

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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**RECEIVED**

JUL 24 2013

**S.C. Supreme Court**

DOMONIQUE D. BLAKNEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000395

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APPENDIX

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| STATE OF SOUTH CAROLINA      | ) |                           |
|                              | ) | COURT OF GENERAL SESSIONS |
| County of Richland           | ) | 07-GS-40-4367             |
|                              |   | 07-GS-40-4366             |
|                              |   | 07-GS-40-4365             |
|                              |   | 07-GS-40-4368             |
|                              | ) |                           |
|                              | ) |                           |
| THE STATE OF SOUTH CAROLINA, | ) |                           |
|                              | ) |                           |
| vs.                          | ) | TRANSCRIPT OF RECORD      |
|                              | ) |                           |
| DOMINIQUE BLAKNEY,           | ) |                           |
|                              | ) |                           |
| DEFENDANT,                   | ) |                           |

January 10th, 2008  
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

APPEARANCES:

DIETRICH LAKE, ASSISTANT SOLICITOR  
Attorney for the State

TAV SWARAT, ESQ.  
Attorney for the Defendant

KAREN TRACY  
Official Court Reporter

|                              |   |                           |
|------------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA      | ) |                           |
|                              | ) | COURT OF GENERAL SESSIONS |
| County of Richland           | ) | 07-GS-40-4370             |
|                              | ) | 07-GS-40-4371             |
|                              | ) |                           |
| THE STATE OF SOUTH CAROLINA, | ) |                           |
|                              | ) |                           |
| vs.                          | ) | TRANSCRIPT OF RECORD      |
|                              | ) |                           |
| KELBY BLAKNEY,               | ) |                           |
|                              | ) |                           |
| DEFENDANT,                   | ) |                           |

January 10th, 2008  
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

APPEARANCES:

DIETRICH LAKE, ASSISTANT SOLICITOR  
Attorney for the State

HANS PAULING, ESQ.  
Attorney for the Defendant

KAREN TRACY  
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 DOMINIQUE BLAKNEY, after being duly  
2 sworn, testified as follows:

3 KELBY BLAKNEY, after being duly sworn,  
4 testified as follows:

5 THE COURT: Okay. Before we proceed, so that the  
6 record is clear, Mr. Lake, if you would indicate who is  
7 speaking on behalf of the Solicitor's Office.

8 MR. LAKE: I -- thank you.

9 THE COURT: And then also who is representing whom  
10 with respect to the Blakeny clan.

11 MR. LAKE: Thank you, Your Honor.

12 Deitrich Lake for the State. Standing before you to  
13 your far right is Kelby Blakney. He's represented by Hans  
14 Pauling. To your left you have Kelby Blakney. He's  
15 actually represented by Tav Swarat. To my left --

16 THE COURT: Okay. I thought you said Kelby Blakeny  
17 twice.

18 MR. PAULING: This is Kelby Blakney. This is --

19 MR. LAKE: I'm sorry, Domonique. I apologize.

20 THE COURT: Thank you.

21 MR. LAKE: Domonique Blakney is represented by Tav  
22 Swarat. To my left, I have Sergeant Kevin Isenhoward.  
23 Behind me is Captain Stan Smith with the Richland County  
24 Sheriff's Department, my victim advocate, Nataki Brown.

25 Your Honor, also one of the victims here, Mr. Davis,

1 was with Express -- who owned Express Teller Services. It  
2 now -- the name has now changed, as I understand it.

3 THE VICTIM: Yes, it has.

4 THE COURT: Okay.

5 MR. LAKE: And your Honor, just for the record, both  
6 Blakneys are pleading guilty to armed robbery, kidnapping,  
7 assault and battery of a high and aggravated nature, and  
8 criminal conspiracy.

9 THE COURT: All right. I'm going to start first with  
10 the attorneys.

11 And -- first of all, Madam Court Reporter, is this  
12 how you have it lined up?

13 THE COURT REPORTER: Yes.

14 THE COURT: Okay. And when we have everyone speak,  
15 we'll have it left to right.

16 But as to the attorneys, have you explained to your  
17 clients the nature of these charges, their maximum  
18 possible punishment, as well as their constitutional  
19 rights?

20 MR. SWARAT: I have, Your Honor.

21 MR. PAULING: Yes, Your Honor.

22 THE COURT: And do you believe that your clients have  
23 understood your conversations?

24 MR. SWARAT: I do, Your Honor.

25 MR. PAULING: Yes, Your Honor.

1 THE COURT: Are you aware of any mental evaluations  
2 that your clients have had?

3 MR. SWARAT: They have not, Your Honor.

4 MR. PAULING: They have not, Your Honor.

5 THE COURT: Okay. And do your clients wish to plead  
6 guilty with respect to these particular charges of armed  
7 robbery, kidnapping, assault and battery of a high and  
8 aggravated nature, and criminal conspiracy?

9 MR. SWARAT: Your Honor, Dominique Blakeny indicates  
10 to me he wishes to plead on all of the charges.

11 THE COURT: Okay.

12 MR. PAULING: Your Honor, Kelby Blakney also wishes  
13 to plead on all of the charges.

14 THE COURT: Do you agree that if these cases were to  
15 go to trial, a conviction would be probable on each of  
16 these charges?

17 MR. SWARAT: I do, Your Honor.

18 MR. PAULING: Yes, Your Honor.

19 THE COURT: Do you agree with your client's decision  
20 to plead guilty?

21 MR. SWARAT: I agree with his decision, Your Honor.

22 MR. PAULING: Yes, Your Honor.

23 THE COURT: Okay. And then as to Mr. and Mr.  
24 Blakney -- am I saying that correctly, Blakney or  
25 Blackney?

1 MR. SWARAT: Blakney, Your Honor.

2 THE COURT: Okay.

3 MR. SWARAT: That's correct.

4 THE COURT: Okay. Are either of you under the  
5 influence of any alcohol, drugs, or medication?

6 DOMINIQUE BLAKNEY: No, ma'am.

7 KELBY BLAKNEY: No, ma'am.

8 THE COURT: And have you ever been evaluated for your  
9 mental health?

10 DOMINIQUE BLAKNEY: No, ma'am.

11 KELBY BLAKNEY: No, ma'am.

12 THE COURT: Okay. With respect to your various  
13 indictments, it indicates for you, Mr. Dominique Blakney,  
14 in the indictment for assault and battery of a high and  
15 aggravated nature that in Richland County on or about  
16 May 10, 2007 you committed an assault and battery upon the  
17 victim, David Jones, constituting an unlawful act of  
18 violent injury to his person accompanied by circumstances  
19 of aggravation, essentially serious bodily harm and/or the  
20 use of a deadly weapon.

21 Do you agree with the facts in that indictment?

22 DOMINIQUE BLAKNEY: Yes, ma'am.

23 MR. SWARAT: Your Honor, and just -- just to clarify,  
24 he is pleading guilty under accomplice liability of the  
25 hand of one, just to make that clear. He did not actually

1 assault the gentleman.

2 THE COURT: Okay.

3 MR. LAKE: Your Honor, that applies actually to both  
4 defendants in this particular case.

5 THE COURT: Okay. And that is as to the assault and  
6 battery of a high and aggravated nature?

7 MR. LAKE: Correct.

8 THE COURT: Okay. And then Mr. Dominique Blakney --  
9 and I assume the indictment reads the same then for  
10 Mr. Kelby Blakney --

11 MR. LAKE: Yes, ma'am.

12 THE COURT: -- as that one?

13 Okay. So Mr. Kelby Blakney, you're pleading under  
14 the hand of all, that's the assault and battery charge, of  
15 a high and aggravated nature, as well?

16 KELBY BLAKNEY: Yes, ma'am.

17 THE COURT: Okay. And as to the kidnapping, as to  
18 both of you then, in Richland County on or about May 10,  
19 2007, you unlawfully seized, confined, deployed,  
20 kidnapped, abducted, or carried away the person of David  
21 Jones by force and arms.

22 Do you agree with the facts in that indictment?

23 MR. SWARAT: Your Honor, he -- he does agree with it,  
24 and it's also under accomplice liability. With the  
25 exception of the criminal conspiracy, he's pleading under

1     that theory under all of the indictments.

2           THE COURT:   Okay.   And that would be the same case  
3     for Mr. Kelby Blakney?

4           MR. PAULING:   Yes, Your Honor.

5           THE COURT:   Okay.   And do you gentlemen, meaning  
6     Mr. Blakney, do you understand what your -- Mr. Swarat has  
7     just mentioned?

8           DOMINIQUE BLAKNEY:   Yes, ma'am.

9           THE COURT:   You're essentially indicating that you  
10    did not engage in a physical altercation with the victim  
11    with respect to the A.B. H.A.N., nor did you actually  
12    participate in the kidnapping, but you're pleading under  
13    accomplice liability.   Do you understand that?

14          DOMINIQUE BLAKNEY:   Yes, ma'am.

15          KELBY BLAKNEY:   Yes, ma'am.

16          THE COURT:   And do you understand that in our state,  
17    the hand of one, hand of all applies?   If you were part of  
18    the general scheme of what has occurred here, that you  
19    would be held liable just as well?

20          DOMINIQUE BLAKNEY:   Yes, ma'am.

21          KELBY BLAKNEY:   Yes, ma'am.

22          THE COURT:   Okay.   And then if I heard you correctly,  
23    Mr. Swarat, that would be the same thing with respect to  
24    the armed robbery?

25          MR. SWARAT:   That's correct, Your Honor.

1 THE COURT: Okay. And just for you gentlemen's  
2 benefit, the armed robbery indictments indicate that in  
3 Richland County on or about May 10, 2007 there was an  
4 armed robbery committed upon Express Teller Services, and  
5 it's basically indicating that while monies were taken  
6 from that entity, that the persons were armed.

7 Do you understand the facts of that indictment?

8 DOMINIQUE BLAKNEY: Yes, ma'am.

9 KELBY BLAKNEY: Yes, ma'am.

10 THE COURT: Okay. And then finally as to the  
11 criminal conspiracy indictment, it indicates that in  
12 Richland County on or about May 10, 2007 you unlawfully  
13 and willfully united, combined, conspired, or agreed or  
14 had a tacit understanding with codefendants for the  
15 purpose of committing the crime of armed robbery.

16 Do you agree with the facts in that indictment?

17 DOMINIQUE BLAKNEY: Yes, ma'am.

18 KELBY BLAKNEY: Yes, ma'am.

19 THE COURT: Okay. All right. I'm going to at this  
20 time first ask you how you wish to plead with respect to  
21 each of these indictments? How do you wish to plead,  
22 Mr. Dominique Blakney?

23 (Pause).

24 DOMINIQUE BLAKNEY: On what case?

25 THE COURT: Excuse me?

1           MR. SWARAT: Do you -- she wants to know if you're  
2 going to plead guilty or not.

3           THE COURT: How do you wish to plead? Do you -- are  
4 you indicating that you are guilty of the assault and  
5 battery of a high and aggravated nature, kidnapping, armed  
6 robbery, and the criminal conspiracy?

7           DOMINIQUE BLAKNEY: Guilty.

8           THE COURT: As to each of these charges?

9           DOMINIQUE BLAKNEY: No, not to all of them.

10          THE COURT: Okay. You'll need to speak with your  
11 attorney.

12          (Pause).

13          While he is speaking with his attorney, I will come  
14 to you, Mr. Pauling.

15          MR. PAULING: Yes, ma'am.

16          THE COURT: Mr. Blakney, Kelby Blakney, how do you  
17 wish to plead as to whether or not you are guilty with  
18 respect to the charges of assault and battery of a high  
19 and aggravated nature, kidnapping, armed robbery, and  
20 criminal conspiracy?

21          KELBY BLAKNEY: Guilty.

22          THE COURT: And are you indicating that you are  
23 guilty as to each of these charges?

24          MR. PAULING: Yes, ma'am.

25          THE COURT: Okay. I'll come back to Mr. Dominique

1 Blakney then.

2 Have you had a chance to speak with your --

3 DOMINIQUE BLAKNEY: Yes, ma'am.

4 THE COURT: -- attorney about your plea?

5 DOMINIQUE BLAKNEY: Yes, ma'am.

6 THE COURT: And how do you wish to plead --

7 DOMINIQUE BLAKNEY: Guilty.

8 THE COURT: -- with respect to these charges?

9 And is that guilty as to each of these charges as

10 I --

11 DOMINIQUE BLAKNEY: Yes, ma'am.

12 THE COURT: -- listed them?

13 DOMINIQUE BLAKNEY: Yes, ma'am.

14 THE COURT: All right. Listen carefully to the  
15 State's case, and then you and your attorneys and anyone  
16 speaking on your behalf will have an opportunity to  
17 respond.

18 MR. LAKE: Your Honor, I'll try to incorporate some  
19 of the facts that took place in the plea yesterday  
20 involving Delaney Sadler.

21 This is a scheme to actually rob Express Teller  
22 Services, which was started, I guess between Delaney  
23 Sadler and codefendant Darryl Frierson.

24 They basically, for months prior to the actual  
25 robbery, had discussed committing a robbery and robbing

1 Express Teller Services of U.S. currency.

2 At some point, Mr. Blakney, both Blakneys, actually,  
3 is my understanding are related to Darryl Frierson. I  
4 think they're the cousin of Mr. Frierson.

5 Mr. Frierson involved both Blakneys, along with a  
6 Jeremy McPhail and a Paul Whitaker and a Dominique Lyde in  
7 the robbery of Express Teller Services.

8 On May 3rd of 2007, they actually went to the  
9 location, the gas station at the intersection of Atlas and  
10 Bluff Road here in Richland County, and they were going to  
11 commit that robbery that particular night.

12 The roles essentially, in which they carried out the  
13 following week, was both Mr. Bakenys would essentially  
14 meet the other codefendants on a dirt road. They took  
15 their two codefendants to the store where they were going  
16 to drop them off.

17 On the May 3rd, 2007 incident, for one reason or  
18 another, the robbery actually did not occur because of the  
19 fact that apparently there was a potential eyewitness out  
20 there. One of the members may have gotten scared to go  
21 forward with the robbery. It was called off.

22 A week later, the actual robbery occurred. During  
23 that timeframe, during that seven days, Ms. Delaney Sadler  
24 was actually cut out of the robbery.

25 In this particular case, Mr. Frierson I think

1 contacted Kelby Blakney and advised him that he wanted to  
2 do the robbery that particular night.

3 Mr. Blakney, I think, was either in Darlington,  
4 Florence at that particular time. He actually picked up  
5 his brother, Domonique Blakney, and I guess they had  
6 communications with Mr. Frierson as to the location of  
7 where this robbery was going to occur.

8 They also came to the location here in Richland  
9 County with Dominique Lyde and also Jeremy McPhail.  
10 Mr. Lyde and Mr. McPhail's role at this gas station was to  
11 get out and essentially subdue the victim, Mr. Jones.

12 Mr. Jones, once they got to that location,  
13 essentially he drove to the gas station. Once he got out  
14 to actually pump gas, Mr. Frierson, I guess up (sic) under  
15 procedure, was required to get into the driver's seat.

16 At that point, as Mr. Jones had actually went to the  
17 location to pay for the gas and was coming back, he was  
18 accosted by Mr. Lyde and Mr. McPhail.

19 Mr. -- both Mr. Blakneys were instructed to meet them  
20 on a dirt road, which is essentially the same thing they  
21 had discussed a week prior to that.

22 Mr. Frierson's role was to pretend to be a victim,  
23 essentially. He complied with what they indicated.  
24 However, Mr. Jones actually put up a struggle. He -- they  
25 did attempt to take his gun from him. He did fight

1 Mr. Lyde and Mr. McPhail.

2 During that scuffle with Mr. McPhail and Mr. Lyde,  
3 the victim, Mr. Jones, sustained a number of serious  
4 injuries. He had a broken orbital bone. He had a broken  
5 nose. He had a chipped tooth.

6 They also, Your Honor -- as they were taking him to  
7 that location, they bound and duct taped him and placed  
8 his head like -- I think between the seats of the armored  
9 car as they were going to the dirt road.

10 Upon getting to the dirt road, essentially  
11 Mr. Frierson's role was to kind of pretend again that he  
12 was still the victim.

13 As Mr. Jones is still in the car, Mr. McPhail stays  
14 in the car with him. Mr. Lyde and Mr. Frierson get out.  
15 There they meet both Blakneys at this particular point.

16 At that time, they removed U.S. currency from the  
17 back of the armored car. Your Honor, it's my  
18 understanding that there was a total of about  
19 \$18.4 million in that truck. \$9 million -- \$9.8 million  
20 of that, approximately that much, was stolen.

21 I'm not sure whether they knew how much was in there  
22 at that particular time or not but they left it. It's my  
23 understanding, from speaking with the investigators, they  
24 just weren't able to carry all of it. Otherwise, they  
25 would -- I guess all of the money would have been taken.

1           They left approximately about \$9 million still in  
2           there. I think one of the individuals at some point told  
3           the victim, because he had sustained a number of injuries,  
4           that you know, because we did this to you, we're going to  
5           leave some money out here in the field for you. Law  
6           enforcement did recover that money at a later date.

7           Your Honor, after fleeing that scene, Mr. Lyde,  
8           Mr. McPhail, and both Mr. Blakneys, they go to a hotel in  
9           Florence.

10          At that time, all of the individuals are there. They  
11          split up the money. At that time, Mr. Lyde leaves with  
12          his money. I think at that point they're not sure where  
13          he goes.

14          Mr. McPhail -- someone -- he calls someone and  
15          someone picks him up. I think Mr. Blakney, I think  
16          Dominique Blakney, collects the money that is owed to  
17          Mr. Frierson.

18          Your Honor, at some point, a couple of days later,  
19          Mr. Frierson meets up with Mr. Blakney and collects his  
20          portion of the robbery.

21          Your Honor, law enforcement developed Mr. Frierson.  
22          He became a suspect almost immediately at the time of this  
23          incident due to several factors, one of them being that  
24          his injuries were very slight.

25          At the time of this incident, he only complained of a

1     shoulder injury. He had -- the other victim, of course,  
2     had a number of visible injuries, plus he continues to  
3     have injuries from that. So they developed him as a  
4     suspect.

5             Law enforcement interviewed him. He did take a  
6     polygraph, did fail that polygraph. He was not arrested  
7     at that particular point, as they were still continuing to  
8     develop their case.

9             One thing law enforcement was able to do, they  
10    secured his cell phone information and found out that he  
11    had been talking to Mr. Paul Whitaker who was also an  
12    employee of Express Teller Services just prior to the  
13    robbery.

14            Law enforcement made contact with Mr. Whitaker. It  
15    appeared to them that he wanted to tell them something.  
16    Sergeant Isenhoward would go on to say that, you know, he  
17    met with them outside. He started to cry and wanted to  
18    kind of let law enforcement know what he knew.

19            He did tell some initial things in terms of the  
20    people that were involved. He did implicate both of these  
21    defendants, along with Mr. Frierson, Mr. McPhail, and  
22    Mr. Lyde in this particular robbery.

23            At some point during a later statement he implicated  
24    himself in the robbery as being the person that was inside  
25    who -- when Mr. Frierson was supposed to have been

1 calling.

2       Essentially, his role was to pretend as though the  
3 truck was coming in to cause a further delay in the -- in  
4 them noticing that the truck wasn't back in time,  
5 essentially.

6       Mr. Frierson was supposed to call in, just pretend  
7 and then he would just call and say, "Well, the truck is  
8 going to be here in 15 minutes," thereby delaying that  
9 knowledge about the actual robbery.

10       Law enforcement arrived that night, Your Honor,  
11 because Mr. Jones actually walked, I think several miles,  
12 to actually find help and call 911.

13       Based upon Mr. Whitaker's statement, they executed  
14 arrests on all of these individuals. At the time that  
15 they spoke with both Mr. Blakneys, they did provide  
16 written statements implicating not only themselves in this  
17 robbery but also implicating all of their codefendants in  
18 this case.

19       Mr. Frierson also provided a written statement  
20 implicating himself in this robbery. Your Honor, there  
21 was -- some of the monies were recovered. All of the  
22 money, of course, was not from these individuals.

23       I think they did indicate through their statements  
24 that some of the money they actually gave to friends or  
25 potentially to family members.

1           They did turn over, essentially, what they had. I  
2   think law enforcement may have executed a search warrant  
3   and discovered additional U.S. currencies from these guys  
4   that were related to the robbery.

5           Your Honor, to this date roughly about \$5.1 million  
6   is still missing from this robbery. That's essentially  
7   the facts of the case in terms of how we -- how we come to  
8   be here today.

9           Beg the Court's indulgence.

10          (Pause).

11          And Your Honor, they did -- there's just one  
12   additional thing I'd add. When law enforcement did make  
13   contact with them to -- for them to find out their  
14   involvement in this robbery, they did secure, I guess cell  
15   phones with photographs of the money that was taken. I do  
16   have copies of photographs. I did show both attorneys.

17          At the appropriate time, Your Honor, we would like  
18   for you to hear from the victims. One of the victims  
19   could not be here, and I'll explain that further. But  
20   this essentially are the injuries, along with some of the  
21   money that was recovered. I did show both attorneys these  
22   photographs.

23          May I approach?

24          THE COURT: Yes, you may.

25          Just so that I have an understanding before I go to

1 the pictures, the first incident was alleged to have --  
2 supposed to have happened on May 3rd, 2007.

3 MR. LAKE: Correct.

4 THE COURT: And then it happened instead on May 10,  
5 2007.

6 MR. LAKE: Correct. They went there that night with  
7 the intentions of committing their robbery and did all of  
8 the acts but complete it --

9 THE COURT: Okay.

10 MR. LAKE: -- in terms of --

11 THE COURT: When were these gentlemen actually coming  
12 into police custody? It wasn't on the night of May 10th.  
13 It was --

14 MR. LAKE: No. I think it was roughly about the  
15 16th.

16 MR. SWARAT: May 16th.

17 THE COURT: Okay. During which time you were  
18 conducting your investigation but --

19 MR. LAKE: They were -- they were -- they were  
20 conducting an interview. As I indicated, Mr. Frierson had  
21 been implicated -- well, he was a suspect.

22 Law enforcement did put a device on his vehicle and  
23 monitored his whereabouts. His whereabouts essentially  
24 went into the home of Mr. Sumter and to a location where  
25 he met Mr. Blakney and recovered the money.

1           So it was consistent with their statements and  
2 consistent with his statement in terms of when he actually  
3 recovered the money and his whereabouts after this  
4 incident.

5           THE COURT: Okay. And then insofar as trying to get  
6 to these gentlemen, was it because they were turned in as  
7 Mr. Frierson was a suspect?

8           MR. LAKE: I think one is Mr. Whitaker. Maybe  
9 Sergeant -- I mean...

10          MR. ISENHOWARD: When we actually secured the arrest  
11 warrant for Mr. Frierson, we -- like was said, we knew  
12 where he was at because we could monitor it.

13          So we waited on him to come to us. He came to  
14 Columbia, and we stopped him and arrested him. I believe  
15 it was Ms. Kelby Blakney who was -- who was with him when  
16 he was -- when Mr. Frierson was arrested.

17          We did recover a small portion of the money in the  
18 vehicle and then went to Darlington, South Carolina to  
19 arrest the other suspects.

20          THE COURT: Okay.

21          MR. ISENHOWARD: So no one turned themselves in to  
22 us.

23          THE COURT: Okay. That's essentially what my  
24 question --

25          MR. ISENHOWARD: Yes.

1 THE COURT: -- was going to lead to. Okay. Okay.

2 And then the pictures that you are indicating then to  
3 the Court, I see the boxes of the money, a couple of -- it  
4 looks like the Herbie-Kerbie or trash cans with some  
5 money. There is also a garbage bag full of money. Okay.  
6 And then -- okay. Pictures of the truck, as well, with  
7 other items around the truck. What is that?

8 MR. ISENHOWARD: What you see in that photograph -- I  
9 just wanted to give you an idea of the chaos and  
10 destruction at the location where the robbery occurred.

11 THE COURT: Okay.

12 MR. ISENHOWARD: These men actually -- the money  
13 secured in these metal containers, they actually -- once  
14 they gained access to the truck, pushed these containers  
15 out of the truck because they weigh a lot. They're full  
16 of money.

17 THE COURT: Okay.

18 MR. ISENHOWARD: They can't pick them up, so they  
19 have to bust them open, break them open, actually. So  
20 they pushed them out. They would break open, and they  
21 could get to the money from there.

22 That's what we found when we get back and we actually  
23 get to the scene. There's actually money still in that,  
24 which is money that, you know, we're saying that they just  
25 couldn't take because they didn't have --

1 THE COURT: Didn't have it.

2 MR. ISENHOWARD: -- transportation for it.

3 THE COURT: And then the other gentleman on the  
4 pictures?

5 MR. LAKE: Your Honor, that is Mr. Jones, David  
6 Jones. He was the other security officer that was  
7 assaulted that particular night.

8 The State is not alleging that either one of these  
9 individuals assaulted him, but of course, up under the  
10 hand of one, hand of all, they're just as responsible.

11 As I indicated, on that particular night as he was  
12 walking, of course, to find help, he was struck in the  
13 eye. He indicated that he was struck with the weapon.

14 The individuals that had the weapons in this armed  
15 robbery were Mr. McPhail and Mr. Lyde were the ones --  
16 it's my understanding they are also the ones who had the  
17 guns on May 3rd. That was developed through the  
18 statements of all of these individuals. Even Ms. Sadler  
19 indicated that they were ones who were supposed to have  
20 the weapons at that particular time.

21 He did indicate that he was struck with a weapon in  
22 the face. As a result of that, like I said, his orbital  
23 bone was fractured, his eye was closed, his tooth was  
24 chipped. He had a broken nose.

25 Since that time, Your Honor, he has had some

1 psychological issues that he's kind of addressing. He's  
2 up under -- he's up under counseling now, and that is one  
3 of the reasons why he is not here today in order to speak  
4 on his -- his behalf.

5 At the appropriate time I will address -- I'm sorry.

6 MR. ISENHOWARD: I'd like to add something else, I  
7 guess, to give you an idea. The Blakneys, their role,  
8 everyone played a part and brought something to the  
9 execution of this robbery.

10 It's my opinion in investigating the case what they  
11 brought was transportation. They actually took their  
12 parents' car and drove it here, and they met at that  
13 location and loaded the money into their car. So they  
14 were present during the robbery.

15 All of this stuff is going on around them. They're  
16 just not actually physically putting their hands on it.  
17 So they're there loading the money from the truck into  
18 this Jeep Cherokee is actually the vehicle it was.

19 THE COURT: Okay. And did you have any indication  
20 from these gentlemen that there was going to be an assault  
21 on Mr. Jones, or was this, you know, in terms of any  
22 planning or anything just by any of the statements?

23 MR. ISENHOWARD: Well, they were willing to subdue  
24 him.

25 THE COURT: Okay. Okay. And that was that was just

1 part of the overall plan that you had to get to --

2 MR. ISENHOWARD: Yeah.

3 THE COURT: -- whoever the driver of the truck was?

4 MR. ISENHOWARD: These guys were armed.

5 THE COURT: Okay.

6 MR. ISENHOWARD: They had firearms.

7 THE COURT: Okay.

8 MR. ISENHOWARD: So they went into it knowing that  
9 they would actually have to put their hands on him because  
10 he was not part of their plan. Obviously, they were okay  
11 with Mr. Frierson because he was in on it with them.

12 THE COURT: Okay.

13 MR. ISENHOWARD: So they knew they were going to have  
14 to do something.

15 THE COURT: But there would be two gentlemen attached  
16 to the truck at all times anyway just for security  
17 purposes?

18 MR. LAKE: Correct.

19 THE COURT: Okay.

20 MR. PAULING: Your Honor, if I might interject just  
21 for clarification. The first aborted attempt on May 3rd,  
22 I don't believe my client was involved in that at all.  
23 They actually brought him in for the next attempt.

24 I think that's why Ms. Sadler was dumped from the  
25 group. That's my reading of discovery. You know, I can't

1 say that for sure, but I know from speaking with my client  
2 that they actually came to him within a day or 24 hours of  
3 the actual robbery to get him to participate.

4 He wasn't part of this group that planned out for  
5 weeks ahead of time, and I just wanted to clarify that for  
6 the Court.

7 THE COURT: Okay. All right. Okay. Anything  
8 further on behalf of the State at this time?

9 MR. LAKE: Your Honor, at the appropriate time, I  
10 think Mr. Domonique Blakney has no prior record.

11 Mr. Kelby Blakney has, I think, a prior disorderly  
12 conduct. He has a pending charge, I think in Darlington  
13 County. I'm not exactly sure what the status is on that.

14 At the appropriate time, Your Honor, law enforcement  
15 would like to address you in terms of the impact in  
16 sentencing. We also have Mr. Davis, who at the  
17 appropriate time, would like to address you.

18 Your Honor, the State's position is that we're asking  
19 for the most that you can give these individuals. I did  
20 advise both counsels that we would be seeking a  
21 substantial sentence based upon the injuries that the  
22 victim sustained and the magnitude of this particular --  
23 of this case. I think it's appropriate.

24 Your Honor, there's roughly about \$5.1 million  
25 missing. It's unclear as to whether the individual that's

1 missing, Mr. Lyde, has that \$5.1 million all to himself or  
2 whether that money may just be out there just sitting out  
3 there waiting for someone, whether it be these defendants  
4 or other defendants to get out of jail in a short period  
5 of time and benefit from a short active sentence.

6 So I did advise all counsel that we were going to be  
7 looking for a significant sentence in this matter.

8 Your Honor, there are additional codefendants that  
9 were scheduled. Of course, you know the sentencing on --  
10 as it relates to Ms. Sadler.

11 There are additional codefendants that were scheduled  
12 to plead today. Yesterday afternoon I was advised that  
13 they would not be going forward with those pleas. I did  
14 advise those attorneys that those cases would now then be  
15 placed on the trial docket to be disposed of at the next  
16 time -- sometime in February, but based upon the  
17 significance of this case, we're asking for a very  
18 significant sentence.

19 THE COURT: Okay. All right. I'll be happy to hear  
20 from you, Sergeant.

21 MR. ISENHOWARD: Yes, very briefly. I think it's  
22 important that we keep in mind that this robbery, it  
23 affects people even outside of the actual incident.

24 The owners of the company, the insurance company, all  
25 of these people were adversely affected by the loss of

1     this money, especially.

2             The company employed I think around 300 people. It's  
3     since been sold. All of those families, I don't know how  
4     many of them actually were able to switch over and keep  
5     their jobs, but it put stress on everybody involved with  
6     that company. They didn't know if they were going to have  
7     a job, to be honest.

8             As a law enforcement officer, and I do investigate  
9     armed robberies in Richland County, what scares me the  
10    most is that we send a message here today that you can --  
11    you can do this type of robbery, and you're only going to  
12    get a little bit of time because we're only going to do so  
13    much to you.

14            It's important to me that we send that message that  
15    says, "Listen, we can't put up with this. We're not going  
16    to stand for it, and you're going to get severe punishment  
17    if you attempt anything like this."

18            I would like to say for everyone here who hears this  
19    that this is an inside job, though. This is not the type  
20    of robbery that usually occurs, people just taking down an  
21    armored car. There's almost always someone involved  
22    internally. Thank God for that.

23            If they get the idea that they can just go up to a  
24    gas station and wait on an armored car, people are going  
25    to die. That's what's going to happen. I would

1 respectfully ask you to keep that in mind when you render  
2 your sentencing.

3 MR. LAKE: Your Honor, I think Captain Smith would  
4 like to address the Court also.

5 MR. SMITH: Your Honor, I feel like it's  
6 inappropriate to suggest at this time -- I would like to  
7 say that these detectives led by Sergeant Isenhoward did  
8 an excellent job in this case, I believe, as their  
9 supervisor. I had nothing to do with this actual  
10 investigation. I'm Captain of Major Crimes.

11 They worked tirelessly for two weeks, sometimes 24  
12 hours a day. It was a big case, and I believe the record  
13 needs to show that they are commended for their efforts.

14 THE COURT: Okay. Anything else?

15 MR. LAKE: Your Honor, this is Mr. Davis.

16 THE COURT: Sure.

17 THE VICTIM: Your Honor, on behalf of all the victims  
18 in the case, namely Mr. Jones, the employee's family, of  
19 Express Teller, I want to thank Sheriff Lott, Sergeant  
20 Isenhoward, for all that they've done.

21 I can't -- I can't stress enough the impact that the  
22 event had on, again, the employees, owners and operators  
23 of the company, but again, this event reaches much farther  
24 than Sergeant Isenhoward stated.

25 Speaking to the sale of the company, I wanted to

1 point out to the Court we were actually scheduled to sell  
2 the company the day following this event. So it is, of  
3 course, with some suspicion that we look at the timing of  
4 the event.

5 As Sergeant Isenhoward has stated, as is the case  
6 many times, these are inside jobs. We take our  
7 responsibility as an industry very seriously.

8 We put policies and procedures in place to protect  
9 first our employees, those around them and assets  
10 entrusted into our possession.

11 Again, it's usually inside involvement where those  
12 policies and procedures are taken advantage of. Although,  
13 this was a large shipment of money, again reiterating what  
14 Sergeant Isenhoward said, it is -- it is paramount to us  
15 that a message be sent to the general public, not just of  
16 Richland County, South Carolina, but to all areas, as this  
17 was a national story, that this is a very serious -- this  
18 was a very serious exercise, a very serious event.

19 Again, thank you for allowing us an opportunity to  
20 speak.

21 THE COURT: Certainly.

22 Anything else?

23 MR. LAKE: Your Honor, just in conclusion, as  
24 indicated, Mr. Jones could not be here. His doctor is one  
25 of the persons that recommended that he not be here.

1           In meeting with him and talking with him, the one  
2           thing that he, you know, felt made it difficult for him to  
3           be here, and what's making it harder for him to get over  
4           the situation, is the fact that it was an inside job; that  
5           he knew both Mr. Whitaker and both Mr. Frierson.

6           The fact that they would allow this to happen to him  
7           is -- it's almost tantamount to betrayal, as far as he was  
8           concerned, and that's what he conveyed to us.

9           He was in agreement with our recommendation, their  
10          recommendation, our position, that a significant sentence  
11          be imposed and that a message be sent, not only to these  
12          defendants, but also to these other codefendants that will  
13          at some point have their case disposed of.

14          THE COURT: Okay. All right. And of course, I'll  
15          allow the State and any representatives an opportunity to  
16          speak.

17          I'll now turn it over to defense counsel on your  
18          behalf. First of all, I'd like to hear from both  
19          Mr. Dominique Blakney and Mr. Kelby Blakney. Do you agree  
20          with the facts as indicated by the State, as well as the  
21          Sergeant and the Captain and other witnesses speaking on  
22          behalf of the State?

23          Let me start with you first, Mr. Domonique Blakney.

24          DOMINIQUE BLAKNEY: Yes, ma'am.

25          THE COURT: Okay. And what about you, Mr. Kelby

1 Blakney?

2 KELBY BLAKNEY: Yes, ma'am.

3 THE COURT: Okay. Do you wish to still plead guilty  
4 knowing that those are the facts that are under  
5 consideration by this Court?

6 DOMINIQUE BLAKNEY: Yes, ma'am.

7 THE COURT: Okay.

8 KELBY BLAKNEY: Yes, ma'am.

9 THE COURT: Okay. And with respect to your plea, do  
10 you understand that by pleading guilty, you are giving up  
11 all of your constitutional rights whether I mentioned them  
12 or not?

13 I will give you some of those rights. They include  
14 your right to a jury trial, your right to actually have on  
15 behalf of your counsel, to challenge any of the State's  
16 witnesses, through their statements or witness testimony  
17 at trial, as well as any of the evidence that the State  
18 intends to present at trial. Do you understand that?

19 DOMINIQUE BLAKNEY: Yes, ma'am.

20 THE COURT: And to the extent that your attorneys  
21 believe that any of that evidence that the State has was  
22 illegally obtained, then they could have done motions for  
23 suppression and other methods of legal means to actually  
24 challenge that evidence prior to the trial.

25 Do you understand that?

1 DOMINIQUE BLAKNEY: Yes, ma'am.

2 KELBY BLAKNEY: Yes, ma'am.

3 THE COURT: And you're giving up that right and their  
4 ability to do so.

5 Do you understand that?

6 DOMINIQUE BLAKNEY: Yes, ma'am.

7 KELBY BLAKNEY: Yes, ma'am.

8 THE COURT: With respect to your constitutional  
9 rights, as well, you could not be compelled to testify  
10 against yourself at trial. Are you aware that the Fifth  
11 Amendment protects you in that regard?

12 DOMINIQUE BLAKNEY: Yes, ma'am.

13 KELBY BLAKNEY: Yes, ma'am.

14 THE COURT: And with respect to your trial, as well,  
15 your attorneys have the ability to present defenses on  
16 your behalf, as well as other witnesses and other evidence  
17 on your behalf. Are you aware of that?

18 DOMINIQUE BLAKNEY: Yes, ma'am.

19 KELBY BLAKNEY: Yes, ma'am.

20 THE COURT: You wish to give up all constitutional  
21 rights whether I've mentioned them or not?

22 DOMINIQUE BLAKNEY: Yes, ma'am.

23 KELBY BLAKNEY: Yes, ma'am.

24 THE COURT: Has anyone threatened you or forced you  
25 in any way to plead guilty today?

1 DOMINIQUE BLAKNEY: No, ma'am.

2 KELBY BLAKNEY: No, ma'am.

3 THE COURT: Are you doing so of your own free will?

4 DOMINIQUE BLAKNEY: Yes, ma'am.

5 KELBY BLAKNEY: Yes, ma'am.

6 THE COURT: And are you doing so on a voluntary  
7 basis?

8 DOMINIQUE BLAKNEY: Yes, ma'am.

9 KELBY BLAKNEY: Yes, ma'am.

10 THE COURT: And with respect to your plea today, do  
11 you have any complaints against any of the arresting  
12 officers, the methods and means by which the investigation  
13 was conducted through law enforcement or through the state  
14 Solicitor's Office or any governmental agency?

15 DOMINIQUE BLAKNEY: No, ma'am.

16 KELBY BLAKNEY: No, ma'am.

17 THE COURT: Okay. Has anyone promised you anything  
18 in exchange for your plea today?

19 DOMINIQUE BLAKNEY: No, ma'am.

20 KELBY BLAKNEY: No, ma'am.

21 THE COURT: And that would be any hope of reward.

22 DOMINIQUE BLAKNEY: No, ma'am.

23 KELBY BLAKNEY: No, ma'am.

24 THE COURT: Including any sentence that you think I  
25 might hand down for you?

1 DOMINIQUE BLAKNEY: No, ma'am.

2 KELBY BLAKNEY: No, ma'am.

3 THE COURT: Are you all satisfied with your  
4 attorneys?

5 DOMINIQUE BLAKNEY: Yes, ma'am.

6 KELBY BLAKNEY: Yes, ma'am.

7 THE COURT: Do you believe that your attorneys have  
8 adequately explained to you the nature of these charges,  
9 your maximum possible punishment, as well as your  
10 constitutional rights?

11 DOMINIQUE BLAKNEY: Yes, ma'am.

12 KELBY BLAKNEY: Yes, ma'am.

13 THE COURT: Do you need any additional time to speak  
14 with your attorneys right now?

15 DOMINIQUE BLAKNEY: No, ma'am.

16 KELBY BLAKNEY: No, ma'am.

17 THE COURT: And should you need so during the  
18 proceeding, you're free to do so, okay.

19 (Nods in the affirmative).

20 THE COURT: With respect to the plea itself, as well,  
21 I just want to mention some other things that you need to  
22 know that are a consequence of the plea, and that would  
23 include the fact that obviously as to the armed robbery  
24 and the kidnapping, these are felonies on your record.

25 Do you understand that?

1 DOMINIQUE BLAKNEY: Yes, ma'am.

2 KELBY BLAKNEY: Yes, ma'am.

3 THE COURT: And then also with respect to those  
4 crimes in particular, these are indicated as violent  
5 crimes, but they're also most serious crimes. What that  
6 indicates under our law is that they are strikes against  
7 you. Are you aware of that?

8 DOMINIQUE BLAKNEY: Yes, ma'am.

9 KELBY BLAKNEY: Yes, ma'am.

10 THE COURT: And should you incur additional strikes,  
11 whether they be serious or most serious strikes, depending  
12 on the nature of the offense, you could find yourself in a  
13 situation of facing life without parole.

14 Do you understand that?

15 DOMINIQUE BLAKNEY: Yes, ma'am.

16 KELBY BLAKNEY: Yes, ma'am.

17 THE COURT: And you still wish to plead guilty  
18 knowing that that's a consequence of the plea?

19 DOMINIQUE BLAKNEY: Yes, ma'am.

20 KELBY BLAKNEY: Yes, ma'am.

21 THE COURT: Okay. You're also -- are not allowed  
22 under your armed robbery to have any suspended sentence or  
23 any type of probation. You're aware of that?

24 DOMINIQUE BLAKNEY: Yes, ma'am.

25 KELBY BLAKNEY: Yes, ma'am.

1 THE COURT: And even with respect to your armed  
2 robbery, you're facing a minimum of ten years on the  
3 sentence.

4 Do you understand that?

5 DOMINIQUE BLAKNEY: Yes, ma'am.

6 KELBY BLAKNEY: Yes, ma'am.

7 THE COURT: And you still wish to plead guilty  
8 knowing that?

9 DOMINIQUE BLAKNEY: Yes, ma'am.

10 KELBY BLAKNEY: Yes, ma'am.

11 THE COURT: And with respect to the kidnapping  
12 offense, you're going to serve at least 85 percent of that  
13 offense.

14 Do you understand that?

15 DOMINIQUE BLAKNEY: Yes, ma'am.

16 KELBY BLAKNEY: Yes, ma'am.

17 THE COURT: And you still wish to plead guilty?

18 DOMINIQUE BLAKNEY: Yes, ma'am.

19 KELBY BLAKNEY: Yes, ma'am.

20 THE COURT: And you will both be placed, as well,  
21 into a D.N.A. database.

22 Do you understand that?

23 DOMINIQUE BLAKNEY: Yes, ma'am.

24 KELBY BLAKNEY: Yes.

25 MR. PAULING: Your Honor, at this time I would ask

1 that the Court make a finding that there was no underlying  
2 sex crime so they are not required to be on the sex  
3 offender registry under the kidnapping statute.

4 Thank you, Your Honor.

5 THE COURT: Absolutely.

6 MR. LAKE: The State agrees.

7 THE COURT: Okay. And I was going to get that to  
8 that, as well, but there's no objection.

9 MR. PAULING: Thank you.

10 THE COURT: Okay. With respect to these crimes, you  
11 need to understand that those are consequences of the  
12 plea, and upon being -- plead guilty, which you agreed to  
13 do so, all of that factors into the Court's decision, but  
14 it's also a part of your record in this case.

15 Do you understand that?

16 DOMINIQUE BLAKNEY: Yes, ma'am.

17 KELBY BLAKNEY: Yes, ma'am.

18 THE COURT: Both of you have the opportunity to  
19 appeal the guilty plea and/or sentence, but you must do so  
20 within ten days.

21 Do you understand that?

22 DOMINIQUE BLAKNEY: Yes, ma'am.

23 KELBY BLAKNEY: Yes, ma'am.

24 THE COURT: Also, if you wish to challenge your  
25 attorney's representation of you, you would have up to one

1 year to file an application for post conviction relief,  
2 and you must indicate to your counsel that you wish to do  
3 that if you so choose.

4 Do you understand that?

5 DOMINIQUE BLAKNEY: Yes, ma'am.

6 KELBY BLAKNEY: Yes, ma'am.

7 THE COURT: But at this time you're indicating to me  
8 that you are satisfied with your counsel; is that correct?

9 DOMINIQUE BLAKNEY: Yes, ma'am.

10 KELBY BLAKNEY: Yes, ma'am.

11 THE COURT: Because of the very serious nature of  
12 these allegations, I would like the counsel to indicate  
13 anything else on this record that they would like to  
14 inform the Court that they've advised their clients.  
15 Okay.

16 MR. PAULING: Yes, Your Honor. I did advise my  
17 client of the community supervision requirement that will  
18 exist for 24 months prior -- after they're released from  
19 the Department of Corrections, if and when that occurs,  
20 and that there's possible penalties for violations of  
21 community supervision. It can be up to one year equal to  
22 the amount of time that they were originally sentenced.

23 THE COURT: Okay. And Mr. Kelby Blakney, do you  
24 understand those conversations with your counsel?

25 KELBY BLAKNEY: Yes, ma'am.

1 THE COURT: Okay. And Mr. Dominique Blakney, as  
2 Mr. Pauling has explained that information now, do you  
3 also understand those issues?

4 DOMINIQUE BLAKNEY: Yes, ma'am.

5 THE COURT: Okay.

6 MR. SWARAT: The only other thing I'd like to add,  
7 I've explained to him he's going to do 85 percent of  
8 whatever sentence the Court hands down, and he understands  
9 that.

10 THE COURT: Okay. You understand that, sir?

11 DOMINIQUE BLAKNEY: Yes, ma'am.

12 THE COURT: You also need to understand that the  
13 Court could run these charges concurrent, but the Court  
14 could also run these charges consecutive. Do you  
15 understand that?

16 DOMINIQUE BLAKNEY: Yes, ma'am.

17 THE COURT: So that means --

18 KELBY BLAKNEY: Yes, ma'am.

19 THE COURT: Okay. So that means for each one of  
20 these offenses, if the Court decided to run them  
21 consecutive, then you would spend the time period  
22 incarcerated on one charge, wait until that time is done,  
23 and then you'd spend the time period incarcerated for the  
24 other charge. So each sentence would start after the one  
25 prior to it.

1 Do you understand that?

2 DOMINIQUE BLAKNEY: Yes, ma'am.

3 KELBY BLAKNEY: Yes, ma'am.

4 THE COURT: And then if the Court decided to run them  
5 concurrent, then the sentences could be served at the same  
6 time.

7 DOMINIQUE BLAKNEY: Yes, ma'am.

8 KELBY BLAKNEY: Yes, ma'am.

9 THE COURT: And regardless because you are pleading  
10 guilty to each of the offenses, all of them, whether you  
11 served them concurrent or consecutive, would be on your  
12 record as serving time for the individual offenses.

13 Do you understand that?

14 DOMINIQUE BLAKNEY: Yes, ma'am.

15 KELBY BLAKNEY: Yes, ma'am.

16 THE COURT: Okay. All right. Let's hear on behalf  
17 of counsel and anyone who wishes to speak for them. Let's  
18 start first with Mr. Dominique Blakeny.

19 MR. SWARAT: Your Honor, may it please the Court.

20 Your Honor, when I was appointed to represent  
21 Mr. Blakney, having prosecuted violent crimes for as long  
22 as I did, I expected to meet somebody that was hardened  
23 and street wise.

24 When I went down to meet with him, I met a very soft  
25 spoken and polite young man who had just turned 19 years

1 old.

2 Your Honor, he's the youngest involved in this  
3 situation. I also had the opportunity to meet with his  
4 family. He has the support of a loving family and a lot  
5 of close friends that are here on his behalf. Your Honor,  
6 I handed up some letters that some of those wrote on his  
7 behalf.

8 THE COURT: And the Court did review those.

9 MR. SWARAT: There are about 15 people in the  
10 courtroom, including friends and family. His high school  
11 basketball coach, Mr. Ken Howell, would like to speak on  
12 his behalf at the appropriate time, as would his  
13 grandmother, Modestine Dubose.

14 Your Honor, I talked to him about this case, and the  
15 first thing he told me is he wanted to take responsibility  
16 for his actions. He didn't want a trial. He didn't want  
17 to challenge the evidence.

18 When he was first arrested, he immediately gave a  
19 confession. He explained the whole thing, including the  
20 prior planning that took place.

21 He lead investigators to recover a substantial amount  
22 of money. From my understanding, he and his brother,  
23 Kelby, didn't spend any of the money, so everything that  
24 they had their hands on, they turned over to law  
25 enforcement. It was a little over \$2 million.

1           Your Honor, he also gave statements about the other  
2 codefendants and laid out their involvement and has always  
3 told me that if he was called to testify on behalf of the  
4 State, he would agree to testify. He would agree to  
5 cooperate.

6           Later on down the road there are going to be trials  
7 of these other individuals. There are also two people out  
8 there on the run.

9           You can account for the missing money through those  
10 two individuals. They did make away with quite a bit of  
11 money. If they are apprehended, if some of the money is  
12 recovered, he will agree to testify against them.

13          Your Honor, his role was limited. He made the very  
14 bad mistake of listening to somebody a little bit older  
15 than he was.

16          He was Darryl Frierson's roommate at Benedict  
17 College. He was a freshman there. Again, no prior  
18 record, no prior juvenile record of any kind.

19          From everything I've seen and discussions with his  
20 friends and family, he was a jock, played in sports in  
21 high school and did very well. He was a good student and  
22 wanted to go on to a prosperous life and do well in  
23 college.

24          After some prodding for a few months from his cousin,  
25 who worked on the inside at this company, he agreed to

1 play a limited role in this offense and --

2 THE COURT: Who was his cousin?

3 MR. SWARAT: Darryl Frierson.

4 THE COURT: Okay. You said he was Frierson's  
5 roommate but was also a cousin.

6 MR. SWARAT: That's correct.

7 THE COURT: Okay.

8 MR. SWARAT: They lived together at Benedict College,  
9 Your Honor.

10 He understood his role was going to be to meet the  
11 car down the dirt road. Essentially, he was going to help  
12 unload the money, and he was going to be one of the  
13 getaway drivers. He and his brother held the same role.

14 They did not handle a gun at all. They did not wear  
15 a mask. They did not participate in the robbery. Neither  
16 one of them assaulted the guard or even met the guard that  
17 night, had no idea that he was assaulted until they heard  
18 the news reports later on that week.

19 Your Honor, the responsibility of the violence and  
20 the robbery itself go to Frierson, who was on the inside.  
21 McPhail, who I understand inflicted some injury on  
22 Mr. Jones, and also to Dominique Lyde, who is one of the  
23 individuals on the run, they inflicted the violence. They  
24 held the guns. They wore the masks, and they did the  
25 active part of the robbery.

1       Mr. Lyde, Mr. Dominique Blakney, and his brother  
2       Kelby are the ones that drove away, had the getaway car  
3       waiting and unloaded the money.

4       They understand that under the hand of one is the  
5       hand of all; that they're responsible for the actions of  
6       their codefendants, but I wanted the Court to understand  
7       their very limited role in what took place.

8       Your Honor, as I understand it, the company itself is  
9       out \$25,000. That was their insurance deductible that  
10      they had to pay.

11      Mr. Blakney has agreed to any restitution that the  
12      Court orders. He apologizes to the company for what took  
13      place.

14      It's my understanding that a division of Lloyds of  
15      London paid out on that claim. He agrees to any  
16      restitution that they're asking for with the understanding  
17      that if any of the money is recovered, that he be given  
18      credit toward that amount.

19      There are a lot of quality people that believe in  
20      him. He has a lot of good qualities. He can have a  
21      purposeful life if he gets out of jail one day.

22      He is just asking for the mercy of the Court and that  
23      one day down the road he has a little bit of light at the  
24      end of the tunnel to make something of himself. Based on  
25      my discussions with him, I believe he can.

1       Your Honor, at this time if you'd like to hear from  
2       Mr. Blakney.

3       THE COURT: And I'll -- on the restitution order for  
4       the Court, it indicates to International Security Systems,  
5       care of Andre Yadine, the amount of \$824,536.

6       MR. SWARAT: That's correct, Your Honor. That's the  
7       division of Lloyds of London --

8       THE COURT: Okay.

9       MR. SWARAT: -- that he's agreeing to reimburse.

10       THE COURT: Okay. All right. And that would be the  
11       same for Mr. Dominique Blakeny in terms of that  
12       restitution amount?

13       MR. SWARAT: That's correct, Your Honor.

14       MR. PAULING: Yes, yes.

15       THE COURT: All right. I'm happy to hear from you  
16       all.

17       DOMINIQUE BLAKNEY: First of all, I want to apologize  
18       to the State of South Carolina, the company Express  
19       Tellers, Benedict College, my family, my friends.

20       I just want to say I'm sorry, and I'm responsible for  
21       my actions. I just ask that y'all forgive me for my part  
22       in what I took in it.

23       It's hard but I just have to say the fact with my  
24       involvement and move on with my life, but when it's all  
25       said and done, I plan on going back to college and

1 finishing my three years in school. I was majoring in  
2 computer engineering. I just want to say I'm sorry to my  
3 family and everyone else.

4 MR. SWARAT: Your Honor, next I'd like to recognize  
5 his coach, Ken Howell, who who would like to speak on his  
6 behalf.

7 THE COURT: Okay, certainly.

8 COACH HOWELL: Dominique was a good guy. I never  
9 thought I'd have to do this and come here today. I've  
10 known Dominique for a long time, since he started playing  
11 ball when he was a little boy.

12 I kind of came into the position of basketball coach,  
13 and Dominique was a senior. He could have bolted real  
14 easily. He could have become a disruption to our team.  
15 He was always very respectful, did everything I asked of  
16 him.

17 At the end of the year, he received our Coach's  
18 Award. He had a lot going for him, and I just think he  
19 got caught up in a lot of things. I just ask that you  
20 have mercy on him. He does have a purpose, and he will be  
21 successful.

22 Thank you.

23 THE COURT: Thank you, sir, for your comments.

24 MR. SWARAT: Your Honor, next I'd like to recognize  
25 Ms. Dubose, his grandmother.

1 MS. DUBOSE: Please God.

2 (Pause).

3 Dominique, I am his grandmother, and these young men  
4 was raised by myself and my husband. When their parents  
5 wasn't there, we were there, and they was good young mens  
6 (sic), but they just got out and made a bad mistake.

7 They worked on various jobs. They had no problem.  
8 Dominique began to become a manager, I think at Wendys.  
9 They just got caught up, and they just -- I always tell  
10 them when you can't handle stuff, say "Jesus, Jesus".  
11 Remember, the Lord will fix it.

12 I said, "Always remember the Bible verse, I can do  
13 all things through Christ who strengthens me." They was  
14 to obey. I always told them to obey your elders, give  
15 them respect when it's due.

16 Don't get out there and get involved in no trouble,  
17 because that trouble is out there. When they walked down  
18 that aisle, I remember from school graduation, I said,  
19 "Y'all boys, y'all is getting the world. You're in the  
20 real world now. There's going to be things coming up  
21 against you, but just lean on God and refuse them."

22 They just made a bad mistake, and Your Honor, I'm  
23 asking and praying that you have mercy on both of my  
24 grandsons. I love them. I love them. I still love them.  
25 They just got caught up.

1           Thank you so much.

2           MR. SWARAT: Your Honor, this is -- this is his  
3 father, John Blakney.

4           THE COURT: Okay.

5           DEFENDANTS' FATHER: Your Honor, I never thought I  
6 would be here today for this type of situation. I raised  
7 my boys, me and my wife, my mother-in-law said "disrespect  
8 nobody".

9           Also, I want to start off by saying the remorse to  
10 the guard that got hurt. My sympathy goes out to him, and  
11 also I'm saying the same thing for my boys and my family.

12           Your Honor, I'm asking for leniency. These are kids.  
13 They didn't know what they were doing. They didn't know  
14 what they were doing. They had to work with me. They had  
15 jobs, going out doing things. That wasn't tolerated in my  
16 home, but what happened is what happened and I'm asking  
17 for leniency.

18           I know they're going to be punished, leniency. I  
19 want to see them again in the real world not behind bars.  
20 I'm not promised to live that many years, but praise God,  
21 I want to see my sons come home again.

22           I'm quite sure, Your Honor, this right here is a  
23 lesson learned. This is a lesson learned, Your Honor.

24           Thank you.

25           THE COURT: Thank you.

1 MR. SWARAT: Thank you, Your Honor.

2 THE COURT: Okay. Thank you. That will conclude the  
3 remarks at this point for Mr. Dominique Blakney.

4 Anything the State wants to say in response?

5 MR. LAKE: Nothing from the State, Your Honor.

6 THE COURT: Okay. I'll proceed along with Mr. Kelby  
7 Blakney before we deal with sentencing issues.

8 MR. PAULING: Yes, Your Honor. For the sake of  
9 expediency, I concur with all the comments made with  
10 regard to both young men.

11 I would just like to say in support of what their  
12 grandmother has said, Kelby Blakney, Your Honor, just a  
13 little background, was very involved in athletics.  
14 Obviously, one of the coaches has just come forward, but  
15 you know, he worked as a volunteer with the Darlington  
16 Recreational Department from the age of 11 until he was  
17 13.

18 He started his first job at Food Lion as a freshman  
19 in high school. He was four-year varsity quarterback at  
20 Darlington High School and started the junior and senior  
21 year, and both years the team went to the play-offs.

22 He played basketball his senior year and baseball,  
23 both a short stop and center field for two years in high  
24 school. So the boys were active in after school  
25 activities. They were active in the community.

1 Kelby has a one-year-old daughter, and the mother of  
2 his child, his fiancée, has been his girlfriend since  
3 elementary school. He's been with the same young lady  
4 since, you know, elementary school.

5 I mean, so I know that the family raised these boys  
6 with the right moral code. I agree with Mr. Swarat the  
7 first time I met Kelby, and I've been doing this not as  
8 long as Mr. Swarat, but on the defense side longer. Seven  
9 years I've been handling criminal defendants in Richland  
10 County and Lexington.

11 I also expected to meet someone hardcore who didn't  
12 have a lot of respect for authority, and that's not what I  
13 met at all. I've been in constant contact with the family  
14 since the beginning.

15 I've talked with Mr. Lake since I was first appointed  
16 on this case several months ago to try to resolve it. I  
17 understand the State's position. They can't make an offer  
18 in a case on this magnitude. I never expected them, I  
19 don't think I ever really asked them.

20 I just said, "Give me an opportunity to present a  
21 case for my client where he's accepting responsibility."  
22 I can tell the judge what kind of person he is, and he's  
23 the kind of person that doesn't step inside this courtroom  
24 very often.

25 High school graduate, a star athlete, loving parents

1 who are still together, a gallery full of people. He is  
2 not alone. He's not a drug addict. He wasn't, you know,  
3 any type of abuser growing up. I just wanted the Court to  
4 take that into account.

5 We have a minimum sentence of ten years, a maximum  
6 sentence of 75. We have got at least four or five other  
7 defendants out there, some much more culpable in the sense  
8 of their physical attacks on the guard and their actual  
9 participation in the robbery.

10 As I said earlier, Kelby was brought in, is my  
11 understanding from the discovery, after the first attempt.  
12 You know, he was someone brought in after 24 hours and  
13 said, "We need another person to drive the car." I just  
14 want the Court to take that into consideration.

15 He wasn't as far as -- what I asked him, that  
16 everything that he got from the robbery was found at the  
17 parents' house, \$2 million when the officers first went  
18 there to check the house.

19 The family cleaned the house later that day, found  
20 another \$78,000. The officers returned and grabbed the  
21 rest of it. It was just under \$2.1 million, all within  
22 the custody of these two young men. I'd ask the Court to  
23 take that into consideration.

24 I'd ask the Court, and I'm -- I know I'm begging  
25 here, but I need to for this client. I'd like the Court

1 to consider a 12-year sentence on him. I think that he is  
2 going to do 85 percent. He has got a one-year-old child  
3 that will never see him in jail before the age of 12 and  
4 give him an opportunity to get out before the age of 12.  
5 That's what I'm asking on behalf of my client, Your Honor.

6 Thank you.

7 THE COURT: With respect to Mr. Blakney, Mr. Lake,  
8 you indicated that you thought there might be some other  
9 pending charges. Have you --

10 MR. PAULING: Your Honor, in Darlington County he  
11 said that there was. I have never been contacted by  
12 anyone from Darlington.

13 I talked to the family and Mr. Blakney. I think  
14 Darlington arrested him, took him to the Sheriff's  
15 Department, and then contacted Richland. So I don't know  
16 where that warrant is. I never heard anything about that.

17 MR. LAKE: Your Honor...

18 (Pause).

19 I mean, your Honor, I was showing that he had a  
20 pending armed robbery. I'm not sure what the status of  
21 that case was. I don't know what the -- there was a  
22 warrant number listed on it, but there was no disposition  
23 on it. That came back from -- I think October 2006 was  
24 his arrest date.

25 I guess he would be the one to better explain that in

1 terms of what the status is on that particular charge, but  
2 I'm showing that he had that particular pending charge.

3 THE COURT: With an October 2006 arrest date?

4 MR. LAKE: Correct.

5 THE COURT: Okay.

6 MR. LAKE: In Darlington County.

7 MR. PAULING: Is there any bond listed? I find that  
8 hard to believe, an armed robbery with no bond.

9 THE COURT: Okay. Well, your client is under oath.  
10 Have him explain it to us.

11 MR. PAULING: Were you ever arrested in 2006 for  
12 armed robbery?

13 (Indicating in the affirmative).

14 THE COURT: You were?

15 MR. PAULING: What was the disposition of that case?

16 KELBY BLAKNEY: I was accused of robbing a store that  
17 I just left.

18 MR. PAULING: Has it been disposed of?

19 KELBY BLAKNEY: No, sir.

20 MR. PAULING: It's still pending? Who is your  
21 attorney?

22 KELBY BLAKNEY: Paul Cannarella.

23 MR. PAULING: I never had any contact with him, Your  
24 Honor.

25 THE COURT: Okay. You have not had anything proceed

1 at all with that case?

2 KELBY BLAKNEY: No, ma'am.

3 THE COURT: Okay. In General Sessions, we'll have  
4 generally first appearances or second appearances or  
5 status conferences on our cases. Were you ever asked to  
6 go to a preliminary hearing, a first appearance, or a  
7 second appearance?

8 KELBY BLAKNEY: No, ma'am.

9 THE COURT: You're trying to tell me that you were  
10 just arrested, and then that was it?

11 KELBY BLAKNEY: Yes, ma'am.

12 THE COURT: Did you bond -- get a bond posted for you  
13 or have a bond set for you?

14 MR. PAULING: Yes, ma'am.

15 THE COURT: And what was the amount of that bond?

16 (There was no response).

17 If the parents have any information, I've like to  
18 hear it.

19 DEFENDANTS' FATHER: I think it was 10,000, ma'am.  
20 I'm not sure.

21 THE COURT: Okay. And do you know if he had to go  
22 back to court to deal --

23 DEFENDANTS' FATHER: No, ma'am.

24 THE COURT: -- with that at all?

25 DEFENDANTS' FATHER: No, ma'am.

1 THE COURT: Okay. So it is just still pending as a  
2 charge in Darlington County?

3 DEFENDANTS' FATHER: Yes, ma'am.

4 MS. DUBOSE: Yes, ma'am.

5 THE COURT: Okay. Understanding, again, as we are  
6 here, Mr. Kelby Blakney, accepting your plea, whatever the  
7 Court does here has nothing to do with what's going on in  
8 Darlington County.

9 Do you understand that?

10 KELBY BLAKNEY: Yes, ma'am.

11 THE COURT: You would still have to answer to those  
12 charges in Darlington County.

13 KELBY BLAKNEY: Yes, ma'am.

14 THE COURT: And you could -- depending on whether you  
15 were going to plead or go to trial, you would still have  
16 to deal with that.

17 That particular judge at that particular time can  
18 either decide to incorporate any time that the Court  
19 sentences you here or decide not to even give any  
20 consideration to what has happened here.

21 Do you understand that?

22 KELBY BLAKNEY: Yes, ma'am.

23 THE COURT: And I say that to say just from a  
24 strategic standpoint, I don't know if he should know a  
25 little bit more about what the status of that issue is

1 going to be as he's facing this major sentence issue here  
2 in terms of a minimum mandatory sentence, at least on the  
3 armed robbery.

4 MR. PAULING: Well, and also for the life without  
5 parole situation that will come up if he goes to trial and  
6 is convicted.

7 THE COURT: Absolutely.

8 Do you understand that?

9 KELBY BLAKNEY: Yes, ma'am.

10 THE COURT: Do you remember when we talked a little  
11 while ago about some of the consequences of your plea?

12 KELBY BLAKNEY: Yes, ma'am.

13 THE COURT: And those consequences being that because  
14 you have got an armed robbery, as well as a kidnapping,  
15 those are most serious offenses, and I'm not saying most  
16 serious as an adjective. That's our designation to  
17 indicate that those are strikes against you and then if  
18 you are convicted on the armed robbery trial by plea or  
19 trial in Darlington County on that particular charge, that  
20 would be another strike of most serious, and you'll be  
21 facing life without parole.

22 Do you understand that?

23 KELBY BLAKNEY: Yes, ma'am.

24 THE COURT: Okay. And Mr. Pauling, since the Court  
25 is bringing up that issue with respect to this plea

1 because it came up through the State with just some  
2 information that they've had and also through their  
3 investigator, it doesn't appear to me, at least, that you  
4 all have had enough time to discuss that matter, and  
5 before the Court proceeds on sentencing, particularly with  
6 this gentleman, I would like you all to step aside and  
7 speak to him, at least for his benefit, so he really  
8 understands --

9 MR. PAULING: Yes, Your Honor.

10 THE COURT: -- what the Court has said.

11 MR. PAULING: Absolutely. Thank you.

12 THE COURT: Okay. If you all will step aside for a  
13 moment.

14 (Kelby Blakney and Hans Pauling stand aside).

15 Okay. Is there anything else with respect to  
16 Mr. Dominique Blakney?

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

18 THE COURT: Okay. Let the Court just take about a  
19 ten-minute recess or so --

20 MR. LAKE: Yes, ma'am.

21 THE COURT: -- so I can deal with both of them  
22 together once I know --

23 MR. LAKE: Yes, ma'am.

24 THE COURT: -- what their pleasure is.

25 MR. SWARAT: Thank you, Your Honor.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: Mr. Pauling, before we took a brief  
3 break, the Court was asking and inquiring about Mr. Kelby  
4 Blakney's armed robbery charge in Darlington County.

5 MR. PAULING: Yes, Your Honor. My understanding is  
6 at this time the Darlington County Solicitor's Office has  
7 not appointed a solicitor to the case.

8 The case -- he was arrested October of 2006, but  
9 chronologically since that robbery took place before this  
10 one, even if he receives -- while he will receive a strike  
11 today, it should not have a collateral repurcussion as far  
12 as an L.W.O.P. with the 2006 case.

13 THE COURT: Okay.

14 MR. PAULING: Whether or not they do a consecutive or  
15 concurrent sentence, it's up to that solicitor and his  
16 attorney in Darlington, Your Honor.

17 THE COURT: All right.

18 MR. PAULING: Thank you.

19 THE COURT: All right. Does anyone have anything  
20 else to state on behalf of anybody?

21 MR. SWARAT: Nothing else from us.

22 MR. LAKE: Nothing else from the State, Your Honor.

23 THE COURT: Okay. And I would like -- for the  
24 Court's record, you can have the various documents, they  
25 can be placed into the Court file, but the Court did

1 review the letters, as well.

2 MR. PAULING: Thank you, Your Honor.

3 THE COURT: And because of the number of indictments,  
4 I wanted to go ahead and take the time to fill out the  
5 sentencing sheets, as well.

6 All right. With respect to the Court issuing the  
7 sentencing, and I have reviewed the matter from all  
8 perspectives.

9 I do want to indicate that because at a minimum, all  
10 parties are aware that there will be at least a ten-year  
11 sentence, everyone needs to refrain from any outbursts.

12 I know it's a very emotional time with respect to all  
13 parties involved in terms of the injuries, whether they be  
14 personal injury or property injuries, as well, but I need  
15 you all to refrain from doing so.

16 The Court is now ready to handle sentence. I will  
17 start with Mr. Dominique Blakeny and will indicate up  
18 front that the sentences will run concurrent, but they  
19 will apply equally to both persons so --

20 MR. PAULING: Yes, Your Honor.

21 THE COURT: -- as I call out the various charges,  
22 then that's how you'll know they're indicated.

23 Before even reading out the sentences, they have both  
24 agreed that they will owe as restitution to International  
25 Security Services, care of Andrea Yadine, \$824,536.

1 All right. As to Dominique Devon Blakeny and  
2 Mr. Kelby Dontrae Blakeny, for the crime of criminal  
3 conspiracy, five years. For the crime of assault and  
4 battery of a high and aggravated nature, ten years. For  
5 the crime of armed robbery, 25 years, and for the crime of  
6 kidnapping 25 years, as well. That's the Court's  
7 sentence.

8 MR. SWARAT: Thank you, Your Honor.

9 MR. LAKE: Thank you.

10 (Whereupon, the proceedings were concluded.)  
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA       )  
                                          )  
COUNTY OF RICHLAND            )

I, Karen Tracy, Official Court Reporter for the 5th  
Judicial Circuit of the State of South Carolina, do hereby  
certify that the foregoing is a true, accurate and  
complete Transcript of Record of the proceedings had and  
evidence introduced in the trial of the captioned case,  
relative to appeal, in the Court of General Sessions for  
Richland County, South Carolina, on the 10th day of  
January, 2008.

May 10th, 2008

Karen Tracy

Karen Tracy, Court Reporter

My Commission Expires: 04/01/14

|                         |   |                           |
|-------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA | ) |                           |
|                         | ) | COURT OF GENERAL SESSIONS |
| COUNTY OF RICHLAND      | ) | 07-GS-40-4365             |
|                         |   | 07-GS-40-4368             |
|                         |   | 08-GS-40-1180             |
|                         |   | 07-GS-40-4358             |
|                         |   | 07-GS-40-4359             |
|                         |   | 07-GS-40-4362             |
|                         |   | 07-GS-40-4364             |
|                         |   | 07-GS-40-4429             |
| THE STATE               |   |                           |
| vs.                     | ) | TRANSCRIPT OF RECORD      |
|                         | ) |                           |
| DOMONIQUE BLAKENEY,     | ) |                           |
| DOMINIC LYDE,           |   |                           |
| JEREMY MCPHAIL,         |   |                           |
| AND DARRYL FRIERSON     |   |                           |

August 24, 2009  
Columbia, South Carolina

B E F O R E:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

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

DANIEL R. GOLDBERG, ASSISTANT SOLICITOR  
Attorney for the State

CHARLIE JOHNSON, ESQ.  
Attorney for Defendant Blakeney

PRISCILLA NAY  
Official Court Reporter

1           THE COURT: Before we proceed with the sentencing, at  
2           the last hearing, I do recall Investigator Eisenhower had  
3           asked about the fourth picture of the evidence. There has  
4           been no formal motion filed at this time but had the  
5           parties even discussed that issue with each other?

6           THE SOLICITOR: No, Your Honor.

7           THE COURT: Given that right now, I suggest you go  
8           forward with the forfeiture proceedings as with the  
9           sentencing of the defendants. As you all know, we've got  
10          a serious matter here and I'm going to ask everybody  
11          remain seated until the appropriate time of the sentence.  
12          If you have been to these proceedings, you are obviously  
13          aware there are very diverse views as to how I should  
14          sentence the defendants in this matter. The only thing  
15          that's going to satisfy this happening -- but if that's  
16          the case and if you are not able to contain yourself, I  
17          ask you leave now.

18          The deputies have been instructed that to the extent  
19          there are any outbursts in the courtroom that they are to  
20          immediately remove you from these proceedings as if  
21          necessary they have the court's authority to take anyone  
22          into custody for which you might be held in contempt and  
23          either jailed or fined. I just need you to understand  
24          that we have to observe courtroom decorum and for purposes  
25          of security measures as well.

1        Now, I have reviewed all of the evidence in this case  
2        that was presented by the Solicitor's office at the last  
3        hearing as well as various documents by the counsel,  
4        listened to your oral as well as reviewed your written  
5        statements and various other documents in the case and I  
6        am now ready to focus on the sentencing but first I want  
7        to make a few remarks. I find this is a very serious and  
8        significant crime and I find no justifiable executions or  
9        explanations.

10       The defendants engaged in a well-thought-out plan  
11       that was conceived well before the date of the incident.  
12       Some of the defendants tried and attempted to commit this  
13       crime the week before had an opportunity to reflect when  
14       it didn't go well and then later on unfortunately were  
15       successful. The defendants' families and their attorneys  
16       have asked me to be lenient and to focus on the character  
17       of these defendants and the lack of our no significant  
18       prior record but I have to balance that with the depravity  
19       of the issues in this case and their conduct both  
20       individually and collectively and any sincere cooperation  
21       with law enforcement's efforts to resolve the case among  
22       other things.

23       I have considered the various roles in this case and  
24       have ultimately concluded that this is a classic case of  
25       why our state has the law of what we call the hand of one

1 is the hand of all. This case particularly fits that law  
2 because each defendant had a succinct role that they had  
3 to carry out their responsibilities, be aware of the  
4 other's roles and let the plan go forward, including  
5 specifically, and at a minimum, having knowledge that for  
6 something of this magnitude to be able to be carried off  
7 there either had to be an inside person or someone would  
8 have to be brutally beaten or killed for this plan to be  
9 successful.

10 After the incident, law enforcement expended  
11 substantial resources to investigate this matter and bring  
12 it to conclusion during which time many of the defendants  
13 denied their involvement initially so now we're at the  
14 point of sentencing and the defendants being punished for  
15 their bad choices. The unanticipated and even unintended  
16 consequences of the crime which at a minimum were the  
17 armed robbery and kidnapping of an innocent and  
18 hard-working citizens who suffered and continue to suffer  
19 severe physical and mental injuries and for which the  
20 defendants, particularly Darryl Friarson, showed no mercy  
21 at the time of the incident, placing millions of  
22 unaccounted for dollars in the community among friends,  
23 relatives, and strangers and the damaging effects on  
24 Express Teller Services as well as his employees.

25 Defendants Friarson's actions are particularly

7

1 breaking the case. I am going to need Mr. Goldberg to  
2 assist me with the time for credit served with these  
3 individuals. Do you have this information available?

4 THE DEFENDANT: Your Honor, I don't have the exact  
5 information in front of me but I request gather it pretty  
6 easily.

7 THE COURT: I'll go ahead and deal with the  
8 sentencings.

9 THE DEFENDANT: I know he served 18 months prior to  
10 being released on bond.

11 THE COURT: We have an exact date? That's what the  
12 Department of Corrections would require I will find that  
13 out but you are hereby sentenced to the offense of  
14 criminal conspiracy to three years. All right.  
15 Mr. Domonique Lyde, your sentences will run concurrent.  
16 You're sentenced to the offense of criminal conspiracy for  
17 five years, assault and battery of a high and aggravated  
18 nature for ten years, and your armed robbery and  
19 kidnapping, 28 years.

20 Mr. Jeremy McFail, your sentences shall also run  
21 concurrent. Criminal conspiracy, five years, assault and  
22 battery of a high and aggravated nature, ten years and,  
23 your armed robbery and kidnapping, 25 years.

24 I have also considered on the motion for  
25 reconsideration the offenses of Mr. Kelvey Blakeney and

1 Mr. Domonique Blakeney. There were issues with respect to  
2 one of these individuals having a prior record. The Court  
3 would note that there was an inquiry made into the arrest  
4 because at all sentencing hearings I have to know what the  
5 prior record is, whether it's an arrest or a conviction  
6 for my consideration. The consideration was not given to  
7 the fact that one of these individuals may have committed  
8 an armed robbery as would be noted because one of them did  
9 not have a prior record and I sentenced them to the same.  
10 In that respect, a motion for reconsideration is  
11 respectfully denied. The sentence will remain at 25  
12 years.

13 And then lastly, Mr. Darryl Friarson. For the  
14 offense of criminal conspiracy, Mr. Darryl Friarson, you  
15 are sentenced to five years consecutive to that I will  
16 sentence you to assault and battery of a high and  
17 aggravated nature ten years and your armed robbery and  
18 kidnapping 30 years. These particular sentences of the  
19 assault and battery of a high and aggravated nature, your  
20 armed robbery and kidnapping will run concurrent with each  
21 other but consecutive to your criminal conspiracy. Are  
22 there any other issues from this court?

23 THE SOLICITOR: Nothing from the State, your Honor.

24 THE COURT: From the defense?

25 MR. JOHNSON: No, Your Honor.

9

1 THE COURT: Proceedings are concluded.  
2 (END OF REQUESTED TRANSCRIPT OF RECORD.)  
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## 1 CERTIFICATE OF REPORTER

2

3

4 STATE OF SOUTH CAROLINA )

5 COUNTY OF RICHLAND )

6

7

8 I, Priscilla Nay, Official Court Reporter for the  
9 Eleventh Judicial Circuit of the State of South Carolina,  
10 do hereby certify that the foregoing is a true, accurate  
11 and complete Transcript of Record of the proceedings had  
12 and evidence introduced in the trial of the captioned  
13 case, relative to appeal, in the Court of General Sessions  
14 for Richland County, South Carolina, on the 24th day of  
15 August, 2009.

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

18

19

January 24, 2010

20

21

22

23

---

Priscilla Nay, Court Reporter

24

25

FORM 5

73  
5MBP  
2011CP4005701

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Domenique Blakney 324081

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND  
FILED  
2011 AUG 29 AM 11:21  
JEANETTE MCBRIDE  
CLERK

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Richland County Court House
3. Name(s) of co-defendant(s) (if any) Kelby Blakney, Jeremu McPhail, Dominic Lyde, Darryl Frickson, Paul Whitaker
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Armed Robbery J 557203 ABHAN J. 5-5-7-19-7
  - (b) Kidnapping J 557198
  - (c) Criminal Conspiracy J 557201
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) January 10, 2008 25 years
  - (b) \_\_\_\_\_

Revised 3/2003

20113210

Prior PCR  
 Case# 2009467 = open

Prior CA  
 Case# 20094263  
 Box# 13-S

## ATTORNEY GENERAL'S OFFICE

RECEIVED

9/11/11

## ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END  
 HAVE COPIES MADE  
 ROUTE TO  
 ORDER TRANSCRIPT  
 PEN RECORDS CLERK RECORDS  
 OTHER

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes \_\_\_\_\_
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Submitted June 1, 2011 - Filed June 21, 2011 \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2011-UP-317 \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See amendment
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (c) the disposition thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- no
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) First post-conviction relief application
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. August G. Siwarat II
- ii. 601 Devine Street Columbia, S.C. 29201
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. arraignment
- ii. plea
- iii. reconsideration
19. State clearly the relief you seek in filing this application: trial  
Conviction reverse and new [redacted] granted
20. Are you now under sentence from any other court that you have not challenged?  
no

STATE OF SOUTH CAROLINA )

County of Richland )

## VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Dominique Blasquez

SWORN to and subscribed before me this 25th  
day of August, 2011.

Sylvia Jones (L.S.)  
Notary Public

My Commission Expires: 1/24/2018

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Dominique Blainey  
Applicant

SWORN or affirmed to and subscribed before me this

25th day of August, 2011

Sylvia Jones  
Notary Public

My Commission Expires:

1/24/2018

RICHLAND COUNTY  
FILED  
2011 AUG 29 AM 11:21  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

|                              |   |                                   |
|------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS      |
|                              | ) |                                   |
| COUNTY OF RICHLAND           | ) | C/A No.: 2011-CP-40-5707          |
|                              | ) |                                   |
|                              | ) |                                   |
| Domonique Blakney, # 326081, | ) |                                   |
|                              | ) |                                   |
| Applicant,                   | ) | <b>SUPPLEMENTAL APPLICATION</b>   |
|                              | ) | <b>FOR POST-CONVICTION RELIEF</b> |
| vs.                          | ) |                                   |
|                              | ) |                                   |
| The State of South Carolina, | ) |                                   |
|                              | ) |                                   |
| Respondent.                  | ) |                                   |
|                              | ) |                                   |

2012 FEB 29 PM 12:29  
 ANETTE W. MORRIS  
 C.C.P. & G.S.

Applicant, pursuant to S.C. Code §17-27-10 *et seq.*, would respectfully show:

STATEMENT OF FACTS

1. That Applicant is currently incarcerated at the Lieber Correctional Institution in the County of Dorchester, State of South Carolina, and is an indigent applicant.
2. That Applicant was indicted for the following offenses:
  - a. Indictment # 2007-GS-40-4365 for armed robbery;
  - b. Indictment # 2007-GS-40-4366 for criminal conspiracy;
  - c. Indictment # 2007-GS-40-4367 for assault and battery of a high and aggravated nature; and
  - d. Indictment # 2007-GS-40-4368 for kidnapping.
3. That Applicant was appointed a public defender for Applicant's defense.
4. That Applicant was represented by August Swarat, Esq., with the Richland County Public Defender's Office.
5. That Applicant was sentenced after a plea of guilty, that was without negotiations or recommendations, and a judgment was entered against Applicant of twenty-five years for the offense of armed robbery, five years concurrent for the offense of criminal conspiracy, ten years concurrent for assault and battery of a high and aggravated nature, and twenty-five years

concurrent for kidnapping, on or about January 10, 2008, in the Court of General Sessions, Fifth Judicial Circuit.

6. That Court of Appeals dismissed Applicant's appeal on June 21, 2011.
7. That Applicant timely filed a first application for post-conviction relief on August 29, 2011.
8. That Applicant has not filed any prior petition with any Court, State or Federal, under South Carolina law, for habeas corpus or conviction relief, for writ of certiorari, or any other petitions.
9. That Applicant has not set forth any ground for relief to this or any other Court, State or Federal, in any motion, petition, or application, other than the initial application for post conviction relief for this action pending in the Court of Common Pleas.
10. That Applicant incorporates by reference his first application, files this first supplemental application, and seeks post-conviction relief for the reasons set forth herein.

#### GROUND FOR RELIEF

11. Paragraphs 1 through 10 of this Application are incorporated herein by reference.
12. That public defender's performance as counsel for Applicant was deficient under the United States Constitution and the South Carolina Constitution in the following particulars:
  - a. That public defender failed to convey to Applicant one or more plea offers prior to the entering of the guilty plea;
  - b. That public defender failed to engage in any discovery before the entering of the guilty plea;
  - c. That public defender failed to adequately investigate the case, and, as a consequence, failed to develop and present all available, relevant,

impeachable, and mitigating evidence that would have challenged the case-in-chief of the prosecution;

- d. That public defender failed to enter into any negotiations on behalf of the Applicant prior to the entering of the guilty plea;
- e. That public defender withheld information from the Applicant that would have given the Applicant an informed decision prior to the entering of the guilty plea;
- f. That public defender allowed his client, the Applicant, to make an uninformed plea without negotiations or recommendations; and
- g. Any other particulars that may be demonstrated at trial.

13. That public defender's performance as counsel for the Applicant, as stated herein, was so deficient that the Applicant was prejudiced such that there is a reasonable probability that, but for public defender's professional errors, the result of the criminal conviction and/or appeal would have been different.

14. That public defender's conduct so undermined the proper functioning of the adversarial process that the guilty plea cannot be relied upon as having produced a just result.

#### RELIEF DESIRED

15. That the Court enter judgment granting Applicant's application for post-conviction relief, and remanding the criminal case for a new trial.

(VERIFICATION AND SIGNATURE OF COUNSEL PAGE TO FOLLOW.)

STATE OF SOUTH CAROLINA    )  
                                                   )  
 COUNTY OF RICHLAND         )       VERIFICATION

I, Domonique Blakney, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Domonique Blakney  
 Domonique Blakney, Applicant

February 23, 2012

Sworn to and subscribed before me on Feb 23, 2012.

Ludham Bryant  
 Notary Public for South Carolina

My commission expires Feb 23, 2012 <sup>28</sup>  
May 26, 2020

Respectfully submitted,

Rowland P. Alston III

Rowland P. Alston III  
 The Law Office of Rowland P. Alston III, LLC  
 1314 Lincoln Street  
 Suite 214  
 Columbia, South Carolina 29201  
 (803) 708-0460  
 Attorney for the Indigent Applicant

February 29, 2012

(APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS PAGE TO FOLLOW.)

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Domonique Blakney, hereby continue to apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my supplemental application, I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Domonique Blakney  
Domonique Blakney, Applicant

February, 23, 2012

Sworn to and subscribed before me on Feb 23, 2012.

Ludham Bryant  
Notary Public for South Carolina

My commission expires Feb 23, 2012 <sup>LB</sup>  
May 26, 2020

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Domonique Blakney, #326081, )

Plaintiff, )

vs. )

The State of South Carolina, )

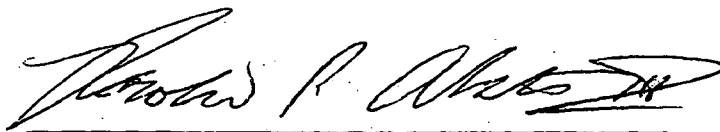
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
C/A No.: 2011-CP-40-5707

## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served the SUPPLEMENTAL APPLICATION FOR POST CONVICTION RELIEF in the above-captioned case, by causing a copy of the same to be hand delivered or personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to attorney(s) of record as indicated below:

Brian T. Petrano, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549



Rowland P. Alston III

February 29, 2012

2012 FEB 29  
JEANETTE W. HARRIS  
C.C.P. & G.

|                          |   |                                |
|--------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS   |
| COUNTY OF RICHLAND       | ) | FOR THE FIFTH JUDICIAL CIRCUIT |
|                          | ) |                                |
| BLAKNEY Domonique -      | ) | 2011CP4005707                  |
| # 00326081,              | ) |                                |
|                          | ) |                                |
| Applicant,               | ) |                                |
|                          | ) |                                |
| v.                       | ) | RETURN                         |
|                          | ) |                                |
| State of South Carolina, | ) |                                |
|                          | ) |                                |
| Respondent.              | ) |                                |
| _____                    | ) |                                |

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 29, 2011, would respectfully show this Court:<sup>1</sup>

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Tav Swarat, Esquire. On January 10, 2008, following a guilty plea, the Applicant was sentenced by The Honorable J. Michelle Childs. The Applicant had been indicted and/or convicted of the following: Armed Robbery, Criminal Conspiracy, C/L, ABHAN, and Kidnapping - (2007-GS-40-4365;66;67;68).<sup>2</sup>

<sup>1</sup>

<http://www4.rcgov.us/publicindex/PCaseDetails.aspx?County=40+&Casenum=2011CP4005707&CourtType=G&CaseType=Civil&CourtAgency=40002>

<sup>2</sup> <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00326081>

## II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.<sup>3</sup> The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

**Direct Appeal**

The Applicant appealed his conviction and/or sentence. The appeal was unsuccessful and the Remittitur was dated sent July 8, 2011.

This application for post conviction relief (PCR) was timely filed on August 29, 2011.

## III.

In his application for post-conviction relief, Applicant fails to set forth any allegations which would entitle him to relief, setting forth only the following:

State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See amendment
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

<sup>3</sup> The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

No such amendment has been received by Respondent to date. In the event Applicant fails to set forth specific grounds upon which he alleges he is entitled to relief prior to the convening of an evidentiary hearing, Respondent will move to summarily dismiss the application as no genuine issue of material fact has been set forth in this action.

#### IV.

For the purposes of this Return, the Respondent will interpret Applicant's filing of the application as an allegation of each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The

courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by

the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

## VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Rowland Alston, III, Esquire regarding when the hearing should be set.<sup>4</sup>

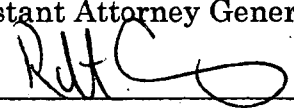
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney  
General

ROBERT D. CORNEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737  
[rcorney@scag.gov](mailto:rcorney@scag.gov)

February 1, 2012

---

<sup>4</sup> The current PCR Roster for the 5<sup>th</sup> Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT  
)

BLAKNEY Domonique -  
# 00326081,

) 2011CP4005707  
)  
)

) Applicant,  
)

) v.  
)

) **CERTIFICATE OF SERVICE**  
)

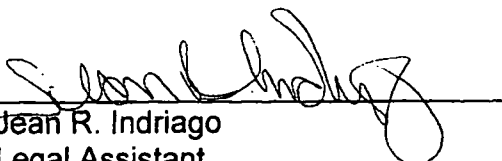
State of South Carolina,  
)

) Respondent.  
)  
)

- 
1. I am an employee of the Respondent in the above-captioned action.
  2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
  3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

**Rowland Alston, III, P O Box 12009 , Columbia, SC 29211**

DATED February 2, 2012.

  
\_\_\_\_\_  
Jean R. Indriago  
Legal Assistant

State of South Carolina )  
 )  
 County of Richland )

In the Court of Common Pleas  
 Fifth Judicial Circuit  
 2011-CP-40-5707

Domonique D. Blakney, )

Applicant, )

vs. )

Transcript of Record

State of South Carolina, )

Respondent. )

October 18, 2012  
 Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

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

Rowland P. Alston, III, Esquire  
 Attorney for the Applicant

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 Attorney for the Respondent

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 Circuit Court Reporter

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1 THE COURT: Yes, sir.

2 MR. CORNEY: Thank you. Please the court, Your Honor?  
3 State would call the post-conviction relief action of  
4 Domonique Blakley -- Blakney, excuse me, docket  
5 2011-CP-40-5707. Mr. Blakney was true-bill indicted at the  
6 September 2007 term of the Richland County Grand Jury for  
7 armed robbery, criminal conspiracy, assault and battery of  
8 a high and the nature, and kidnapping. He pled guilty  
9 January 10, 2008, before Judge Childs to the charges as  
10 indicted. He was thereafter sentenced to twenty-five  
11 years' imprisonment for the armed robbery, twenty-five  
12 years for the kidnapping, ten years for the assault and  
13 battery of a high and aggravated nature, and five years for  
14 the criminal conspiracy charge, all to run concurrently.

15 A motion for reconsideration was filed, and that was  
16 denied August 24, 2009, by Judge Childs. And I believe  
17 that was the second transcript that's included in your  
18 packet. There's a couple of transcripts that I have handed  
19 up to make part of the record.

20 A notice of appeal was filed, and an Anders brief was  
21 submitted on applicant's behalf by Mr. Robert Pachak of the  
22 South Carolina Office of Appellate Defense. The appeal was  
23 dismissed June 21, 2011, and the remitter was issued July  
24 8, 2011, giving jurisdiction back to the circuit court.

25 The applicant had filed a previous PCR application,

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1 Your Honor, January 16, 2009; it was dismissed without  
2 prejudice. At that time the appeal was still pending, so  
3 that prior action in 2009 was dismissed without prejudice.  
4 The current application was filed August 29, 2011, and  
5 amended February 9, 2012. He is represented today by Mr.  
6 Rowland Alston on the action.

7 THE COURT: All right, Mr. Alston.

8 MR. ALSTON: Thank you, Your Honor. May it please the  
9 court?

10 THE COURT: Sir.

11 MR. ALSTON: If the court does not need any further  
12 information from me as to the charges, I'll call my first  
13 witness.

14 THE COURT: All right.

15 MR. ALSTON: I call Mr. Tav Swarat to the stand, Your  
16 Honor, Your Honor.

17 AUGUST GUSTAV SWARAT, II, BEING  
18 DULY SWORN, TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: Please have a seat. State your full  
20 name for the record, and please spell your last.

21 WITNESS: My full name is August Gustav Swarat, II. I  
22 commonly go by Tav. My last name is spelled S-w-a-r-a-t.

23 DIRECT EXAMINATION BY MR. ALSTON:

24 Q. Good morning, Mr. Swarat.

25 A. Good morning.

A. SWARAT - DIRECT EXAMINATION BY MR. ALSTON

5

1 Q. Mr. Swarat, were you the attorney for my client, Mr.  
2 Domonique Blakney, at his guilty plea for the charges that  
3 Mr. Corney just recited for the record?

4 A. I was. Yes, sir.

5 Q. And when were you appointed?

6 A. Shortly after his arrest. I don't remember the date,  
7 Mr. Rowland.

8 Q. Okay. Do you know the length of time between when you  
9 were appointed and when he pled?

10 A. It was approximately eight or nine months, somewhere  
11 in that range.

12 Q. Okay. What is your understanding of the, of the crime  
13 that Mr. Blakney was charged with in terms of the facts?

14 A. Mr. Blakney and several of his co-defendants,  
15 including some family members -- I believe a cousin who was  
16 his roommate at Benedict College, and his brother -- robbed  
17 a armored car. It was planned out over approximately two  
18 or three weeks of time.

19 Mr. Blakney's role was fairly minimal, but the crime  
20 itself was pretty substantial. Garnered a lot of publicity  
21 in the area. The truck had approximately \$19 million in  
22 cash in it, and he and his co-defendants made off with  
23 approximately \$9 million, and the driver of that truck was  
24 substantially injured during the assault and armed robbery.

25 Q. Did you meet with Mr. Blakney before the plea?

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1 A. Many times, yes, sir.

2 Q. You said many times?

3 A. Yes.

4 Q. Can you tell me approximately how many times you met  
5 with him?

6 A. It was probably four or five, and also I had many  
7 conversations with his family members, including his  
8 father. His father and I talked almost on a daily basis  
9 between the time I was appointed to represent him and the  
10 time of his guilty plea.

11 Q. Okay. Did you give him your opinion as to the  
12 evidence?

13 A. I did.

14 Q. Okay. Did you show him any of the evidence?

15 A. I did. Mr. Blakney was arrested shortly after this  
16 occurred. Once they figured out it was an inside job, one  
17 of the people that was involved in the conspiracy to rob  
18 the armored car truck was an employee of the business that  
19 was robbed, once they figured out it was an inside job, Mr.  
20 Blakney and his cousin, whose last name I believe is  
21 Frierson, were arrested.

22 Mr. Blakney was interviewed by the detectives that  
23 were in charge of this case, and he gave a confession, both  
24 an oral confession and a written confession. He showed  
25 them photographs from his cell phone that showed a lot of

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1 the money that had been stolen from the armored car truck.  
2 He also led them to, I believe, his parent's house where  
3 approximately \$2 million in cash was recovered and given  
4 back to the authorities. So, he, he cooperated fully from  
5 the time he was arrested.

6 Q. Okay. Did you ever communicate with Mr. Blakney in  
7 regard to any sentencing recommendations or negotiations?

8 A. I made several attempts through the deputy solicitor  
9 who had the case to try to get a recommendation from the  
10 state for a negotiation from the state. They were not  
11 willing to do so, I believe in large part because of the  
12 publicity surrounding the case.

13 They agreed not to make a specific recommendation as  
14 to Mr. Blakney at his guilt -- guilty plea, but they were  
15 not willing to drop any of the charges against him or  
16 negotiate a specific sentence for Mr. Blakney.

17 Q. Okay. Do you have any record of any attempts you made  
18 to get a negotiated sentence for Mr. Blakney like a letter  
19 to the solicitor or anything like that?

20 A. I went and met with the solicitor on a number of  
21 occasions. I also met with the court and the solicitor  
22 prior to Mr. Blakney's guilty plea. All these were oral  
23 conversations, and nothing was reduced to writing.

24 Q. Okay. So, no dropping of the charges by the  
25 solicitor, and no recommendations or negotiations from the

A. SWARAT - DIRECT EXAMINATION BY MR. ALSTON

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1 state?

2 A. Right. They were not willing to negotiate at all with  
3 Mr. Blakney; however, they were willing not to recommend a  
4 specific sentence.

5 Q. So, did he walk into court with an open plea?

6 A. Essentially.

7 Q. Okay.

8 A. And I'll, and I'll explain that. He, he was given two  
9 options by the state: either enter a plea to all the  
10 charges in front of Judge Childs, who Mr. Blakney and I  
11 talked about at length and who Mr. Blakney apparently  
12 talked with other people at the jail about at length; or  
13 they were going to call the case for trial in front of a,  
14 quote unquote, hanging judge, the toughest judge they could  
15 find if it went to trial. And then he could take his  
16 chances at trial.

17 THE COURT: Could you repeat that again?

18 MR. BLAKNEY: Hanging judge.

19 THE COURT: I didn't hear what you just said.

20 WITNESS: Okay, which, which part, Your Honor? I  
21 apologize.

22 THE COURT: If he didn't plead guilty.

23 WITNESS: If he didn't plead guilty, they were going  
24 to try it in front of a judge known to be a very harsh  
25 sentencer, and he could take his chances in front of that

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1 judge.

2 THE COURT: And who told you that?

3 WITNESS: The prosecutor.

4 BY MR. ALSTON:

5 Q. Now, you said their words were hanging judge?

6 A. Or, or a tough sentencer.

7 Q. Okay.

8 A. Somebody that would give him -- more likely give him a  
9 more significant sentence than Judge Childs would, and of  
10 course I relayed that to my client.

11 Q. Okay. What advice did you give Mr. Blakney?

12 A. I left it up to Mr. Blakney as to what he wanted to  
13 do. When I first met with Mr. Blakney, he said he wanted  
14 to take responsibility for his actions. He had  
15 demonstrated that prior to my appointment by cooperating  
16 with law enforcement extensively.

17 The one thing I was able to negotiate for him, and it  
18 was a contingent negotiation, I believe, was that he was  
19 willing to cooperate fully against anybody that went to  
20 trial, and that was put on the record during the guilty  
21 plea.

22 There were several individuals that were still on the  
23 run at the time of Mr. Blakney's guilty plea, and there was  
24 a substantial amount of money still outstanding, millions  
25 of dollars. Mr. Blakney said he agreed to cooperate later

A. SWARAT - DIRECT EXAMINATION BY MR. ALSTON

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1 on if need be. He would also help assist in the recovery  
2 of any money, either through his family or through  
3 information, or whatever he could provide.

4 Q. Okay, but you did explain to Mr. Blakney the choices  
5 he had?

6 A. Yes, sir. It was either enter a guilty plea or go to  
7 trial.

8 Q. Okay.

9 A. He didn't have any other choice.

10 Q. And did you explain to him the consequences, potential  
11 consequences of either option?

12 A. Absolutely.

13 Q. Did any other individuals charged with this heist  
14 obtain a negotiated sentence?

15 A. I believe there was one individual that had a very,  
16 very minimal involvement. I, I think somebody that was at  
17 the business, the security business received a negotiated  
18 sentence.

19 Q. Okay. How about -- it's my understanding that during  
20 this heist, there were two assailants. Is that your  
21 understanding?

22 A. It was either two or three. I don't recall.

23 Q. Okay, and do you recall any other person receiving a  
24 negotiated sentence?

25 MR. CORNEY: Your Honor, I'm going to object to that

A. SWARAT - DIRECT EXAMINATION BY MR. ALSTON

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1 question. I don't see how that's relevant whatsoever. I  
2 mean, his-- he's already testified to his, his version of  
3 negotiations with the state. What other defendants got for  
4 their roles don't play any part in this action. So, I'm  
5 just going to object on relevancy.

6 THE COURT: All right, Mr. Alston.

7 MR. ALSTON: Well, I disagree. I mean, if -- Your  
8 Honor, it's my understanding that the people who committed  
9 the actual assault did receive negotiated sentences, and I  
10 think that's relevant when my client's PCRing from an open  
11 plea on all these charges before Judge Childs.

12 THE COURT: I'll overrule the objection.

13 BY MR. ALSTON:

14 A. Mr. Rowland, I don't recall anybody that was involved  
15 in the actual assault and robbery receiving a negotiated  
16 sentence. I just know that they were not willing to  
17 negotiate a sentence with Mr. Blakney.

18 Q. Did Mr. Blakney take part directly in any violent act  
19 during this heist?

20 A. He did not, no, sir.

21 Q. What do you understand his role to be limited to?

22 A. Well, and there were actually -- it wasn't just one  
23 robbery. They planned to rob the -- an armored car truck  
24 prior to this robbery, and apparently it just didn't go  
25 through. It was approximately a week or two weeks before

A. SWARAT - DIRECT EXAMINATION BY MR. ALSTON

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1 the actual robbery. They got up to the point of being at  
2 the site where the truck was going to be, and they backed  
3 out. Mr. Blakney was involved in that; he was involved in  
4 the planning to some degree.

5 And at the time of the actual robbery, the successful  
6 robbery, I guess you could call it, he was approximately a  
7 quarter of a mile down the road waiting on the armored car  
8 truck to arrive. And he and his brother, along with  
9 others, helped unload the armored car truck.

10 Q. So, he was sitting in another car some mile or plus  
11 away from the incident scene?

12 A. It, it was about a quarter of a mile. It's, it's not  
13 too far in time. I believe the driver, the victim of the  
14 armored car robbery, the person that was beat up severely,  
15 I believe he was still in the armored car at the time they  
16 were out in the field unloading the truck, but he, he  
17 didn't lay hands on him. He didn't assault him personally.

18 Q. Is there anything you would have done differently in  
19 your representation of Mr. Blakney?

20 MR. CORNEY: Your Honor, I'm going to object to that  
21 as well. That's hindsight. We don't look at hindsight in  
22 PCR under *Strickland vs. Washington*. He's asking in  
23 hindsight is there anything he would have done differently.  
24 We don't, we don't view post-conviction relief applications  
25 in hindsight. That's, that's -- we look at the time of the

A. SWARAT - DIRECT EXAMINATION BY MR. ALSTON

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1 actual representation, so I object to that question.

2 THE COURT: All right.

3 MR. ALSTON: Well, I don't understand the basis for  
4 that objection. I think ---

5 MR. CORNEY: It's, it's ---

6 MR. ALSTON: --- hindsight is exactly -- we're talking  
7 about what happened in the past. I don't know what other  
8 time frame I can put it in.

9 MR. CORNEY: *Strickland vs.* -- *Strickland vs.*  
10 *Washington*, which is our keynote case for post-conviction  
11 relief application, says that we don't look at things in  
12 hindsight. Hindsight doesn't make a difference. That's an  
13 improper question, and I don't think has any relevancy to  
14 this case where it is an improper question. That's not  
15 something for the court to consider.

16 THE COURT: I sustain the objection.

17 MR. ALSTON: Okay. Court's indulgence, Your Honor.

18 THE COURT: All right.

19 (COUNSEL CONFERS WITH APPLICANT.)

20 BY MR. ALSTON:

21 Q. Mr. Swarat, are you sure you disclosed the evidence  
22 against Mr. Blakney to him?

23 A. Yes, sir, and we discussed his possible defenses as  
24 well, which, which were very limited. We could attack his  
25 confession and his cooperation. We could claim that he was

A. SWARAT - DIRECT EXAMINATION BY MR. ALSTON

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1 being coerced and was under duress by his co-defendants,  
2 which there was some coercion. It wasn't enough to build a  
3 defense of duress unfortunately.

4 We -- he could have rolled the dice and hoped for a  
5 sympathetic jury that would let him go, but it wasn't  
6 likely due to the magnitude of the crime and the fact that  
7 somebody was brutally assaulted. I discussed all those  
8 possibilities with him, and he made the choice to go ahead  
9 and enter his guilty plea.

10 I wish he'd gotten a lesser sentence. I thought  
11 based on his limited participation that he had a very good  
12 chance of getting a sentence less than what he did, but  
13 unfortunately it didn't work out.

14 Q. And did you, did you ever tell him that?

15 A. Did I tell him what?

16 Q. About the chances of what sentence he was going to  
17 get.

18 A. I told him that the bare minimum, based on the armed  
19 robbery charge, that he could get was ten years. And that  
20 if everything ran consecutive, he could have gotten, I  
21 believe it was around seventy-five, eighty years, and that  
22 the judge could sentence anywhere in that range. But as  
23 far as what I expected him to get? No, no. It was up to  
24 the judge entirely.

25 (COUNSEL CONFERS WITH THE APPLICANT.)

A. SWARAT - DIRECT EXAMINATION BY MR. ALSTON

15

1 Q. Mr. Swarat, were you ever aware of any evidence  
2 involving a bite mark and DNA from a glove that would have  
3 been an advantage to Mr. Blakney during the defense of his  
4 case?

5 A. An advantage to Mr. Blakney?

6 Q. Uh-huh, for a defense.

7 A. Considering the fact he, he wasn't actively engaged in  
8 the assault, it really didn't have any relevant value to  
9 his participation. I think I do know something about the  
10 bite mark. I, I believe either the victim bit the  
11 assailant or vice versa. I think there was an issue with a  
12 bite mark, but it, it had no bearing on the strength or  
13 weaknesses in his case.

14 Q. Okay. What about the glove with DNA? Are you  
15 familiar with that at all?

16 A. To a degree, yes, sir. I believe they did try to  
17 recover DNA from a glove that was left at the scene. But  
18 again he, he didn't participate in the assault. He gave a  
19 full confession and fully cooperated with law enforcement  
20 well before I was ever involved in his representation.

21 And, I mean, I don't, I don't know that I understand  
22 where you're going with that. We could have attacked the,  
23 the quality of the DNA sample, where it came from, but it,  
24 it wouldn't have pointed to Mr. Blakney. He wasn't at the  
25 scene of the crime.

A. SWARAT - CROSS-EXAMINATION BY MR. CORNEY

16

1 Q. Okay.

2 MR. ALSTON: No further questions, Your Honor.

3 THE COURT: Yes, sir.

4 MR. CORNEY: Just very briefly, Your Honor.

5 CROSS-EXAMINATION BY MR. CORNEY:

6 Q. Mr. Swarat, would you just briefly tell the court  
7 about your experience as a lawyer, especially in the  
8 criminal field?

9 A. Okay. I was sworn in November 21, '94. I was a law  
10 clerk for a circuit court judge in which I saw numerous  
11 criminal cases. I became assistant solicitor February of  
12 '95. I worked for Solicitor Giese in the Violent Crime  
13 Task Force until Solicitor Myers offered me more money, and  
14 I went to Lexington where I handled violent crimes, death  
15 penalty cases, murder cases, armed robbery cases. Worked  
16 for Solicitor Giese for about four years until Attorney  
17 General McMaster offered me more money to come over to his  
18 office, and I finished my prosecution career in the State  
19 Grand Jury.

20 Q. All right, just relating to the specific allegations  
21 raised by Mr. Blakney, there were roughly five or so  
22 co-defendants in this case?

23 A. At least, yes, sir.

24 Q. Okay, and regarding the DNA that was found in a glove  
25 left at the scene which I believe Mr. Alston just referred

A. SWARAT - CROSS-EXAMINATION BY MR. CORNEY

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1 to a minute ago, that DNA was actually matched to one of  
2 Mr. Blakney's alleged co-defendants, correct?

3 A. It may have been, but it wouldn't have been to Mr.  
4 Blakney.

5 Q. Okay, and there were co-defendants that actually  
6 implicated Mr. Blakney in this crime, correct?

7 A. Mr. Blakney implicated himself from the start. In  
8 fact, he helped crack the case. I mean, part of his plea  
9 in front of Judge Childs went to his limited participation,  
10 his age. He had no prior record whatsoever. He agreed to  
11 cooperate. He helped in the recovery of a vast sum of  
12 money. He remained readily available to cooperate against  
13 some of the people that were involved in the violence,  
14 which put he and his family at risk. We threw that all in  
15 front of Judge Childs in the hope that she would give him a  
16 sentence lesser than some of the more active participants  
17 in this crime, but it didn't work out unfortunately for  
18 him.

19 Q. And along those lines with him implicating himself,  
20 did you represent Mr. Blakney at the time he gave those  
21 statements and cooperated with law enforcement?

22 A. No, sir. He had done that prior to my representation.

23 Q. Now, the fact that Mr. Blakney didn't personally carry  
24 out any of the violent acts that happened at the scene of  
25 the crime, that was something you reviewed at the plea

A. SWARAT - CROSS-EXAMINATION BY MR. CORNEY

18

1 hearing, correct?

2 A. Yes, sir.

3 Q. And at mitigation at sentencing as well?

4 A. Yes, sir.

5 Q. Okay.

6 A. And I filed a motion to reconsider, and we -- that may  
7 have been brought up at that time as well. I don't -- but  
8 I don't recall.

9 Q. Okay. Also I believe it was at the sentencing hearing  
10 in one of the two transcripts that's part of the record  
11 before this court that Mr. Blakney was well aware that in  
12 going through with this crime, there was a good possibility  
13 he may have to help subdue or otherwise kind of restrain  
14 the driver of the truck. Do you recall that?

15 A. I don't recall that, but I recall the state giving a  
16 presentation about the driver being subdued or...

17 Q. Okay. Were you able ---

18 A. Facts, facts sufficient to justify kidnapping. I do  
19 remember that.

20 Q. Do you recall reviewing with him accomplice liability  
21 as the hand of one is the hand of all theory?

22 A. That was discussed extensively, yes, sir.

23 Q. Okay. Is that a pretty substantial theory to be  
24 applied to this case?

25 A. It, it is, and Mr. Blakney, as I said before, he had

A. SWARAT - CROSS-EXAMINATION BY MR. CORNEY

19

1 no prior record when this occurred. That was a large part  
2 of our discussions when I met with him, and also when I  
3 talked with his family. And you can see in the guilty plea  
4 exchange with the court that that was something that was  
5 discussed quite a bit.

6 Q. And under that theory of accomplice liability, in your  
7 review of the facts, did you feel that there was a pretty  
8 good likelihood that Mr. Blakney could have been convicted  
9 at trial of the assault and battery of a high and  
10 aggravated nature even though he didn't personally  
11 participate in the assault on the driver?

12 A. Based, based on the law at that time, yes, sir.

13 Q. You feel you gave Mr. Blakney all the advice and  
14 information necessary to make an informed and intelligent  
15 decision on the right to go to trial or take the plea?

16 MR. ALSTON: Your Honor, I'm just going to object to  
17 this line of questioning. Seems to me this is kind of the  
18 hindsight thing that he objected to me earlier. So, I'm  
19 going to just use the same objection.

20 THE COURT: Overrule the objection.

21 BY MR. CORNEY:

22 Q. I can repose the question, if you'd like.

23 A. That's all right. I went through everything with Mr.  
24 Blakney I could possibly think of, any possible defense he  
25 may have, both legally and factually. We discussed

A. SWARAT - REDIRECT EXAMINATION BY MR. ALSTON

20

1 everything.

2 As I said before, when I first met with him, he wanted  
3 to take responsibility for his actions. He did --  
4 obviously wanted the best outcome for himself. I, I  
5 thought that he had a great opportunity to have a  
6 successful future once he gets out. I still do. I was  
7 hopeful and he was hopeful that his sentence would be less  
8 than those of the more active participants in this crime,  
9 and unfortunately just didn't work out that way for him.

10 MR. CORNEY: I believe that's all the questions I  
11 have. Thank you.

12 REDIRECT EXAMINATION BY MR. ALSTON:

13 Q. Mr. Swarat, what was my -- what were the charges again  
14 my client was sentenced to?

15 A. It was armed robbery, kidnapping, criminal conspiracy,  
16 assault and battery of a high and aggravated nature. I  
17 believe that's it.

18 Q. Okay, and was there any sort of sexual offender  
19 registry issue that came up?

20 A. No, and I, as you know, I discussed that with you and  
21 his father outside the court this morning. There is no  
22 allegation in this case that there was any such -- any type  
23 of sexual offense. That was put on the record. That's  
24 apparent in the indictment, and I believe if you bring that  
25 to the attention of the Department of Corrections, that can

A. SWARAT - REDIRECT EXAMINATION BY MR. ALSTON

21

1 be corrected.

2 Q. Okay, but it's your understanding that that is an  
3 issue as of right now?

4 A. It's an issue within the Department, Department of  
5 Corrections, but there was nothing on the record to  
6 indicate this was an offense of a sexual nature, no, sir.

7 MR. ALSTON: Nothing further, Your Honor.

8 THE COURT: All right, you may step down.

9 WITNESS: Thank you, Your Honor.

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: Next witness, please.

12 MR. ALSTON: Your Honor.

13 WITNESS: May, may I be excused?

14 THE COURT: Thank you.

15 WITNESS: Thank you.

16 THE COURT: All right. Thanks for coming.

17 MR. ALSTON: Your Honor, I call my client, Domonique  
18 Blakney, to the stand, please.

19 THE COURT: Yes, sir. Come forward.

20 DOMONIQUE D. BLAKNEY, BEING DULY

21 SWORN, TESTIFIES AS FOLLOWS:

22 CLERK OF COURT: Please have a seat there, sir. State  
23 your full name for the record.

24 WITNESS: Domonique Blakney.

25 MR. ALSTON: Your Honor, at this time, the only

1 exhibit I'd like to mark into evidence, and I understand  
2 Mr. Corney says he's already handed you some of these  
3 records, but this is the transcript of record of August 10,  
4 2009. And if there's no objection, I'll just have it  
5 marked just...

6 THE COURT: All right.

7 MR. CORNEY: Judge, I know you've already got at least  
8 two transcripts in front of you. I just wanted him to  
9 double check you had that particular transcript. There are  
10 a couple of different transcripts we have of co-defendant  
11 pleas and things of this nature.

12 THE COURT: All right. Well, we'll receive this one  
13 as well since ---

14 MR. CORNEY: I have no objection.

15 THE COURT: --- it helps with his examination.

16 MR. CORNEY: I have no objection.

17 THE COURT: All right. Thank you.

18 MR. ALSTON: May I mark that, Your Honor?

19 THE COURT: Whatever you like.

20 MR. ALSTON: I'm sorry. I'll give it back to you.

21 (TRANSCRIPT OF DOMINIC LYDE'S GUILTY PLEA MARKED AS  
22 COURT'S EXHIBIT NUMBER 1.)

23 MR. ALSTON: Your Honor, I'd like to offer Court's 1  
24 into evidence.

25 THE COURT: Okay, it's in evidence. Do you need it,

D. BLAKNEY - DIRECT EXAMINATION BY MR. ALSTON

23

1 or you want me to look at it?

2 (COUNSEL CONFERS WITH APPLICANT.)

3 MR. ALSTON: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION BY MR. ALSTON:

6 Q. Good morning, Mr. Blakney.

7 A. Good morning.

8 Q. Have we met about your case?

9 A. Yes, sir.

10 Q. Okay, and have we corresponded about your case?

11 A. Yes, sir.

12 Q. Okay, and are you satisfied that we have covered all  
13 the issues and arguments in your case today?

14 A. Yes, sir.

15 Q. Okay, and are almost all your grounds for relief  
16 contained in the supplemental application that I filed on  
17 your behalf?

18 A. Yes, sir.

19 Q. Okay. Did you listen to the testimony of Mr. Swarat  
20 this morning?

21 A. Yes, sir.

22 Q. Okay. Do you disagree with any of his testimony?

23 A. Yes, sir.

24 Q. Okay. Now is the time, Mr. Blakney, to tell the court  
25 your version of the facts and what you disagree with in.

D. BLAKNEY - DIRECT EXAMINATION BY MR. ALSTON

24

1 regards to Mr. Swarat's testimony, and I ask you to please  
2 speak, speak slowly and clearly so that the judge can  
3 understand you and the court reporter can take down  
4 everything you say.

5 A. Yes, sir. Mr. Swarat, he never, he never told me  
6 about he tried to get a negotiated plea prior to saying  
7 that -- for me to plea. He failed also to let me know  
8 about evidence they had far as the bite mark, the  
9 fingerprints of the, of the -- or from the DNA glove.

10 And also to the fact that he didn't come see me  
11 numerous of times. Far as I know, he came to see me two  
12 times -- three, three to be exact, three, but he -- we  
13 never really discussed far as me pleading to evidence. The  
14 evidence he showed, he never -- I never seen my motion of  
15 discovery period. The evidence he told me they had against  
16 me, but I never seen it. Also to the fact that he just  
17 failed in so many ways. He failed to negotiate with me  
18 period.

19 Q. So, it's my understanding that your testimony is that  
20 he did not thoroughly discuss the evidence with you?

21 A. Not all, not all of it.

22 Q. Okay. All right. Have you reviewed the transcript  
23 that I had marked into evidence of August 10, 2009?

24 A. Yes, sir.

25 Q. Okay, and did you learn anything from this transcript

D. BLAKNEY - DIRECT EXAMINATION BY MR. ALSTON

25

1 that led you to regret taking an open plea in this case?

2 A. Yes, sir.

3 Q. Okay. Now is your time to tell the court what that  
4 is.

5 A. First of all, I was unaware of the, of the bite mark.  
6 He never told me about the bite mark. Second of all, he  
7 never told me about, about the DNA from a glove from the  
8 crime scene. I never, I never knew about that either.

9 Q. Okay. Anything else?

10 A. No, sir. No, sir.

11 Q. Now, do you have specific citations to the transcript  
12 of things that you felt or feel that are important? Is  
13 there anything on those citations you want to direct the  
14 court to at this time?

15 (A PAUSE.)

16 MR. CORNEY: And, Your Honor, I don't know if he's  
17 getting ready to read off of something, but if he's going  
18 to read off something, I'd like to see what it is. I mean,  
19 I don't know who prepared it or what that is. I'd just  
20 like for him to testify, or at least let me see if he's  
21 going to read off of something.

22 THE COURT: All right.

23 MR. CORNEY: I mean, if it was prepared out of court  
24 for this, I think I've got a right to see it.

25 MR. ALSTON: We can hand him a copy of the exhibit and

D. BLAKNEY - DIRECT EXAMINATION BY MR. ALSTON

26

1 he can ---

2 THE COURT: What is it that he's about to read?

3 MR. ALSTON: Well, he, he reviewed the transcript, and  
4 there was some testimony by co-defendants and investigators  
5 that he felt that, had he known about, would have given him  
6 an informed decision about whether or not to take a plea.

7 THE COURT: And he's about to refer to some line and  
8 page in the transcript?

9 MR. ALSTON: Yeah. I, I -- he has the citations of  
10 that.

11 MR. CORNEY: I'm fine with that, Your Honor. I am not  
12 trying to be difficult. I just want -- I just wanted to  
13 make sure he wasn't getting ready to read line for line off  
14 of something. If he's got a document that's going to  
15 refresh his memory as to particular cites, I have no issue  
16 with that. I just wasn't sure where he was getting ready  
17 to go, so I, I apologize.

18 THE COURT: Let's see where it goes.

19 MR. CORNEY: Okay.

20 THE COURT: If it goes too far, we'll cut it short.

21 WITNESS: This comes from page 32, lines 22 through  
22 25.

23 THE COURT: Page 32, lines 22 through?

24 WITNESS: 25.

25 THE COURT: 25, all right.

D. BLAKNEY - DIRECT EXAMINATION BY MR. ALSTON

27

1           WITNESS: It states about the DNA glove that were  
2 found, about the DNA glove found at the crime scene.

3           THE COURT: All right, next question.

4           BY MR. ALSTON:

5           Q. Is there anything else you want to share with the  
6 court, Mr. Blakney, regarding the transcript? Are there  
7 any citations you want to direct to the court's attention  
8 so that they will be on the record?

9           A. About -- state numerous of times throughout the  
10 transcript about me not being the assault part, me not  
11 being directly the aggressor in this situation.

12          Q. Okay, and all those examples are contained in this  
13 transcript?

14          A. Numerous, numerous of times.

15          Q. Okay. Would you have pled guilty if you knew of all  
16 this evidence, the anticipated and the actual testimony of  
17 the co-defendants and witnesses, and that two of the men  
18 who were involved received negotiated sentences?

19          A. No, sir.

20          Q. Okay. Would you have pled guilty if it had not been  
21 for the advice of your counsel, Mr. Swarat?

22          A. No, sir.

23          Q. Is there anything else you would like to add to the  
24 court?

25          A. No, sir. No, sir.

D. BLAKNEY - CROSS-EXAMINATION BY MR. CORNEY

28

1 MR. ALSTON: Your Honor, that's all I have at this  
2 time. I thank you.

3 THE COURT: All right. By the state?

4 MR. CORNEY: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. CORNEY:

6 Q. Mr. Blakney, you've read that August 10th transcript  
7 that was just handed up to Judge Newman, correct?

8 A. Yes, sir.

9 Q. Now, that, that, that glove that was talked about in  
10 the transcript, it was fingerprinted and found to match one  
11 of your co-defendants, wasn't it?

12 A. Yes, sir.

13 Q. Okay. You remember which co-defendant that was?

14 A. To my knowledge, I think it was Dominic Lyde.

15 Q. Dominic Lyde, all right, and it's been a while since  
16 I've deal with Mr. Lyde and Mr. MacPhail and their PCR's,  
17 but your brother confessed. Kelby, he confessed to the  
18 crime and implicated you in the crime, didn't he?

19 A. Yes, sir.

20 Q. Okay. Darryl Frierson confessed to the crime and  
21 implicated you as well?

22 A. Yes, sir.

23 Q. All right. There was some talk on the record about  
24 cell phone pictures showing a bunch of the co-defendants  
25 and potentially you and -- with money and guns in a hotel

D. BLAKNEY - CROSS-EXAMINATION BY MR. CORNEY

29

1 room. Do you recall that?

2 A. There was no guns.

3 Q. Okay.

4 MR. CORNEY: I believe that's all the questions I  
5 have, Your Honor. Thank you very much.

6 MR. ALSTON: Your Honor, I have nothing further.

7 THE COURT: Thank you, sir. You can step down.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: Next witness.

10 MR. ALSTON: Your Honor, I have no further witnesses.

11 THE COURT: All right, any witnesses by the state?

12 MR. CORNEY: No witnesses from the state, Your Honor.  
13 Thank you.

14 THE COURT: You may -- any closing statements?

15 MR. ALSTON: Yes, Your Honor. Do I go first?

16 THE COURT: Yes, sir.

17 MR. ALSTON: Okay. Your Honor, I think it's important  
18 to understand the context of the crime and the situation my  
19 client was in when he was walking into the court. You will  
20 -- this transcript that I've had marked as Exhibit 1 has  
21 some eye opening information in it, and it's very  
22 enlightening to read.

23 One of the things that stuck out at me, and I know  
24 this can be kind of a double-edged sword, but I think it  
25 works for my client's favor, is that one of the prosecutors

1     said that -- I think he was talking to an insurance agent  
2     for the armored car company. So, it was kind of hearsay on  
3     the record, but the representation was made this was one of  
4     the largest armored car heists in American history.

5             Given the severity not only of the crimes but the  
6     facts behind the crimes, it is my position that this --  
7     that my client deserved the greatest of attention, and I  
8     think the evidence bears out he was not given that. That  
9     it was a half-hearted attempt at representation of him. He  
10    walked in, and I think the facts bear that out. He walked  
11    into court before Judge Childs pleaing without any  
12    recommendation or negotiations to one of the largest heists  
13    in American history.

14            And the record will show, the exhibit will show that  
15    two of the gentlemen did -- two of the gentlemen  
16    represented by I think Mr. Josh Kendrick and Mr. Joe  
17    McCulloch did receive negotiated sentences. And those two  
18    gentleman, if I understand correctly -- the record will  
19    bear it out -- were the actual assailants involved in the  
20    crime. So, they were able to get recommendations from the  
21    state for the two people who actually assaulted the armored  
22    car employee, but yet for some reason, my client was not  
23    able to get anything from Mr. Swarat.

24            My client testified extensively about the lack of  
25    representation he received, the lack of information he

1 received. And I think Mr. Swarat had an obligation to at  
2 least document his communication with my client because my  
3 client was walking into court totally unaware of what was  
4 going on and under the advice of counsel, as he testified,  
5 take the plea.

6 And, Your Honor, I found a case that was pretty  
7 interesting, and I'll, if I may approach, I'll hand it up  
8 to you.

9 THE COURT: Yes, sir.

10 MR. ALSTON: I have a copy here. It's *Smith vs.*  
11 *State*, and *Smith vs. State* has a rule that says, and this  
12 is on page 2 under head note 4 of the opinion:

13 The defendant's undisputed testimony that he  
14 would not have pled guilty to the charges but for  
15 trial counsel's advice is sufficient to prove  
16 that defendant would not have pled guilty.

17 And, Your Honor, I asked him on the stand directly.  
18 Would you have pled guilty if it had not been for the  
19 advice of your counsel? And he said no, and that has yet  
20 to be disputed by anyone today.

21 THE COURT: And what misadvice was he given? It says:  
22 But for the ---

23 MR. ALSTON: To plead guilty ---

24 THE COURT: --- trial counsel's alleged misadvice.

25 What misadvice is Mr. Blakley claiming?

1 MR. ALSTON: Well, he's claiming that Mr. -- he  
2 testified that Mr. Swarat advised him to take the plea. He  
3 would not have done that but for Mr. Swarat's advice.  
4 After he took the plea is when this transcript came out on  
5 August 10, 2009, that contained a lot of information that  
6 would have changed my client's mind that would have -- he  
7 would have teed it up in front of the court, in front of a  
8 jury.

9 Now, we can argue about whether or not -- you know,  
10 what the defenses were and what the strength of the  
11 evidence is, but this goes to the decision of my client and  
12 his future, and it all bears on what representation was  
13 given to my client by Mr. Swarat. And I asked him in my,  
14 one of my last questions would you have pled guilty if it  
15 had not been for the advice of Mr. Swarat, and he said no,  
16 and that falls squarely within the ruling of this case.

17 THE COURT: Well, in that case, in the case that you  
18 just handed me, the guy plead guilty to felony DUI and was  
19 sentenced to twelve years. The lawyer told him that when  
20 he pled guilty, he'd only have to serve half of the  
21 sentence because he would be eligible for parole in six  
22 years. But, in fact, because he was pleading guilty to  
23 felony DUI, the law was he had to serve eight-five percent  
24 without the possibility of parole. And but for that  
25 misadvice, he would not have pled guilty. So, that's,

1 that's a different story.

2 MR. ALSTON: Well, I, I agree with Your Honor that ---

3 THE COURT: The lawyer gave him, the lawyer gave him  
4 bad advice regarding parole eligibility.

5 MR. ALSTON: Well, I agree with Your Honor. The facts  
6 are not the same.

7 THE COURT: Yeah.

8 MR. ALSTON: I, I would say that this rule, though,  
9 applies to any circumstance where ---

10 THE COURT: Well, that's what I'm asking. What is the  
11 misadvice? I mean, we know what the misadvice of this one  
12 is. The lawyer said you'll only have to do six years  
13 where, in fact, he had to do eighty-five percent of twelve  
14 years.

15 MR. ALSTON: Well, I think to the extent that there is  
16 misadvice as you couch it, Your Honor, the misadvice ---

17 THE COURT: No, I didn't couch it. That's what the,  
18 that's what the case says. This case says: But for the  
19 trial counsel's alleged misadvice. I'm quoting the case.  
20 I'm not ---

21 MR. ALSTON: Okay. Well, I ---

22 THE COURT: I'm not just characterizing. I'm quoting  
23 the case you handed to me.

24 MR. ALSTON: Yes, sir. I, I guess what I'm, I'm  
25 focusing on is the earlier rule. But, Your Honor, I ought

1 to address what you have, what you have addressed. I would  
2 say that the misadvice comes from the fact that my client  
3 was not informed of all the evidence against him, given  
4 what was revealed at the August 10, 2009, sentencing  
5 hearing.

6 THE COURT: I thought he confessed. He confessed to  
7 being guilty, didn't he? That's what the testimony was.  
8 He ---

9 MR. ALSTON: Well, Your Honor.

10 THE COURT: That he confessed even before he got the  
11 lawyer.

12 MR. ALSTON: Your Honor, I'm not arguing that. All  
13 I'm saying is that -- I'm just talking about what factors  
14 that should have been disclosed to my client before he  
15 decided whether or not to take a guilty plea or go to  
16 trial.

17 My client has the right, if I'm not mistaken, if -- he  
18 can still confess and if he wants to go to a trial by jury,  
19 he has that right.

20 THE COURT: I understand. I'm just asking what is  
21 that. What is it that the lawyer should have told him that  
22 he said the layer didn't tell him, or what misadvice he's,  
23 is he contending?

24 MR. ALSTON: Well, Your Honor, I can't -- other than  
25 what my client has testified to about all the evidence that

1 he was not involved in the assault, that he was not an  
2 aggressor, and that his role -- the evidence showed that  
3 his role in the crime to the extent he was guilty of it was  
4 a very passive role. And, and so all of those things  
5 should have been borne out to my client before he walked in  
6 and take -- and took the guilty plea.

7 And again he testified that if it hadn't been for his  
8 advice of counsel, he wouldn't have pled. And I can only  
9 make the argument, Your Honor, based on what the testimony  
10 has been here today.

11 THE COURT: All right. Yes, sir.

12 MR. CORNEY: Your Honor, just first of all, regarding  
13 the *Smith vs. State* case handed up by Mr. Alston a minute  
14 ago, I note that on the bottom of 2 of the three pages he  
15 handed up says specifically with this case, it says:

16 Further, the PCR court did not have the  
17 opportunity to review the plea transcript because  
18 neither party presented it to the court.

19 Accordingly, the only evidence before the PCR  
20 court was respondent's sworn statement in his PCR  
21 application that he wouldn't have pled guilty had  
22 he known this.

23 That's not the case here. This court has the  
24 transcript right in front of him. The reason it was  
25 uncontested testimony is because there was no record for

1 the judge to look at in that case. That's entirely  
2 different than what we have here.

3 We have Mr. Swarat's testimony and the record before  
4 the court. It is contested. It is, it is -- I mean, it's  
5 undisputed testimony. It is undisputed by the facts and  
6 circumstances in the record before this court. So, this is  
7 a -- I mean, this case is entirely not on point with what  
8 we have here.

9 Further, the facts and circumstances in the record  
10 before the court allow this court to make a credibility  
11 finding on whether Your Honor believes Mr. Blakney's  
12 testimony that he wouldn't have pled guilty had he known  
13 these things. Credibility is an issue in this case as  
14 well, and that can be determined from the entirety of the  
15 record before the court. So, even if it was undisputed, I  
16 think that the court can look into it, the facts and  
17 circumstances in the record, to find whether or not that's  
18 a credible statement that he wouldn't have based on the  
19 evidence he was facing at trial. Regardless, the *Smith*  
20 case, I would submit, is completely off -- not on point  
21 here. There is -- it is disputed by the record before the  
22 court.

23 He was -- he confessed himself. He, according to Mr.  
24 Swarat's testimony a little bit ago, he brought the police  
25 officers to this, the house where the money was where he

1 brought it to. He showed them cell phone pictures of some  
2 sort showing them involved in the crime or with fruits of  
3 the crime. His brother, Kelby, confessed to the crime and  
4 implicated him. Darryl Frierson, another participant in  
5 the crime, confessed and implicated him. There were  
6 pictures all from a cell phone that showed them with money,  
7 bags of money, trash bags full of money. You'll see that  
8 in the record.

9 It was never set forth by the state that he was an  
10 active participant in the assault. The fact is the hand of  
11 one is hand of all is accomplice liability, which Mr.  
12 Swarat reviewed with Mr. Blakney prior to the plea to let  
13 him know I think there's a good likelihood you're going to  
14 be convicted of assault and battery of a high and  
15 aggravated nature, even though you didn't lay a hand on Mr.  
16 Jones, the driver in this case, because you went in knowing  
17 there was a likelihood you were going to have to do that.  
18 So, it was an accomplice liability theory that he could  
19 have been convicted under. So, I don't think there's any  
20 substance to that argument either.

21 As far as the glove, Your Honor will see in the  
22 transcript that the glove that was found was fingerprinted  
23 and matched one of his co-defendants. It's not this glove  
24 matched some unknown party and it could have been, you  
25 know, a third-party guilt argument at trial. It matched

1 one of his co-defendants who was involved in this and  
2 implicated him.

3 Finally, Your Honor, as far as the sex offense  
4 registry and it not being mentioned on the record, that's a  
5 declaratory judgment action that he can bring with the  
6 Department of Corrections to have that corrected. That's  
7 not a post-conviction relief allegation, and he can have  
8 that remedied with the Department of Corrections directly.

9 THE COURT: Well, the solicitor asked the judge to  
10 make a finding.

11 MR. CORNEY: And it is in the transcript.

12 THE COURT: It's in the transcript the solicitor asked  
13 the judge to make a finding that this is not sex offender  
14 related.

15 MR. CORNEY: Absolutely, Your Honor, and I would just  
16 say that, as I say, it's a declaratory judgment action he  
17 can bring directly against the Department of Corrections to  
18 have that corrected if he feels that was erroneous for him  
19 to be on the sex offender registry.

20 With all those things considered and quite honestly,  
21 Your Honor, the overwhelming evidence that was up against  
22 Mr. Blakney in this case, the state would request that you  
23 deny his application for post-conviction relief. Thank  
24 you.

25 THE COURT: All right. All right, I will announce my

1 decision after further reviewing ---

2 MR. ALSTON: I -- I'm sorry.

3 THE COURT: --- the transcript.

4 MR. ALSTON: May I have one more remark, Your Honor?

5 THE COURT: Yes, sir.

6 MR. ALSTON: Okay, just going back the misadvice. I  
7 think that ties in with one of the oral arguments in my  
8 case. The misadvice was to advise my client to walk into a  
9 courtroom under these charges. To take an open plea  
10 without recommendation or negotiations, especially in light  
11 of the fact that two of the, two of the only aggressors in  
12 this heist did receive such negotiated recommended  
13 sentences. And on that I will rest, Your Honor.

14 THE COURT: All right. Very good.

15 MR. ALSTON: Thank you, Your Honor.

16 MR. CORNEY: Thank you very much.

17 MR. ALSTON: Your Honor, as to the sentence, the sex  
18 offender registry issue, how is my client to address that?  
19 With the Department of Corrections? Is that ---

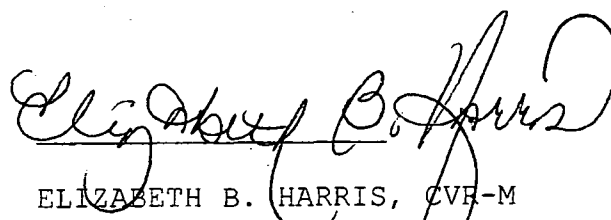
20 THE COURT: I don't know. You're the lawyer. You've  
21 got to give him the advice.

22 --- END OF TRANSCRIPT OF RECORD ---

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED  
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH  
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE  
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE  
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING  
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE  
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON  
THE 18TH DAY OF OCTOBER, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JUNE 8, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Domonique D. Blakney, #326081,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-05707

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 29, 2011, and amended February 29, 2012. An evidentiary hearing into the matter was convened on Thursday, October 18, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Rowland P. Alston, III, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea counsel, Tav Swarat, Esquire (hereafter "counsel"). This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the September 2007 term of the Richland County Grand Jury for Armed Robbery, Criminal Conspiracy, Assault and Battery of a High and Aggravated Nature ("ABHAN") and Kidnapping (2007-GS-40-04365 through -04368). On

BLAKNEY, Domonique D., #326081 - Order of Dismissal (2011-CP-40-05707)

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SCANNED

January 10, 2008, Applicant appeared with counsel before the Honorable J. Michelle Childs, where he pled guilty to the charges as indicted and was sentenced to twenty-five (25) years imprisonment each for Armed Robbery and Kidnapping, ten (10) years imprisonment for ABHAN and five (5) years imprisonment for Criminal Conspiracy. The sentences were set to run concurrently. Counsel filed a motion for reconsideration of the sentences, which was denied by Judge Childs on August 24, 2009, following a hearing on the motion.

A Notice of Appeal was filed thereafter and an Anders brief submitted on Applicant's behalf by Appellate Defender Robert Pachak. On June 21, 2011, the South Carolina Court of Appeals issued an order granting appellate counsel's motion to be relieved and dismissing the appeal. The Remittitur was issued July 8, 2011.

In the current application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

- a. That public defender failed to convey to Applicant one or more plea offers prior to the entering of the guilty plea;
- b. That public defender failed to engage in any discovery before the entering of the guilty plea;
- c. That public defender failed to adequately investigate the case, and, as a consequence, failed to develop and present all available, relevant, impeachable, and mitigating evidence that would have challenged the case-in-chief of the prosecution;
- d. That public defender failed to enter into any negotiations on behalf of the Applicant prior to the entering of the guilty plea;

- e. That public defender withheld information from the Applicant that would have given the Applicant an informed decision prior to the entering of the guilty plea;
- f. That public defender allowed his client, the Applicant, to make an uninformed plea without negotiations or recommendations; and
- g. Any other particulars that may be demonstrated at trial.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

#### *Failure to Negotiate Plea Offer*

Applicant first alleges counsel was ineffective for failing to sufficiently negotiate an advantageous plea offer from the state. Specifically, Applicant stated counsel never informed him of the possibility of negotiating a specific plea offer with the state, but alleged one of his codefendants was able to plead under the terms of a negotiated plea with the state. Applicant contends had he known of that option, he would not have entered the plea as he did.

Counsel testified he was appointed to represent Applicant roughly eight (8) or nine (9) months before the January 2008 guilty plea. He stated he met with Applicant "many times" to discuss the case in addition to speaking with Applicant's father "almost daily" about the case. Counsel testified he made "several attempts" to enter into plea negotiations with the state on Applicant's behalf, but the prosecuting solicitors were not willing to extend any plea offers to

Applicant other than to not make a specific sentencing recommendation to the plea judge. Counsel noted all of his conversations with the state in this regard were carried out orally and he had no written communications detailing these discussions in his trial folder for Applicant. He reiterated the state's stance on negotiations with Applicant, saying they were "not willing to negotiate at all" for an advantageous plea offer for Applicant. Counsel also noted he tried to use Applicant's willingness to testify against his codefendants as a bargaining chip to initiate negotiations, but to no avail.

Counsel said he and Applicant entered the plea on the day of the hearing "essentially with an open plea" being Applicant's only option if he decided to plead guilty. He noted Applicant made it clear he "wanted to take responsibility" for his involvement in the crimes. Counsel also testified he left the decision of whether to plead or go to trial entirely up to Applicant after he explained the potential choices and consequences Applicant was facing with Applicant. Part of that discussion, counsel said, was advising Applicant he was facing a "bare minimum" sentence of ten (10) years imprisonment on the charges and could receive much more time if the sentences were run consecutively. Counsel noted he did not advise Applicant that he should expect to receive any particular sentence upon entry of his plea. Counsel stated he recalled one codefendant with "very minimal involvement" in the crimes that was extended a negotiated plea offer from the state, but said he did not recall any other codefendant receiving offers from the state.

Based on the testimony above and a thorough review of the record, this Court finds this allegation to be without merit. As a preliminary matter, this Court finds counsel's testimony to be very credible, while conversely finding Applicant's testimony to be not credible. Counsel undertook reasonable and diligent steps to attempt to secure an advantageous plea offer from the

state for Applicant, including offering Applicant's cooperation in the prosecution of his several codefendants. Because of the highly publicized nature of the case (one of the largest armored truck heists in U.S. history) and the state's view of the robbery as a detailed and sophisticated conspiracy, the state was unwilling to even begin to participate in plea negotiations with counsel despite counsel's earnest efforts to do so. The state, being under no duty to enter into plea negotiations or to extend any plea offers to a defendant, rendered counsel's constant attempts to plea bargain futile. *See Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (*A defendant has no constitutional right to plea bargain*). Applicant has failed to establish how counsel's performance was objectively unreasonable or otherwise deficient in this regard.

Further, Applicant has failed to carry his burden in proving resulting prejudice. Applicant failed to prove that, had counsel undertaken some further action, the state would have extended an advantageous plea offer to Applicant or Applicant's case would have somehow ended in a different result. *See Lafler v. Cooper*, 132 S.Ct. 1376 (2012) (*In the context of pleas, a defendant must show the outcome of the plea process would have been different with competent counsel*). In fact, the transcript of Applicant's guilty plea makes it clear the state was not willing to extend any beneficial plea offers to Applicant. At the plea hearing, the solicitor specifically requested the judge impose "the most amount" of jail time "that [the court] can give". (Plea Tr. 26, ll. 18 – 19). The remainder of the record only further convinces this Court Applicant failed to prove resulting prejudice from counsel's alleged deficient performance in plea negotiations. Therefore, this allegation is denied.

*Failure to Investigate Latex Gloves/Bite Mark Evidence*

Applicant next alleges counsel was ineffective for failing to further investigate evidence in his case relating to a latex glove found at the scene of the robbery and a bite mark left by the victim on a codefendant's hand during the struggle. Applicant testified counsel never reviewed the discovery materials with him prior to the plea, nor did he ever advise Applicant of the existence of the glove or bite mark. Applicant stated he only became aware of that evidence at the August 10, 2009, motion for reconsideration hearing when it was noted by the solicitor.

Counsel testified he reviewed the entirety of the discovery with Applicant during their several pre-plea meetings. He noted Applicant provided a full confession both orally and in writing to police upon his arrest, as well as showed law enforcement pictures of him and his codefendants with bags of the stolen money. Counsel said Applicant also took law enforcement to a large amount of the hidden money which they were able to recover. Counsel testified he did not believe the latex glove(s) and/or bite mark were relevant in any way to Applicant's role in the crimes as the state was not alleging Applicant participated in the actual taking or robbing of the truck; rather, counsel said, the state was seeking to prove Applicant participated in driving a car to recover the money and was, therefore, guilty under the accomplice liability theory of "the hand of one is the hand of all". Counsel said he reviewed this theory of liability in depth with Applicant to ensure he understood it as it was "very crucial" to Applicant's case.

This Court finds Applicant has failed to prove both deficiency and resulting prejudice in this regard. First, counsel's testimony that he reviewed all of the discovery materials received from the state with Applicant is more credible than Applicant's testimony to the contrary. Therefore, this Court finds no merit in Applicant's assertion that he was unaware of these items prior to his plea hearing.

Further, as alluded to by counsel, the evidence of a suspect suffering a bite mark from victim was of no consequence to Applicant's ability to challenge the charges as Applicant was not alleged to have personally participated in the assault of the victim where the bite occurred. Additionally, the inside and outside of the latex glove found at the crime scene were tested and both confirmed to contain the DNA of Dominic Lyde ("Lyde"). In Applicant's confession to police, he openly admitted to participating in the robbery with several other individuals, including Lyde. Therefore, the evidence complained of is not beneficial or in any way exculpatory to Applicant's case; rather, the evidence only further confirms the authenticity and accuracy of his written confession to law enforcement. Therefore, this Court finds any alleged deficiency in this regard did **not** result in prejudice there is no reasonable probability Applicant would not have pled guilty had he known about these pieces of evidence.

Finally, this Court finds Applicant cannot prove resulting prejudice from any alleged deficiency in counsel's performance as the record reflects Applicant was facing overwhelming evidence of guilt on the charges. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994) (*Reasonable probability of a different result does not exist when there is overwhelming evidence of guilt*). In addition to Applicant's own written confession to the crimes, four of Applicant's codefendants (Kelby Blakney, Darryl Frierson, Paul Whitaker, and Jeremy McPhail) provided full confessions to law enforcement implicating Applicant as a participant and confirming the details set forth in Applicant's confession. Applicant provided law enforcement with pictures of the stolen money in his possession and brought law enforcement to a location to recover some of the stolen money. These pieces of evidence, along with many others contained in the record, provide overwhelming evidence of Applicant's guilt. Accordingly, the current application must

also be denied as Applicant cannot carry his burden of proof under Strickland v. Washington's two-prong test.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

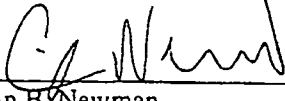
This Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed **with prejudice**; and
2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 5<sup>th</sup> day of December, 2012.

  
\_\_\_\_\_  
Clifton B. Newman  
Presiding Judge  
Fifth Judicial Circuit

Kingtree, South Carolina.

WITNESSES

(S) INV. KEVIN ISENHOWER RCD

ARREST WARRANT NUMBER

J557203

ACTION OF GRAND JURY

FILED

Person of Grand Jury

SEP 12 2007

VERDICT

Person of Petit Jury

144

DOCKET NO. - 2007GS-40-4365

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

THE STATE

VS.

DOMINIQUE DEVON BLAKNEY

Defendant

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

DOMINIQUE BLAKNEY

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARMED ROBBERY

Defendant

Witness  
C.C.C. RES. AND G.S.

CERTIFIED TRUE COPY  
OF ORIGINAL  
FILED  
RICHLAND COUNTY  
SOUTH CAROLINA

Indictment for

ARMED ROBBERY

SC Code 16-11-0330(A)

CDR Code 0139

Class FEL (M)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

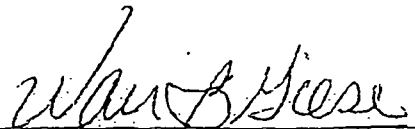
## INDICTMENT

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That DOMINIQUE DEVON BLAKNEY did in Richland County on or about May 10, 2007, commit an armed robbery by feloniously taking from the person or presence of David Jones, by means of force or intimidation goods or monies of Express Teller Services such goods or monies being described as U.S. Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, all in violation of §16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

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

  
 WARREN B. GIESE, SOLICITOR

CERTIFICATE  
 OF

RICHLAND COUNTY  
 SOUTH CAROLINA

WITNESSES

(S) INV. KEVIN ISENHOWARD ECSD

ARREST WARRANT NUMBER

201

ACTION OF GRAND JURY

**RUEBIL**

Person of Grand Jury

SEP 12 2007

VERDICT

DOCKET NO. 2007-GS-40-4366

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

THE STATE

VS.

DOMONIQUE DEVON BLAKNEY

Indictment for

CRIMINAL CONSPIRACY C/L  
CONSPIRACY DEFINED

SC Code: 16-17-410

CDR Code: 049

Class FEL-F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

*DOMONIQUE BLAKNEY*

I hereby appear in my own proper person and plead guilty to the within indictment or to

*CR CONSPIRACY*

*Domonique Blakney*  
Defendant

Witness  
*[Signature]*  
C.C.C. RES. AND G.S.

CERTIFIED TRUE COPY  
OF ORIGINAL  
FILED  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

INDICTMENT

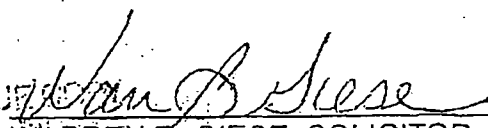
COUNTY OF RICHLAND )

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

**CRIMINAL CONSPIRACY, C/L CONSPIRACY DEFINED**

The DOMONIQUE DEVON BLAKNEY did in Richland County, on or about May 10, 2007, unlawfully and wilfully unite, combine, conspire, confederate, agree and have tacit understanding with co-defendants, for the purpose of committing the crime of armed robbery, in violation of §16-17-410, Code of Laws of South Carolina, (1976, as amended).

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

CERTIFIED TRUE   
OF OFFICIAL WARREN B. GIESE, SOLICITOR

  
RICHLAND COUNTY  
SOUTH CAROLINA

WITNESSES

(S) INV. KEVIN ISENHOWER RCD

ARREST WARRANT NUMBER

7197

ACTION OF GRAND JURY

FILED

*Sharon H. Blair*  
Person of Grand Jury

SEP 12 2007

VERDICT

Person of Petit Jury

148

DOCKET NO. 2007-GS-40 4367

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

THE STATE

VS.

DOMONIQUE DEVON BLAKNEY

Indictment for

ASSAULT AND BATTERY  
OF A HIGH AND  
AGGRAVATED NATURE

SC Code: 17-25-30 C/L  
CDR Code: 0013  
Class: MIS/UNC

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

*DOMONIQUE BLAKNEY*

I hereby appear in my own proper person and plead guilty to the within indictment or to

*ABHHA*

*Domonique Blakney*  
Defendant

*W. Harold*  
C.C. P.S. AND G.S.

CERTIFIED TRUE  
OF ORIGINAL FILE  
C.C. P.S. AND G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

INDICTMENT

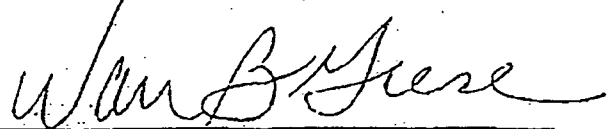
At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

**ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE**

That DOMONIQUE DEVON BLAKNEY did in Richland County on or about May 10, 2007, commit an assault and battery upon the victim, David Jones, constituting an unlawful act of violent injury to the person of the said victim accompanied by circumstances of aggravation, to wit: the infliction of serious bodily injury and/or the use of a deadly weapon, all in violation of §17-25-30 (Common Law), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided:

C. F. 17-25-30

  
WARREN B. GIESE, SOLICITOR

CLERK  
C.C.C.  
RICHLAND COUNTY  
SOUTH CAROLINA

WITNESSES

(S) INV: KEVIN ISENHOWARD RCSD

DOCKET NO. 2007-GS-40-4368

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

ARREST WARRANT NUMBER

57198

RETURN TO GRAND JURY  
FILED

*Sharon Miles*

Representation of Grand Jury  
SEP 12 2007

VERDICT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

*DOMONIQUE BLAKNEY*  
I, *DOMONIQUE BLAKNEY*, hereby appear in my own proper person and plead guilty to the within indictment or to *KIDNAPPING*

*Domonique Blakney*  
Defendant

Witness  
*Wm. J. Smith*  
C.C.C. RUSLAND G.S.

CERTIFIED TRUE COPY  
OF ORIGINAL  
C.C.C. RUSLAND G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

DOMONIQUE DEVON BLAKNEY

THE STATE  
VS.

Indictment for

KIDNAPPING

SC Code: 16-3-910  
CDR Code: 0095  
Class FEL(A)(V)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

## INDICTMENT

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That DOMONIQUE DEVON BLAKNEY did in Richland County on or about May 10, 2007, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: David Jones, by force and arms, to wit: firearms, by any means whatsoever without authority of law. All in violation of §16-3-910, Code of Laws of South Carolina (1976) as amended.

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

*Warren B. Glese*  
 CERTIFIED TRUE COPY  
 OF ORIGINAL FILED  
 JAMES L. DUFFY  
 C.C.C. & G.S.  
 RICHLAND COUNTY  
 SOUTH CAROLINA