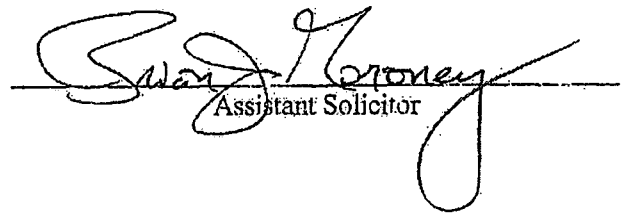
GRAND LARCENY

§ 16-13-0030

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did feloniously take and carry away the personal goods of Kimberly W. Searles of the value of more than ten thousand and NO/100 (\$10,000.00) dollars described as follows: one (1) 2014 Chrysler 300, with the intent to deprive the owner permanently of such goods, in violation of Section 16-13-30 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

FILED GENERAL SESSIONS
8th JUDGE CIRCUIT
GREENWOOD, SC

2015 NOV 24 AM 10: 20

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24- *1604*

WARRANT NUMBER

2015A2420100540

THE STATE

vs.

Terrence O'Neil Frazier

Foreman of the Grand Jury

Date: *11-13-15*

INDICTMENT FOR

TRAFFICKING IN METHAMPHETAMINE

§ 44-53-0375

VERDICT

True Bill

CDR: 0450

Foreman

Verdict: Guilty

11-19-15

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF GREENWOOD

TRAFFICKING IN METHAMPHETAMINE
§ 44-53-0375

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did willfully, unlawfully, and knowingly traffic in methamphetamine, in that the said defendant was in actual or constructive possession of more than 10 grams, but less than 28 grams of methamphetamine, in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

FILED GREENWOOD SESSIONS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

2015 NOV 24 AM 10:19

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

WARRANT NUMBER

79764HA

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24- *1603*

THE STATE

vs.

Terrence O'Neil Frazier

Foreman of the Grand Jury

Date: *11-13-15*

INDICTMENT FOR

LEAVING SCENE OF ACCIDENT
§ 56-05-1220

CDR: 2464

VERDICT

True Bill

Foreman

J. McAllister
Anna L. Lashan

Verdict: Guilty

Anna L. Lashan

11-19-15

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

LEAVING SCENE OF ACCIDENT

§ 56-05-1220

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did willfully and unlawfully fail to stop his motor vehicle which was involved in an accident resulting in damage to another motor vehicle being driven and occupied by Bessie Williams, in violation of Section 56-5-1220 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

FILED GENERAL SESSIONS
80th JUDICIAL CIRCUIT
GREENWOOD, SC

2015 NOV 24 AM 10: 21

WITNESSES

Brian Penn
Greenwood County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24-1632

WARRANT NUMBER

2015A2410200701

THE STATE

vs.

Terrence O'Neil Frazier

Foreman of the Grand Jury

Date: 11-13-15

INDICTMENT FOR

CARJACKING
§ 16-03-1075

VERDICT

CDR: 2599

True Bill

Foreman

Verdict:

Guilty to Use of Vehicle w/o permission

11-19-15

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

CARJACKING
§ 16-03-1075

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did willfully and unlawfully take or attempt to take a motor vehicle from another person by force and violence or by intimidation, while the person was operating the vehicle or while the person was in the vehicle, to wit: that Terrence O'Neil Frazier did take a 1997 Ford F-150 pickup truck being operated by one Susanna Chatos, in violation of the provisions of Section 16-3-1075 of the 1976 Code of Laws of South Carolina, as amended

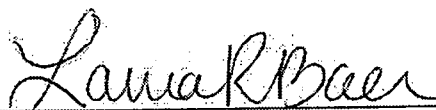
Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

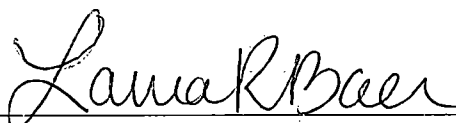
ATTORNEY FOR APPELLANT

This 28th day of March, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 28th day of March, 2018.

RECEIVED

MAR 28 2018

SC Court of Appeals