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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari from Richland County
DeAndrea G. Benjamin, Trial Judge
Michael S. Holt, Post-Conviction Relief Judge

Appellate Case No. 2023-001269

EMMANUEL B. ELLEBY, #275057,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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1 All right. Anything we need to take up
2 before -- well, the jury is not here. I am going
3 to order them lunch, I guess. Anything we need to
4 take up other than the jury charge?

5 MS. SAMPSON: Other than the jury charge?
6 No, I don't think so.

7 THE COURT: Anything from the Defendant?

8 MR. RUFFIN: No. We're fine.

9 THE COURT: All right. Any issues from the
10 State with the jury charge?

11 MS. SAMPSON: I don't have any problem with
12 it, no, ma'am.

13 MR. RUFFIN: Neither do we.

14 THE COURT: All right.

15 MR. RUFFIN: That's fine.

16 THE COURT: Okay. Let me print you all the
17 verdict form. I will print the verdict form. I
18 put on the verdict form as to the indictment
19 alleging armed robbery and as to the indictment
20 alleging kidnapping. And then I'll print a copy
21 for you all to look at.

22 And just procedurally, the State has rested.
23 Does the Defense have any -- are you all going to
24 present any evidence?

25 MR. RUFFIN: No. No, Your Honor.

1 THE COURT: All right. Do you want to -- and
2 I think we can do it this way, just so when they
3 come in, you have to rest in front of them.

4 MR. RUFFIN: Right.

5 THE COURT: Do you want to rest here, then
6 make motions? We can hear motions after your --
7 after you rest, and then when I bring the jury in
8 you can formally rest and then we can go straight
9 into closing arguments.

10 MR. RUFFIN: That's fine. You mean rest right
11 now and go ahead with the motions?

12 THE COURT: Yes, rest so we can hear the
13 motions, and then for presentation purposes --

14 MR. RUFFIN: I understand.

15 THE COURT: -- rest in front of the jury, and
16 then we can go straight into closing arguments
17 after that.

18 MR. RUFFIN: Okay. Well, at this point,
19 Judge, the Defense rests. We are not calling any
20 witnesses.

21 THE COURT: All right. So the State has
22 rested and the Defense has rested also. So we --
23 I'll be glad to entertain any motions at this time.

24 MR. RUFFIN: Judge, I would just renew all of
25 our previous objections and previous motions,

1 including the objection to this being a trial in
2 Mr. Elleby's absence, including the suppression
3 motion that was pretrial, and including our motion
4 for a directed verdict. We would renew all of our
5 previous motions and objections at this time.

6 THE COURT: All right. Yes, ma'am?

7 MS. SAMPSON: I would just ask that you keep
8 all of your motions in place. I think we have
9 argued them ad nauseam. I think you made the
10 proper rulings in allowing us to go forward on a
11 trial in absence, and all of your other motions and
12 rulings that you made on the other motions that he
13 had. I would ask you to keep your rulings in
14 place.

15 THE COURT: All right. And I am going to
16 respectfully deny the motions, but they are
17 preserved for the record.

18 And, once again, we'll deal with the issue
19 of -- I know there was some question yesterday
20 about if he is convicted sentencing. We can talk
21 about that after the fact. And motions -- what
22 needs to be done as far as the ten days on the
23 motions and when that actually would go into
24 effect. I believe you all said that you think it
25 is not until the conviction is actually published.

1 MS. EIGENBROT: -- Yes, Your Honor. I had a
2 similar situation with a much lesser offense,
3 actually my first trial ever. We didn't file the
4 appeal until he was actually brought in for
5 sentencing, as the sentence was sealed at that
6 time. At that point is when we filed a motion for
7 appeal.

8 MS. SAMPSON: And my understanding is even
9 though we all know that I asked and intended to
10 seek LWOP, you can still seal the sentence until he
11 is picked up, and the ten days will not start until
12 that conviction is actually read into the record in
13 front of him, and so until the sentence is read
14 into the record in front of him. So even if we get
15 a conviction today, so long as you don't sentence
16 him, even though we all know that it is going to
17 be -- I was seeking LWOP, we have served the proper
18 notice for that, as long as it is not done until he
19 is picked up after conviction on a bench warrant,
20 then the ten days do not start until he receives
21 the sentence.

22 THE COURT: I think either way. If he is
23 convicted, even if we seal it, she is saying the
24 ten days doesn't start until --

25 MS. SAMPSON: Correct.

1 THE COURT: And I think that is correct.

2 MS. SAMPSON: And I'm agreeing, even though we
3 know what the sentence will be if there is a
4 conviction, that is irrelevant. That is sealed
5 until he is here.

6 THE COURT: And just one other thing on that
7 issue. I have been thinking about the issue of the
8 life without parole and the notice. The State has
9 served him -- and has all of that been made a part
10 of the record? You gave it to me.

11 MS. SAMPSON: I would need to check to see if
12 we made it a Court Exhibit. I know we spoke to you
13 about it and showed it to Your Honor. I think we
14 can still make it a Court Exhibit.

15 MR. RUFFIN: I think it was made part of the
16 record during the pretrial motions.

17 THE COURT: Okay. We'll go back and check.

18 MR. RUFFIN: But I don't know if it is a Court
19 Exhibit.

20 MS. SAMPSON: I know that I also presented the
21 bond form. And I remember you reading that into
22 the record.

23 THE COURT: But I think those need to be made
24 Court Exhibits because I'm sure that will be an
25 issue at some point.

1 MS. SAMPSON: And I believe since we did speak
2 of it, I don't think it is improper if we have to
3 make it a Court Exhibit now.

4 MR. RUFFIN: I don't have any problem with
5 that.

6 THE COURT: You can make it a Court Exhibit
7 now because technically the LWOP does not come in
8 play until -- even though they kept saying
9 before -- it doesn't come in play until he is
10 actually convicted. The State will move upon
11 conviction, and so until he is actually convicted,
12 that does not come into play.

13 But the issue is, also, in considering this
14 and thinking about the motion for continuance, the
15 State originally made an offer -- and I put this on
16 the record -- for 20 years. That offer technically
17 was to expire at 12:30 on Monday.

18 MS. SAMPSON: Correct.

19 THE COURT: So whether he pled or went to
20 trial under any circumstances, whether he is here
21 or not here, the life without parole notice and the
22 State's intent was already -- was in place
23 technically after 12:30 when he rejected the plea
24 offer, which was extended to the following day
25 until 2:00 o'clock, and he did not show up to

1 plead, which was further extended until Wednesday
2 morning by the Court, I guess, until I swore them
3 in on Wednesday morning at 9:30. And he did not
4 show up.

5 So I just want to put that on the record that
6 the offer was to expire, and even if this case was
7 continued, I'm not sure if that offer still
8 remained even if it was continued beyond this week,
9 considering the State had indicated that it would
10 have expired on Monday.

11 MS. SAMPSON: And for the record, I know that
12 we talked about it, it may be over there in the
13 Court Exhibits, but I don't physically, because I
14 wasn't thinking about bringing all that stuff back
15 up in here, I don't have in front of me the LWOP
16 notice.

17 THE COURT: I have it. I'll make this a Court
18 Exhibit.

19 MS. SAMPSON: And I don't have the bond form,
20 but I know that I had it at some point, the bond
21 form.

22 THE COURT: You did, because you gave it to
23 me. Do you have that, Debbie?

24 MS. SAMPSON: If not, we can get one and make
25 sure that we have it and make it a Court Exhibit.

1 THE COURT: We will make this a part of the --
2 it is a Court Exhibit. So the bond form was made a
3 Court Exhibit, but the LWOP notice was not. So we
4 will make this Court Exhibit Number 3.

5 (WHEREUPON, Court's Exhibit No. 3 was
6 marked for identification only.)

7 THE COURT: All right. I'm going to print the
8 verdict form. Anything else?

9 MS. SAMPSON: I was just going to say, and
10 there is a transcript of us serving him with LWOP.
11 It was done in person on the record on September
12 1st in front of Judge --

13 MR. RUFFIN: Gravely.

14 MS. SAMPSON: Gravely. And we also at that
15 point noticed him for our trial date and we also
16 noticed -- served him with his DP indictment for
17 kidnapping. So there is a transcript of that if
18 the Court -- if this goes further and the Court
19 needs that. It was in front of Judge Gravely on
20 September 1st.

21 THE COURT: Thank you. Anything else?

22 MS. SAMPSON: Not from the State, Your Honor.

23 THE COURT: All right. So what we need to
24 do -- the jury should be coming in. I have given
25 them the forms to order lunch. And so as soon as

1 they are ready -- you all want to take a break
2 since we are going to go straight into closing
3 argument, and if you need to set up anything. But
4 we will bring them in around 9:30. It is about
5 9:20 now. I'll go grab the verdict form and then
6 we can go from there.

7 MS. SAMPSON: Thank you.

8 THE COURT: Thank you.

9 (WHEREUPON, a break was taken at 9:21
10 a.m.)

11 THE COURT: On the jury charge, I was looking
12 for the language -- I don't know if I deleted it
13 out of there -- on Page 11. And if it is
14 sufficient for everybody else, that is fine. But
15 when it talks about the Defendant was armed with a
16 deadly weapon during the robbery.

17 Finally, the State must prove -- the third
18 paragraph -- that the Defendant was armed with a
19 deadly weapon during the robbery. A deadly weapon
20 is an article, instrument, or substance which is
21 likely to cause death or great bodily harm.
22 Whether an instrument has been used as a deadly
23 weapon depends on the facts and circumstances of
24 each case.

25 Then it goes on to read -- but there is

1 another portion -- and they switched out my jury
2 charges, but it talks about -- did y'all see that
3 in here? -- it talks about whether -- you know the
4 language that says -- I know the BB gun, whether or
5 not it is working. And I deleted that because I
6 didn't think it applied. And then there is
7 something in there about a toy gun.

8 MS. SAMPSON: I think what is missing -- and
9 this is totally my fault because I don't think Ms.
10 Moser has done an armed robbery before. There is
11 usually language when there is a question as to
12 whether an actual deadly weapon was used, it can be
13 an instrument presented in a manner -- and right
14 now I can't remember the language. Because we
15 don't have a weapon for sure. There is language
16 about --

17 THE COURT: I know, but I -- it is not in
18 here. They changed that section. There is one
19 that says -- let's see -- I did have mere presence
20 in there; right?

21 MS. SAMPSON: You did. And I don't -- it is
22 my fault, I don't have my charge book. There is a
23 charge about -- and I cannot remember the specific
24 language, but it has to do with presenting a weapon
25 or in any manner something that could be presumed

1 to be a weapon by reasonable -- I can't -- I am not
2 even going to try to make up the language, but it
3 is something about that.

4 THE COURT: If the people -- the person --

5 MS. SAMPSON: Reasonably believed, I think is
6 the language.

7 Similar to what is in the indictment, where it
8 says, While armed with a pistol, and all the
9 examples, or while alleging by actions or words
10 that he or she was and while using a representation
11 of a deadly weapon or any object which a person
12 present during the commission of robbery reasonably
13 believed to be a weapon.

14 THE COURT: I need the indictment.

15 MS. SAMPSON: I'll give you my copy for now.

16 THE COURT: I just need to add that last
17 portion of the indictment.

18 MS. SAMPSON: Yes. That can just be added.

19 THE COURT: And I am just going to take the
20 language directly from the indictment.

21 Okay, I think we are ready.

22 MS. SAMPSON: It has been brought to my
23 attention -- and, again, I will apologize to the
24 Court for not bringing this up a few minutes ago --
25 mere presence, I'm not sure that that should be a

1 charge in this particular case simply because there
2 has been absolutely no evidence that he was merely
3 present.

4 THE COURT: Well, he testified -- I think the
5 officer testified that he was there earlier that
6 day.

7 MS. SAMPSON: At 11:00 o'clock. The closest
8 he came was saying that he was there at 11:00
9 o'clock. When he asked him about where he was at
10 11:52, he said, I don't know. He stated that he
11 didn't know.

12 And the other evidence is that his
13 Co-Defendant said he was there doing it. And the
14 bigger I think reason is in the video there are two
15 people committing the crime together.

16 THE COURT: I know, but I think -- well, I
17 will let y'all argue it, but I think the fact that
18 he was --

19 MR. RUFFIN: I mean, I think it is an
20 appropriate charge, Judge. The jury doesn't have
21 to believe Mr. Boler.

22 THE COURT: Yes. He did tell the officer that
23 he was there, what, an hour earlier or something?

24 MS. SAMPSON: Yes, ma'am.

25 THE COURT: And because he is being put there

1 by the GPS, I think, yes.

2 MS. SAMPSON: That's fine.

3 THE COURT: I think that is appropriate. That
4 is why I put it in there.

5 All right. Are you ready to bring them in?

6 MS. SAMPSON: The State is ready, Your Honor.

7 MR. RUFFIN: We're ready.

8 THE COURT: All right. You can bring them on
9 in.

10 (WHEREUPON, the jury came into open
11 court at 9:53 a.m.)

12 THE BAILLIF: The jury is seated, Your Honor.

13 THE COURT: All right. Good morning, ladies
14 and gentlemen of the jury. I hope that you had a
15 restful evening.

16 At this time -- as you heard on yesterday, the
17 State has rested their case. At this time I will
18 ask -- as I stated to you before, the Defense does
19 not have to present any evidence. The burden is
20 solely upon the State to prove the Defendant in
21 this case guilty beyond a reasonable doubt. But,
22 however, if the Defense chooses to present any
23 evidence, now is the time to do so.

24 I will ask Mr. Ruffin and Ms. Eigenbrot if
25 there is any witnesses that they would like to

1 call?

2 MR. RUFFIN: No, Judge. We would rest.

3 THE COURT: All right. Ladies and gentlemen
4 of the jury, the State has rested and the Defense
5 has decided not to call any witnesses.

6 At this time you have heard all of the
7 evidence, and therefore it is time for us to have
8 closing arguments in this case.

9 After the closing arguments, you will hear the
10 jury charge. First you will hear from Ms. Sampson,
11 on behalf of the State, and then you will hear from
12 Mr. Ruffin, on behalf of the Defendant, and then I
13 will give you the jury charge at that point.

14 Please pay close attention to the attorneys.

15 All right. Thank you.

16 MS. SAMPSON: May it please the Court?

17 THE COURT: Yes, ma'am.

18 CLOSING STATEMENT

19 MS. SAMPSON: Good morning.

20 THE JURY: Good morning.

21 MS. SAMPSON: The Bible says that the love of
22 money is the root of all evil.

23 In this case, Emmanuel Elleby and Devin Boler,
24 the love of money is the root of the evil brought
25 about in front of Elizabeth Coleman and Kenneth

1 Gardner and the Dollar General. And that is what
2 has brought us here today.

3 At this point you have heard all the evidence.
4 My job is to kind of sum it up for you and as
5 quickly as I can so you can get on out of here and
6 get to doing your job. So we're going to talk
7 about this case.

8 We have Emmanuel Elleby and Devin Boler. You
9 actually heard from Devin Boler yesterday. He told
10 you -- and you also heard from Elizabeth Coleman
11 and Kenneth Gardner -- who told you that on
12 August 22nd of 2014 at the Dollar General on Bluff
13 Road, if you go down Bluff Road it is past the
14 stadium, keep on driving like you are heading
15 towards 77, you'll drive right past this Dollar
16 General, 1905.

17 That day Elizabeth Coleman and Kenneth Gardner
18 went to do their job like most of us do every day.
19 Elizabeth Coleman was pregnant working at the
20 Dollar General making whatever she makes an hour so
21 she can get by. Kenneth Gardner was managing, an
22 assistant manager. You heard him talk about how he
23 had to go try to open his store yesterday, but we
24 brought him in here instead. He was just doing his
25 job like he is supposed to. But the day didn't end

1 at all the way they thought it would, because the
2 next thing they know, they had an armed robbery.

3 An armed robbery is defined as the taking away
4 of another's goods by threat or intimidation while
5 armed with a deadly weapon or while armed with what
6 appears to be a deadly weapon. Those are the
7 things that we have to prove.

8 Now, how do we prove that in front of you
9 guys? We showed you a video. And in that video
10 you can clearly see two black males covered about
11 their face, covered in clothing, not a piece of
12 them is showing. One of them had shorts. You
13 could see a little bit of his legs. And you could
14 see about this much of their face, enough to know
15 they were black.

16 They took away the goods of Kenneth Gardner by
17 taking his phone and the goods of the Dollar
18 General, \$387. You can clearly see them taking it
19 out of the cash register and putting it in their
20 bag.

21 While armed with a deadly weapon. Now, you
22 know good and well at this point we never found the
23 gun. They had three days to get rid of that gun
24 before we found it. But what we do have is video.
25 And what we did have was testimony. Both Coleman

1 and Gardner came in here and told you that they
2 thought he had a gun. They were scared for their
3 lives. But they held -- and they told --
4 Ms. Coleman didn't even know what kind of gun it
5 was, but what did she tell you? Everybody said it
6 was some sort of gun, I don't know what it was.
7 And Ms. Moser with her played you the 9-1-1 call
8 where she said, We just got robbed at gunpoint. I
9 don't know what kind of gun it is.

10 That is where you get to, it appears to be a
11 deadly weapon. They had every reason to believe
12 that people wearing T-shirts over their heads,
13 pointing something at them, that it was a gun.
14 That is all we have to prove. We don't have to
15 actually bring you the gun in. Yes, that would be
16 great. I would love to have the gun here to show
17 you. They had three days to get rid of it. But we
18 have got video. And we brought the video. That is
19 all I have got to do.

20 There was also a kidnapping. Kidnapping is
21 defined as, to seize. They seized them when they
22 walked in and pointed that gun. She didn't even
23 move; right? She just stood there for a second.
24 That is seizing.

25 To confine. They confined Ms. Coleman. They

1 also confined Mr. Gardner. They did more to him,
2 however.

3 Please don't ask me what the definition of
4 inveigle is. I don't know. The judge is actually
5 going to give you a definition. I still don't even
6 know.

7 To decoy. Again, they made them move around.
8 To decoy.

9 To abduct. Now, you see on the video the
10 minute Mr. Gardner sees that gun, what did he do?
11 (Holds hands up) and walks away. That is
12 abducting. Not only did that they do that, they
13 made him go around and open the registers. And
14 remember Ms. Coleman told you she can't do it, she
15 needed a key. You will see him on the video, they
16 take the the key out of one register so he can put
17 it in the other and open it up because they wanted
18 it, because they demanded him to do so. That is
19 kidnapping.

20 And they carried him away. That is moving.
21 Moving him around.

22 Now, all of us in our mind may think of
23 kidnapping as you, you know, you get somebody in
24 the back of a car, you drive them around, or you
25 tie them up, or any of that.

1 And in South Carolina -- technically maybe I'm
2 kidnapping y'all making y'all sit here listening to
3 me because you don't want to be here, you don't
4 want to be listening to me. My children will tell
5 you I kidnap them all the time. That is the
6 definition of kidnapping: Making people stay
7 somewhere they don't want to be without legal
8 authority to do so. That is what they did.

9 So let's talk a little about this video. And
10 I'm going to show it to you. Now remember, we have
11 three different angles; right? We presented this
12 evidence to you. But I would like to now review it
13 with you again.

14 All right. So you are going to see that there
15 are people moving about, because this is Dollar
16 General. It is your local Dollar General. You go
17 in, you shop, you buy whatever, gum, Gatorade, I
18 don't know, whatever it is you buy there, cards, as
19 Ms. Moser told you.

20 And as it plays you will see at about 28
21 seconds in our video -- we can speed it up -- and,
22 remember, Ms. Coleman is over here. There comes
23 Mr. Gardner with his hands up being robbed. You
24 see this gentleman covered up, robbing him. I'm
25 pretty sure he didn't just say, Can I have whatever

1 you got? And if you will pause it. What you can
2 see that is very important in this video? I'll
3 ask you to look at his feet. He happened to be
4 wearing white Converse which were found at Emmanuel
5 Elleby's home. That, ladies and gentlemen, is
6 Emmanuel Elleby.

7 How else do you know? See that nice 38 bag
8 he's got -- that I also have? Because Investigator
9 Carwell did his job and went and got the bag that
10 is in that video from Emmanuel Elleby's bedroom
11 that is hidden under his mattress.

12 Proceeds to take the money out of the
13 register. That is robbery.

14 And he is acting in concert with the other
15 guy. So even if you think I'm wrong and Emmanuel
16 is that one, they both are stealing. That is the
17 definition of armed robbery.

18 Gets everything out. The other gentleman in
19 his right hand has the gun. You are going to get a
20 charge that explains the hand of one is the hand of
21 all. If one is armed, the other one is just as
22 armed. They won't do it without the other one.
23 They are acting in concert together. It is the
24 definition of armed robbery.

25 And you can see, going over the counter. And

1 that is Devin Boler, because you can tell by the
2 shoes. He has got on black shoes.

3 And in just a second you are going to see
4 Emmanuel Elleby as well walk away. And, again, the
5 way I can tell them apart is one has on white shoes
6 and one has on black shoes. And there he goes.

7 I don't know how you get any more involved
8 that that is an armed robbery than showing you a
9 video. I'm sure the Defense is going to get up
10 here and ask that we have done a whole bunch of
11 other things, and we will get to that, but really
12 this is all I need.

13 So we'll go to the next video. Different
14 angle. And, again, you see Elizabeth Coleman doing
15 her job, earning her money, unlike Emmanuel Elleby
16 and Devin Boler, who just like to steal it. She is
17 doing her job, watching the customers. Customers
18 doing whatever they do, chitchatting, going about
19 the Dollar General. And she is going doing her
20 job, whatever again that is.

21 And in just a second you are going to see, and
22 I would ask you to look up. There they come. And
23 as you see, he is pointing a gun at Mr. Gardner.
24 Again, as he climbs over the counter, pointing a
25 gun. The definition of armed.

1 Elizabeth Coleman told you she went to the
2 register. But she can't open it. She can't open
3 it. But she does open the cigarette case. What
4 she is doing. Remember, it is behind them. She is
5 not going to try to interrupt him or anything. I
6 mean, he is armed.

7 Now, what I find a little amusing, this is a
8 Dollar General. That gentleman continues to shop
9 as these people are getting robbed. I guess he
10 really needed whatever he is buying. But this just
11 shows you, this is the Dollar General. There goes
12 Kenneth Gardner opening the register like he told
13 you he did.

14 There is right there what I believe is
15 Emmanuel Elleby with the blue pants that Carwell
16 talked to you about standing behind him going in
17 the register. He was the one with the bag, so he
18 has to put the money in the bag. Can't see Devin
19 Boler right now. He is, again, the one with the
20 black shoes. But there he is. He never leaves.
21 They are acting together. No doubt about it.

22 Continues. They want to make sure they get
23 all the money. They don't want to leave any money
24 in the store.

25 Now that they are ready, one goes out. And

1 the manager, takes a few seconds, and the other one
2 goes out.

3 Armed robbery. Now, you are probably tired of
4 looking at videos at this point. I am going to
5 show you one more, because it is important.

6 Now, I can't make this one bigger, but what I
7 am going to ask you to do is look at this. It is
8 the same angle. What is that? The time, 11:56.
9 Very important. Because at 11:52 nothing is going
10 on. Not quite yet.

11 But why is 11:52 important? Remember
12 Investigator Greene? She came in here and talked
13 about the GPS tracking. And it said -- and you'll
14 have it back there with you and you will be able to
15 see the green dots that shows that Emmanuel Elleby
16 is in the area at 11:52. This one can't be set up.
17 Lo and behold, who walks in at 11:52 but the
18 robbers?

19 What is important is -- y'all have already
20 seen the other two videos -- the only other people
21 in the store were an older black gentleman with a
22 white hat on, too old to be Emmanuel Elleby, and
23 that white man right there. I'm fairly sure that
24 is not Emmanuel Elleby. Only two people in the
25 store besides these two are Elizabeth Coleman, who

1 you saw, and Kenneth Gardner, who you saw --
2 neither of which are Emmanuel Elleby -- and the two
3 robbers. That's it.

4 This robbery takes about two minutes. That's
5 it. They are in and they are out. And I am going
6 to keep talking as this plays because we have seen
7 all of this enough at this point. But what is
8 important is when it gets totally done they are out
9 by I believe it is 11:54, or 11:55. The robbers
10 are gone out the door.

11 Why is that important to you all? As we just
12 played, you will be able to see, once the robbery
13 is over, nobody really knows what to do. They
14 stand around.

15 Elizabeth Coleman told you -- and you heard
16 the 9-1-1 call and you can't actually see that on
17 the video, but she does call 9-1-1. These two
18 gentlemen I guess decide, Maybe it is that
19 important to purchase whatever I'm here for, and
20 go stand in the corner and wait for the robbery to
21 be over.

22 But what you are going to see as this plays is
23 other people start to come in. And I think the
24 Defense may try to say those people could have been
25 Emmanuel Elleby. But what you are going to see is

1 two of them are white. Again, we have already got
2 pictures of Emmanuel Elleby. We have already told
3 you he is black. And you can actually see them
4 standing out there by the door. There is one
5 gentleman, that isn't Emmanuel Elleby. He is going
6 to come in the store with another gentleman. They
7 are white.

8 You are going to see in a few minutes as they
9 come in -- here they come. Yes, they were outside,
10 but they do the right thing. They come in. They
11 point and say, Hey, they went that way. They are
12 clearly not the robbers.

13 Maybe the Defense is going to say that
14 Emmanuel Elleby was standing outside when this
15 happened, because we -- the GPS cannot put you
16 exactly where you are standing.

17 Having said that, why didn't he do like these
18 two people? Hey, I saw it. Go get them. They are
19 down that way. Or even better, when Investigator
20 Carwell shows up at your house asking you, Hey, do
21 you know anything about this? When he takes you
22 down to headquarters and asks you:

23 Where were you at 11:52?

24 I don't know.

25 Were you at the Dollar General?

1 No.

2 If you were there doing nothing wrong, say so.
3 Don't lie. That is what he did.

4 And I am going to let this keep playing just
5 to show you, nobody else comes in that Dollar
6 General. When they do, it is not Emmanuel Elleby.

7 And what is important is this is going to end
8 at around 11:59, which doesn't even matter to me.
9 Because at 11:58 he is home. His monitor shows him
10 going back to his house. His GPS. Back at his
11 house at 11:58. So he is not any of these people
12 walking in the store because there is absolutely no
13 way he makes it back home by 11:58. And at 11:57,
14 the next person that comes in is him.

15 So I ask you to use your common sense as you
16 are looking at this and as you listen to Mr.
17 Ruffin, because they are going to tell you, there
18 is reasonable doubt. There is a reasonable doubt.
19 They didn't show you Emmanuel Elleby's face on this
20 video. No, because they covered their faces up.
21 They didn't bring you DNA. They didn't bring you a
22 CSI in here. Sure didn't, because that doesn't
23 fit. CSI is a TV show.

24 But here is what we did bring you. Proof
25 beyond a reasonable doubt. We brought you the GPS

1 device tracking. We talked about that. You will,
2 when you go back to the jury, you will have all
3 this evidence. We don't keep it up here from you.
4 We are going to send it all back to you. And I ask
5 that you look at it. It shows the dots. And the
6 best one is this last one, Exhibit 3, that shows
7 how he moved from the Dollar General to his house.
8 If he wasn't in there doing a robbery, then why did
9 you leave the Dollar General and run home?

10 The items were in his room three days later:
11 His shoes, his bag. And the change is in here. A
12 bunch of change. And his Newport cigarettes in
13 there, which were stolen. And then this shirt.

14 Now, why is this shirt important? Well, if
15 you want to watch the video, and I have shown it to
16 you at this point, he has on blue pants that look
17 like they are this color and scrubs that would
18 match this. That is why. And I've gone through at
19 this point the things that he finds.

20 All right. When he goes to talk to Mr.
21 Elleby, what does Investigator Carwell say? Did he
22 act like -- I might be -- I'm not going to lie -- I
23 talk to Investigator Carwell all the time, but when
24 somebody I don't know who is an officer comes to
25 talk to me, that is human nature; right? You get a

1 speeding ticket, you immediately start going, Do I
2 have my registration? Do I have my insurance? It
3 is not the most nice thing all the time. So I
4 don't mind you getting a little angry, but sweating
5 profusely and throwing up on your porch to the
6 point that Investigator Carwell didn't even want to
7 give him a pen? That is a little excessive if you
8 are innocent and didn't do anything.

9 He had no explanation for why his GPS placed
10 him at the scene of the crime. First he said, I
11 wasn't there. Then he said, Hum, I don't know.
12 Then he said, Well, I did go by the Dollar General
13 at 11:00 o'clock. We all know this happened at
14 11:52. If there is an innocent explanation, if
15 there is an explanation that you didn't do
16 something, isn't this a good time to say it? When
17 he is asking you and arresting you and charging you
18 with a crime? Isn't this the time to say, Hey,
19 hey, it wasn't me. He didn't. He lied. Flat out
20 lied.

21 Call to Boler. That is important. I don't
22 know. I didn't do it. Wait, I do know who did it.
23 His name happens to be in my phone and I happen to
24 be able to call him. And by the way, when I call
25 him, I'm going to say, Do you want to do another

1 lick?

2 Why is that important? Because why would you
3 say another one if you hadn't done the first one.
4 Wouldn't you just say, Hey, I need to go do a
5 robbery with you -- a lick, as they call it? Why
6 would he say another one? Because you have done
7 the first one.

8 And, lo and behold, Boler shows up to go do
9 another lick.

10 Now, let's talk a little bit about Boler. He
11 told you that he did it with Emmanuel Elleby. He
12 told Investigator Carwell he did it with Emmanuel
13 Elleby. He picked him out of a photo line-up. He
14 says, That is Emmanuel Elleby. That is the guy I
15 did it with. That is Phatz.

16 Now, I have got to admit, he came in here
17 yesterday, wasn't the most truthful. He came in
18 here and he told you, Well, yeah, I kind of did a
19 robbery with him, but he went over the counter, I
20 just kind of stayed and watched. Right? Isn't
21 that what he said?

22 It reminds me of a little kid when they
23 finally get caught and they have had time to think
24 about it. They don't want to be -- they know they
25 are going to get caught; right? But they try to

1 mitigate it. They don't want it to be really bad,
2 they just want it to be a little bad. That's what
3 he did.

4 And when Carwell talked, he didn't have a
5 chance to think about it. He says, Okay, yeah,
6 here is what I did. And he told him everything;
7 right? Y'all will have the statement back there,
8 you will be able to see it. I'm sorry, you won't
9 have his statement, you will have Elleby's
10 statement. But Boler's statement, he talked about
11 it with Carwell. And with Boler he immediately
12 tells him, Yes, we did it. We had what appeared to
13 be a gun. We covered it up. But, yeah. It looked
14 like a gun to me. He pointed it in their faces. I
15 wore this, he wore that. He got the description;
16 right? Told him everything. But in front of you
17 he didn't want to be quite that bad.

18 And I'm sure the Defense is going to get up
19 here and say, He is trying to work off his time.
20 He is just telling y'all this so he won't get as
21 much time.

22 He told him that a year ago. He told us that
23 today. I can still go get that much time on him.
24 I can have a trial. He now has a sworn statement
25 again. I could do exactly what I'm doing now with

1 another set of 12 people and have even better
2 evidence with him. But he did it anyway, because
3 it is the truth. They can't do anything with that.

4 This is what they would like us to have. They
5 would like us to have fingerprints. So we brought
6 you somebody to talk about that. I know he was a
7 little boring. But we brought him in here for
8 y'all to talk to.

9 And he told you, first of all, you can't get
10 fingerprints if they wear gloves. And they had on
11 gloves. But they tried. They did their job.
12 Richland County did an exceptionally good job.
13 They tried. But you can't get fingerprints when
14 they wear gloves.

15 And he said even if they didn't, remember he
16 talked about the porous surfaces, and it is not
17 like TV where you get these pristine prints. Like
18 I love -- I do watch CSI and all that stuff even
19 though I know it doesn't happen that way. It
20 doesn't. It takes three, four, five people on TV
21 what takes them to do in 42 minutes in one. But
22 they tried. So, no, we don't have them. It would
23 be great if we did, but we don't.

24 DNA. Sure they are going to get up here and
25 talk about how, Well, they swabbed for DNA. They

1 took their swab in their mouth. They didn't test
2 it. So what? So what?

3 We brought you Devin Boler. Why would I test
4 his DNA? He told you that he did it. We brought
5 you the video. We brought you the things from his
6 house. Why would I test for DNA?

7 The other reason -- and, again, you have seen
8 this video -- they are covered from head to toe.
9 Exactly how were they going to leave DNA? It
10 doesn't just jump off your body. You have to touch
11 something with your skin in order to leave it.
12 They don't -- they are covered. And they didn't
13 touch anything. So, no, they swabbed for DNA
14 because Richland County did their job, they tried.
15 But his job is to decide what to test. And the
16 decision was made not to, because it wasn't
17 necessary.

18 Cell phone records. I'm sure this is going to
19 come up. Well, they took their cell phone.
20 Remember, they asked him that, Didn't you take
21 their cell phones? Couldn't you have gotten their
22 records? Yes, could have. Why? Why should I
23 bring up all these people to waste your time, waste
24 his time, to show that they called each other.
25 They called each other in front of him. I brought

1 you the people. Why would I bring you records when
2 I can bring you the real deal? I brought you real
3 deal. Don't need phone records. They called each
4 other in front of him. They admitted they knew
5 each other. Why would I need phone records?

6 That would be like asking, Today is Thursday.
7 Can you go get a calendar and prove it? Why would
8 you go get a calendar? It is Thursday.

9 Gardner's cell phone. Oh, they don't have
10 Gardner's cell phone. They didn't go look for it.
11 Again, are you going to tell me the cell phone
12 wasn't taken? I brought you the man whose phone
13 was stolen. Why would I have to go look for his
14 phone?

15 Investigator Carwell told you that Gardner
16 told him that. It ended up somewhere in Lexington
17 County. They are going to say, Oh, that wasn't in
18 his notes. Okay. It also wasn't in his notes how
19 he got there. There is lots of stuff that aren't
20 in the notes because it is just not important. The
21 question is, Was the phone taken, not where it
22 ended up. I don't have the \$387 either. Pretty
23 sure they spent that, because that is what you do
24 with a robbery; right? You don't take it and just
25 hold everything with you. The whole point is to

1 steal it, use it. So maybe they sold the cell
2 phone. I don't know. It is three days later by
3 the time he even finds them. Who cares where the
4 cell phone is? All it would show is it is not with
5 Mr. Gardner, which we all know it is not with
6 Mr. Gardner.

7 All that is irrelevant. What is relevant to
8 you all is what we brought in here. What was
9 brought in here is that Emmanuel Elleby committed a
10 crime with Devin Boler. He committed an armed
11 robbery with Devin Boler.

12 Your job is to judge the credibility of all of
13 the evidence that has been presented to you. Your
14 job is to judge the credibility of the witnesses.
15 Why do they have any reason to lie, if they have
16 any reason to lie? Why did they come in here and
17 say what they said? Is it corroborated by other
18 things? Do they corroborate each other? I don't
19 know if you noticed, but we had to keep bringing in
20 the witnesses. They didn't hear what the other one
21 said. Everybody in here came in here and told you
22 the same thing. Gave you the same description of
23 the robbery. Devin Boler gave you the same
24 description of the robbery. The video gives you
25 the same description of the robbery. If it wasn't

1 Emmanuel Elleby, exactly why does he have the
2 evidence in his house? I guess it could have been
3 somebody else. I guess. But the reasonable
4 assumption, the reason going from Point A to Point
5 B, the reasonable assumption from the GPS tracking
6 that starts at the Dollar General and ends at his
7 house is that Emmanuel Elleby committed this crime.
8 There is no reasonable doubt.

9 In a few minutes you are going to hear from
10 Mr. Ruffin and then you are going to hear
11 instructions from the judge and then you are going
12 to go back there and deliberate.

13 What I ask is that you look at all the
14 evidence. That you use the common sense that God
15 gave you. Think about it. There is no other
16 person who could have done it but Emmanuel Elleby
17 with the evidence that we have given you, with the
18 video that we have given you, with the Co-Defendant
19 that we gave you, and with Investigator Carwell
20 that we gave you.

21 Emmanuel Elleby is guilty of armed robbery and
22 kidnapping. And I ask that you come back with that
23 verdict.

24 Thank you.

25 THE COURT: Thank you.

1 Now you will hear from Mr. Ruffin, on behalf
2 of the Defendant.

3 MR. RUFFIN: Thank you, Judge. May it please
4 the Court?

5 THE COURT: Yes, sir.

6 CLOSING STATEMENT

7 MR. RUFFIN: I'm scared. I'm actually
8 terrified. Because, you know, the State's case is
9 not nearly as strong as they want you to believe.
10 It is full of holes. But, look, here we are. We
11 are at the tail end of a jury trial. Y'all are
12 just a few minutes away from getting this case.
13 You will be able to decide that momentarily.

14 And you have an incredible power in your hands
15 today. You will be able to go back to that jury
16 room and you can find Emmanuel Elleby guilty, even
17 though he is innocent. And that is why I'm scared.

18 A reasonable doubt is doubt that would cause a
19 reasonable person to hesitate to act. So anything
20 in this case that would cause you to hesitate, even
21 just for a moment, even for a split second, that
22 causes you to hesitate, that is reasonable doubt.

23 You know, I think about it like if you are
24 walking down Main Street over here in Downtown
25 Columbia and you get to an intersection and the

1 light is red for you, so you stop at the
2 intersection; right? And it turns green. And you
3 get the little green man that says it is okay to
4 walk, so you get ready to start walking.

5 Before you take that step out into the street,
6 do you look to the left? Do you take a glance to
7 the left and the right before you take that step so
8 you don't get run over by a bus or run over by a
9 car?

10 You know, that is reasonable doubt. It is
11 slight, it is very subtle, but it causes you to
12 pause for a split second before you take that next
13 step -- before you make that next decision.

14 Now, in a criminal trial and a jury trial
15 situation I like to think of reasonable doubt as
16 unanswered questions in the case. So I would like
17 to take a couple of minutes to talk to you about
18 some of the unanswered questions that I have, and
19 my guess is that y'all probably have your own
20 unanswered questions that maybe I haven't even
21 thought about. And I encourage you and challenge
22 you that when you go back into that jury room that
23 you ask yourself and that you ask of all of your
24 fellow jurors, What unanswered questions do we
25 have? And I hope that you will discuss those at

1 length and that you will, you know, take this
2 seriously, because this is a very serious case, and
3 it is a very serious decision you have to make.

4 So let me start with the unanswered questions
5 that I have. She actually brought a lot of them up
6 herself. And I'm glad that she did. So I'll start
7 with DNA.

8 The DNA that was collected from the scene,
9 collected from the cash register area and from the
10 cigarettes -- there were cigarettes that were taken
11 from, I believe -- they collected DNA. They
12 collect DNA from Emmanuel Elleby and they collect
13 DNA from Devin Boler and then just don't test it.
14 I mean, they have it in their possession and they
15 just choose not to test it, which is kind of
16 amazing because Investigator Carwell gets up here
17 and says, Yes, more evidence is better than less
18 evidence. But, you know, it is not really cost
19 effective always to do a full and thorough
20 investigation, apparently. I guess it is too
21 expensive to run the DNA test, so we just don't do
22 it.

23 That kind of brings me to the actual question
24 that I have about the DNA, which is, you know, What
25 would it show? I mean, Ms. Sampson gets up here

1 and says, This isn't CSI. True. This is not a
2 television show. This is real life. This is a
3 real case. They don't have to have DNA. Okay.
4 But they do have it. They do have DNA. Taken from
5 the scene. And they have it in their possession
6 now. They just chose not to test it. Maybe they
7 don't want to know. They don't want to know what
8 the DNA would show.

9 Maybe if they tested it it would show that
10 they have the wrong guy. You know, more evidence
11 is not always something that is favorable to the
12 Government. Okay? Because sometimes when they
13 collect more evidence it starts to show that they
14 are wrong about who they have arrested. That they
15 actually might find out, Look, we have the wrong
16 guy. So they choose to have less evidence, even
17 though more evidence is readily available.

18 And the stuff about the gloves, all right?
19 The State's own witness, Investigator Beeler, who
20 was the crime scene investigation guy, yes, he did
21 say, Gloves mean no fingerprints. You are not
22 going to leave fingerprints if you have gloves on.
23 And they didn't find fingerprints.

24 What did he say about DNA, though? He said,
25 If you are wearing gloves and, you know, you wipe

1 your face, you are scratching your head(hitting
2 desk) -- DNA. All right? But they don't even
3 bother to find out. You know, that is
4 unacceptable. And, to me, that is just one of the
5 unanswered questions that I have about this case.

6 The second unanswered question I have would be
7 about the cell phones of Mr. Elleby and Mr. Boler.
8 All right? They have those cell phones in their
9 possession now. Both of them. They are both smart
10 phones. All right? Both of these guys give their
11 phones over voluntarily and say, Sure, Investigator
12 Carwell, you can search my phone.

13 So what do you think an investigator would do?
14 Probably search their phone. What does
15 Investigator Carwell do? Thanks, but, no thanks.
16 I'm actually not even going to look at your phone.
17 All right? I mean, is that too expensive? That is
18 not cost effective for him to just pick up the
19 phone and scroll through it and see what phone
20 calls these guys made, what text messages, e-mails,
21 social media posts? You can get a location from a
22 cell phone. He chooses less evidence, even though
23 more evidence is readily available.

24 And this is why I think he might have done
25 that. Because Boler, right, he gets up on the

1 stand yesterday and says, Yes, Emmanuel called me
2 right before we did the robbery. Right? That was
3 never verified. That is not corroborated by
4 anything, even though they have both the cell
5 phones in their possession. They could scroll
6 through and say, Okay, yes, they did call each
7 other, or, No, they did not call each other. All
8 right? They don't have it. They choose less
9 evidence, even though they could have more easily.
10 That is one of my big unanswered questions about
11 this case.

12 Third, Devin Boler himself. You know, what do
13 we know about Devin Boler but the fact that he came
14 into court yesterday and committed a crime in front
15 of all of us. He got on the witness stand and lied
16 to everybody. He committed perjury. Right? He
17 said, I didn't have the object that looked like a
18 gun. I didn't have that. You know, Emmanuel had
19 that. And he did the whole thing and I just stood
20 there and watched. That's what he said at first.

21 Then, you know, he kind of wants maybe to tell
22 a little bit more of the truth. I don't know if
23 what he -- anything he is telling is the truth.
24 Then he says, Yes, actually I was the guy with the
25 object, but I never pointed it at anybody. And I

1 never jumped over a counter and I never went behind
2 the counter. He sticks to that story. All right?
3 And then, I mean, we just watched the video a
4 second ago. And y'all watched the same video that
5 I watched. Whoever it was who had the object --
6 and I don't know if it was Devin Boler or not --
7 but what I do know is that on the video, whoever
8 was holding that object is pointing that thing in
9 people's faces. And the guy who is holding the
10 object jumps over the counter and goes behind the
11 counter. Okay?

12 So what do we know about Boler? He is a liar.
13 He lied. Okay? He lied to this whole courtroom
14 yesterday. All right? And that is abundantly
15 clear just from watching a quick glance at the
16 video. All right?

17 And not to mention the fact that he is facing
18 10 to 30 years in prison on armed robbery and zero
19 to 30 years in prison on kidnapping. Well, if he
20 gets 30 on both, that is 60 years. This guy could
21 be in prison for 60 years in the South Carolina
22 Department of Corrections at 85 percent time. All
23 right?

24 Now, I don't know what 85 percent of 60 is off
25 the top of my head, but I know that is a lot of

1 years. All right? And it is probably longer than
2 he would survive in the Department of Corrections.

3 But, good news for him; right? He already has
4 been given a plea offer. Ms. Sampson, with the
5 State, they have already agreed, Hey, man, if you
6 plead guilty we'll agree to 10 years. You know,
7 you just come in and say that you are guilty, we'll
8 agree to 10 even though you could get 60. All
9 right? You know, that is a pretty decent deal, I
10 guess. Ten is a lot better than 60; right?

11 But what did Boler say when I asked him about
12 that? He doesn't want to take 10 years. He
13 doesn't want to do 10 years. Why? He has been to
14 prison before. All right? At 25 years old he has
15 already been to prison for 10 months. He doesn't
16 want to go back.

17 Remember when he was talking about what prison
18 life was like? Right? Living in a cage with two
19 other grown men. Toilet -- they have got to share
20 a toilet, go to bathroom in front of each, the food
21 that they eat is disgusting, it is horrible. The
22 conditions are horrendous. And I'm not saying that
23 it shouldn't be like that, y'all. It is prison.
24 They are there to be punished. Okay? But my point
25 is that he doesn't want to go back, period.

1 Definitely not for 10 years. All right? So he
2 wants to help the State convict Emmanuel Elleby;
3 right? Because if he helps them convict -- the
4 State basically is asking you to convict Emmanuel
5 Elleby based on a liar's testimony. He got up here
6 and just flat out lied to all of us. They want you
7 to convict him based on his testimony.

8 And if you do, let's fast-forward to tomorrow.
9 Okay? Let's say y'all find Emmanuel guilty today.
10 And then tomorrow the State goes to Boler and says,
11 Hey, man, I appreciate you helping us out with that
12 trial, we got that conviction. We are going to go
13 ahead and reduce your charge from armed robbery to
14 strong arm robbery. Remember, when I asked Boler
15 about that? Zero to 15 years. And we'll just
16 recommend probation. You can get out of jail this
17 afternoon.

18 MS. SAMPSON: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. RUFFIN: The point is that, you know, if
21 you think that these kind of negotiations don't go
22 on, you are kidding yourself. All right? They
23 have already made one offer. He wants a better
24 offer. Frankly, I don't think you should believe a
25 single word that Devin Boler says. I mean, period.

1 I don't know if he actually was even involved in
2 the case. I don't believe anything that he said,
3 period. And I don't think you should either.

4 The last thing -- the last unanswered question
5 for me is the victim's cell phone. All right?
6 What is important -- and, look, I'm not saying the
7 victim's cell phone wasn't stolen. Of course it
8 was stolen. I mean, Kenneth Gardner got arm
9 robbed. Okay? Somebody arm robbed him. Two
10 people arm robbed him. And they took his cell
11 phone. Why is that important? Well, cell phones
12 are unique. They are one of a kind. This is my
13 cell phone right here. Okay? I know that it is
14 mine because it has a big ugly case on it so if I
15 drop it it doesn't smash to pieces. All right? I
16 know that it is mine because if I turn it on there
17 is a picture of me and my wife. All right? I know
18 that it has a password. Okay? So if I type in the
19 password and it comes up, I know this phone is
20 mine. All right? I know that it is no one else's
21 phone. My pictures and stuff are on here. My
22 videos, e-mails, texts, all that stuff is right on
23 there, so I know it is mine. And if you don't
24 think that if I take my cell phone number and give
25 to Investigator Carwell and I say, Here, here is my

1 phone number. My cell phone provider is Verizon.
2 Here, I will sign a consent for you to, you know,
3 to get my cell phone records. You don't think he
4 can go do it just like that? He can get all of my
5 cell phone information off of this phone, including
6 the location of it. All right?

7 There is no effort ever made, ever, in the
8 whole case, to find the victim's cell phone. That
9 is my problem with it. All right? I'm not --
10 we're not talking about was it stolen or was it not
11 stolen. Okay? Investigator Carwell writes a
12 six-page single-spaced typed statement -- or not
13 statement, but notes, okay? All of his
14 investigative notes he did in the whole case. All
15 right? Nowhere in there does he mention looking --
16 even making an attempt to look for Kenneth
17 Gardner's cell phone. And then, amazingly --
18 amazingly -- I was blown away by this yesterday
19 when he took the stand; right? And he said, Oh,
20 yeah, yeah, yeah, Kenneth Gardner told me that he
21 has an app on his phone that has GPS. And he said
22 that the cell phone was going down I-77 towards the
23 county line.

24 What? So he has been told by the victim, Hey,
25 man, my cell phone is headed down the interstate to

1 a different county. Well, where does Carwell look?
2 Two blocks down the street from the Dollar General
3 at Emmanuel Elleby's house. And he finds a shirt
4 that they don't even allege is involved in the
5 robbery at all; right? It matches somebody's pants
6 maybe? Cigarettes? Are these unique? Is this one
7 of a kind like a cell phone is? Right? They have
8 three, right, they have three of these in here
9 right now. Those are one of a kind? What about
10 this bag, the 38 bag? And the white tennis shoes?
11 Are these one of a kind?

12 What is the first thing Investigator Carwell
13 tells you about this bag when he takes the stand.
14 He said, As soon as I saw that 38 I immediately
15 thought George Rogers. For some of y'all who may
16 not be football fans, George Rogers is a very
17 famous football player from South Carolina who
18 played for the Gamecocks, made it to the NFL, a
19 well-known guy. This bag is not one of a kind;
20 right? Neither are his tennis shoes. They are not
21 one of a kind.

22 The only thing stolen or involved in the
23 robbery at all that is truly one of a kind is the
24 cell phone, which, according to Investigator
25 Carwell's own sworn testimony yesterday, he had

1 information that that cell phone was headed down
2 the interstate to a different county, and he didn't
3 go look. Didn't even go look. They don't even
4 try. It is like they are not -- they don't want
5 more evidence because, like I said, sometimes more
6 evidence is not good for the State. It is not good
7 for the Government. It is the additional evidence
8 that they get, it creates problems with their case
9 if that additional evidence shows that they got the
10 wrong guy, which they do have the wrong guy. All
11 right?

12 I want to wrap it up here. You know, these
13 are just a few of the unanswered questions that I
14 have. Okay? Y'all probably have others. And I
15 really hope that you will talk about them. Because
16 these certainly are not the only ones.

17 And, you know, y'all are doing something today
18 that a lot of people in our community and our
19 country never do: Serve on a jury. I mean, most
20 people who even get called up for jury duty, I know
21 probably y'all came up here on Monday wondering,
22 Are we going to get called or are we not? Most of
23 the people called got sent home; right? And it is
24 just a handful of y'all who actually got picked.
25 And some of y'all, this may be your first time on a

1 jury. Some of you this might be your last time
2 ever being on a jury. And you may be glad. You
3 may walk out of here relieved and say, Whew, I hope
4 I never have to do that again. That was awful. It
5 was long. It was boring. Don't really like
6 lawyers. It was just annoying. Okay? But whether
7 you like it or not, whether you like being on a
8 jury or not, you probably will remember this for
9 many years to come.

10 And years from now you may look back on this
11 case and you may think to yourself or you may ask a
12 friend, you know, Did I do Emmanuel Elleby justice
13 when I was a juror on this case? You know, did I
14 make the right decision?

15 Well, y'all, if you are going to have a doubt
16 about this case, have it right now. Have it today.
17 Okay? Because for Emmanuel there is no tomorrow,
18 there is no next week or year from now. All right?
19 Today is his day that y'all will decide his fate.
20 It is in your hands.

21 And I can't stress to you enough that if there
22 is unanswered questions in your mind about this
23 case, if there is anything that you heard that I
24 have said, that any of the witnesses said, that any
25 of -- some things that Ms. Sampson -- I mean, Ms.

1 Sampson said in her closing, It could have been
2 somebody else. Yeah, it could have been somebody
3 else. That is the problem. She even admits in her
4 own closing argument it could have been somebody
5 else, but is asking you to find this guy guilty. I
6 mean, it blows my mind. And it terrifies me, quite
7 frankly. That is why I told you I'm scared. All
8 right? So I hope that when you go back into your
9 jury room and you talk about this case, I know you
10 are tired, I know you are ready to go home and get
11 on with your lives, you don't want to hear about
12 Emmanuel Elleby and Devin Boler any more probably
13 ever again. I understand it. But the decision you
14 are about to make when you go back there is
15 extraordinarily important and it is extraordinarily
16 serious. Okay? A man's life is basically in your
17 hands. And I'm asking you, if you have a
18 hesitation, if you have any hesitation, you must
19 find Emmanuel Elleby not guilty.

20 I'm done. Thank y'all for listening. I
21 appreciate it.

22 JURY CHARGE

23 THE COURT: All right, ladies and gentlemen of
24 the jury, you have heard the evidence, the
25 arguments of the parties, and now it is my

1 responsibility to charge you as to the law.

2 I remind you that during this trial you and I
3 have certain duties to perform. As the trial
4 judge, it is my responsibility to preside over the
5 trial of this case, and I also have the duty to
6 rule on the admissibility of the evidence offered
7 during this trial.

8 You are to consider only the competent
9 evidence before you. If there was any testimony
10 ordered stricken from the record in this case
11 during this trial, you must disregard that
12 testimony. You are to consider only the testimony
13 which has been presented from the witness stand,
14 any exhibits which have been made a part of the
15 record in this case, and any stipulations of
16 counsel.

17 I have the additional duty to charge you the
18 law applicable to this case. As the presiding
19 judge I am the sole judge of the law of this case,
20 and it is your duty as jurors to accept and apply
21 the law as I now state it to you.

22 If you already have any idea as to what the
23 law is or what the law ought to be, and it does not
24 agree with that I now tell you the law is, you must
25 abandon this idea because you are sworn to accept

1 the law and apply the law exactly as I state it to
2 you.

3 In every case tried in this court before a
4 jury, the jury becomes the sole and exclusive judge
5 of the facts in a case. A trial judge cannot
6 state, comment on, or make any statement to a trial
7 jury about the facts in a case. Since you, the
8 jury, are the sole judge of the facts in this case,
9 you are not to infer from what I have said during
10 the progress of this trial in ruling upon the
11 admissibility of evidence, or otherwise, or
12 anything that I say now during the course of this
13 instruction to you, that I have an opinion about
14 the facts in this case.

15 The law does not allow me to have an opinion
16 about the facts in the case. This is a matter
17 solely for you, the jury, to determine as jurors.
18 It is your duty to determine the effect, the value,
19 weight, and truth of the evidence presented during
20 this trial.

21 There are two types of evidence which are
22 generally presented during a trial. We have direct
23 evidence and circumstantial evidence.

24 Direct evidence is the testimony of a person
25 who claims to have actual knowledge of a fact, such

1 as an eyewitness. It is evidence which immediately
2 establishes the main fact to be proved.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of
5 a fact. It is evidence which immediately
6 establishes collateral facts from which the main
7 fact may be inferred. Circumstantial evidence is
8 based on inference and not on personal knowledge or
9 observation.

10 The law makes absolutely no distinction
11 between the weight or value to be given to either
12 direct or circumstantial evidence, nor is a greater
13 degree of certainty required of circumstantial
14 evidence than of direct evidence.

15 You should weigh all of the evidence in this
16 case. After weighing all the evidence, if you are
17 not convinced of the guilt of the Defendant beyond
18 a reasonable doubt, you must find the Defendant not
19 guilty.

20 Necessarily, you must determine the
21 credibility of witnesses who have testified in this
22 case.

23 Credibility simply means believability. It
24 becomes your duty as jurors to analyze and to
25 evaluate the evidence and determine which evidence

1 convinces you of its truth.

2 In determining the believability of witnesses
3 who have testified in this case, you may believe
4 one witness over several witnesses or several
5 witnesses over one witness. You may believe a part
6 of the testimony of a witness and reject the
7 remaining part of the testimony of that same
8 witness. You may believe the testimony of a
9 witness in its entirety or reject the testimony of
10 a witness in its entirety. You may consider
11 whether any witness has exhibited to you any
12 interest, bias, prejudice, or other motive in this
13 case. You may also consider the appearance and
14 manner of a witness while on the witness stand.

15 Ladies and gentlemen of the jury, the
16 indictment in this case -- the indictments --
17 charge the Defendant with armed robbery and
18 kidnapping. I remind you that the Defendant was
19 arrested, charged, and indicted in this case, and
20 that that is not evidence in this case and cannot
21 be considered by you as evidence of guilt in this
22 case, nor does it create any presumption or
23 inference of guilt.

24 This document, which is the indictment -- or
25 the indictments -- is simply the formal instrument

1 which contains the charges made against the
2 Defendant. It is the formal document by which this
3 case is brought into this court.

4 Next we'll talk about the presumption of
5 innocence. The Defendant in this case has pled not
6 guilty to the indictment, and that plea puts the
7 burden on the State to prove the Defendant guilty.

8 A person charged with committing a criminal
9 offense in South Carolina is never required to
10 prove himself innocent.

11 I charge you that it is an important rule of
12 law that the Defendant in a criminal trial, no
13 matter what the seriousness of the charge may be,
14 will always be presumed to be innocent of the crime
15 for which the indictment was issued unless guilt
16 has been proven by evidence satisfying you of that
17 guilt beyond a reasonable doubt.

18 The presumption of innocence does not end when
19 you begin your deliberations, but it accompanies
20 the Defendant throughout the trial until you have
21 reached a verdict of guilt based on evidence
22 satisfying you of that guilt beyond a reasonable
23 doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

1 Defendant which remains with the Defendant until it
2 has been stripped from the Defendant by evidence
3 satisfying you of the Defendant's guilt beyond a
4 reasonable doubt.

5 The presumption of innocence is not a mere
6 legal theory. It is not just a legal phrase. It
7 is a substantial right to which every Defendant is
8 entitled unless you, the jury, are satisfied from
9 the evidence of the Defendant's guilt beyond a
10 reasonable doubt.

11 What is reasonable doubt? What is a
12 reasonable doubt in the law? A reasonable doubt is
13 the kind of doubt that would cause a reasonable
14 person to hesitate to act.

15 The State has the burden of proving the
16 Defendant guilty beyond a reasonable doubt. Some
17 of you may have served as jurors in civil cases
18 where you were told that it is only necessary to
19 prove that a fact is more likely true than not
20 true, such as by the greater weight or the
21 preponderance of the evidence.

22 In criminal cases, the State's proof must be
23 more powerful than that. It must be beyond a
24 reasonable doubt.

25 Proof beyond a reasonable doubt is proof that

1 leaves you firmly convinced of the Defendant's
2 guilt. There are very few things in this world
3 that we know with absolute certainty, and in a
4 criminal case the law does not require proof that
5 overcomes every possible doubt.

6 If, based on your consideration of the
7 evidence you are firmly convinced that the
8 Defendant is guilty of the crimes charged, you must
9 find the Defendant guilty.

10 If, on the other hand, you think there is a
11 real possibility that the Defendant is not guilty,
12 you must give the Defendant the benefit of the
13 doubt and find him not guilty.

14 An issue in this case is the identification of
15 the Defendant as the person who committed the
16 crimes charged. The State has the burden of
17 proving identity beyond a reasonable doubt. You
18 must be satisfied beyond a reasonable doubt of the
19 accuracy of the identification of the Defendant
20 before you may convict the Defendant.

21 Identification testimony is an expression of
22 belief or impression by a witness. You must
23 determine the accuracy of the identification of the
24 Defendant. You must consider the believability of
25 each identification witness in the same way as any

1 other witness.

2 You may consider whether the witness had an
3 adequate opportunity to observe the offender at the
4 time of the offense. This will be affected by
5 things like how long or short of a time was
6 available, how far or close the witness was, the
7 lighting conditions, and whether the witness had
8 the chance to see or know the person in the past.

9 Are you satisfied that the identification made
10 by the witness subsequent to the offense was the
11 product of his own recollection? You may take into
12 account both the strength of the identification and
13 the circumstances under which the identification
14 was made.

15 If the identification by the witness may have
16 been influenced by the circumstances under which
17 the Defendant was presented to him for
18 identification, you should scrutinize the
19 identification with great care.

20 You may also consider the length of time that
21 lapsed between the occurrence of the crime and the
22 next opportunity of the witness to see the
23 Defendant as a factor bearing on the reliability of
24 the identification.

25 You may take into account any occasions which

1 the witness failed to make an identification of the
2 Defendant or make an identification that was
3 inconsistent with an identification at trial.

4 Finally, you must consider the credibility of
5 each identification witness in the same way as any
6 other witness, consider whether he was truthful,
7 and considering whether he had the capacity and
8 opportunity to make reliable observation on the
9 matter covered in his or her testimony.

10 Once again, I instruct you the burden of proof
11 on the State extends to every element of the crimes
12 charged, and this specifically includes the burden
13 of proving beyond a reasonable doubt the identity
14 of the Defendant as the person who committed the
15 crime.

16 If, after examining the testimony, you have a
17 reasonable doubt as to the accuracy of the
18 identification, you must find the Defendant not
19 guilty.

20 Ladies and gentlemen of the jury, under the
21 laws of the State, a Defendant may be tried even if
22 the Defendant does not attend the trial, but the
23 fact that a Defendant is not present may not be
24 considered against the Defendant in any manner
25 whatsoever. It must not be discussed by you during

1 your deliberation.

2 Ladies and gentlemen of the jury, I further
3 charge you that a person who has a past criminal
4 record is competent to testify during a trial. A
5 past record does not affect the ability of that
6 witness to testify. The past record may only be
7 considered by you, if at all, in determining the
8 witness's believability.

9 Remember that you are the sole judges of the
10 facts in the case and of the believability of any
11 and all of the witnesses.

12 A statement alleged to have been made by the
13 Defendant has been admitted into evidence in this
14 case. While the Court has determined that the
15 statement is admissible, I instruct you to make the
16 ultimate decision as to whether or not the
17 Defendant made the statement.

18 If the Defendant did make the statement, you
19 must determine whether the statement was made by
20 the Defendant voluntarily and of his own free will.
21 This means that the statement was not caused by
22 pressure, force, fear, threat, coercion, or
23 intimidation, or by hope or a promise of leniency
24 or a reward of any kind.

25 In determining whether the statement was

1 voluntary, you should consider both the
2 characteristics of the Defendant and the details of
3 the questioning.

4 Some of the factors that you must consider
5 are: (1) the age of the Defendant; (2) the
6 Defendant's education or lack of education; (3) the
7 Defendant's mental ability or capacity; (4) the
8 Defendant's IQ or intelligence; (5) the Defendant's
9 background and environment; (6) the place and the
10 length of detention; (7) the nature of questioning;
11 and (8) the advice, or lack thereof, to the
12 Defendant of his constitutional rights, including
13 but not limited to, the right to remain silent;
14 that any statement could be used against him in a
15 court of law; the right to have a lawyer present;
16 that if he could not afford a lawyer, a lawyer
17 would be appointed to represent him without any
18 cost; and that he could stop making a statement at
19 any time.

20 You must carefully consider all the
21 surrounding circumstances before you give any
22 weight to that to an alleged statement.

23 The State has the burden of proving beyond a
24 reasonable doubt that the alleged statement was
25 voluntarily. If you determine it was, you may give

1 the statement any further consideration that you
2 deem proper. You must decide what weight, if any,
3 should be given to the alleged statement. If you
4 determine the alleged statement was not the free
5 and voluntary statement of the Defendant, you
6 should not consider the statement at all.

7 The Defendant in this case, as I have told you
8 earlier, you have heard, is charged with armed
9 robbery. In order to prove the offense, the State
10 must prove beyond a reasonable doubt that the
11 Defendant took personal property from the person or
12 presence of another person.

13 Property is in the presence of a person if it
14 is within the person's reach, inspection,
15 observation, or control so that the person could,
16 if not overcome with violence or prevented by fear,
17 keep possession of the property.

18 The State must also prove beyond a reasonable
19 doubt that the Defendant carried the property away
20 intending to permanently deprive the owner of the
21 property and to keep the property for the
22 Defendant's own use. The slightest removal of the
23 property or the complete possession of the
24 property, even for an instant, by the Defendant is
25 sufficient to show a taking and carrying away of

1 the property.

2 The taking and carrying away of the property
3 must have been done with violence or by putting the
4 owner of the property in fear of violence.

5 Finally, the State must prove beyond a
6 reasonable doubt that the Defendant was armed with
7 a deadly weapon during the robbery.

8 A deadly weapon is an article, instrument, or
9 substance which is likely to cause death or great
10 bodily harm. Whether an instrument has been used
11 as a deadly weapon depends on the facts and
12 circumstances of each case.

13 The following are examples of instruments
14 which may be deadly weapons: A pistol, a shotgun,
15 a rifle, a dirk, a dagger, a knife, a slipping
16 shot, metal knuckles, a razor, gasoline, a fire
17 bomb, or Molotov cocktail and lighter fluid, or
18 while alleging by actions or words that he or she
19 was armed while using a representation of a deadly
20 weapon or any object which a person during the
21 commission of a robbery reasonably believed to be a
22 deadly weapon. A gun may be a deadly weapon even
23 if it is not operating.

24 The Defendant in this case is also charged
25 with kidnapping. The State must prove beyond a

1 reasonable doubt that the Defendant knowingly,
2 unlawfully seized, confined, inveigled, decoyed,
3 kidnapped, abducted, or carried away another person
4 without authority of law.

5 To do a thing unlawfully is to do it willfully
6 against the law.

7 Knowingly means with knowledge, consciously,
8 not accidentally.

9 Seize means to take hold of suddenly or
10 forcibly.

11 Confine means to limit, restrict, or enclose
12 within bounds, imprison, or shut or keep in.

13 Inveigle means to lure, entice, or lead astray
14 by false representation, promises, or other
15 deceitful means.

16 Decoy means to lure by, or as if by, decoy. A
17 decoy is something to entice a person into a trap.

18 Kidnap is to remove the person against his
19 will by unlawful force or by fraud.

20 Abduct means to carry off secretly or by force
21 of an illegal purpose.

22 Carry away means to remove.

23 The State does not have to prove that the
24 Defendant did all of these things. Instead, if you
25 find beyond a reasonable doubt that the Defendant

1 did any of these things, you may find the Defendant
2 guilty of kidnapping.

3 Something done without authority of law is
4 something which the law does not sanction, permit,
5 allow, condone, or provide justification for.

6 The kidnapping does not have to be for any
7 personal or monetary gain for any illegal purpose,
8 but may be for any reason whatsoever.

9 In order to establish criminal liability,
10 criminal intent is required. For example, the
11 mental state required to be proven by the State for
12 a particular crime might be purpose, intent,
13 knowledge, recklessness, or criminal negligence.

14 Criminal intent must be proven by the State
15 beyond a reasonable doubt. Criminal intent is
16 always a matter that must be determined by the jury
17 from circumstances surrounding the situation.

18 There is no way to prove intent to a
19 mathematical certainty. There is no way medical
20 science can dissect a person's brain and determine
21 what the person had in mind. So the law says that
22 criminal intent may be inferred from circumstances
23 shown to have existed. This is how you make a
24 determination of whether or not the element
25 requiring intent was present.

1 It is not necessary to establish intent by
2 direct and positive evidence, but intent may be
3 established by inference in the same way as any
4 other fact, by taking into consideration the act of
5 the party and all of the facts and circumstances of
6 the case.

7 Criminal intent is a mental state, a conscious
8 wrongdoing. It is up to you to determine what the
9 Defendant intended to do based on the circumstances
10 shown to have existed.

11 Criminal intent can arise from action or a
12 failure to act. It may arise from negligence,
13 recklessness, or indifference to duty, or to
14 consequences that is considered by law to be the
15 equivalent of criminal intent.

16 Ladies and gentlemen of the jury, I charge you
17 that mere presence at the scene is not sufficient
18 to prove someone is guilty of a crime.

19 A Defendant's presence where a crime is being
20 committed or mere association with the person who
21 commits the crime does not make a Defendant an
22 accomplice or an aider and/or a better of the
23 person committing the crime.

24 The burden is on the State to prove every
25 element of the crime charged. If you find, after

1 reviewing all the evidence, that the State has
2 proved that the Defendant was only present at the
3 scene of a crime and that they have not proved
4 beyond a reasonable doubt any other participation
5 in the crime, then you must find the Defendant not
6 guilty.

7 The law is that proof of at the scene of a
8 crime, is not sufficient to find someone guilty.

9 Next we will talk about the hand of one, the
10 hand of all. If a crime is committed by two or
11 more people who are acting together in committing a
12 crime, the act of one is the act of all.

13 A person who joins with another to commit an
14 unlawful act is criminally responsible for
15 everything done by the other person which happens
16 as a probable or natural consequence of the acts
17 done in carrying out the common place and purpose.

18 For example, two people can be guilty of
19 killing another person when only one had a gun,
20 there was only one bullet, and only one of the two
21 fired the shot that caused the death.

22 If two or more people are together, acting
23 together, assisting each other in committing the
24 offense, the act of one is the act of all, or, as
25 it is said sometimes, the hand of one is the hand

1 of all.

2 Prior knowledge that a crime is going to be
3 committed without more is not sufficient to make a
4 person guilty of that crime. Mere knowledge that
5 another person is going to commit a crime, even if
6 the Defendant is present when the crime is
7 committed, is not sufficient to convict the
8 Defendant as a principal.

9 Guilt as a principal is shown by actual or
10 constructive presence at the scene as a result of
11 prior arrangement. Therefore, a finding of a prior
12 arranged plan or common scheme is necessary for a
13 finding of guilt as a principal.

14 The State must prove beyond a reasonable doubt
15 by competent evidence the theory of the hand of one
16 is the hand of all.

17 A principal in a crime is one who either
18 actually commits the crime or is present aiding,
19 abetting, or assisting in committing the crime.

20 When a person does an act in the presence of
21 and with the assistance of another, the act is done
22 by both.

23 Where two or more, acting with a common plan
24 or intent, are present at the commission of the
25 crime, it does not matter who actually commits the

1 crime. All are guilty. The hand of one is the
2 hand of all.

3 Present at the commission of a crime means to
4 be sufficiently near to aid and abet and assist in
5 the commission of the crime. However, mere
6 presence at the scene of a crime is not sufficient
7 to convict one as a principal on the theory of
8 aiding and abetting.

9 Intent is also a necessary element, for there
10 must have been a common design or intent to commit
11 the crime, and the crime must have been committed
12 pursuant thereto with the person aiding and
13 abetting by some overt act.

14 Intent means intending the result which
15 actually occurred, not accidentally or involuntary.
16 Intent may be shown by acts and conduct of the
17 Defendant and other circumstances from which you
18 may naturally or reasonably infer intent. The
19 State must prove these element beyond a reasonable
20 doubt.

21 Ladies and gentlemen of the jury, you have
22 heard testimony concerning the penalty a person can
23 serve for the crimes alleged in the indictment.

24 In determining the guilt or innocence of the
25 Defendant, you cannot consider any possible penalty

1 for any particular crime. The punishment for the
2 crime is a matter for me to determine and should
3 never be considered by you in any way whatsoever in
4 arriving at an impartial verdict as to the guilt or
5 innocence of the Defendant.

6 Ladies and gentlemen of the jury, the
7 Defendant in this case has failed to testify. I
8 instruct you and emphasize that the fact that the
9 Defendant did not testify is not a factor to be
10 considered by you in any way in your deliberation
11 and in your consideration of the question of the
12 guilt or innocence of the Defendant. It must not
13 be considered by you in any manner whatsoever. A
14 Defendant has a constitutional right to remain
15 silent, and the assertion of this right must not be
16 considered by you in your deliberations.

17 I repeat, under your oath, you are to draw no
18 conclusion whatsoever from the fact that the
19 Defendant in this case did not testify. The fact
20 that the Defendant did not testify should not even
21 be discussed in the jury room.

22 The burden of proof, as I stated to you
23 earlier, is on the State. The Defendant is not
24 required to prove himself innocent. The burden of
25 proof remains on the State to prove guilt beyond a

1 reasonable doubt.

2 Ladies and gentlemen of the jury, the State
3 and the Defendant are entitled to the individual
4 opinion of each juror on the issues of fact in this
5 case. It is the duty of each of you to consider
6 and weigh all of the evidence in the case and from
7 such evidence to determine, if you can, the
8 question of the guilt or innocence of the
9 Defendant.

10 There is nothing peculiarly different in the
11 way a jury should consider the evidence in a
12 criminal case from that in which all reasonable
13 persons treat any question depending upon evidence
14 presented to them.

15 You are expected to use your good sense,
16 consider the evidence in the case for only the
17 purposes for which it has been admitted, and give
18 it a reasonable and fair construction in the light
19 of your common knowledge of the natural tendencies
20 and inclinations of human beings.

21 If the accused be proved guilty beyond a
22 reasonable doubt, say so. If not so proved guilty,
23 say so.

24 Your verdict in this case will be one of two
25 forms. If, from the evidence and the law, you find

1 that the Defendant is not guilty, you will circle
2 "not guilty" on the verdict form that I will give
3 you, and, Mr. Foreman, you will sign your name.
4 If, on the other hand, you find that the Defendant
5 is guilty based upon the evidence and law which you
6 have heard, you will circle "guilty" on the verdict
7 form, and, Mr. Foreman, you will sign your name.

8 Your verdict must be unanimous. It must be
9 guilty or not guilty.

10 The law requires that a jury verdict be
11 unanimous, which means that all jurors must agree.

12 The only two forms of the verdict are: Guilty
13 or not guilty. Mr. Foreman, once the jury reaches
14 a verdict of not guilty or guilty, circle the
15 verdict on the face of the verdict form and sign
16 under the verdict form to signify that you have
17 circled the verdict of all the jurors. Then you
18 will knock on the door and notify the bailiff that
19 you have reached a verdict.

20 Ladies and gentlemen of the jury, I have here
21 the verdict form. It says: The State of South
22 Carolina, County of Richland, State of South
23 Carolina v. Emmanuel Elleby, as the Defendant, In
24 The Court of General Sessions of the Fifth Judicial
25 Circuit, Indictment Number 2014-GS-40-7355 and

1 2014-GS-40-7364.

2 It says: Please circle -- as I read to you a
3 second ago -- the appropriate verdict below and
4 follow the accompanying instructions.

5 First question is: As to the indictment
6 alleging armed robbery, we the jury unanimously
7 find the Defendant -- and I had to put one before
8 the other. Please do not think that I have a
9 position as to the verdict in this case, because I
10 do not have an opinion. As I stated to you
11 earlier, the facts are up to you. But it says: We
12 the jury unanimously find -- and it says guilty or
13 not guilty. They are next to each other: You
14 circle which one is appropriate.

15 On Number Two it says: As to the indictment
16 alleging kidnapping, We, the jury, unanimously find
17 the Defendant guilty or not guilty. You will stop
18 in your deliberations. You will sign, Mr. Foreman,
19 the verdict form, and date it.

20 I am going to send you all back into the jury
21 room. You cannot begin your deliberations just
22 yet. You are not to begin your deliberations until
23 you receive all of the evidence -- I will send that
24 back with you -- and the verdict form, and then
25 when you receive the instructions from the bailiff

1 to begin your deliberations, you will begin your
2 deliberations.

3 Your lunch is supposed to be here around noon,
4 I believe. So you may deliberate while you are
5 eating your lunch, but when they knock on the door
6 to bring the lunch in, you have to stop your
7 deliberations because no one other than the 12 of
8 you will be allowed to be in the jury room during
9 the deliberations. So you can eat. If you wish to
10 stop and eat and then start back up, that is up to
11 you, Mr. Foreman, and the rest of the jurors, or if
12 you wish to eat while you deliberate or work while
13 you are eating, that is perfectly fine. Just when
14 they knock on the door, stop your deliberations
15 until the door is closed again.

16 All right. I am going to send you all back
17 into the jury room. And you all just wait on
18 instructions until you receive the evidence and the
19 verdict form and the instructions.

20 All right, thank you.

21 And the alternates, if they can just sit in
22 the hallway for a second. Mr. Dye, just hold the
23 alternates.

24 (WHEREUPON, the jury retires to the jury
25 room at 11:15 a.m.)

1 THE COURT: I did not -- here is the verdict
2 form. I have to change it from sixth to fifth.
3 Y'all just doublecheck and make sure it is right.

4 MR. RUFFIN: It looks fine.

5 THE COURT: Okay. All right, anything else
6 from the State? Any objections or exceptions to
7 the jury charge?

8 MS. SAMPSON: No, ma'am.

9 THE COURT: Any objections or exceptions from
10 the Defense?

11 MR. RUFFIN: No, ma'am.

12 MS. SAMPSON: I will say this. I never
13 noticed this until just loading this in the box,
14 and there is an ID that says, Alvin S. Glenn
15 Detention Center, of the Defendant in the box. I
16 would ask that we take that off.

17 MR. RUFFIN: Right.

18 MS. SAMPSON: I don't know, it does not need
19 to be in the box.

20 MR. RUFFIN: I actually noticed when I was
21 fumbling through there in my closing.

22 MS. SAMPSON: It is not listed as an item on
23 the outside.

24 THE COURT: Just make sure there is nothing --

25 MR. RUFFIN: It is on the outside too.

1 MS. SAMPSON: It is? Oh, it is. It is on the
2 box.

3 MR. RUFFIN: What does it say?

4 MS. SAMPSON: Well, it says, ASGDC inmate
5 card, so, yes.

6 MR. RUFFIN: Is that okay, Judge, just to mark
7 it out?

8 THE COURT: Yes, that's fine.

9 MR. RUFFIN: With a pen, or whatever.

10 THE COURT: And if you will check everything
11 else and make sure it is all there, then we will go
12 ahead and get them started.

13 And I need to bring the alternates in.

14 (WHEREUPON, the alternates enter the
15 courtroom at 11:18 a.m.)

16 THE COURT: All right, we have the alternates.
17 And our alternates are Ms. Vaughn; is that correct?

18 THE ALTERNATE: Yes, ma'am.

19 THE COURT: And Mr. Wannamaker?

20 THE ALTERNATE: Yes, ma'am.

21 THE COURT: All right. I wanted to thank you
22 all for your service here this week. It appears
23 that all 12 jurors have returned, I guess, the last
24 two days, and so therefore we did not need your
25 services today. We did need you, but we do not

1 need you any longer for deliberations because only
2 12 jurors can go back into the jury room for
3 purposes of deliberations.

4 But I do want you all to know that on behalf
5 of the State, on behalf of the Defendant, and the
6 Court, we thank you for your service here this
7 week, and I hope that it has been enjoyable and
8 that you have learned something.

9 My old boss always says, Being an alternate is
10 like being invited to the dance but not being asked
11 to dance.

12 So I do want you to know that we thank you and
13 we appreciate your service. Your lunch should be
14 here around noon if you are willing to wait for it.
15 If you don't want to wait for it, I assure you that
16 one of our deputies will eat it.

17 And if you wish to hang around, you can. You
18 can talk about the case now to the lawyers or
19 anyone else that you choose to talk about it. If
20 you don't want to talk about it, you don't have to
21 talk about it. But sometimes the lawyers will call
22 on jurors just to find out, you know, How did we
23 do, or, What did you think? And that is definitely
24 permissible at this point for you, not for them,
25 but permissible for you at this point. Or if you

1 would rather leave and go about your business, I
2 think the clerk has some paperwork for you to sign,
3 and then you'll be free from service for the rest
4 of the week.

5 All right, thank you again.

6 (WHEREUPON, the alternates were excused
7 at 11:20 a.m.)

8 (WHEREUPON, the jury was instructed to
9 begin deliberations at 11:21 a.m.)

10 (WHEREUPON, a break was taken.)

11 THE COURT: We have a question. We will mark
12 it as Court Exhibit 4.

13 (WHEREUPON, Court Exhibit No. 4 was
14 marked for identification only.)

15 (WHEREUPON, the jury came into open
16 court at 1:15 p.m.)

17 THE BAILIFF: The jury is seated, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury,
19 it is my understanding that you all have a
20 question. And I have it here. It has been marked
21 as Court Exhibit Number 4.

22 And it says: We request to see the definition
23 of kidnapping again. And that is signed by our
24 foreman, Mr. Scott; is that correct?

25 All right. And what I will do is read it to

1 you again, if that is okay.

2 The Defendant is charged with kidnapping. The
3 State must prove beyond a reasonable doubt that the
4 Defendant knowingly and unlawfully seized,
5 confined, inveigled, decoyed, kidnapped, abducted,
6 or carried away another person without authority of
7 law.

8 To do a thing unlawfully is to do it willfully
9 against the law.

10 Knowingly means with knowledge, consciously,
11 not accidentally.

12 Seized means to take hold of, suddenly or
13 forcibly.

14 Confined means to limit, restrict, or enclose
15 within bounds, imprison, or to shut or keep in.

16 Inveigle means to lure, entice, or lead astray
17 by false representation, promises, or other
18 deceitful means.

19 Decoy means to lure by, or as if by, decoy. A
20 decoy is something to entice a person into a trap.

21 Kidnap is to remove a person against his will
22 or her will by unlawful force or by fraud.

23 Abduct means to carry off secretly or by force
24 for an illegal purpose.

25 Carry away means to remove.

1 The State does not have to prove that the
2 Defendant did all of these things. Instead, if you
3 find beyond a reasonable doubt that the Defendant
4 did any of these things, you may find the Defendant
5 guilty of kidnapping.

6 Something done without authority of law is
7 something which the law does not sanction, permit,
8 allow, condone, or provide justification for.

9 The kidnapping does not have to be for any
10 personal or monetary gain for any illegal purpose,
11 but may be for any reason whatsoever.

12 And that is the definition of kidnapping.

13 All right. I am going to send you all back
14 into the jury room to continue your deliberations.

15 (WHEREUPON, the jury returns to the jury
16 room to continue deliberations at
17 1:17 p.m.)

18 THE COURT: All right. We'll just wait and
19 see.

20 MS. SAMPSON: Thank you, Your Honor.

21 MR. RUFFIN: Thank you, Your Honor.

22 (WHEREUPON, a break was taken at 1:18
23 p.m.)

24 THE COURT: All right, I am informed we have a
25 verdict.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

RECEIVED

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

MAR 08 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EMMANUEL BASHAN ELLEBY,

APPELLANT

APPELLATE CASE NO 2015-002620

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

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1 (WHEREUPON, the jury came into open
2 court at 1:31 p.m.)

3 THE BAILIFF: The jury is seated, Your Honor.

4 THE COURT: All right. Mr. Foreman, I am
5 informed by the bailiff that you all have reached a
6 verdict; is that correct?

7 THE FOREMAN: Yes, ma'am, we have.

8 THE COURT: And is that verdict unanimous?

9 THE FOREMAN: Yes, ma'am.

10 THE COURT: If you can hand that to the
11 bailiff, he will pass it up, and then I will give
12 it to the clerk to publish.

13 (Complies.)

14 (Court views verdict form.)

15 THE COURT: All right. I will ask the clerk
16 to publish the verdict.

17 VERDICT

18 THE CLERK: The Court of General Sessions of
19 the Fifth Judicial Circuit, State of South
20 Carolina, County of Richland, State of South
21 Carolina v. Emmanuel Elleby, Indictment Number
22 2014-GS-40-7355 and Indictment Number 2014-GS-40-
23 7364.

24 As to the indictment alleging armed robbery:
25 We, the jury, unanimously find the Defendant

1 guilty.

2 As to the indictment alleging kidnapping: We,
3 the jury, unanimously find the Defendant guilty.

4 Signed by the foreperson, Derek Scott.

5 And it is dated 9/17/2015.

6 Mr. Foreman, is this your verdict, and the
7 verdict of the entire jury?

8 THE FOREMAN: Yes, it is.

9 THE CLERK: Thank you.

10 THE COURT: All right. And I will ask the
11 clerk to poll the jury.

12 THE CLERK: Ladies and gentlemen of the jury,
13 I am going to ask each of you two questions, and I
14 need you to answer both the questions.

15 Number 244. Was this your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Number 238. Was this your
20 verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Number 270. Was this your
25 verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Number 302. Was this your
5 verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Number 201. Was this your
10 verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Number 99. Was this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Number 161. Was this your
19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Number 136. Was this your
24 verdict?

25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?
2 THE JUROR: Yes.
3 THE CLERK: Number 26. Was this your verdict?
4 THE JUROR: Yes.
5 THE CLERK: Is it still your verdict?
6 THE JUROR: Yes.
7 THE CLERK: Number 207. Was this your
8 verdict?
9 THE JUROR: Yes.
10 THE CLERK: Is it still your verdict?
11 THE JUROR: Yes.
12 THE CLERK: Number 20. Was this your verdict?
13 THE JUROR: Yes.
14 THE CLERK: Is it still your verdict?
15 THE JUROR: Yes.
16 THE CLERK: Number 49. Was this your verdict?
17 THE JUROR: Yes.
18 THE CLERK: Is it still your verdict?
19 THE JUROR: Yes.
20 THE CLERK: The jury is polled, Your Honor.
21 THE COURT: All right. Let the record reflect
22 that all of the jurors have indicated that this is
23 their verdict. This would be a unanimous verdict
24 of the jury.
25 Ladies and gentlemen of the jury, I would like

1 to thank you all for your service here this week.
2 I hope that your time here has been enjoyable and
3 that you have learned something about our court
4 system, learned something about the court system
5 and the judicial process.

6 I believe the clerk will have some remarks --
7 some paperwork for you, not remarks, but some
8 paperwork, but you will be free to leave and
9 dismissed for the rest of the week.

10 But, once again, I would like to thank you on
11 behalf of the State, on behalf of the Defense, on
12 behalf of the court staff here, and the clerk of
13 court for your service here this week.

14 Thank you. And have a wonderful weekend. And
15 as we told you, I don't know if they told you this
16 on Monday, but you will not have to serve in this
17 court for three years. I cannot promise you you
18 will not have federal court, magistrate's court or
19 city court, but as for this court you will not have
20 to serve here for three years unless you choose to
21 do so after the first year.

22 All right, thank you. Have a wonderful
23 weekend.

24 (WHEREUPON, the jury is excused at 1:36
25 p.m.)

1 THE COURT: All right. I don't know if you
2 have a sentence sheet.

3 MS. SAMPSON: No.

4 THE COURT: I think the Defense is in the
5 position that the ten days is after the sentence is
6 imposed. And I think we all agree, but just to
7 protect the record, I will allow ten days for
8 motions after -- I'll go ahead and do the sentence,
9 but allow for ten days after the sentence is
10 published for motions to be filed with the court.

11 MS. SAMPSON: Do you want me to get you some
12 sentencing sheets?

13 THE COURT: Yes. I have to seal it.

14 MS. SAMPSON: I couldn't leave the room after
15 the question.

16 THE COURT: Yes, I will need a sentencing
17 sheet. And I will seal it and give it to the
18 clerk.

19 MS. SAMPSON: Okay. I'll do that now and get
20 it to you.

21 MR. RUFFIN: And I guess I just want to renew
22 all my objections and pretrial motions for the
23 record, Judge.

24 THE COURT: Yes, sir. All right. And those
25 are preserved for the record and respectfully

1 denied. And, once again, you will have ten days
2 after the publishing of the verdict -- I mean, of
3 the sentencing sheets to file any appeal.

4 MR. RUFFIN: Thank you, Judge.

5 MS. EIGENBROT: Thank you, Your Honor.

6 (WHEREUPON, the proceedings were
7 concluded at 1:37 p.m.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, 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 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 14th, 15th, 16th and 17th days of September, 2015.

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

April 24, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
 2014-GS-40-07355
 2014-GS-40-07364

3
 4 State of South Carolina,)
 5 Plaintiff,)
 6 vs.) TRANSCRIPT OF RECORD
 7 Emmanuel Elleby,)
 8 Defendant.)

9 October 16, 2015
 10 Columbia, South Carolina

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 12
 13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

15
 16
 17 A P P E A R A N C E S:

18 APRIL W. SAMPSON, ASSISTANT SOLICITOR
 Attorney for the Plaintiff

19 ADAM S. RUFFIN, ASSISTANT PUBLIC DEFENDER
 20 Attorney for the Defendant

21
 22
 23
 24 DEBORAH M. McCURDY, RPR
 25 Official Court Reporter

1 I N D E X O F W I T N E S S E S

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4 (WHEREUPON, no witnesses were called

5 during these proceedings.)

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10 E X H I B I T S

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13 (WHEREUPON, no exhibits were introduced

14 during these proceedings.)

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OCTOBER 16, 2015

MS. SAMPSON: For the record, April Sampson, for the State, here with Adam Ruffin. Mr. Elleby is present in the courtroom.

Mr. Elleby is charged with armed robbery and kidnapping. Mr. Elleby had a trial which began on September 29th?

MR. RUFFIN: I think.

MS. SAMPSON: Maybe September 30th. Around then. Or the 28th, that week.

MR. RUFFIN: Around then.

MS. SAMPSON: And ended with a conviction. Mr. Elleby was tried in his absence over the objection of the Defense.

The jury came back with a guilty verdict on both charges. And we are here today for his sentence.

THE COURT: Is Mr. Elleby all right?

MR. RUFFIN: I mean, he is here, Judge. I was instructed by medical personnel the other day that shaking from side to side is impossible during a seizure.

THE COURT: Sir?

THE COURT REPORTER: I'm sorry? I didn't hear you.

1 MR. RUFFIN: I was told by medical personnel
2 the other day that shaking side to side is
3 impossible during a seizure.

4 THE COURT: Is impossible?

5 MR. RUFFIN: To shake from side to side.

6 THE COURT: Mr. Elleby?

7 MS. SAMPSON: As the Court is aware, he has
8 done this before.

9 MR. RUFFIN: Judge, I'm fine to go forward
10 under the sealed sentence.

11 THE COURT: All right. Do y'all want to call
12 an ambulance up here for him?

13 MS. SAMPSON: You can take him back
14 downstairs, I assume, as soon as she sentences.

15 THE DEPUTY: Yes, we will take him downstairs.

16 THE COURT: All right. I am going to unseal
17 the sentence. I will unseal the sentence.

18 Mr. Elleby was tried in his absence and found
19 guilty by the jury. The State had served the
20 Defendant with a life without parole notice on -- I
21 don't have the exact date.

22 On Indictment 2014-GS-40-7355, Mr. Elleby, the
23 sentence of the Court is that you will be sentenced
24 to the State Department of Corrections for -- and
25 the indictment is for armed robbery -- life without

1 parole. And the sentence date is September 17th,
2 2015.

3 MS. SAMPSON: Sorry, I stated the wrong date.
4 I couldn't remember.

5 THE COURT: All right. Thank you. And you
6 are going to get me the -- you have ten days to
7 file the appeal.

8 MR. RUFFIN: Yes. And, Judge, I also have
9 some post-trial motions I'll file with the Court,
10 if that is all right with you.

11 THE COURT: All right, post-trial motions?
12 Yes. Ten days is good?

13 MR. RUFFIN: Right.

14 THE COURT: Let me know if you need an
15 extension.

16 MR. RUFFIN: Thank you, Judge.

17 MS. SAMPSON: Thank you, Your Honor.

18 THE COURT: And, Mr. Ruffin, we will handle
19 the -- I guess there is a week in November I'm
20 here?

21 MS. SAMPSON: November 9th.

22 THE COURT: Y'all get together and let me know
23 what works for you and I'll block off the
24 afternoon.

25 MR. RUFFIN: Okay. Thank you, Judge.

1 MS. SAMPSON: Thank you, Your Honor.
2 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, 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 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 16th day of October, 2015.

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

March 24, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) 2014-GS-40-07355
4) 2014-GS-40-07364

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Emmanuel Elleby,)
8 Defendant.)

9 November 12, 2015
10 Columbia, South Carolina

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13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
15

16
17 A P P E A R A N C E S:

18 APRIL W. SAMPSON, ASSISTANT SOLICITOR
19 Attorney for the Plaintiff

20 ADAM S. RUFFIN, ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant
22
23
24

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

1 I N D E X O F W I T N E S S E S

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4 (WHEREUPON, no witnesses were called

5 during these proceedings.)

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10 E X H I B I T S

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13 (WHEREUPON, no exhibits were introduced

14 during these proceedings.)

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1 NOVEMBER 12, 2016

2 THE COURT: Yes, ma'am?

3 MS. SAMPSON: May it please the Court? We're
4 here on the State v. Emmanuel Elleby.

5 As Your Honor is aware, Mr. Elleby was
6 convicted of armed robbery and kidnapping back in
7 September of this year. The trial was done in his
8 absence. He did not show up, even though he was
9 provided notice.

10 After the conviction, once he was apprehended,
11 he was brought in early -- in October, I believe it
12 was, to be served with the notice of -- to be
13 served with his life sentence.

14 At that point you took that in. And
15 Mr. Ruffin filed timely his motion. And we're here
16 today on that motion.

17 THE COURT: Yes, sir?

18 MR. RUFFIN: This is my motion to reconsider
19 sentence. So I would just like to start with what
20 I'm asking you to do. I'm asking you to vacate the
21 life sentence and resentence Mr. Elleby in the
22 range of 10 to 30 years.

23 South Carolina's life without parole statute,
24 which I actually don't have in front of me, I think
25 it is 17-25-10, or something like that, but

1 basically the only limits in that statute is, does
2 a person have a record that makes them eligible for
3 it.

4 Beyond that, the sole -- all the discretion
5 then is up to the individual prosecutor in a case.
6 So they have total discretion as to who they will
7 seek it against and who they will not.

8 So basically my contention is that the South
9 Carolina General Assembly has created a system that
10 is inherently arbitrary as to who gets life without
11 parole and who does not just based on the
12 individual prosecutor's feeling.

13 The two cases that I'm going to rely on are
14 actually death penalty cases. If I could pass them
15 up, Judge.

16 THE COURT: Yes, sir.

17 (Complies.)

18 MR. RUFFIN: It is Furman v. Georgia and
19 Gregg -- or Georgia v. Gregg. I'm sure you are
20 familiar with those cases.

21 Furman, which was in 1972, I think established
22 or highlights the problem of arbitrary sentencing.
23 And if I could, I'd like to maybe read just a
24 little bit from the case. I think if you will look
25 on Page 5. I know these are long opinions, that is

1 why I want to point you to the page.

2 And in Furman, as you know, Furman v. Georgia,
3 the only thing that the majority agreed to was that
4 the death penalty as applied in those cases was
5 unconstitutional. And there were five justices
6 that agreed to that rationale.

7 There is some disagreement as to the
8 rationale. Some of the justices found the death
9 penalty was unconstitutional always, and some found
10 that it was unconstitutional only in this case, or
11 as applied in these cases.

12 I'd like to point you to Page 5, the first
13 paragraph. This is Justice Douglas' concurrence, I
14 believe.

15 And he says:

16 "We cannot say from the facts
17 disclosed in these records that
18 these defendants were sentenced to
19 death because they were black."

20 Now, that is not my argument for Mr. Elleby.
21 I'm not arguing that they sought the life without
22 parole because he is black.

23 They go on to say:

24 "Yet our task is not restricted to
25 an effort to divine what motives

1 impelled these death penalties.
2 Rather, we deal with a system of
3 law and of justice that leaves to
4 the uncontrolled discretion of
5 judges or juries the determination
6 whether defendants committing these
7 crimes should die or be imprisoned.
8 Under these laws no standards
9 govern the selection of the
10 penalty. People live or die,
11 dependent on the whim of one man or
12 of 12."

13 There is more language in here that I would
14 like to point out to you. On the bottom of Page 9,
15 Judge:

16 "In determining whether a
17 punishment comports with human
18 dignity, we are aided by a second
19 principle inherent in the Clause --
20 that the State must not arbitrarily
21 inflict a severe punishment. The
22 principle derives from the notion
23 that the State does not respect
24 human dignity when, without reason,
25 it inflicts upon some people a

1 severe punishment that it does not
2 inflict upon others. Indeed, the
3 very words 'cruel and unusual'
4 imply condemnation of the arbitrary
5 infliction of severe punishments."

6 So Furman I think and those sentiments are
7 echoed throughout the concurring opinions in that
8 case.

9 Basically, in Furman, the sentencer was a
10 jury. So I understand there is obviously a
11 difference here because under South Carolina's life
12 without parole statute, the sentencer essentially
13 becomes the State. They get to choose whether you
14 are going to get life or whether you are going to
15 get something less than life.

16 And I don't think there can be any contention
17 that among people who are eligible under the life
18 without parole statute, there is huge disparity in
19 their sentences and huge -- and I think the reason
20 is because of the arbitrariness -- the State is
21 going to pick among which armed robbers, which
22 murderers, which rapists are going to get life and
23 which are going to get something less than life.

24 So that is the problem, I think. And even
25 though these were death penalty cases, you know, I

1 think that from a practical standpoint, the death
2 penalty is rapidly disappearing in South Carolina
3 and across the country.

4 I don't think South Carolina has executed
5 somebody in four years or so. There are no
6 scheduled executions on the horizon, from my
7 knowledge. So the penalty of death today in 2015
8 is the practical equivalent of life without parole.
9 With most Defendants, whether you are sentenced to
10 death or whether you are sentenced to life without
11 parole, you will go to prison and be locked in a
12 cage until you die. Same end result.

13 And so I think that life without parole,
14 because it is becoming -- rapidly becoming the most
15 severe punishment a person can receive -- not only
16 in this state, but anywhere in the country -- I
17 think that this arbitrariness standard should be
18 applied also to life without parole.

19 Now, what I'm -- I want to just say real quick
20 what I'm not arguing is, I'm not arguing that life
21 is unreasonably disproportionate. That argument
22 has been raised in a number of life without parole
23 cases under the cruel and unusual punishment. That
24 is not what I'm arguing. I'm not saying that it is
25 disproportionate. What I'm saying is that it is

1 arbitrarily inflicted. And it is the most severe
2 punishment that you can receive.

3 Now, Gregg comes along, Judge, Gregg v.
4 Georgia came along and basically said -- this is
5 four years after Furman. Georgia had revamped --
6 rewritten their death penalty statute to include a
7 bunch of factors. But basically they were saying:

8 We can't have juries or judges
9 sentencing people, you know,
10 without regards to some standard or
11 without being in accordance with a
12 set of standards that will reduce
13 the arbitrariness of the infliction
14 of these penalties.

15 So Georgia -- and South Carolina also has a
16 very similar death penalty statute, which basically
17 lists a bunch of aggregators and mitigators for a
18 juror or a judge to consider before they impose a
19 life without parole sentence or a death sentence.

20 Now, I understand that the discretion is
21 invested in the prosecutor, so we don't have an
22 issue where -- and my argument is not that the
23 judge must have discretion to not sentence someone
24 to life, my argument is not that a jury must be the
25 sentencer. That is not what I'm arguing here

1 today.

2 What I'm arguing is that if the prosecutor is
3 going to be given that discretion -- which under
4 the statute the only thing that they need to
5 consider is, are you eligible or not. There is no
6 standard beyond that. My argument is that there
7 should be, that there must be, to comport with the
8 8th and 14th Amendments, there has to be standards
9 beyond, do you qualify or not.

10 You know, I don't know what the policies are
11 throughout the state as to when they seek life and
12 when they do not seek life. What I do know is that
13 I have represented several people who are LWOP
14 eligible and who did not receive LWOP. They pled
15 guilty.

16 You know, in my experience it seems that it is
17 used as a hammer basically to punish people who
18 don't plead guilty. That seems to be when they
19 seek it. You know, you either -- so, in my
20 experience, Judge, and I don't have the resources
21 to do a statewide, you know, review of all life
22 eligible cases in the state, but what I can tell
23 you from my experience is it seems that the
24 prosecutors in this circuit consider two things:
25 are you eligible; and are you willing to plead

1 guilty.

2 If you are eligible and not willing to plead
3 guilty, then they will seek life at trial. That is
4 my understanding of it.

5 I believe that that is arbitrary and that
6 there needs to be more standards in place when the
7 State is going to single-handedly choose whether
8 someone receives what I believe is impractical
9 or -- the practical reality is that this is the
10 most severe punishment a person can receive.

11 For that reason, I would ask that you strike
12 the life sentence given to Mr. Elleby as having
13 been arbitrarily inflicted upon him and that you
14 resentence him in the range of 10 to 30, which is
15 what armed robbery carries. And, of course, he was
16 also convicted of kidnapping, which is zero to 30.
17 So I suppose, you know, he is facing 10 to 60, up
18 to 60 years, if you were to run the sentences
19 consecutively.

20 So that is what I'm asking for, Judge.

21 THE COURT: All right. Thank you. I guess
22 you are asking me to find the LWOP statute
23 unconstitutional?

24 MR. RUFFIN: Well, I believe that is the only
25 way you could actually do what I'm asking for,

1 because it is mandatory, obviously, once the State
2 seeks it and he is convicted, the imposition of the
3 life sentence is mandatory upon you. The
4 discretion is not yours.

5 So what I'm asking you, because I think the
6 only way that you could sentence him to anything
7 other than life is to find the statute is
8 unconstitutional by being arbitrarily inflicted at
9 the whim of individual prosecutors.

10 And for that reason, yes, I am asking you to
11 strike that statute and resentence him.

12 THE COURT: All right. Thank you.

13 Yes, ma'am?

14 MS. SAMPSON: Thank you, Your Honor. May it
15 please the Court?

16 Just for the record, the statute number to
17 serve life without the possibility of parole is
18 17-25-45, so we're clear?

19 And what Mr. Ruffin has failed to give you is
20 any case law that supports what he is doing. What
21 I can give you is State v. Jones, which is 344 S.C.
22 48, 543 S.E.2d 541. This is a 2001 case. Our
23 Supreme Court stated that:

24 "Mandatory life without possibility
25 of parole does not violate

1 separation of powers, nor does it
2 violate the cruel and unusual
3 punishment."

4 Basically what the Court stated you should
5 look at, or what they deem that should be looked
6 at, and I think we have done in this case, would
7 be -- let me quote so I'm not saying incorrectly.
8 Requires us to look at:

9 The duration of a sentence not be
10 grossly out of proportion with the
11 severity of the crime.

12 Pursuant to that, they ask that you look at
13 three factors: The gravity of the offense compared
14 to the harshness of the penalty; sentences imposed
15 by other criminals in the same jurisdiction; and
16 sentences for the same crime in other
17 jurisdictions.

18 In this particular case, Your Honor, he was
19 convicted of armed robbery back in May of 2001. He
20 was released in February of 2013, and by August of
21 2014 was charged with another armed robbery. That
22 was the basis for us seeking life without
23 possibility of parole. It was not arbitrary, nor
24 was it based on anything other than the fact that
25 within 18 months of being let out he was committing

1 another armed robbery.

2 LWOP is allowed in our state. It has been
3 allowed. It has been up through the Supreme Court
4 as recently as in State v. Williams, 380 S.C. 336,
5 669 S.E.2d 640. That was a 2008 case. And, again,
6 the Court stated that:

7 The sentence of life without
8 possibility of parole was not cruel
9 and unusual.

10 In that case he received --

11 THE COURT: What is the case?

12 MS. SAMPSON: It is State v. Williams. Again,
13 the case number is 380 S.C. 336, 669 S.E.2d 640.

14 In that case, his first conviction was when he
15 was 17. The second conviction was for drugs. And
16 he again got an LWOP. And the Court found that
17 that was within the State's discretion, it was not
18 against cruel and unusual punishment. If it wasn't
19 for a drug conviction, I don't see how it could be
20 for two armed robberies. Again, we are allowed to
21 do that. It is not arbitrary. It was not due to
22 force him into doing anything other than getting
23 punished for the crime that he committed and that a
24 jury of 12 found him guilty of.

25 Therefore, we think that the sentence should

1 be imposed as it already has been and stay at.

2 MR. RUFFIN: If you will allow me a brief
3 response?

4 THE COURT: Yes.

5 MR. RUFFIN: Just to be clear. You know, I
6 think those cases were upheld and I think I may
7 have said earlier, I know that many life without
8 parole cases have been upheld when the argument to
9 the Court was that it was disproportionate to the
10 crime committed. That is not what I'm arguing.
11 I'm not arguing to you that it is cruel and unusual
12 because it is disproportionate to the crime being
13 committed. I am arguing to you that it is
14 arbitrarily inflicted at the whim of an individual
15 prosecutor.

16 There are many cases with similar severity
17 that result -- that do not result in life without
18 parole convictions, which was the issue and the
19 problem in Furman where they said -- you know, it
20 is like getting struck by lightning. I mean, if I
21 gave you the facts of 100 LWOP-eligible cases and
22 asked you to pick which ones resulted in life
23 without parole and which ones resulted in something
24 less, you wouldn't be able to decide. They are
25 factually indistinguishable cases that result in

1 some getting life without parole based on the
2 decision of the prosecutor and some not.

3 So my argument is not that it is
4 disproportionate, but that it is arbitrarily
5 inflicted at the whim of the prosecutor.

6 And I would just like to note, Ms. Zmroczek
7 has pointed out to me a case that she had that is
8 currently on appeal -- it is State v. Ard -- where
9 she made a similar argument as me, so that argument
10 is currently being heard on appeal now.

11 And I don't believe that my issue, what I'm
12 raising, has been decided by our courts.

13 THE COURT: Okay. All right. I will take a
14 look at the cases and I will get you all an order.

15 MR. RUFFIN: Thank you, Judge.

16 THE COURT: All right. Thank you.

17 MS. SAMPSON: Thank you, Your Honor.

18 (WHEREUPON, the proceedings were concluded.)
19
20
21
22
23
24
25

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, 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 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 12th day of November, 2015.

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

March 24, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

The State of South Carolina,)

vs.)

Emmanuel Elleby,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
Indictment Numbers: 2014A400735
2014GS4007364

RECEIVED

DEC 22 2015

NOTICE OF MOTION TO RECONSIDER
SENTENCE AND DECLARE
SOUTH CAROLINA CODE §17-25-45
UNCONSTITUTIONAL

SC Court of Appeals

2015 OCT 21 PM 12:14
JANETTE W. McBRIDE
C.C.P. & G.S.

FILED
RICHLAND COUNTY

TO: ASSISTANT SOLICITOR APRIL SAMPSON:
CC: THE HONORABLE DEANDREA BENJAMIN

YOU WILL PLEASE TAKE NOTICE that counsel will move before this Court on November 9, 2015 at 9:30 a.m. or, as soon thereafter as this matter may be heard for a motion to reconsider the defendant's sentence as being pursuant to an unconstitutional state statute. Emmanuel Elleby, through undersigned counsel, asserts that South Carolina Code §17-25-45 violates the Equal Protection Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution. Therefore, Mr. Elleby respectfully moves this Court to reconsider his sentence imposed pursuant to this statute.

This notice is also a formal request for the Solicitor's Office to have the above-named Defendant transported to the Richland County Judicial Center from the South Carolina Department of Corrections.



Adam S. Ruffin
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 20 day of October, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTH JUDICIAL CIRCUIT

INDICTMENT NO. 2014-GS-40-7355
2014-GS-40-7364

STATE OF SOUTH CAROLINA,

vs.

EMMANUEL ELLEBY
DEFENDANT.

RECEIVED

ORDER DEC 22 2015

SC Court of Appeals

2015 DEC 22 PM 3:08

FILED

This matter came before the Court on November 9, 2015 as a motion to reconsider the above Defendant's sentence of Life Without the Possibility of Parole (LWOP) as unconstitutional. Counsel for the Defendant argued that South Carolina Code § 17-25-45 violates the Equal Protection Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution. For reasons set forth below, the motion to reconsider the Defendant's sentence is denied.

CONSTITUTIONALITY OF STATUTE

Defendant argues that South Carolina Code § 17-25-45, the LWOP statute, is unconstitutional. The statute states that, "upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has either: (1) one or more prior convictions for: (a) a most serious offense. . ."¹ This is commonly referred to as the "Two Strikes" law.² South Carolina courts have held numerous times that the LWOP statute is constitutional and is not a violation of

¹ S.C. Code Ann. § 17-25-45(A)(1).

² *State v. Standard*, 351 S.C. 199, 201, 569 S.E.2d 325, 327 (2002).

equal protection nor cruel and unusual punishment.³ Here, a jury found the Defendant guilty of Kidnapping⁴ and Robbery/ Armed Robbery, Robbery While Armed or Allegedly Armed With a Deadly Weapon⁵, both of are eligible for a life without parole sentence under the Two Strikes law.⁶ Therefore, the Defendant's sentence of a term of imprisonment of LWOP for the two strikes was appropriate, and is not a violation of Fourteenth and Eighth Amendment rights.

Additionally, the Defendant argues the prosecutor in this case arbitrarily chose to pursue LWOP as a sentence recommendation. The South Carolina Constitution and South Carolina case law place the "unfettered discretion to prosecute" solely in their hands. . . and they "may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they may simply decide not to prosecute the offense in its entirety."⁷ It is important to note that the prosecutor's discretion is subject to constitutional constraints and may not base a decision to prosecute on unjustifiable standards such as "race, religion, or other arbitrary classifications."⁸ Further, the Judicial Branch does not have the power to encroach on a prosecutor for exercising this discretion.⁹ The Defendant presented no persuasive evidence to indicate the prosecutor made an arbitrary decision to take the Defendant's case to trial. Because the prosecutor, in her allowed discretion, sought to try the Defendant for two crimes that are under the Two Strikes law, the Defendant's sentence must be LWOP if found guilty in accordance to the statute.¹⁰

³ *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. White*, 349, S.C. 33, 562 S.E.2d 305 (2002).

⁴ S.C. Code Ann. § 16-03-0910

⁵ S.C. Code Ann. § 16-11-0330 (A)

⁶ S.C. Code Ann. § 17-25-45 (C)(1)

⁷ *State v. Needs*, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998).

⁸ *Id.*

⁹ *Id.*

¹⁰ S.C. Code Ann. § 17-25-45(A)

For these reasons, the Defendant's motion to reconsider his LWOP sentence is denied.

IT IS SO ORDERED.



DeAndrea G. Benjamin
Judge, Fifth Judicial Circuit

12-13, 2015

Columbia, South Carolina

FILED
2015 DEC 16 PM 3:28
JEANETTE R. MURPHY
C.C.P. & G.S.

WITNESSES

(S) John Garwell JR
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010203052

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4007355

The State of South Carolina

County of
Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2014
91.

THE STATE
vs.

Emmanuel Bashan Elleby

Indictment for
ROBBERY // ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON

SC Code: 16-11-0330(A)
CDR Code: 0139

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

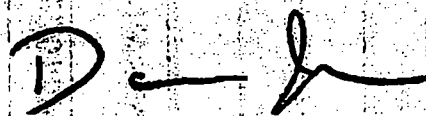
INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 12 2014,
the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Emmanuel Bashan Elleby did in Richland County on or about August 22, 2014, commit robbery by feloniously taking from the person or presence of Kenneth C. Gardner, by means of force or intimidation, goods or monies of Dollar General and/or Kenneth C. Gardner, such goods or monies being described as U.S. currency in the amount of three hundred and eighty-seven dollars (\$387.00), and/or five (5) packs of cigarettes, and/or a cell phone, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she 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), SC Code of Laws (1976, as amended).

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


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.
Emmanuel Bashan Elleby

AKA:

Race: BLACK Sex: M Age: 34

DOB: SS#

Address:

City, State, Zip: Columbia, SC 29201

DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2014GS4007355

A/W#: 2014A4010203052

Date of Offense: 8/22/2014

S.C. Code §: 16-11-0330

CDR Code #: 0139

SENTENCE SHEET DEC 22 2015

SC Court of Appeals

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

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

JAMFSON, APRIL 15964 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ ✓
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ ✓
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ ✓
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

(S) John Garwell, Jr.

- Richland County Sheriff Department

DOCKET NO. 2014GS4007364

The State of South Carolina

County of

Richland

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

DP14298

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2014

91

**THE STATE
vs.**

Emmanuel Elleby

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 13 2014

VERDICT

**Indictment for
KIDNAPPING / KIDNAPPING**

SC Code: 16-03-0910

CDR Code: 0095

Foreperson of Petit Jury

Date:

540

540

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on ~~NOVEMBER~~ 12, 2014,
the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Emmanuel Elleby did in Richland County on or about October
28, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry
away one Kenneth C. Gardner, without authority of law, in violation of
Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

NOV 13 2014

FILED

542

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Emmanuel Elleby

AKA: _____

Race: BLACK Sex: M Age: 34

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Kidnapping / KidnappingINDICTMENT/CASE#: 2014GS4007364A/W#: DP14298Date of Offense: 10/28/2014S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: April SAMPSON 15968
 SAMPSON, APRIL SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Clerk of Court/ Deputy Clerk Jeanette W. McBrideCourt Reporter: D. McCurdy

SCCA/217 (03/2011)

Presiding Judge WJBJudge Code: 2161Sentence Date: 9-17-15

548

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

Barnes St
ADDRESS
Columbia, SC 29201
CITY/STATE/ZIP
251-49-8857
TELEPHONE
SOCIAL SECURITY NUMBER
DRIVERS LICENSE OR ID NUMBER
SIGNATURE OF DEFENDANT
AUG 26 2014
DATE
ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

- a. ☐ Placement in custody. The defendant is placed in the custody of: _____
NAME OF PERSON OR ORGANIZATION
ADDRESS CITY/STATE ZIP TELEPHONE
who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.
SIGNATURE OF CUSTODIAN (IF APPROVED) DATE
- b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: _____

- c. ☐ Part-time Release. The defendant will be released from custody from _____ o' clock, _____ AM/PM to _____ o' clock, _____ AM/PM
on _____ on condition that he return to the custody of _____
DATE(S) NAME OF PERSON OR ORGANIZATION
at _____ as designated.
LOCATION
- d. ☐ Other conditions. The defendant will comply with the following other conditions of release: _____
No Contact With Victim directly/indirectly, Do Not Return to Incident Location

APPEARANCE RECOGNIZANCE WITH SURETY

On the 2 day of April, 2015, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 60,000, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

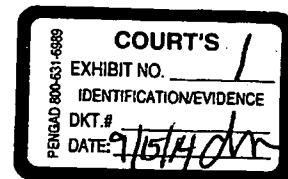
Lesa Phipps
NAME OF SURETY BONDSMAN COMPANY
7082526
TELEPHONE

Lesa Phipps
SIGNATURE OF SURETY BONDSMAN

Smaller Southeast Bonding
ADDRESS
443 D Meeting St
CITY/STATE/ZIP
East Columbia, SC 29169
NAME OF INSURANCE COMPANY
Palmetto Surety Corp
ADDRESS OF INSURANCE COMPANY
Landing Suite 200
29492

Azrael
SIGNATURE OF JUDGE
DATE
APR 02 2015

CITY/STATE/ZIP
PALMETTO SURETY CORP.
Form Approved by S.C. Attorney General
Section 16-7-20
March 21, 2012
SEVEN FARMS DR. S-170
CHARLESTON, SC 29492



PSC 100013389

BAIL PROCEEDING
FORM IISTATE OF SOUTH CAROLINA
COUNTY OF RichlandIN THE Richland County General Sessions

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Elleby, Emmanuel Bashan

NAME OF DEFENDANT

Offense Charged: Armed Robbery-[2014A4010203052]

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
- ☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

Nature of Circumstances of Offense; Must Notify Court Immediately of Change of Address; ****For any charge that carries a suspension of your driver's license, you are required to bring and surrender your driver's license to the Court at the time of _____

[Considerations: Nature and Circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.

2. That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND

☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of \$ _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits \$ _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the state.

APPEARANCE RECOGNIZANCE WITH SURETY

☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$ 60,000.

3. That the defendant shall appear at (check one):

☒ the term of COURT OF GENERAL SESSIONS beginning on September 29, 2014 at 9:00 o'clock, A.M.
at Richland County General Sessions - 1701 Main Street/P O Box 192/Columbia, SC 29202 / (803) 576-1999
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____ at _____ o'clock, _____
at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Bond Amount(s): \$60,000.00 (CS) or \$60,000.00 (SB)INITIALS OF DEFENDANT EE

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE

Benjamin Byrd

DATE

AUG 26 2014

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
SCCA/511A (Revised 3/2012) Original Copy For The Trial Court - Copy For The Defendant

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The State)

-vs-)

EMMANUEL ELLEBY,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

**NOTICE OF INTENTION TO SEEK A
SENTENCE OF LIFE WITHOUT PAROLE**

Indictment Nos.: 2014GS407355, 7364

TO: Emmanuel Elleby, Defendant, and Adam Ruffin, Attorney for Emmanuel Elleby

PLEASE TAKE NOTICE that upon conviction (trial or guilty plea) of the above-entitled action to be scheduled on a date at least ten (10) days hence, of which you have been timely notified, the State will seek a sentence of life imprisonment without the possibility of parole, pursuant to South Carolina Code of Laws, Section 17-25-45 (1995), as amended. The State intends to rely upon the following prior conviction of the defendant to statutorily enhance his punishment:

South Carolina conviction for Armed Robbery on May 8, 2001.



Dan Johnson, Solicitor
Fifth Judicial Circuit

Columbia, South Carolina

This 1st day of September, 2015



CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 8th day of March, 2017.

RECEIVED

MAR 08 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

Emmanuel Bashan Elleby

AKA:

Race: BLACK Sex: M Age: 34

DOB: SS#:

Address: 629 Barnes St

City, State, Zip: Columbia, SC 29201

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

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

in violation of § 16-11-0330(A)

of the S.C. Code of Laws, bearing CDR Code #

0139

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SAMPSON, APRIL

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	✓
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	✓
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCA Surcharge)	\$5	\$	✓
3% to County (if paid in installments)		\$	3.90
TOTAL		\$	133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4007355

A/W#: 2014A4010203052

Date of Offense: 8/22/2014

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code: 2161

Sentence Date: 9-17-15

Clerk of Court/Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

553

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

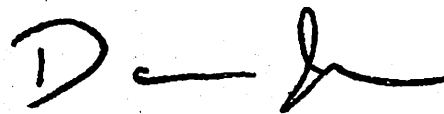
INDICTMENT

At a Court of General Sessions, convened on ~~NOVEMBER~~ 12 2014,
the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Emmanuel Bashan Elleby did in Richland County on or about August 22, 2014, commit robbery by feloniously taking from the person or presence of Kenneth C. Gardner, by means of force or intimidation, goods or monies of Dollar General and/or Kenneth C. Gardner, such goods or monies being described as U.S. currency in the amount of three hundred and eighty-seven dollars (\$387.00), and/or five (5) packs of cigarettes, and/or a cell phone, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she 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), SC Code of Laws (1976, as amended).

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



DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Secretary of State
C.C. HARRIS,
RICHLAND COUNTY
SOUTH CAROLINA

RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) John Carwell JR
Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010203052

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

NOV 13 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4007355

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER

TERM 2014

91

**THE STATE
vs.**

Emmanuel Bashan Elleby

**Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON**

**SC Code: 16-11-0330(A)
CDR Code: 0139**

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

555

AKKES I WARRANT

2014A4010203052

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

1408017922-R1

against

Emmanuel Bashan Elleby

Address: 629 Barnes St

Columbia, SC 29201-

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 6 Weight: 200

DL State: DL #:

DOB: [REDACTED] Agency ORI #: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: John Carwell, JR - 1227

Offense: Armed Robbery

Offense Code: 0139

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

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Emmanuel Elleby

on 8/26/14

V. Jones

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant John Carwell, JR

being duly sworn deposes and says that defendant Emmanuel Bashan Elleby

did within this county and state on or about 8/22/2014

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE: Armed Robbery

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

That on or about 8/22/2014 while at 1905 Bluff Rd in the Olympia Magisterial District of Richland County, it is believed that the def. did commit the crime of Armed Robbery b/c the def. did willfully, unlawfully & feloniously while his co-def. was armed w/what appeared to be a deadly weapon, to wit: a pair of pliers wrapped in a black trash bag, which appeared to be a gun to the vic.& on video, place 2 employees in fear of their life & did rob the business of \$387 in U.S. currency by use of force. This robbery was captured on video & it shows the def. w/ a black bag with the #38 on it as he is putting money from the reg. in it. The def. was wearing a GPS monitor on his ankle during this robbery, which placed him in the business during the robbery. The black bag w/ the 38 was also located in his bedroom, at his residence during a lawful search. His co-def. has implicated himself as well as the def. The def. provided a statement & had knowledge of the robbery. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

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

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

on or about 8/22/2014

defendant Emmanuel Bashan Elleby

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

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

Sworn to and subscribed before me

on 8/25/2014

(L.S.)

Benjamin Franklin Byrd

Judge Code: 7201

Judge's Address P. O. Box 192
Columbia, SC 29202-

Judge's Telephone (803)-57-6-23 x 30

Issuing Court: ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

955

2014 SEP 19 AM 10:56

FILED

RICHLAND COUNTY

CLERK OF COURT

W. MCGRIDE

C.C.R. & G.S.

CERTIFIED TRUE COPY

OF ORIGINAL FILED

RICHLAND COUNTY

SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

Emmanuel Elleby

AKA:

Race: BLACK Sex: M Age: 34

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnapping

in violation of § 16-03-0910

of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST:
SAMPSON, APRIL 15968
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

557

2161

9-17-15

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on **NOVEMBER 12**, 2014,
the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Emmanuel Elleby did in Richland County on or about October
28, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry
away one Kenneth C. Gardner, without authority of law, in violation of
Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF
THE
ORIGINAL
FILED
IN
CASE NO. 14-000000
BY
CLERK OF COURT
JANUARY 1, 2015

WITNESSES

(S) John Carwell, Jr.

- Richland County Sheriff Department

ARREST WARRANT NUMBER

DP14298

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 13 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS4007364

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER --- TERM 2014

91

THE STATE

vs.

Emmanuel Elleby

**Indictment for
KIDNAPPING / KIDNAPPING**

SC Code: 16-03-0910

CDR Code: 0095

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

559

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 03/06/18
OMCOMITA RELEASE DATE SCREEN C060888
SCDC# > 00275057 LOC: MCCORMICK
ELLEBY, EMMANUEL BASHAN SCDC CLASSIFICATION...: **VIOLENT**
OFFENDER TYPE...: **ADULT-STRAIGHT SENTENCE** SEXUAL REGISTRY...: **Y**
SEXUAL PREDATOR...: **NOT APP**
DNA STATUS...: **COMPLETED**
GPS REQUIREMENT...: **N**
PREA DECISION...:
PREA VICTIM...: **HIGH VULNERABLE** PREA PERP...: **POTENTIAL PERPETRATOR**
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...:
LIFE CURRENT SENT START DATE: **02/09/2015**
PROJECTED COMPLETION DATES
MAXOUT DATE ...: **99/99/9999** CURRENT EWC...:
YOA SIX YEAR DATE: CURRENT EEC ...:
INITIAL PAROLE DATE: **00/00/0000** NEXT PAROLE HEARING DATE: **00/00/0000**

TOTAL GT DAYS EARNED ...: **000000** LABOR CREW/WORK PROG DATE: **99/99/9999**
TOTAL EARNED WORK CREDITS ...: **000000** LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ...: **000000** **CURRENT OR PRIOR SEX CONDUCT CONVICT**
TOTAL EXTRA EARNED CREDITS ...: **000** SUPERVISED REENTRY DATE...: **00/00/00**
TOTAL SERVICE TIME EARNED ...: **000000** ISS...:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, March 6, 2018

Classification Summary Reports

Inmate Number

Classification Summary Report for ELLEBY, EMMANUEL BASHAN :

CLASSIFICATION SUMMARY REPORT DATED 03/06/2018

SCDC# 00275057

ELLEBY, EMMANUEL BASHAN

FBI# 209907NB9

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: MCCORMICK

SECURITY/CUST: 3 MEDIUM

CURR INCARC 999 YRS 0 MOS
SENT: 0 DAYS

VICTIM
WITNESS:

MED
CLASS:

INST OUTPATIENT MENTAL
RESTRICT: HEALTH

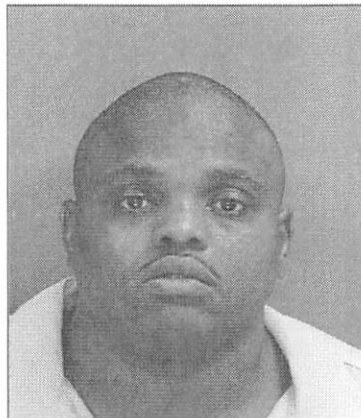
MENTAL
CLASS:

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: Y

DNA: C

AGE: 37



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: F4 0152 B

PROJ MAXOUT
DATE: -

PROJ PAROLE
DATE: -

EWC
JOB: GENERAL WORKER

ASSIGNMENT: BLDING DETAIL BLDG.
#4

EWC
LEVEL: 5F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE	DYS	COUNTY	START	SENTENCE	V/NV	CAT	INDICT
KIDNAPPING	999	99	999	RICHLAND	02/09/2015	V	5	14GS4007364		
ARMED ROBBERY	999	99	999	RICHLAND	02/09/2015	V	4	14GS4007355		

COMPLETED OFFENSES	YRS	MOS	SENTENCE	DYS	COUNTY	START	SENTENCE	V/NV	CAT	INDICT
CARRY PROHIBITED WEAPON	1	0	0	RICHLAND	05/29/2000	N	3	00GS4051753		

ARMED ROBBERY	15	0	0	RICHLAND	05/29/2000 V	4	01GS4053045
BURGLARY-2ND DEGREE	15	0	0	RICHLAND	05/29/2000 V	4	01GS4055161
CRACK POSSESS	5	0	0	RICHLAND	05/29/2000 N	2	01GS4046051
POSSESSION OF WEAPON	1	0	0	RICHLAND	05/29/2000 N	3	00GS4051752

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

ESCAPE WANTED PRESIDING JUDGE CATEG:4

ESCAPES:

10/09/2015 CLASS II ESCAPE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

09/12/2017	STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON	CONVICTED	MAJOR DISC. HEARING	STAFF ASSAULT	N
05/20/2016	POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING		N
01/10/2005	POSSESSION OF A WEAPON	DISMISSED	MAJOR DISC. HEARING		N
08/05/2001	RIOT	DISMISSED	MAJOR DISC. HEARING		N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

05/15/2017	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
05/15/2017	POSSESSION OF CONTRABAND	NOT GUILTY	MAJOR DISC. HEARING
03/29/2017	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
03/29/2017	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
04/21/2016	THREATENING TO INFLICT HARM ON EMPLOYEE	DISMISSED	MAJOR DISC. HEARING
03/29/2016	THREATENING TO INFLICT HARM ON EMPLOYEE	CONVICTED	MAJOR DISC. HEARING
03/29/2016	USE OBSCENE,VULGAR,PROFANE LANG/GESTURES	DISMISSED	MAJOR DISC. HEARING
12/31/2012	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
05/14/2012	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
03/23/2012	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
03/12/2012	UNAUTHORIZED AGENCY UNIFORMS	NOT GUILTY	MAJOR DISC. HEARING
10/08/2011	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
07/23/2011	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
07/02/2010	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
03/05/2009	POSSESSION OF CONTRABAND	CONVICTED	ADMINISTRATIVE RESOLUTION
12/09/2008	INTERFERING WITH COUNT	CLOSED	OTHER ACTION TAKEN/INFORM
11/05/2008	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
09/04/2008	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING
09/04/2008	USE OBSCENE,VULGAR,PROFANE LANG/GESTURES	CONVICTED	MAJOR DISC. HEARING
09/03/2008	POSSESSION OF CONTRABAND	CONVICTED	ADMINISTRATIVE RESOLUTION
07/21/2008	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
07/21/2008	DAMAGE,DESTROY PROP. VALUED LESS \$100.	CONVICTED	ADMINISTRATIVE RESOLUTION

04/29/2008	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
04/12/2008	STEALING	CLOSED	OTHER ACTION TAKEN/INFORM
02/17/2008	OUT OF PLACE	CLOSED	OTHER ACTION TAKEN/INFORM
01/09/2008	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
10/09/2007	SAFETY REGULATIONS	CLOSED	OTHER ACTION TAKEN/INFORM
07/23/2007	INTERFERING WITH COUNT	CLOSED	OTHER ACTION TAKEN/INFORM
03/01/2007	MALINGERING	CONVICTED	ADMINISTRATIVE RESOLUTION
09/25/2006	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
08/20/2006	DISRESPECT	CONVICTED	ADMINISTRATIVE RESOLUTION
01/10/2005	SEXUAL MISCONDUCT	DISMISSED	MAJOR DISC. HEARING
10/29/2004	REFUSING TO WORK	CONVICTED	MAJOR DISC. HEARING
10/19/2004	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING
10/18/2004	SEXUAL MISCONDUCT	CONVICTED	MAJOR DISC. HEARING
09/30/2004	DISRESPECT	CLOSED	OTHER ACTION TAKEN/INFORM
07/31/2004	USE OBSCENE,VULGAR,PROFANE LANG/GESTURES	CONVICTED	MINOR DISC. HEARING
11/03/2002	DISRESPECT	CONVICTED	MINOR DISC. HEARING
07/08/2002	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
07/06/2002	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
06/13/2002	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MINOR DISC. HEARING
03/11/2002	OUT OF PLACE	CONVICTED	MINOR DISC. HEARING
03/04/2002	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
10/24/2001	OUT OF PLACE	CLOSED	OTHER ACTION TAKEN/INFORM
06/12/2001	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MINOR DISC. HEARING

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

11/21/2017	MCCORMICK	INCARCERATED	RETURN FROM COURT
11/21/2017	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
03/15/2017	MCCORMICK	INCARCERATED	ADMINISTRATIVE
02/28/2017	LEE	INCARCERATED	ADMINISTRATIVE
02/28/2017	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
02/02/2017	LEE	INCARCERATED	ADMINISTRATIVE
02/02/2017	KIRKLAND	INCARCERATED	MEDICAL
12/20/2016	LEE	INCARCERATED	MEDICAL
12/19/2016	TUOMEY REGIONAL	AUTH ABSENCE (AWL)	MEDICAL
11/30/2016	LEE	INCARCERATED	ADMINISTRATIVE
11/30/2016	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
07/07/2016	LEE	INCARCERATED	ADMINISTRATIVE
07/07/2016	KIRKLAND	INCARCERATED	MEDICAL
06/01/2016	LEE	INCARCERATED	ADMINISTRATIVE
06/01/2016	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
03/16/2016	LEE	INCARCERATED	ADMINISTRATIVE
11/12/2015	KIRKLAND	INCARCERATED	RETURN FROM COURT
11/12/2015	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
10/17/2015	KIRKLAND	INCARCERATED	MEDICAL
10/17/2015	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
10/16/2015	KIRKLAND	INCARCERATED	NEW ADMISSION
02/01/2015	UNK	RELEASE	EXPIRATION OF SENTENCE
02/01/2013	RICHLAND CO	COMMUNITY SUPERVISION	COMMUNITY SUPERVISION
09/04/2012	RIDGELAND	INCARCERATED	ADMINISTRATIVE
08/29/2012	TURBEVILLE	INCARCERATED	MEDICAL

07/19/2010	RIDGELAND	INCARCERATED	ADMINISTRATIVE
06/17/2010	MANNING	INCARCERATED	ADMINISTRATIVE
06/17/2010	CENTRAL OFFICE ANNEX	INCARCERATED	MEDICAL
10/19/2009	MANNING	INCARCERATED	ADMINISTRATIVE
10/19/2009	STEVENSON	INCARCERATED	ADMINISTRATIVE
10/06/2008	ALLENDAL	INCARCERATED	ADMINISTRATIVE
10/02/2008	MANNING	INCARCERATED	RETURN FROM COURT
10/02/2008	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
10/29/2007	MANNING	INCARCERATED	ADMINISTRATIVE
10/29/2007	KIRKLAND	INCARCERATED	MEDICAL
08/27/2007	MANNING	INCARCERATED	ADMINISTRATIVE
08/27/2007	KIRKLAND	INCARCERATED	MEDICAL
06/25/2007	MANNING	INCARCERATED	ADMINISTRATIVE
06/25/2007	KIRKLAND	INCARCERATED	MEDICAL
06/11/2007	MANNING	INCARCERATED	ADMINISTRATIVE
06/11/2007	KIRKLAND	INCARCERATED	MEDICAL
05/17/2007	MANNING	INCARCERATED	ADMINISTRATIVE
05/17/2007	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
08/04/2006	MANNING	INCARCERATED	MEDICAL
08/04/2006	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
07/05/2006	MANNING	INCARCERATED	ADMINISTRATIVE
08/19/2005	LEE	INCARCERATED	ADMINISTRATIVE
06/23/2005	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
06/23/2005	KIRKLAND	INCARCERATED	MEDICAL
04/28/2005	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
03/02/2005	KERSHAW	INCARCERATED	ADMINISTRATIVE
02/17/2005	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
01/12/2005	GILLIAM PSY	INCARCERATED	MEDICAL
03/31/2004	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
03/26/2004	LEE	INCARCERATED	RETURN FROM COURT
03/26/2004	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
03/17/2003	LEE	INCARCERATED	ADMINISTRATIVE
11/22/2002	ALLENDAL	INCARCERATED	MEDICAL
11/22/2002	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/05/2001	ALLENDAL	INCARCERATED	ADMINISTRATIVE
06/01/2001	KERSHAW	INCARCERATED	ADMINISTRATIVE
05/17/2001	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	01/31/2018	-		5F5
GENERAL WORKER	06/14/2017	01/16/2018	PLACED IN ST/SP CUSTODY	5F5
GENERAL WORKER	03/29/2017	06/05/2017	PLACED IN ST/SP CUSTODY	5F5
WARDKEEPER	10/14/2011	10/17/2011	DISCIPLINARY/LOCK-UP	3F5
WARDKEEPER	09/08/2011	10/13/2011	ASLT/DRUG/MAJOR DISC	2F5
SENIOR GROUNDSKEEPER	03/25/2011	09/07/2011	INMATE REQUEST	2F5
SENIOR GROUNDSKEEPER	03/24/2011	03/24/2011	MI ELIGIBLE FOR LEVEL 2	3F5
WARDKEEPER	07/22/2010	10/18/2010	DISCIPLINARY/LOCK-UP	3F5
BAKER	10/20/2009	03/31/2010	INMATE REQUEST	2F5
FOOD SERVICE AIDE	05/20/2009	10/19/2009	INSTIT TRANSFER	2F5
GENERAL WORKER	03/06/2009	05/19/2009	INMATE REQUEST	2F5
GENERAL WORKER	10/09/2008	03/05/2009	MI ELIGIBLE FOR LEVEL 2	3F5
LAUNDRY HELPER	07/08/2005	08/19/2005	INSTIT TRANSFER	2F5

WORKER ACTIVITY APPRENTIC	05/27/2005	07/07/2005	COMPLETED EDUC PROGRAM	2F5
WORKER ACTIVITY APPRENTIC	05/19/2005	05/26/2005	MI ELIGIBLE FOR LEVEL 2	3F5
WARDKEEPER ASSISTANT	11/03/2004	01/10/2005	PLACED IN ST/SP CUSTODY	3F5
WORKER ACTIVITY APPRENTIC	10/01/2004	10/20/2004	INMATE REQUEST	3F5
FOOD SERVICE AIDE	04/02/2004	08/16/2004	UNSAT JOB PERFORM	3F5
GENERAL WORKER	11/26/2003	03/31/2004	INSTIT TRANSFER	3F5
FOOD SERVICE AIDE	03/18/2003	11/25/2003	INMATE REQUEST	3F5
FOOD SERVICE AIDE	03/05/2003	03/17/2003	INSTIT TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 2 - FULL TIME(NO EWC)	04/01/2010	07/02/2010	PLACED IN ST/SP CUSTODY
BONUS 12-14 HR/WK	06/06/2009	10/19/2009	INSTIT TRANSFER
LVL 2 - FULL TIME(NO EWC)	03/12/2007	04/29/2008	PLACED IN ST/SP CUSTODY
LVL 2 - FULL TIME(NO EWC)	10/13/2006	02/24/2007	PLACED IN ST/SP CUSTODY
LVL 2 - FULL TIME(NO EWC)	09/01/2006	09/27/2006	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EWC)	04/07/2005	04/28/2005	INSTIT TRANSFER
LVL 5 - FULL TIME(NO EWC)	03/04/2005	04/06/2005	CUSTODY REVIEW
BONUS 4-7 HRS/WK	04/15/2004	08/26/2004	UNSAT JOB PERFORM
BONUS 15 OR MORE	03/11/2004	03/31/2004	INSTIT TRANSFER
LVL 3 - FULL TIME(NO EWC)	09/20/2001	11/04/2002	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EWC)	06/05/2001	08/05/2001	INSTIT TRANSFER

***** END OF REPORT *****

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[Version: 1.4.13 Built: 02/01/2018 11:35:22 AM Time: 10:34:29 AM]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland

STATE

VS.

Emmanuel Elleby

AKA:

Race: BLACK Sex: M Age: 34

DOB: 1980 SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Kidnapping / Kidnapping

INDICTMENT/CASE#: 2014GS4007364

A/W#: DP14298

Date of Offense: 10/28/2014

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910

of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST:
SAMPSON, APRIL15960
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-35.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	3.90
TOTAL	\$	133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE VS.

Emmanuel Bashan Elleby

AKA:

Race: BLACK Sex: M Age: 34

DOB: 1980 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Columbia, SC 29201

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

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

☒ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(A)

of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 15964

JAMPSON, APRIL

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒

State Department of Corrections,

☐ County Detention Center,

for a determinate term of Life days/months/years-or

☐

under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-35.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms: [REDACTED]

☐ Set by SCDPPPS [REDACTED]

Recipient: [REDACTED]

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

INDICTMENT/CASE#: 2014GS4007355

A/W#: 2014A4010203052

Date of Offense: 8/22/2014

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

Presiding Judge

Judge Code: 2161

Sentence Date: 9-17-15

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EMMANUEL ELLEBY,

APPELLANT

APPELLATE CASE NO 2015-002620

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse her discretion in denying the motion for continuance and proceeding with a jury trial in Appellant's absence with the State seeking a sentence of life without parole pursuant to S.C. Code §17-25-45 when the State had offered to allow Appellant to plead guilty for a negotiated twenty year sentence and Appellant had indicated that he would accept the plea offer?

STATEMENT OF THE CASE

In November of 2014, the Richland County Grand Jury indicted Appellant Elleby for armed robbery and kidnapping, indictments #2014-GS-40-7355, 7364. On September 15, 2015, Appellant was tried in his absence before a jury with the Honorable DeAndrea G. Benjamin presiding. Adam S. Ruffin and Megan A. Eigenbrot represented Appellant at trial. April w. Sampson and Sandra V. Moser prosecuted the case. The jury returned verdicts of guilty and Judge Benjamin sealed the sentences. On October 16, 2015, Appellant appeared before Judge Benjamin for sentencing. Judge Benjamin sentenced Appellant to life without parole pursuant to S.C. Code §17-25-45 on both charges. On October 21 2015, Appellant filed a timely motion to reconsider sentence and declare S.C. Code §17-25-45 unconstitutional. (R. p. 533). On November 12, 2015, Judge Benjamin held a hearing in regard to the motion. In a written order filed December 16, 2015, Judge Benjamin denied the motion. (R. pp. 534 – 536). A timely notice of intent to appeal was served on December 22, 2015. This appeal follows.

ARGUMENT

The trial judge abused her discretion in denying the motion for continuance and proceeding with a jury trial in Appellant's absence with the State seeking a sentence of life without parole pursuant to S.C. Code §17-25-45 when the State had offered to allow Appellant to plead guilty for a negotiated twenty year sentence and Appellant had indicated that he would accept the plea offer.

Prior to trial, on September 14, 2015, counsel for Appellant contacted the prosecutor and advised her that Appellant accepted the offer to plead guilty to a negotiated sentence of twenty years but he needed time to complete the paperwork with Appellant. (R. p. 19, lines 2-15). While Appellant was completing the paperwork, he had a medical issue and was taken to the hospital by ambulance. (R. p. 12, lines 5-16). The matter was continued to the next day. (R. pp. 12-17). The next day, however, Appellant did not appear in court. (R. pp. 17-20; 28-32). Counsel for Appellant objected to a trial in Appellant's absence, especially in light of the fact that Appellant had indicated that he wished to accept the plea offer and plead guilty. (R. p. 28, lines 2-22). Counsel argued that because the State was seeking a mandatory sentence of life without parole upon conviction at trial, the better practice would be to issue a bench warrant for Appellant and continue the matter until he was located. (R. p. 30, 31, 32, lines 1-4). The judge denied the motion to continue the case, finding that Appellant had been given proper notice. (R. p. 38, lines 2-18). The jury was chosen that afternoon but not sworn. (R. p. 46, lines 1-15).

The next day, prior to the jury being sworn, counsel for Appellant again objected to the trial in Appellant's absence and asked for a continuance. (R. pp. 170-179). The judge again denied the motion to continue. (R. p. 179, lines 17-24). At the close of the case counsel renewed the objection to the trial in Appellant's absence. (R. p. 414, lines 4-8; p. 422, line 24 – p. 423, lines 1-2). The trial judge erred in refusing to continue the case and proceeding with the trial in Appellant's absence when Appellant had accepted the offer to plead guilty to a negotiated twenty

year sentence instead of risk facing the mandatory sentence of life without parole upon conviction at trial.

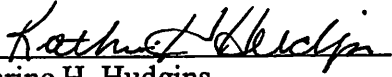
In Morris v. State, 371 S.C. 278, 283, 639 S.E.2d 53, 56 (2006), the South Carolina Supreme Court wrote:

The trial court's refusal of a motion for continuance in a criminal case will not be disturbed absent a clear abuse of discretion resulting in prejudice to the appellant. State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996); Lytchfield, supra. Here, it is clear petitioner would have been prejudiced by the denial of a continuance because the trial *in absentia* subjected him to the ABIK conviction whereas the guilty plea would have been to ABHAN. The difference between these two crimes is significant. ABHAN is a common law misdemeanor punishable by up to ten years in prison, while ABIK is a violent crime felony punishable by up to twenty years in prison. See State v. Fennell, 340 S.C. 266, 274-75, 531 S.E.2d 512, 516 (2000); S.C.Code Ann. §§ 16-1-60, 16-3-620 (2003). Given the drastic distinctions between a conviction of ABIK versus one of ABHAN, we find this is the rare case where the refusal of the continuance would have amounted to an abuse of discretion. See State v. Williams, supra; Lytchfield, supra. Thus, we find petitioner established prejudice from counsel's deficient performance.

In Morris counsel failed to move for a continuance. In the present case, counsel moved for a continuance but the judge denied the motion. Appellant was prejudiced by the denial of the continuance. The trial in his absence resulted in a mandatory sentence of life without parole. The guilty plea would have resulted in a sentence of twenty years. The difference between a sentence of twenty years and a mandatory sentence of life without parole is significant. Like Morris, the present case is one of the rare cases where the refusal to grant the continuance amounted to an abuse of discretion.

CONCLUSION

Based on the above argument, Appellant's convictions and sentences should be reversed and the case remanded.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of March, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 23, 2017

A handwritten signature in black ink, reading "Kathrine H. Hudgins", is written over a horizontal line.

Kathrine H. Hudgins
Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

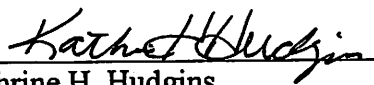
V.

EMMANUEL ELLEBY,

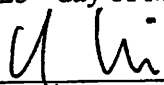
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Ranee Saunders, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of March, 2017.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of March, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2025.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2015-002620

THE STATE, ...RESPONDENT

v.

EMMANUEL ELLEBY, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DANIEL E. JOHNSON
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion in declining to grant a continuance based on Appellant's absence where the State did not indicate it would hold open the offer for a twenty-year negotiated sentence.

STATEMENT OF THE CASE

Appellant was indicted during the November 2014 term of the Richland County Grand Jury for armed robbery (2014-GS-40-7355) and kidnapping (2014-GS40-7364). (R.p.537-538; 540-541) Appellant failed to appear for trial and was tried in his absence before the Honorable DeAndrea G. Benjamin. Appellant was convicted as charged and sentenced to life without possibility of parole on both charges pursuant to Section 17-25-45 of the South Carolina Code (2014).

STATEMENT OF FACTS

Appellant was arrested and charged with armed robbery and kidnapping and the State noticed him that it would seek life without parole (LWOP) on both the charges pursuant to section 17-25-45. (R. pp. 4–5.) The State offered a plea deal for a negotiated sentence of twenty years' imprisonment, which would expire at 12:30 pm the day prior to trial. (R. p.19.) On the day when trial was set to begin, the State informed the trial court it would delay calling Appellant's case because earlier that day when defense counsel attempted to discuss the plea deal with his client, Appellant "fell out[and] perhaps had a seizure." (R. p.12.) Because Appellant was subsequently taken to the hospital, the case was delayed until the following day, with the trial court noting that if he was still in the hospital the next morning, it would continue the case. (R. p.16.) The following morning, Appellant failed to appear but defense counsel stated his belief his client was on the way and he requested an extension of the plea deal until 2:00 pm that day because his client had indicated he would accept the offer. (R. pp.17–18.) The solicitor agreed; however, by 2:00 p.m. Appellant still had not appeared. (R. pp. 20, 24.)

Defense counsel objected to a trial *in absentia* (TIA), arguing his client would be prejudiced by the denial of the opportunity to accept the plea deal. (R. p. 28.) In response, the solicitor clarified she "said the offer was only good through 2:00 [] because [they] all had to be [there] to start the trial. . . . The offer is now – we are here at trial. The offer is gone. We are at trial." (R. p. 34.) Nevertheless, the trial court waited until the following morning to swear the jury, and the solicitor agreed to extend the plea offer until then. (R. pp. 46, 169.)

However, the following morning, Appellant still had not been located. (R. p. 170.) Defense counsel again moved for a continuance based on his "objections to this being a TIA." (R. p. 170.) The trial court denied the motion and the case proceeded to trial. Appellant never appeared over the course of the three-day trial, and was ultimately convicted as charged. (R. pp.

501–502.) After being apprehended, Appellant was sentenced to LWOP on both charges.¹ (R. pp. 512–513, 539; 542.) Appellant filed a post-trial motion, arguing section 17-25-45 was unconstitutional and he should be resentenced, which the trial court ultimately denied by written order. (R. p.534-536.)

¹ The details of when or how Appellant was apprehended are not included in the record.

ARGUMENT

The trial court did not abuse its discretion in declining to grant a continuance based on Appellant's absence because the State did not indicate it would hold open the offer for a twenty-year negotiated sentence.

Appellant argues the trial court erred in refusing to grant a continuance because had it been granted, he would have accepted the State's offer of a negotiated twenty-year sentence. However, there is no indication the State was willing to hold open the offer until Appellant decided to appear for court. Instead, the State opposed the motion, arguing it was ready to proceed with trial.

The denial of a continuance rests within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion. *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007). As it is oft stated, a reversal of the trial court's refusal to grant a continuance is about as "rare as the proverbial hens' teeth." *State v. Williams*, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996).

In asserting the trial court erred in its denial, Appellant relies solely on *Morris v. State*, 371 S.C. 278, 639 S.E.2d 53 (2006), in which the South Carolina Supreme Court found a petitioner was entitled to post-conviction relief where defense counsel neglected to object to a trial *in absentia* on the indicted charge even though the petitioner, the solicitor, and defense counsel all signed a sentencing sheet on the day of trial in anticipation of the petitioner pleading guilty to a lesser included charge of assault and battery of a high and aggravated nature (ABHAN). *Id.* at 280, 639 S.E.2d at 54. After the petitioner signed the sentencing sheet, he left the courthouse and a trial proceeded in his absence after which he was convicted of assault and battery with attempt to kill (ABIK). *Id.* at 281, 639 S.E.2d at 54. In finding counsel was ineffective in failing to request a continuance, the Supreme Court reasoned that under the

circumstances, the trial court would have had to grant the motion and continue the case given the clear prejudice that because the case proceeded he was subjected to “the ABIK conviction whereas the guilty plea would have been to ABHAN.” *Id.* at 283, 639 S.E.2d at 56.

In this case, the facts are clearly distinguishable from *Morris*. Here, there is no evidence the State would have kept the offer open and the court had no legal basis to require an extension of time for acceptance even if it wanted to. The offer of a plea rests within the discretion of the State and the court cannot expand the confines of an offer. *State v. Thrift*, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994) (“Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor’s hands. . . . Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” (footnotes omitted)). Although the court can enforce an agreement once made, until the plea is formally accepted, it is non-binding. *Reed v. Becka*, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (Ct. App. 1999) (“A plea agreement is only an ‘offer’ until the defendant enters a court-approved guilty plea. A defendant accepts the ‘offer’ by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court.”).

Therefore, although the trial court could have granted the continuance, no evidence exists the result would have been different. Notably, in response to defense counsel’s request for the continuance, the trial court clarified that a continuance would not affect the status of the plea: “Well, see, what I think you all are missing is the Solicitor is saying that her offer has expired. Regardless of whether or not I start the trial or not, she is saying her offer has expired.” (R. p.41.) Ultimately, the trial court *did* grant a continuance and agreed to not swear the jury that

day. Further, the solicitor allowed defense counsel the evening to locate his client, even though she had stated “[t]he offer is now – we are here at trial. The offer is gone. We are at trial.” (R. p. 34.) When Appellant again failed to appear court the following morning, defense counsel renewed his objection “to this being a TIA.” (R. p. 170.) He did not mention continuing the case to secure the plea deal as it was apparent such a deal was no longer available. The solicitor clearly did not intend to extend the deal as she opposed the motion for a continuance, stating the State was prepared to proceed and would be prejudiced by further delay.²

Accordingly, the trial court did not err in denying the second motion for a continuance as it was not made on the grounds that Appellant wanted to plea and further, even if a continuance was granted, there is no evidence the State would keep it open (again) past its expiration.

²The trial court again noted the plea would not have remained open in addressing motions made by defense counsel after the State rested: “I just want to put that on the record that the offer was to expire, and even if this case was continued, I’m not sure if that offer still remained even if it was continued beyond this week, considering the State had indicated that it would have expired on Monday.” (R. p. 427.)

CONCLUSION

Based on the foregoing, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

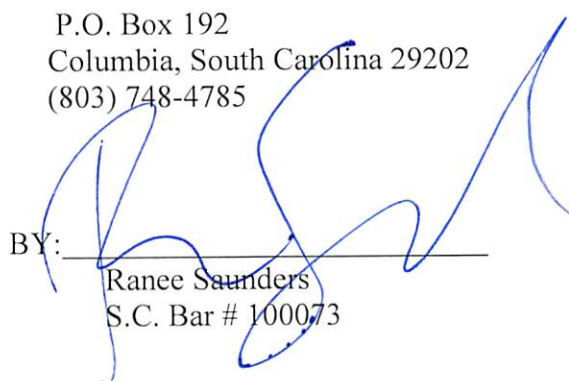
Respectfully submitted,

ALAN WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

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Solicitor, Fifth Judicial Circuit

P.O. Box 192
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BY: 

Ranee Saunders
S.C. Bar # 100073

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ATTORNEYS FOR RESPONDENT

March 16, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2015-002620

THE STATE,

Respondent,

v.

EMMANUEL ELLEBY,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),
SCACR.

ALAN WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

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ATTORNEYS FOR RESPONDENT

March 16, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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Appellate Case No. 2015-002620

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v.

EMMANUEL ELLEBY,

Appellant.

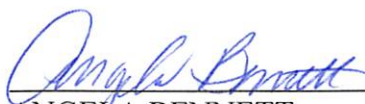
PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Ms. Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 16th day of March, 2017.



ANGELA BENNETT
Administrative Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Emmanuel Bashan Elleby, Appellant.

Appellate Case No. 2015-002620

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge

Unpublished Opinion No. 2017-UP-420
Submitted October 1, 2017 – Filed November 8, 2017

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan Wilson, Assistant Attorney
General Susan Rane Saunders, and Solicitor Daniel
Edward Johnson, all of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. McKennedy*, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002)
("[A] trial court's denial of a motion for continuance 'will not be disturbed absent a
clear abuse of discretion.'" (quoting *State v. Williams*, 321 S.C. 455, 459, 469

S.E.2d 49, 51 (1996)); *State v. Ravenell*, 387 S.C. 449, 456, 692 S.E.2d 554, 558 (Ct. App. 2010) ("[A] trial [court] must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend."); *City of Aiken v. Koontz*, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006) ("Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present."); *State v. Fairey*, 374 S.C. 92, 101-03, 646 S.E.2d 445, 449-50 (Ct. App. 2007) (holding the defendant's signature on a bond form "served as a warning that he would be tried in his absence" should he fail to appear).

AFFIRMED.¹

LOCKEMY, C.J., and HUFF and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



RECEIVED *WBA*

DEC - 1 2017

ATTORNEY GENERALS

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 30, 2017

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: The State v. Emmanuel Elleby
Lower Court Case No. 2014GS4007355, 2014GS4007364
Appellate Case No. 2015-002620

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Kathrine Haggard Hudgins, Esquire
Susan Ranee Saunders, Esquire
Daniel Edward Johnson, Esquire

FORM 5

STATE OF SOUTH CAROLINA

County of Richland

EMMANUEL Elledy, 275057

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2018CP400 0591

**APPLICATION FOR
POST-CONVICTION RELIEF**

JEANNETTE W. MCBRIDE
C.C.P. & G.S.

2018 JAN 29 AM 8:03

RICHLAND COUNTY
FILED

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 the 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 384 - Mc COMB CONVENTIONAL INST. Mc COMB SC.
29899
2. Name and location of Court which imposed sentence Richland County Court House
3. Name(s) of co-defendant(s) (if any) DEVER BOVER.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) KIDNAPPING - 2014-LS-400-7364
 - (b) ARMED ROBBERY - 2014-LS-400-7355

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-17-2015 - life - kidnapping
- (b) 9-17-2015 - ARM ROBBERY
- (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. SUPREME COURT, SOUTH CAROLINA
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed: DETERED.
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result: N/A
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. DETERED.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL.
- (b) COUNSELOR FAILED TO RESEARCH.
- (c) COUNSELOR FAILURE TO INTERVIEW WITNESS.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) FAILURE TO PREPARE FOR TRIAL.
- (b) FAILED TO INVESTIGATE, OR TO LOCATE OR INTERVIEW WITNESS.
- (c) FAILED TO PUT AGREEMENT IN WRITING OR THE RECORD.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(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?

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) _____
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
(b) your trial, if any? ☒ _____
(c) your sentencing? _____
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Trial - Mr. Adam Ruffin
UNKNOWN.
ii. ~~REDACTED~~
iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial - Mr. Adam Ruffin
UNKNOWN.
ii. _____
iii. _____

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE.

20. Are you now under sentence from any other court that you have not challenged?

Y/A

STATE OF SOUTH CAROLINA)

County of Richland County)

VERIFICATION

I, EMMANUEL ELLEBY, 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.

Emmanuel Elleby

SWORN to and subscribed before me this 22
day of January, 2018

Jeff Franklin (S.)
Notary Public

My Commission Expires: 12.16.2019

1) Trial Counsel failed To Actively Get Me A Mental Evaluation.

Matthews v. State 358 SC. 456, 596 SE. 2d 49 (2004)

(1) Defendant Clearly established by A Preponderance of Evidence that he was incompetent At time he Entered a GUILTY Pleas, And

(2) Trial Counsel's failure to request competency hearing to determine defendant's fitness to stand Trial constituted ineffective assistance.

(1+2) Petitioner asserts his Trial Counsel was ineffective in failing to raise the issue of his fitness to stand Trial. He contends that the PCR Judge erred in denying PCR Relief and, At the same time, Ruling That Petitioner should be Treated AS HAVING Pled GUILTY. We find that Petitioner's Trial Counsel was ineffective in failing to make A Motion for A BLAM hearing given the evidence of Petitioner's incompetency.

(3) Due Process Prohibits the conviction of an incompetent defendant, And this right MAY not be waived by A guilty Plea. Jeter v. State, 308 SC. 230, 232, 417 S.E. 2d 594, 595-596 (1992) (Citations omitted)

FILED
2016 JAN 29 AM 8:03
JEANETTE W. MCBRIDE
C.C. & S.

VON DOHLEN V. STATE, 602 S.E. 2d 738 (2004)

- (1) Trial Counsel was ineffective in investigating Psychiatric Evidence for Presentation at Penalty Phase of trial.
- (2) Trial Counsel formed deficiently by failing to solicitors "Golden Rule Argument" at Penalty Phase; but
- (3) such deficient performance was not prejudicial.

(1-3) A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984). There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case. Strickland, 466 U.S. at 690, 104 S.Ct. 80 L.Ed 2d at 695; Cheney v. State, 300 S.C. 115, 386 S.E 2d 624 (1989).

In order to prove counsel was ineffective, the applicant must show that counsel's performance was deficient and that there is a reasonable probability that, but for counsel error's, the result of trial would have been different. A reasonable is a probability sufficient ** 741 to undermine confidence in the outcome of trial. Strickland, 466 U.S. at 687-694, 104 S.Ct. at 2064-2068, 80 L.Ed 2d at 693-698, Rhodes v. State, 349 S.C 25, 561 S.E 2d 606 (2002)

(2) Trial Counsel fail to investigate and question witness Sheila Ashley and Breanna Hampton. SEE / Lord v. Wood: Cite as 184 F.3d 1083 (9th Cir. 1999). The Court of Appeals, Kozinski, Concurring Judge, held that defense Counsel's failure to call, or personally interview, three witnesses who ~~was~~ claimed to have seen the victim alive after petitioner was ~~supposed~~ supposed to have killed her constituted ineffective assistance of Counsel.

(1-2) A lawyer who fails adequately to investigate, and to introduce into evidence, [information] that demonstrates his client's factual innocence, or that raises sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance." Hart v. Gomez, 174 F.3d 1067, 1070 (9th Cir. 1999). Mindful of the deference we owe Counsel's trial strategy, we nevertheless conclude that Counsel's cursory investigation of the three AWP witnesses, and their subsequent failure to put them on the stand, constitute deficient performance that was prejudicial to Lord's defense.

(3) Trial Counsel failed to object to co-defendant statement on stand. See SMITH V. GROOSE, 205 F.3d 1045 (8th Cir. 2000)

The United States District Court for the Western District of Missouri, Joseph Stevens, J., denied Petition. Petitioner appealed. The Court of Appeals, Wollman, Chief Judge, held that: (1) state violated ~~the~~ defendant's due process rights when it used one of co-defendant two factually contradictory versions of events surrounding murders to convict defendant, then relied on other version at later trial to convict someone else of same murders, and (2) such conduct warranted habeas relief.

(4) Counsel failed to object to hearsay on t.p.
See/ ~~State~~ Dawkins v. State, 346 S.C. 151, 551 S.E. 2d 260.

The Supreme Court, Moore, J., held that counsel rendered ineffective by failing to object to hearsay evidence that corroborated victims' testimony. [3,4,5] The rule ~~against~~ against hearsay prohibits the admission of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies. Jolly v. State, 314 S.C. 17, 443 S.E. 2d 566 (1994).

A well-settled exception in criminal sexual conduct cases allows limited corroborative testimony. *Id.* When the victim testifies, evidence from other witnesses that the victim complained of the sexual assault is admissible in corroboration; however, such evidence is limited to the time and place of the assault and cannot include details or particulars. *Id.*; State v. Munn, *supra*. Testimony from 263 other witnesses regarding the victim's identification of the perpetrator does not fall within this hearsay exception. (6) Since the testimony was inadmissible hearsay, counsel's failure to object to the introduction of the evidence fell below an objective standard of reasonableness. Strickland v. Washington, *supra*; Brown v. State, *supra*. As to the prejudice prong of Strickland, petitioner was prejudiced by counsel's deficient performance because improper corroboration testimony that is merely cumulative to the victim's testimony cannot be harmless. As we stated in Jolly *157 "it is precisely this cumulative effect which enhances the devastating impact of improper corroboration. See/ Jolly v. State, 314 S.C. at 21, 443, S.E. 2d

(5) Adam Ruffen was ineffective Assistance Counsel.
MISSOURI V FAYE, cite AS 132 S.Ct. 1399 (2012) The Supreme Court, Justice Kennedy, held that: (1) defense Counsel Adam Ruffen has the duty to communicate formal offers from the Prosecution to accept a Plea on terms and conditions that may be favorable to the accused, and (2) Counsel deficient in failing to communicate to defendant Prosecutor's written Plea offer before it expired.

LAFER V CONDER, cite AS 132 S.Ct. 1376 (2012)

Valentine V United States, 488 f. 3d 325 332-333 (6th Cir 2007)

Satten Lee V Wolfenbarger, 374 f. SUPP. 2d 562, 567-568 (E.D. Mich 2005)

Nunes V Mueller, 350 f. 3d 1045 1053-1057 (9th Cir. 2003)

Conclusion.

Wherefore Appellant Prays that his Sentence of LIFE YEARS be set aside.

Respectfully Submitted,

Emmanuel Elleby
Emmanuel Elleby

386 Redemption Way
McCormick Corr. Inst.
McCormick, SC 29899

January — 2018

EMMANUEL ELLEBY, #275057

McCORMICK C.I.

386 - REDEMPTION WAY

McCORMICK, South Carolina, 29899

JANUARY 22 2018

DEAR CLERK,

PLEASE STAMP CLOCK AND FILE THIS
POST-CONVICTION APPLICATION, AND AMEND WITH YOUR
OFFICE, AND SERVE COPY BACK FOR MY FILES).

THANKING YOU IN ADVANCE FOR YOUR EFFORTS
IN MY BEHALF.

Elleby Emmanuel

JEANETTE W. McBRIDE
Clerk of Court

VIRGINIA F. BELCHER
Chief Deputy Clerk of Court



MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, SC 29202-2766

TELEPHONE:
Phone: 803.576.1934
Fax: 803.576.1785
TDD: 803.748.4999

RICHLAND COUNTY CLERK OF COURT

Richland County Judicial Center
1701 Main Street, Room 205
Columbia, South Carolina 29201

January 29, 2018

Jessica E. Kinard
Attorney at Law
South Carolina Attorney General Office
Post Office Box 11549
Columbia South Carolina 29211

Re: Emmanuel Elleby# 275057
2018-CP-40-0591

Dear Ms. Kinard:

I am enclosing a copy of an Application for Post-Conviction Relief that has been filed in the Office of the Clerk of Court and assigned a civil action number 2018-CP-40-0591.

Also, I have enclosed a copy of his/her criminal records.

Sincerely,

Tonian Davis
Deputy Clerk of Court-Civil Record

Enclosures

Cc: Mr. Dan Johnson, Esquire

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

I, EMMANUEL ELIEBY, 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.

EMMANUEL ELIEBY
Applicant

SWORN or affirmed to and subscribed before me this

22 day of January 2018
J. Franklin
Notary Public

My Commission Expires:

12-16-2019

2018 JAN 29 AM 8:03
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

18-591

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

I, EMMANUEL ELLEBY, 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.

Emmanuel Elleby
Applicant

SWORN or affirmed to and subscribed before me this

22 day of JANUARY 2018
J. Franklin
Notary Public

My Commission Expires: 12-16-2019

2018 JAN 29 AM 8:03
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

GRANTED pursuant to
S.C. Code Ann. § 17-27-6D.
Jocelyn Neumann
March 6, 2019

2019 MAR -7 AM 10:08
FILED
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Revised 3/2003

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Emmanuel Elleby, SCDL #27507,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-0591

RETURN

FILED
JUN -5 11:00
JANETTE W. MCBRIDE
CLERK
C.C.P. & C.S.

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on January 29, 2018, would respectfully show this Court:

I. Procedural History

Emmanuel Elleby (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 indicted during the November 2014 term of the Richland County Grand Jury for armed robbery (2014-GS-40-7355) and kidnapping (2014-GS40-7364). Applicant was represented by Assistant Public Defender Adam Ruffin of the Richland County Public Defender's Office. The case was prosecuted by Assistant Solicitor April Sampson of the Fifth Circuit Solicitor's Office. Applicant failed to appear for trial and was tried in his absence before the Honorable DeAndrea G. Benjamin, circuit court judge. The jury convicted Applicant as charged and Judge Benjamin sealed her sentence. On October 16, 2015, all parties appeared for a sentencing hearing, during which Judge Benjamin sentenced to life without possibility of parole on both charges pursuant to Section 17-25-45 of the South Carolina Code (2014). Thereafter, counsel filed a motion to reconsider Applicant's sentence, which was heard and denied by Judge Benjamin on November 12, 2015.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by

Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense-Division of Appellate Defense. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences by unpublished opinion filed November 8, 2017. State v. Elleby, Op. No. 2017-UP-420 (S.C. Ct. App. filed November 8, 2017). The remittitur was returned to the circuit court on November 30, 2017.

II. Allegations Raised and Relief Sought

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to research."
 - b. "Counsel failed to interview witnesses."
 - c. "Counsel failed to prepare for trial."
 - d. "Counsel failed to investigate or to locate or interview witnesses."
 - e. "Counsel failed to put agreement in writing or the record."

In his requested relief, Applicant states he is seek for his convictions to be vacated.

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pre-trial transcript, the trial transcript, the sentencing transcript, the motion to reconsider transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges various instances of ineffective assistance of counsel. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit.

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

In a post-conviction relief action, an applicant bears the burden of proving the allegations

in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI. Request for an Evidentiary Hearing

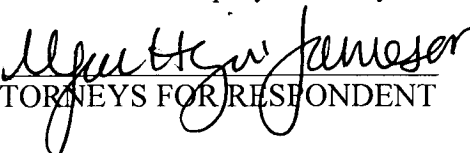
Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. Respondent also moved for Applicant's counsel to amend his *pro se* application to include the specific allegations he intends to raise well in advance of an evidentiary hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

5/31, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

EMMANUEL ELLEBY, #27507

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2018-CP-40-0591

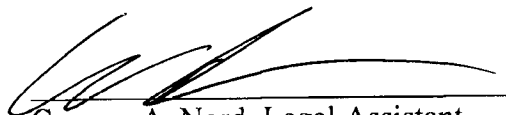
AFFIDAVIT OF SERVICE BY MAIL

FILED
JUL 5 11:06
CLERK OF COURT
JANET M. HCBRIER
SOUTH CAROLINA

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 **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201

DATED this the 31st day of May, 2018.


Carmen A. Nord, Legal Assistant
For Respondent

STATE of South Carolina
County of Richland
EMMANUEL ELLEBY # 275057,
Applicant.

V.

State of South Carolina,
Respondant.

In The Court of Common Pleas
Case # 2018CP4000591

Amendment to Post-Conviction
Relief (PCR) Action

JEANETTE W. MCBRIDE
C.C.P. & G.S.

2018 OCT -2 PM 2:32

FILED
RICHLAND COUNTY

Now Comes EMMANUEL ELLEBY (Applicant) on the above
Captioned Matter, Respectfully Amending Post-Conviction
Relief action.

(5) Defense Counsel Adam Ruffin was ineffective
Assistance of Counsel. Because he has the duty to
communicate formal offers from the Prosecution to accept
a plea on terms and conditions that MAY be favorable
to the Accused, and Counsel was deficient in failing to
communicate to the defendant, before the Prosecutor written
plea offer expired. defense counsel (Never) informed Applicant
about a plea offer on Richland County. defense counsel
failure to advise defendant of terms of plea bargain offer
was deficient representation.

See // Trans. Pg. (6) Lines (9-14). This was the first time
Applicant heard about the plea before Applicant had a seizure.
ALSO SEE // Wanatee v. Ault, 101 F. Supp. 1189 (N.D. Iowa
2000); US v. McKinnon, 995 F. Supp. 1404 (N.D. Fla. 1998)
US v. Blaylock, 20 F.3d 1458 (9th Cir. 1994) Clanton v. Blair,
69 F. Supp. 226 (N.D. Ohio 1986) Teague v. Scott, 60 F.3d 1167
(5th Cir. 1995)

Missouri v. Frye, cite as 132 S.Ct. 1399 (2012) The Supreme Court, Justice Kennedy, held that defense counsel Adam ~~Ruffin~~ Ruffin has the duty to communicate formal offers from the ~~Prosecution~~ Prosecution to accept a plea on terms and conditions that may be favorable to the accused, and (2) counsel deficient in failing to communicate to defendant prosecutor's written plea offer before it expired.

RICHLAND COUNTY
FILED
2018 OCT -2 PM 2:32
JEANNETTE W. MCPHIDE
C.C.P. & G.S.

Lafley v. Cooper, cite as 132 S.Ct. 1376 (2012)

Valentine v. United States, 488 F.3d 325, 332 (6th Cir. 2007)

Satter Lee v. Wolfenbarger, 374 F.Supp. 2d 562, 567-568 (E.D. Mich. 2005)

Nunes v. Mueller, 350 F.3d 1045, 1053-1057

HPS Counsel's Representation was not within the range and scope of competence demanded by Streckland v. Washington and its progeny.

Notary B. D. Hudeman

Exp. 9-30-26

STATE of South Carolina
County of Richland
EMMANUEL ELLEY #275057
Applicant,

V.

STATE of South Carolina
Respondent.

In The Court of Common
Pleas.

5th Judicial Circuit

Case No: 2018CP4000591

Notice of Motion and
Motion for Fees in Post-
Conviction Relief Case.

FILED
2019 APR 11 PM 4:35
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

Please take notice that the Applicant will move before the Presiding Judge of the Court of Common Pleas for Richland County Ten (10) days following Service, or as soon thereafter, so that Counsel may be heard for an order authorizing fees in Post-conviction to wit: \$3,500.00 for services of an investigator:

These are the reasons:

- (1) Shepla Ashley: statement / Informant
- (2) Breanna Hampton: statement
- (3) Dawn Bolea: statement / Plea and Testimony
- (4) Elizabeth Coleman: statements

(1 of 3)

Under the South Carolina Legislature has provided that indigents seeking Post-conviction Relief who are unable to pay the ~~expenses~~ expenses of representation shall have those expenses made available to him in the trial court in amounts and to the extent funds are made available to indigent defendants by the General Assembly. See // S.C. Code 17-27-50 and 17-27-60. See Also Rule 602(G) Scar.

These funds are necessary to provide Applicant Constitutionally and Statutorily adequate resources to meaningfully Pursue Post-conviction relief.

See e.g. U.S. Const. Amends. V, VI, VIII, XIV; S.C. Const. ART. I III XIV. AKB V. Oklahoma, 470 U.S. 68 (1985) Barley V. STATE, 309 S.C. 455 S.E. 2d 503 (1992) S.C. App. Ct. R. 602. Applicant reserves the right to move for additional funds if they become reasonably necessary.

The right to file an application for Post-conviction relief and the right to the assistance of counsel when doing are hollow in the absence of concomitant right of an indigent Applicant to ~~receive~~ receive funding for experts and investigative services where appropriate. Williams V. Martin, 618 F.2d 1021, 1025 (4th Cir. 1980)

(Explaining that "the quality of representation at trial MAY be excellent and yet valueless to the defendant if his defense requires... The services of an... expert and no such services are provided" citing ABA standards, Providing defense services Commentary, 22-23 (APP. Draft 1968). The state is required to "Provide the basic tools for an adequate defense to an indigent defendant." Barley V. State, 427 S.E. 2d 803, 506 (citing AKB V. Oklahoma, 470 U.S. 68 (1985). ~~██████████~~)

Namely, it is the state's duty to "ensure that the defendant has... [funding for] the services of experts necessary to a meaningful defense. Id.

Applicant, has also requested that his counsel preserve the issue concerning his motion for funding. He would like to have the motion heard on open court so that a record ^{will} be available should his request be denied.

This 15 day of November 2018

Notary: B. J. Williams
9-30-26

Respectfully submitted
Emmanuel Elsey

(3 of 3)

STATE of South Carolina
County of Richland

Emmanuel Elleby #275057
Applicant,

V.

STATE of South Carolina
Respondant.

South Carolina Court of Appeal

Case No: 2018CR4000591

Notice of Motion for Discovery

S.C. Code ANN. 17-27-150

FILED
2019 JAN 23 AM 11:11
JENNIFER W. MCBRIDE
CLERK, S.C. COURT OF APPEALS

Please take notice that, The Applicant
this Motion to obtain documents. The Applicant
contends that the motion seeks to obtain the
transcript of Applicant's one (1) co-defendant who
was given a deal for his testimony despite
making it known during trial he was not.
This motion seeks to obtain:

(1) Transcripts of Guilty Plea

(2) Sentencing sheets

These are the ONLY documents which will
help support Applicant claim that his sentence
is illegal, and that a deal was given. Without
such documents, Applicant will not be able to
substantiate his contention in support of this
motion, for this reason the court should not deny
Applicant Application.

600

Wherefore Applicant Prays for a grant
of this Motion.

This 15 day of January 2019

Notar By [Signature]

Exp. 930-26

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Emmanuel Elleby, # 275057,)
Applicant,)
)
vs.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: 2018-CP-40-0591

NOTICE OF MOTION AND MOTION
FOR DISCOVERY, FUNDING, AND
CONTINUANCE

FILED
2019 FEB 12 AM 9:26
RICHLAND COUNTY
CLERK OF COURT
S. J. MCBRIDE

TO: SAMUEL KEY, ASSISTANT ATTORNEY GENERAL:

PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney will move before the court on Friday, February 22, 2019, or soon thereafter for an order allowing discovery in the above captioned Post Conviction Relief case.

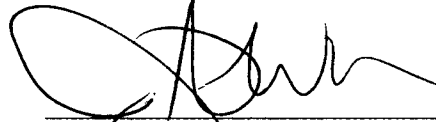
The Applicant was indicted during the November 2014 term of the Richland County grand jury for Kidnapping (2014-GS-40-7364) and Armed Robbery (2014-GS-40-7355). Applicant was represented by Adam Ruffin, Esquire. Applicant was tried in his absence before the Hon. DeAndrea G. Benjamin, and was ultimately convicted, as indicted, of each charge. Following his conviction, Judge Benjamin sentenced Applicant to a term of life without the possibility of parole pursuant to §17-25-45 of the South Carolina Code. All sentences were ordered to be run concurrently.

The Applicant presented himself to the courthouse and his counsel on the day the trial was scheduled to begin. Prior to the commencement of the trial, Applicant had some sort of medical episode and was transported to the hospital via ambulance. When Applicant did not appear for trial the next day, the trial commenced, and Applicant was convicted in his absence.

Given the harsh nature of the potential penalty, Applicant contends that he should have had the opportunity to be present at his trial, when his absence was not of his own choosing. Therefore, Applicant hereby seeks to conduct discovery in his Post Conviction Relief case to ascertain whether his absence from his trial was the result of a medical condition requiring hospitalization and also the ability to subpoena hospital records for Applicant's admission and treatment during the trial. Applicant also requests funding for the above.

Therefore, the Applicant respectfully moves for an order granting discovery in this case, the funding to conduct said discovery, and for the matter to be continued to the next available term of Post Conviction Relief court for the Fifth Judicial Circuit.

Respectfully submitted,



Jonathan D. Waller, Esquire
Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201
(803) 520-7278
jonathan@wallergroupsc.com
ATTORNEY FOR THE APPLICANT

Columbia, South Carolina
February 8, 2019

STATE of South Carolina
County of Richland
EMMANUEL ELLEY # 275057
Applicant,

V.

STATE of South Carolina
Respondent.

In The Court of Common
Pleas.

5th Judicial Circuit

CASE NO: 2018CP4000591

Notice of Motion and Motion
for fees in Post-conviction
Relief Case.

PLEASE take notice that the Applicant will
move before the Presiding Judge of the Court
of Common Pleas for Richland County Ten (10) days
following service or soon thereafter so that counsel may
be heard for an order authorizing fees in Post-
conviction to wit: \$3,500.00 for services of an
Investigator:

These are the Reason:

- (1) Sheila Ashley: Statement / Informant
- (2) Breanna Hampton: Statement
- (3) Elizabeth Coleman: statements
- (4) Devin Boler: Statement / Plea deal and testimony
- (5) Kenneth Gardner: statement.

Under the South Carolina Legislature has provided that indigents seeking post-conviction relief who are unable to pay the expenses of representation shall have those expenses made available to them on the trial court on amounts and to the extent funds are made available to indigent defendants by the General Assembly. SEE S.C. Code 17-27-50 and 17-27-60 ~~See~~ See ALSO Rule 602 (G), SCAR.

These funds are necessary to provide applicant constitutionally and statutorily adequate resources to meaningfully pursue post-conviction relief.

SEE E.g. U.S. Const. Amends. V, VI, VIII, XIV; S.C. Const. ART. I, III, XIV. AKB V. Oklahoma, 470 U.S. 68 (1985) Barley V. STATE, 309 S.C. 455 SE 2d 503 (1992) S.C. APP. CT. R. 602. Applicant reserves the right to move for additional funds if they become reasonably necessary.

The right to file an application for post-conviction ~~relief~~ relief and the right to the assistance of ~~counsel~~ counsel when doing are hollow in the absence of the concomitant right of an indigent applicant to receive funding for experts and investigative services where appropriate. Williams V. Martin, 618 F.2d 1021, 1025 (4th Cir 1980)

(Explaining that "the quality of representation at trial MAY be excellent and yet valueless to the defendant if his defense requires... the services of an... expert and no such services are provided" (citing ABA Standards, Providing defense services Commentary, 22-23 (APP. Draft 1968)). The STATE is required to "provide the basic tools for an adequate defense to an indigent defendant." Barley V. State, 427 S.E. 2d 803, 506 (citing AKB V. Oklahoma, 470 U.S. 68 (1985)).

Namely it is the STATE'S duty to "ensure that the defendant has... [funding for] the services of experts necessary to a meaningful defense. Id.

Applicant has also requested that his counsel preserve the issue concerning his motion for funding. He would like to have the motion heard in open court so that a record will be available should his request be denied.

This ⁶ ~~1~~ day of ~~February~~ 2019

Notary: B. Q. Medina
9-30-26

Respectfully Submitted
Emmanuel Elley

(3 of 3)

18-591

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

I, EMMANUEL ELLEBY, 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.

Emmanuel Elleby
Applicant

SWORN or affirmed to and subscribed before me this

22 day of January 2018

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

2018 JAN 29 AM 8:03
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

GRANTED pursuant to
S.C. Code Ann. § 17-27-60.

Jocelyn Neuman
March 6, 2019

2019 MAR -7 AM 10:08
FILED
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Revised 3/2003

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Emmanuel Elleby, #275057,)
Applicant,)

Case No. 2018-GP-40-0591

VS.)

ORDER GRANTING
LIMITED DISCOVERY

State of South Carolina,)
Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed January 29, 2018. By motion dated February 12, 2019, and heard by the Court on February 22, 2019, Applicant, Emmanuel Elleby, pursuant to S.C. Code Ann. § 17-27-150(A), moved the Court to grant limited discovery and funding for such discovery.

Applicant argues that given the nature of the allegations of the crime at issue, his past criminal history, and the potential penalties he was facing if convicted, he may have a claim that his counsel was ineffective for failing to investigate whether he was still in the hospital when his trial commenced. It is undisputed that Applicant suffered some sort of medical episode the day his trial was scheduled to start and was taken by ambulance to the hospital. Applicant argues that he remained hospitalized for multiple days while his trial proceeded in his absence, despite the trial judge indicating that the matter would be continued if Applicant remained in the hospital.

Applicant contends documents related to his medical treatment during the hospital stay are necessary to determine whether Applicant has a valid claim of Ineffective Assistance of Counsel as alleged in his Post Conviction Relief Application. Applicant argued that due to the

unusual circumstances in this case, the Applicant should be entitled to the limited discovery of his hospital records. It is noted that counsel for the State does not contest Applicant's request.

By way of the Motion for Limited Discovery, this Court finds that Applicant has shown a sufficient basis for allowing discovery of the following:

- 1) Applicant's hospital records for the incident occurring on or about September 14, 2015.

Based upon Applicant's Motion and the rare and unique circumstances involved in this case, this Court finds Applicant has shown good cause for discovery pursuant to S.C. Code Ann. § 17-27-150(A) and the funding to conduct such discovery. Therefore, Applicant's request shall be granted to ensure that Applicant can properly prepare for his Post Conviction Relief hearing.

IT IS THEREFORE ORDERED:

1. Limited discovery is **GRANTED** to Applicant to subpoena, review, and retain a copy of the Applicant's hospital records, and the funding to conduct such discovery. Counsel for Applicant is directed to forward any and all materials to Respondent.

2. The Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 9th day of April, 2019.

Sumter, South Carolina

Kristi Curtis
Kristi Curtis
Presiding Judge, 5th Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Emmanuel Bashan Elleby, 275057,
Applicant,

**AMENDMENT TO APPLICATION FOR
POST CONVICTION RELIEF**

Vs.

Case No. 2018-CP-40-0591

State of South Carolina

Respondent.

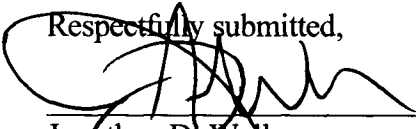
Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed January 29, 2018, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

RICHLAND COUNTY
FILED
2019 JUN 17 PM 12:53
JEANETTE W. MCBRIDE
Clerk, C.S. & F.C.

1. As to representation rendered by Adam Ruffin, Esquire:

- a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding Applicants hospitalization, thus depriving Applicant of a continuance and presence at his trial.

Respectfully submitted,


Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

June 15, 2019

Columbia, South Carolina

Elleby vs. State of SC
Amendment to PCR Application

Page 1 of 1

STATE of South Carolina
County of Richland

Emmanuel Elieby #275057,
Applicant.

V.

STATE of South Carolina
Respondant.

In The COURT of Common Pleas

Case# 2018CP4000591

Amendment to Post-Conviction
Relief (PCR) Action

RICHLAND COUNTY
FILED
2019 AUG 19 PM 2:20
JANETTE M. MCBRIDE
CLERK, COURT OF COMMON PLEAS

Now Comes EMMANUEL ELIEBY (Applicant) on the above captioned matter Respectfully Amending Post-Conviction Relief Action.

Trial Counsel Adam Ruffin was ineffective. Mr. Adam Ruffin failure to investigate, if he would have investigate the outcome of trial would have been different. I have wrote MR. STEVEN D. TUTTLE, he stated: That he checked 1993 ACT No. 184 and 1995 ACT No. 7 but could not locate a visible impression of the Great Seal. I receive this on September 24, 2018. Without the impression of the Great Seal. That means that the kidnapping and Armed Robbery is ~~invalid~~ invalid.

Under S.C. CONST. ART. III § 18
No Bill or Joint Resolutions have the force of Law until it shall have been read **THREE TIMES** and on **THREE SEVERAL DAYS**, in each house, has had the (Great seal) of the STATE **APPOXED** to it, and has been **SIGNED** by the President of the Senate and the Speaker of the House of Representatives: Provided that either branch of the General Assembly may provide by Rule for a first and Third Readings of any bill or Joint Resolution by its title only. It constitutes the 2 Prong test of Strickland 632 Washington.

Conclusion

I want My Case Reversed
and VAcated

AUG. 14th 2019

Emmanuel Elleby
275057
McCormick Comm. Inst.
F2B#149
386 Redemption Way
McCormick, SC 29899

Emmanuel Elteby
McCormick CI/F2B#149
386 Redemption way
McCormick, SC 29899

Aug. 14, 2019

Dear Ms. McBride,

Can you file and stamp
this Amendment in a timely manner.

Thanks for your Time
and Assurances.

STATE of South Carolina
County of Richland
Emmanuel Elleby #275057,
Applicant.

✓

STATE of South Carolina
Respondant.

In the Court of Common
Pleas.

CASE # 2018CP 4000591

Amendment to Post-Conviction
Relief (PCR) Action

2019 OCT -3 PM 12:39
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

FILED
RICHLAND COUNTY

Now Comes Emmanuel Elleby (Applicant) in the
above captioned matter respectfully amending Post-
Conviction Relief action.

Trial Counsel Adam Ruffin was ineffective.
Mr. Adam Ruffin failure to investigate if he
would have investigate the outcome of trial
would have been different.

I have wrote Mr. Steven D. Tuttle, #
He stated: That he checked 1993 Act No. 184
and 1995 Act No. 7 but could not locate a
usable impression of the Great Seal. I
receive this on September 24, 2018.
Without the impression of the Great Seal
that means that the kidnapping and
Armed Robbery is void.

Under SC Const. Art. III § 18

No Bill or Joint Resolutions have
the force of Law until it shall have
been read Three Times and on

Three Several Days Each house
has had the Great Seal of the
State affixed to it and has been signed
by the President of the Senate and
The Speaker of the House of
Representatives: Provided, that either
branch of the General Assembly may
Provide by Rule for a first and
Third Reading of any bill or Joint
Resolution by it's title only.
It constitutes the 2 Prong
test of Strickland v.
Washington.

- Conclusion -
Reversed And
Vacated

Emmanuel Elleg
McConneek C.I
386 Redemption way
McConneek, SC 29884



24 September 2018

Mr. Emmanuel Elleby #275057
McCormick Correctional Institution F2B #152
386 Redemption Way
McCormick, SC 29899

Dear Mr. Elleby:

I checked 1993 Act No. 184 and 1995 Act No. 7 but could not locate a visible impression of the Great Seal.

Sincerely,

Steven D. Tuttle
Deputy Director
Archives & Records Management

Can you Please file and
Clock and send me a
Copy in return

Thanks

STATE of South Carolina
County of Richland

Emmanuel Elleby # 275057,
Applicant.

V.

STATE of South Carolina,
Respondant.

In The Court of Common
Pleas.

Case # 2018CP4000591

Amendment to
Conviction Relief
Action.

JEANETTE W. MORRIS
CLERK, C.P. & C.S.
2018 OCT 12 AM 10:00
FILED
RICHLAND COUNTY
COURT
CLERK
OFFICE
COURT
CLERK
OFFICE

Now Comes Emmanuel Elleby (Applicant) in the above
captioned Matter Respectfully Amending Post-Conviction
Relief action.

(4) Adam Ruffen was ineffective Assistance Counsel for
failing to object to hearsay on 2p.

SEE // Dawkins v. State, 346 S.C. 151 551 S.E. 2d 669
The Supreme Court, Moore J., held that Counsel was
ineffective by failing to object to hearsay evidence that

Corroborated Victims' Testimony. [3,4,5] The Rule
Against hearsay Prohibits the admission of an out-of-court
Statement to Prove the Truth of the Matter Asserted Unless
An Exception to the Rule Applies. Jolly v. State, 314 S.C. 17,
443 S.E. 2d 566 (1994). A well-settled exception in Criminal
Sexual Conduct Cases allows limited corroborative
Testimony. Id. When the Victim Testifies, Evidence
from other witnesses that the victim complained of the sexual
Assault is admissible in corroboration; However, such
evidence is limited to the time and place of
the Assault and cannot include details or Particulars.
Id.; State v. Munn, Supra. Testimony from ** 263 other
Witnesses regarding the Victims identification of the
Perpetrator does not fall within this hearsay exception.

(6) Since the testimony was inadmissible hearsay, Counsel's failure to object to the introduction of the evidence fell below an objective standard of reasonableness. Strickland v. Washington, SUPRA; Brown v. STATE, SUPRA. As to the Prejudice Prong of Strickland, Petitioner was prejudiced by Counsel's deficient performance because improper corroboration testimony that is merely cumulative to the victim's testimony cannot be harmless. As we stated in Jolly * 157 "it is precisely this cumulative effect which enhances the devastating impact of improper corroboration."

SEE// JOLLY v. STATE 314 S.C. At 21 & 443. S.E. 2d. At 569 Consequent Petitioner should be granted Relief for the ineffective Assistance of Counsel.

S/Emmanuel Ellegu

STATE of South Carolina
County of Richland

Emmanuel Elleby # 275057
APPLICANT,

-VS-

STATE of South Carolina
Respondant.

In The Court of Common Pleas

CASE # 2018 CP4000591

Amendment to Post-Conviction
Relief (PCR) Action.

FILED
2020 FEB 24 PM 12:00
JEANNETTE W. MCBRIDE
Clerk, P. & G. S.

Now comes Emmanuel Elleby (APPLICANT) on the above
captioned matter respectfully amending Post-conviction
Relief Action.

(6) Adam Ruffen defense counsel failure to
familiarize himself with the facts and laws
relevant to trial which made him constitutionally
ineffective in failing to investigate. The Petitioner did
not waive the right to present the evidence. ~~the~~

Thomas v. Zant, cite as 697 F.2d 977 (1983). IN

Washington v. Strickland, 693 F.2d 1243, 1254

(5th Cir. 1982) (Unit B en banc), we noted the central
role of counsel strategy in ~~noted~~ our assessment of
effectiveness of representation. Because often it will "not
be clear whether the failure to investigate a line of
defense is based upon trial strategy or upon neglect of
counsel's professional obligations," courts presume that
counsel's action.

S/ Emmanuel Elleg # 275057

~~McCormick~~ McCormick C.I./F2B # ~~2750~~ 149
386 Redemption way
McCormick S.C. 29899

Can you please clock and
stamp and send a copy.

STATE OF South Carolina
County of Richland

Emmanuel Elleby #275057

APPLICANT,

V.

STATE of South Carolina
Respondent.

South Carolina Court of
Appeal.

CASE NO: 2018CP4000591

Notice of Motion for Discovery
S.C. Code ANN. 17-27-150

FILED
2020 AUG 26 AM 10:20
JEANETTE W. McBRIDE
Clerk, S.C. Appellate
Richland County

Please take notice that The APPLICANT files this Motion to obtain documents. The APPLICANT contends that the Motion seeks to obtain the transcript of APPLICANT's one(1) Co-defendant who was given a deal for testimony despite making it known during Trial he was not. This Motion seeks to obtain:

- (1) Transcripts of Guilty Plea
- (2) Sentencing Sheets

These are the only documents which will help support APPLICANT'S claim that his sentence is illegal, and that a deal was given. Without such documents, APPLICANT will not be able to substantiate his contentions in support of this Motion, for this reason the Court should not deny APPLICANT Application.

Wherefore APPLICANT Prays for a Grant of this Motion.

This 5 day of August 2020

Notary: B. D. Waldman

9.30.20

Respectfully Submitted

S/ Emmanuel Elleby

Emmanuel Elleby # 275057

STATE OF South Carolina
County of Richland

Emmanuel Elleby #275057,
Applicant.

Vs.

STATE of South Carolina,
Respondant.

In The Court of Common
Pleas.

Case # 2018CP4000591

Amendment to Post -
Conviction Relief (PCR)
Action.

FILED
2021 APR 16 AM 11:42
CLERK OF COURT
SOUTH CAROLINA
COUNTY OF RICHLAND

Now Comes Emmanuel Elleby (Applicant) of the
Above Captioned Matter respectfully Amending Post-conviction
Relief Action.

(4) Adam Ruffin was ineffective Assistance of Counsel, for
for failing to object to hearsay on tip.

SEE // Dawkins V. State, 346 S.E. 151, 551 S.E. 2d 260.
The Supreme Court Moore J. held that counsel rendered
ineffective by failing to object to hearsay evidence that
corroborated victim's testimony. [3,4,5] The Rule
against hearsay prohibits the admission of an out-of-court
statement to prove the truth of the matter asserted unless
an exception to the Rule applies. Jolly V. State, 314 S.E. 17,
443 S.E. 2d 566 (1994). A well-settled exception in criminal cases
allows limited corroborative testimony. Id. When the victim
testifies, evidence from other witness that the victim complained
of a robbery is not admissible in corroboration; However, such
evidence is limited to the time and place of the robbery
and cannot include details on particulars. Id;
State V. Munn, supra.

Since the testimony was inadmissible hearsay Counsel's failure to object to the introduction of evidence fell below an objective standard of reasonableness. Strickland v. Washington, supra; Brown v. State, supra. As to the Prejudice Prong of Strickland Petitioner was prejudiced by Counsel's deficient performance because improper corroboration testimony that is merely cumulative to the victim's testimony cannot be harmless. As we stated in Jolly #157 "it is precisely this cumulative effect which enhances the devastating impact of improper corroboration. SEE// Jolly v. State 314 S.C. 21, 443 S.E. 2d 566.

s/ Emmanuel Elleby

STATE OF South Carolina
COUNTY OF Richland

Emmanuel Elleby #275057,
Applicant.

Vs.

STATE OF South Carolina,
Respondant.

In The Court of Common
Pleas.

Case # 2018CP400057

Amendment to Post
Conviction Relief (PCR)
Action.

2021 MAY 11 PM 4:35
JEROME A. MCNEEL
CLERK
JANET L. MCNEEL
CLERK

Now comes Emmanuel Elleby (Applicant) on the Above
Captioned Matter Respectfully Amending Post-Conviction
Relief Action

(2) Trial Counsel fails to investigate and Question
witnesses Elizabeth Coleman, Kenneth Gardner,
Sheila Ashley and Breanna Hampton.

Lord vs Wood cite as 184 F.3d 1083 (4th Cir. 1999).

The Court of Appeals, Kozinski, Circuit Judge, held that
defense counsel's failure to call, or personally
interview, Four (4) witnesses who claimed to have
to have seen the Armed Robbery and
Kidnapping. Sheila Ashley seen Petitioner at
her house before and After the Allege
Crimes happen. Trial Counsel constituted
Ineffective Assistance of Counsel.

(1-2) A LAWYER who fails adequately to investigate, and to introduce into evidence, [information] that demonstrates his client's factual innocence or that raises sufficient doubt as to that question to undermine confidence in the verdict. renders deficient performance".

Hart v. Gomez, 174 F.3d 1067, 1070 (9th Cir. 1999). Mendful

of the deference we owe counsel's Trial strategy, we nevertheless conclude that counsel's cursory investigation of the two AIBI witnesses, and their subsequent failure to put them on the stand, constitute deficient performance that was prejudicial to Elleby's defense.

5/ Immanuel Elleby #27505?

State of South Carolina
County of Richland.

Emmanuel Elleby #275057
Applicant.

Vs.

State of South Carolina,
Respondant.

In The Court of Common
Pleas.

Case# 2018CP4000

Amendment to Petition
Conviction R. Lett
Action.

ALL H. AND COUNTY
FILED
2021 MAY 11 PM 4:35
CLERK OF COURT
J. L. G. J. G. J. G.

- (3) Trial Counsel failed to object to co-defendant statement on stand. When the solicitor questioned him about his statement, when it been contradictory.

Smith V. Groose, cite as 205 F.3d 1045 (8th Cir. 2000)

The Court of Appeals, Wollman, Chief Judge, held that:

(1) State violated defendants due Process rights when it ~~was~~ used one of co-defendant two factually contradictory versions of ~~the~~ events surrounding Armed Robbery and Kidnapping to convict defendant.

(2) Such conduct warranted habeas Relief

S/Emmanuel Elleby

State of South Carolina
County of Richland

Emmanuel Elleby #275057
Applicant,

vs.

South of South Carolina
Respondant.

In The Court of
Common Pleas.

Case# 2018 CP 4000591

Amendment to Post-
Conviction Relief (PCR)
Action.

Now Comes Emmanuel Elleby (Applicant)
In the Above Captioned Matter respectfully
amending Post-conviction Relief Action.

(1) Trial Counsel failed to actively get
me a mental evaluation.

Matthews V. STATE, 358 S.C 456, 596 S.E 2d
49 (2004)

(1) Defendant clearly established by a Preponderance
of evidence that ~~he was~~ I was incompetent At
the time of Trial.

(2) Trial Counsel's failure to request competency
hearing to determine defendant fitness to
stand Trial constituted ineffective assistance
Counsel.

(1+2) Petitioner asserts his Trial Counsel was ineffective in failing to raise the issue of my fitness to stand Trial. Petitioner's Trial Counsel was ineffective in failing to make a Motion for a BLAIR hearing the evidence of Petitioner's incompetency.

(3) Due process ~~and~~ prohibits the ~~conviction~~ conviction of an incompetent defendant, and this right may not be waived a guilty plea.
Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595-596 (1992) (Citations omitted)

Von Dohlen v. STATE, 602 SE 2d 738 (2004)

- (1) Trial Counsel was ineffective investigating Psychiatric evidence for Presentation at Penalty Phase of Trial.
- (2) Trial Counsel Formed deficiently by failing to solicitors "Golden Rule Argument" at penalty phase; but
- (3) Such deficient performance was prejudicial

(1-3) A defendant has the right to effective assistance of Counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). There is a strong Presumption that Counsel rendered inadequate Assistance Counsel.

Strickland, 466 U.S. At 690, 104 S.Ct. 80 L.Ed. 2d At 695. Cherry v. STATE, 300 S.C. 115, 386 SE 2d 624 (1989).
~~Re~~ Rhodes v. STATE, 349 S.C. 25, 561 SE 2d 606 (2002).

5/2/2006 Elleb #275057

STATE of South Carolina
County of Richland

Emmanuel Eitelby #275057,
Applicant.

V.

STATE of South Carolina,
Respondant.

In The Court of
Common Pleas.

Case # 2018 CP 4000591

Amendment to Post-
Conviction Relief (PCR)
Action.

Now Comes Emmanuel Eitelby (Applicant) on the
Above captioned matter respectfully Amending Post-Conviction Relief Action.
(4) Counsel failed to object on hearsay tip.

DAWKINS V. STATE, 551 SE 2d 260

The Supreme Court, Moore, J., held that counsel rendered
ineffective by failing to object to hearsay evidence
that corroborated victims testimony.

The rule against hearsay prohibits the admission of an
out-of-court statement to prove the truth of the
matter asserted unless an exception to the rule applies

Jolly v. State, 443 SE 2d 566 (1994) A well-settled
exception in a Armed Robbery and Kidnapping cases
allows limited corroborative testimony. Id.
When the victims complained of the
Armed Robbery and Kidnapping is inadmissible in
corroboration; However such evidence is
limited to the time and place of the

Armed Robbery And Kidnapping and cannot include details or Particulars. Id; State v. Munn, Supra. Testimony from other witnesses regarding the victim's identification of the Perpetrator does not fall within this hearsay exception.

Since the testimony was inadmissible hearsay Counsel's failure to object to the introduction of the ~~ad~~ evidence fell below an objective standard of reasonableness. Strickland v. Washington, Supra; Brown v. State, Supra. As to the Prejudice prong of Strickland Petitioner was prejudiced by Counsel's deficient performance because improper corroboration testimony that is merely cumulative to the victim's ~~testimony~~ testimony cannot be harmless. As we stated in Jolly it is precisely this cumulative effect which enhances the devastating impact of improper corroboration see / Jolly v. State, 443 S.E.2d 566.

9/ Emmanuel Elleby #275057

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF COMMON PLEAS
2018-CP-40-591

Emmanuel Elleby,)
Applicant,)
vs.) TRANSCRIPT OF RECORD
State of South Carolina,)
Respondent.)

July 15, 2021
Columbia, South Carolina

B E F O R E:
THE HONORABLE MICHAEL S. HOLT, JUDGE.

A P P E A R A N C E S:
JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

MICHAEL D. DAVIDSON, ESQ.
YASMEEN E. KLEIN, ESQ.
ASSISTANT ATTORNEY GENERALS
OFFICE OF THE ATTORNEY GENERAL
Attorneys for the Respondent

DEBORAH M. McCURDY, RPR
Official Court Reporter

INDEX OF WITNESSES

EMMANUEL ELLEBY

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By the Court. 37

Redirect By Mr. Waller 43

Recross By Mr. Davidson 45

ADAM RUFFIN

Direct By Mr. Waller 48

Cross By Mr. Davidson 62

Redirect By Mr. Waller 81

CERTIFICATE OF REPORTER. 85

EXHIBITS

1	Hospital Records	12	12

JULY 15, 2021

(WHEREUPON, at 11:39 a.m., the hearing commenced.)

THE COURT: Court will come to order. This is 2018-CP-40-591. This is Emmanuel Elleby, the Applicant in this PCR matter. I have Mr. Elleby present. He is with counsel, Mr. Jonathan Waller. I also have Mr. Davidson, with the AG's Office, along with Ms. Klein.

Okay. Anything counsel needs to tell the Court before we get started?

MR. WALLER: No, Your Honor.

THE COURT: All right, Mr. Waller, are you ready to go forward at this time?

MR. WALLER: I am, Your Honor.

THE COURT: All right, sir. You can call your first witness.

MR. WALLER: Thank you, Your Honor. I call Emmanuel Elleby.

THE COURT: Mr. Elleby, I want the court reporter to be able to hear, so it might be conducive if you just go where Mr. Smith is standing. Maybe right there. That way you can question him and she can also see him. I want to make sure the court reporter gets it.

1 Madam Clerk?

2 THE CLERK: Do you swear or affirm the
3 testimony you are about to give in this case will
4 be the truth, the whole truth, and nothing but the
5 truth, so help you God?

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Thank you.

8 THE COURT: Now, Mr. Elleby, if you will just
9 face your lawyer.

10 Mr. Elleby, before I ask you to give your name
11 for the record, the court reporter -- it won't
12 affect you as much, but we have all this glass and
13 it is hard to hear in here. She has had difficulty
14 this week; I have had difficulty. So just make
15 sure you speak loud enough so you can be heard.
16 Your lawyer is going to ask you some questions and
17 counsel for the Attorney General's Office will ask
18 you some questions, okay?

19 THE WITNESS: Yes, sir.

20 THE COURT: Would you just state your name for
21 the record, please?

22 THE WITNESS: Emmanuel Elleby.

23 THE COURT: That is perfect right there.

24 All right, your witness, sir.

25 MR. WALLER: Thank you, Your Honor.

1 Judge, before we start, I wanted to just make
2 sure the Court was aware, Mr. Elleby filed his
3 application and then there was an amendment filed
4 back in June of 2019, so we're going to be going
5 forward on the allegations in both in the original
6 application as well as that amendment.

7 THE COURT: All right, sir, thank you.

8 EMMANUEL ELLEBY,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WALLER:

12 Q Good afternoon, Mr. Elleby. How are you today?

13 A I'm doing all right.

14 Q All right, Mr. Elleby. I want to, if I can, take
15 you back in time to when you were first arrested on
16 the charges that led you to be in here today. Do
17 you remember that?

18 A Yes, sir.

19 Q Okay. What were you charged with?

20 A Armed robbery.

21 Q You were charged with armed robbery. Okay. And
22 you are doing -- your sentence is life without
23 parole, is that right?

24 A Yes, sir.

25 Q Okay. How -- armed robbery doesn't carry life

1 without parole on its own. How did you get life
2 without parole?

3 A Because they charged me with kidnapping two months
4 after I was already in Alvin S. Glenn on
5 August 22nd of 2014.

6 Q Okay. Did you have a prior conviction of a most
7 serious offense?

8 A Yes, sir.

9 Q You had a prior armed robbery?

10 A Armed robbery back in 2000.

11 Q Okay. And so that was the prior conviction that --
12 how you were served with notice of intent to seek
13 life without parole?

14 A Yes, sir.

15 Q Okay. All right. Who was your lawyer on this
16 current armed robbery charge?

17 A Adam Ruffin.

18 Q Okay. Was Mr. Ruffin your attorney the entire time
19 or did somebody else represent you first?

20 A He was.

21 Q Okay. Did anybody else help him at all throughout
22 the course of your case?

23 A No.

24 Q Not that you are aware of? Okay. When you were
25 first arrested, how long after that did you and

1 Mr. Ruffin meet?

2 A I met him once when I was in county jail and twice
3 after I got released from the county jail.

4 Q Okay. So at some point you bonded out?

5 A Yes, sir.

6 Q Is that right? So you met with him, you said,
7 three times?

8 A Yes, sir.

9 Q Okay. That first meeting when you were in the
10 county jail, do you remember what y'all talked
11 about?

12 A No.

13 Q Okay. I know it has been a while. Do you remember
14 if he had any discovery in your case or not?

15 A Not to my knowledge.

16 Q Okay. Once you were released on bond -- so what
17 changed? How were you able to make bond?

18 A My family came up with the money and paid about
19 \$6,000.

20 Q Okay. So once you bonded out, were you able to --
21 you were able to meet with him twice, you said?

22 A Twice.

23 Q Okay. Do you remember any of those conversations?

24 A One -- the first one I don't remember. The second
25 one he was telling me that my Co-Defendant, my

1 Co-Defendant tendered a plea.

2 Q Okay. You did have a Co-Defendant, is that right?

3 A Yes, sir.

4 Q Okay. When you say you can't remember the first
5 one, is that because it was six years ago, or is
6 that because -- for some other reason?

7 A I can't really remember.

8 Q You are here today in court. Not to get into your
9 personal business, but you are here in a wheelchair
10 right now?

11 A Yes, sir.

12 Q Okay. Were you in a wheelchair back then?

13 A No, sir.

14 Q Okay. So before this trial you were not
15 handicapped in this way?

16 A No, sir.

17 Q Okay. Did you suffer from any other medical
18 conditions at the time, though?

19 A Epilepsy.

20 Q Okay. If you can, tell the Court a little bit of
21 your history as far as having epilepsy.

22 A I have a chronic problem with epilepsy that may
23 liable to come back any time, unnoticed, unaware
24 that it happened.

25 Q If you recall, when were you first diagnosed with

1 epilepsy?

2 A Around like 17.

3 Q Okay. How old are you now?

4 A Forty-one.

5 Q Okay. So that would have been, oh goodness, 24
6 years ago?

7 A Yes, sir.

8 Q Okay. So you were suffering from -- or you were
9 diagnosed with epilepsy during the time of
10 Mr. Ruffin's representation of you?

11 A Actually, before.

12 Q Before, but during that whole -- you still have
13 epilepsy, is that right?

14 A Yes, sir.

15 Q Okay. All right. So you and Mr. Ruffin discussed
16 your Co-Defendant's statement, is that right?

17 A Yes.

18 Q And what else did y'all talk about?

19 A That was basically it. And next thing I know, I
20 had a seizure and wake up in the hospital.

21 Q All right. Let me back up a little bit more than
22 that, though. Other than your Co-Defendant, there
23 were at least three other witnesses that ultimately
24 testified in your trial. Were you aware of those
25 witnesses?

1 A No.

2 Q Okay. The allegations were that you robbed a
3 Dollar General with a Co-Defendant, is that right?

4 A Yes, sir.

5 Q Okay. But there was a store clerk who testified
6 against you. Did you know about that?

7 A No.

8 Q Okay. And there were two other individuals who
9 said they had seen you afterwards, after the
10 robbery. Did you know about that as well?

11 A I heard about them.

12 Q Okay, you heard about them. And let me, I guess so
13 the judge can understand, you were not present for
14 your trial, is that right?

15 A Yes, sir. I wasn't present.

16 Q Okay. You were tried in your absence. You don't
17 know who testified at your trial?

18 A Yes, sir.

19 Q Okay. Before your trial began, when you were
20 meeting with Mr. Ruffin, did you know of the other
21 witnesses other than your Co-Defendant, Mr. Boler?

22 A That is only one I knew about.

23 Q Okay. Did the State make any plea offers to you
24 during this case?

25 A Yes, they offered me 20 before I had a seizure.

1 Q Okay. So you had an offer of 20 years?

2 A Yes, sir.

3 Q Would the charge still remain armed robbery?

4 A Yes, sir.

5 Q Okay. And at some point -- can you tell the Court
6 what happened?

7 A I thought I was coming in for -- to meet for a roll
8 call. Then Mr. Ruffin started to inform me about
9 the State's offer of 20 years. I told him I
10 accept. Then right after I tell him I was going to
11 accept, I had a seizure and ended up in Baptist
12 Hospital.

13 Q Okay. All right. And was that the first time you
14 had been extended an offer or --

15 A That was the first time.

16 Q Okay. And you said you thought you were coming for
17 roll call?

18 A Yes, sir.

19 Q All right. Mr. Elleby, I am going to show you what
20 has been marked as Applicant's Exhibit 1 and ask if
21 you will flip through there and tell me if you have
22 seen those before.

23 A No, sir.

24 Q Okay. Looking at those records, do they look like
25 records from your hospital stay from when you had a

1 seizure?

2 A Yes, sir.

3 Q Okay.

4 MR. WALLER: Your Honor, I would offer those
5 as Applicant's Number 1, I believe without
6 objection.

7 MR. DAVIDSON: No objection.

8 THE COURT: Without objection, that will be
9 Applicant's Number 1.

10 (WHEREUPON, Applicant's Exhibit No. 1
11 was marked for identification and
12 received into evidence.)

13 BY MR. WALLER:

14 Q Hold on to those for just a minute, Mr. Elleby.
15 So I want to back up just a little bit. So you are
16 discussing the plea offer with Mr. Ruffin, and you
17 fell ill, you said you had a seizure?

18 A Yes, sir.

19 Q Okay. What happened after that?

20 A I stayed in the hospital until the next day and
21 then went home.

22 Q All right. So you had to go to the hospital?

23 A Uh-huh.

24 Q Do you remember going to the hospital?

25 A No.

1 Q How did you get to the hospital?

2 A I don't know.

3 Q Don't know. Okay. Did you later find out it was
4 an ambulance?

5 A Yes.

6 Q Okay. And you left from this courthouse, is that
7 right?

8 A Yes, sir.

9 Q Okay. In an ambulance?

10 A Yes, sir.

11 Q All right. And so when did you leave the hospital?

12 A The next day. I can't recall what date, but it was
13 the next day.

14 Q Okay. The date following that you went there.

15 Okay. All right, what did you do after that?

16 A I went -- I went home.

17 Q Okay.

18 A Until I felt better. And I tried to call Adam
19 Ruffin, but I couldn't get in contact with him.

20 Q Okay. How long did it take before you felt better?

21 A Like four days.

22 Q Please speak up just a little bit so the court
23 reporter can hear what you said.

24 A About four days.

25 Q Okay. And when you have had a seizure in the past,

1 how does it affect you?

2 A All my limbs feel tight and I can't really move
3 like I need to move, and my vocabulary would not
4 allow me to speak too high to let people know how I
5 feel.

6 Q How does it affect you mentally? Do you feel
7 sluggish? Do you feel fuzzy? Describe that for
8 me.

9 A When -- after I have a seizure, I feel like I am
10 all over the place and I can't comprehend, I can't
11 understand or be aware of what is around me.

12 Q Okay. In your experience with epileptic seizures,
13 how long does it usually take for you to get back
14 to normal after one?

15 A At least about four or five days.

16 Q Okay. So after this incident that happened here at
17 the courthouse when you say it took you four days
18 to recover, or to feel better, I believe is what
19 you said, that is normal for you?

20 A Yes, sir.

21 Q All right. So you said after you felt better you
22 tried to call Mr. Ruffin?

23 A Yes, sir.

24 Q And were you able to get in touch with him?

25 A No, sir.

1 Q Okay. At the time that you met with Mr. Ruffin and
2 y'all were discussing a plea, do you know if any
3 plea offers had been made to your Co-Defendant?

4 A Yes. He was offered ten years.

5 Q How -- you knew that at the time?

6 A Because he told me.

7 Q Who told you?

8 A Mr. Ruffin told me he was offered ten years.

9 Q Okay. So you knew about it at the time, is that
10 right?

11 A Yes, that he had ten -- offered ten years.

12 Q Okay. And your offer was 20?

13 A Yes, sir.

14 Q Okay. All right. Did you and Mr. Ruffin ever
15 discuss going to trial?

16 A No.

17 Q Okay. Did y'all ever -- did you tell him you
18 wanted to go to trial?

19 A No.

20 Q Okay. Did you ever give him any information you
21 wanted him to investigate?

22 A Yes.

23 Q And what did you tell him?

24 A I had wanted him to investigate because the one I
25 received had a different date on it. It said

1 October 28th of 2014, but I already been in Alvin
2 S. Glenn Detention Center when this occurred.

3 Q You are talking about the kidnapping charge?

4 A Yes, sir.

5 Q Did you give him any facts or anything you wanted
6 him to specifically investigate?

7 A If he would investigate he would know the people
8 who was testifying against me, whatever, did it,
9 would have told him a different story.

10 Q And who specifically was that?

11 A Kenneth Gardner, Elizabeth Coleman, Sheila Ashley,
12 and Breanna Hampton.

13 Q Okay. Did you give him those people's names?

14 A Yes.

15 Q Did you give him any sort of address or telephone
16 number or any way to locate them that you know of?

17 A I didn't -- I didn't have any of that.

18 Q Okay. But you did know the names and you gave him
19 the names?

20 A Yes.

21 Q Okay. What else did you tell him? What else did
22 you want him to do to defend you in the case?

23 A We really hadn't talked exactly about that, but if
24 he would have did investigate the situation, the
25 whole outcome of the trial would have been

1 different because he would get the background, got
2 his information and facts, everything, records, and
3 it would have been better for me.

4 Q Okay. Did you intend to go to trial in this case?

5 A No, sir.

6 Q Okay. So what preparation would you have done or
7 you and Mr. Ruffin together would have done for
8 trial?

9 A We would have investigate every fact surrounding
10 the armed robbery. If they had any video or
11 anything surrounding the armed robbery, we would
12 have got the facts straight. In this case,
13 somebody was telling a lie.

14 Q Okay. But you don't know if any of that was done
15 in this case, is that right?

16 A Yes.

17 Q Okay. Because you didn't want to go to trial, you
18 wanted to plead guilty?

19 A Yes, sir.

20 Q Okay. And you told Mr. Ruffin that you were
21 planning to accept the offer?

22 A Yes, sir.

23 Q Is that right? Okay. And then had a seizure?

24 A Yes, sir.

25 Q Do you know the witnesses or the individuals you

1 asked Mr. Ruffin to speak to or to investigate, do
2 you know if he was able to talk to them?

3 A No, sir.

4 Q You don't know, or he did not do it?

5 A I don't know.

6 Q You don't know. Okay. Did you ever -- have you
7 seen Mr. Ruffin again since you had your seizure?

8 A No.

9 Q Okay. Obviously you were not at the trial, is that
10 right?

11 A Yes, sir.

12 Q Okay. Since that day, have you had other seizures?

13 A Yes, sir.

14 Q Okay. About how often do they occur?

15 A When I first got incarcerated, I was having them
16 every three or four days. But now I have them like
17 once a week probably.

18 Q Okay. So it has slowed down a little bit?

19 A Yes, because of the medicine I'm taking now.

20 Q With medication it got better?

21 A Yes, sir.

22 Q Okay. Mr. Elleby, I have asked you all the
23 questions that I have. Is there anything you think
24 that I left out or the judge needs to be aware of
25 Mr. Ruffin's representation of you?

- 1 A Yes. Because I asked him the first time I met him,
2 I asked him to give me a mental evaluation, but now
3 I am on great medicine now that allows me to be
4 able to communicate with people better. I was
5 talking slurred. Now I can talk more louder. And
6 it was a whole lot. I had wanted -- like I said
7 before, I had wanted him to investigate the
8 surroundings of my case even though I wasn't there
9 and I would offer to plead guilty. And for him
10 failing to give me a mental evaluation.
- 11 Q Let me back up just a little bit and go over a
12 couple of pieces of evidence against you. You
13 already talked about your Co-Defendant, who took a
14 plea, testified at your trial, and made a written
15 statement, right?
- 16 A Yes.
- 17 Q You knew about all that?
- 18 A Yes, sir.
- 19 Q Okay. There was some GPS monitoring data that was
20 used in your trial. Were you aware of that at the
21 time you met with Mr. Ruffin?
- 22 A No.
- 23 Q Okay. He knew you were wearing an ankle monitor,
24 though?
- 25 A Yes, sir.

1 Q Okay. Did y'all ever talk about whether that GPS
2 data could be used?

3 A No, sir.

4 Q Okay. There was a search done of your residence or
5 where you lived, right? Did y'all ever talk about
6 that?

7 A Yes, for a brief second, but I told him that I
8 didn't sign.

9 Q Okay. All right, let me back up just a little.
10 Where did you live?

11 A With my mother.

12 Q Okay. And that was when this incident took place,
13 right?

14 A Yes, sir.

15 Q Okay. Fast-forward a little bit when this trial
16 was starting, where did you live?

17 A With my mother.

18 Q The same house?

19 A The same house.

20 Q Okay. Did you and Mr. Ruffin have a chance to talk
21 about law enforcement's arrest of you and the
22 search of your mother's house?

23 A No.

24 Q Okay. Y'all didn't talk -- did you bring it up to
25 him?

1 A I can't remember.

2 Q Okay. Did you know that law enforcement had a
3 certain piece of evidence they got from that house?

4 A Through my transcript.

5 Q Through the trial transcript?

6 A Yes, sir.

7 Q Okay. How about the bag with the numbers written
8 on the side?

9 A Through my transcript.

10 Q Okay. What did you and Mr. Ruffin discuss as far
11 as the evidence that the State would have used
12 against you if you had gone to trial?

13 A We didn't discuss nothing because we never talked.

14 Q And because you wanted to accept the offer?

15 A Yes, sir.

16 Q Is that right? Okay. And you were living at your
17 mother's house when the trial was starting?

18 A Yes, sir.

19 Q Did anyone else live there?

20 A It was me, my mother, and my sister.

21 Q Okay. All right, Mr. Elleby, I don't have any
22 other questions, okay? Please answer any questions
23 the Attorney General's Office may have.

24 THE COURT: Your witness, Mr. Davidson.

25 CROSS-EXAMINATION

1 BY MR. DAVIDSON:

2 Q Good afternoon, Mr. Elleby.

3 A Good afternoon.

4 Q I think earlier you testified that you only met
5 with your attorney three times, is that correct?

6 A Yes, sir.

7 Q And you testified during those meetings you never
8 went over any discovery with him?

9 A We never went over no discovery.

10 Q And did you go over any of the elements of armed
11 robbery and kidnapping with him in those meetings?

12 A No.

13 Q And you testified that you guys never talked about
14 trial because you wanted to plead, is that correct?

15 A Yes, sir.

16 Q And because you wanted to plead, did you guys --
17 did you talk to him about having any defenses if
18 you were to go to trial?

19 A No.

20 Q What did you tell your attorney about what happened
21 the day of the armed robbery?

22 A I ain't had nothing to do with it.

23 Q So you told him that you had nothing to do with the
24 armed robbery?

25 A Yes, sir.

1 THE COURT: Mr. Davidson, can we take a brief
2 recess, sir?

3 MR. DAVIDSON: Yes, Your Honor.

4 (WHEREUPON, at 2:54 p.m., a break was
5 taken.)

6 (WHEREUPON, at 3:02 p.m., the hearing
7 resumed.)

8 THE COURT: Mr. Davidson, are you ready to
9 proceed?

10 MR. DAVIDSON: Yes, sir.

11 BY MR. DAVIDSON:

12 Q Mr. Elleby, you testified that you met -- I'm sorry
13 for repeating myself -- with Mr. Ruffin three
14 times, one time at the county jail, correct?

15 A Yes.

16 Q And then the other two times were after you bonded
17 out?

18 A Yes, sir.

19 Q Where did you meet with Mr. Ruffin when you were
20 bonded out?

21 A Right here in this courthouse.

22 Q And why were you in the courthouse when you met
23 with him?

24 A Because he had called my phone and said he had
25 wanted to see me.

1 Q Okay. So you came to his office here?

2 A Yes, sir.

3 Q Do you recall a hearing on September 1st where the
4 State notified you that they were going to be
5 seeking life without parole?

6 A I can't -- I can't remember that.

7 Q So you don't remember coming about two weeks before
8 your trial started for a hearing, a meeting with
9 Mr. Ruffin?

10 A I just remember them serving me with kidnapping, or
11 a kidnapping warrant.

12 Q Did you have to come to court for that?

13 A Yes, sir.

14 Q Was Mr. Ruffin with you?

15 A Yes, sir.

16 Q And when you met with him, did you guys discuss any
17 plans to meet in the following week since you had a
18 trial coming up?

19 A No.

20 Q Did you have Mr. Ruffin's phone number?

21 A Yes.

22 Q How many times would you say that you called him?

23 A Quite a few times.

24 Q Did you always use the same number to call him?

25 A Yes, sir.

1 Q And your phone number was the same every time you
2 called him?

3 A Yes, sir.

4 Q What discussions did you have with your attorney,
5 Mr. Ruffin, about what type of plea deal you would
6 want?

7 A We didn't.

8 Q You didn't talk at all?

9 A No.

10 Q So what was the plan?

11 A He said the State offered 20 years. And that was
12 it.

13 Q And what was your response?

14 A I accept.

15 Q That was the very first conversation you ever had?

16 A And that was the first sit-down conversation we
17 had.

18 Q Okay. And after you had that hearing where they
19 served the kidnapping charges, did you call Mr.
20 Ruffin?

21 A That day?

22 Q Any time before trial started?

23 A Yes, I called him quite a few times, but not always
24 got a answer, but I called.

25 Q When he did answer, what did you guys talk about?

1 A Nothing. I just asked him how was everything
2 coming along.

3 Q He didn't say anything about was happening?

4 A No.

5 Q How was your epilepsy around this timeframe? Were
6 you having seizures frequently?

7 A Yes.

8 Q Did you let Mr. Ruffin know that you had epilepsy?

9 A No.

10 Q Did you think it might be important to let him
11 know?

12 A No.

13 Q The day of the trial starting, you testified that
14 you were in Mr. Ruffin's office and he mentioned a
15 plea agreement of 20 years, correct?

16 A Correct.

17 Q And then the next thing you knew you woke up in the
18 hospital?

19 A Correct.

20 Q Okay. You also testified that you left the
21 hospital the day after, correct?

22 A Correct.

23 Q Do you remember if you left because they told you
24 you were fine to go, or did you leave against
25 medical advice?

1 A Nobody tell me I couldn't leave or I had to stay.

2 THE COURT REPORTER: I'm sorry, or what?

3 A Nobody told me I had to stay or I could leave.

4 Q So when you went to leave, then, they didn't say
5 you should stay?

6 A No.

7 Q Did they take any IV's out of your arm, or anything
8 like that?

9 A No.

10 Q Okay. If you want to flip to Page 13 of that
11 medical report. It should say Page 13 of 41.

12 A Yes, got it.

13 Q Towards the bottom there is a discharge summary.
14 Do you see where I'm talking about?

15 A Yes.

16 Q If you'll look that over and tell me if that
17 refreshes your memory about you leaving.

18 A I don't remember none of this.

19 Q So you don't remember them taking your IV out?

20 A No.

21 Q And you don't remember leaving, although they
22 advised you that you shouldn't?

23 A No.

24 Q Okay. And if you look down a little bit further
25 under the heading of ED documentation, there is a

1 service date/time. Do you see that?

2 A Yes.

3 Q Can you tell me what date it says that you left?

4 A 9/14.

5 Q Okay. And 9/14, September 14, isn't that the day
6 that you went to the hospital?

7 A I don't know what day I went to the hospital. I
8 just wake up in the hospital.

9 Q Do you recall what day your trial started?

10 A No.

11 Q If I said it started on the 14th of September and
12 showed you the transcript of the trial date. And
13 you just testified that after you left the hospital
14 you went home, correct?

15 A Correct.

16 Q So when you went home, was there anyone home?
17 Anybody else at the home?

18 A My mother.

19 Q Okay. And did your mom, your mother know what
20 happened that day?

21 A No.

22 Q Was she aware that you were about to start a trial?

23 A No.

24 Q So your mom had no idea that you were arrested at
25 her house and charged with armed robbery?

1 A Yes, she knew that. But what that got to do with
2 it?

3 Q So she knew you were charged, but she didn't know
4 that you were going to trial?

5 A Correct.

6 Q Is there a reason why you didn't tell her that you
7 were starting trial?

8 A I didn't know I was starting trial.

9 Q But you did after you went to the courthouse that
10 day?

11 A No, I didn't. He just told me they was offering me
12 a plea. He didn't never tell me we were starting a
13 trial that day.

14 Q And you said you read the transcript, correct?

15 A Correct.

16 Q Did you see in the transcript where Mr. Ruffin told
17 the Court that they were trying to locate you?

18 A Ain't nobody never locate me. I was at my mother's
19 house. Nobody never came there and asked for me or
20 nothing.

21 Q And you never moved between your arrest and --

22 A No.

23 Q -- the trial? Was your uncle ever at your mother's
24 house for any time?

25 A What uncle? Ain't nobody stay there but me, my

1 mama, and my sister.

2 Q So no uncle came to visit?

3 A No.

4 Q Okay. So you testified that you didn't know you
5 were going to trial. Is that why you didn't show
6 up any of the following days for trial?

7 A Correct.

8 Q All right. One of your allegations is that counsel
9 failed to research. Can you explain what you mean
10 by that?

11 A If counsel would have researched, he would have
12 known the charges that was brought against me were
13 false.

14 Q And what exactly should he have researched to know
15 that?

16 A Because if he would have researched -- if he would
17 have researched the incident, the armed robbery, he
18 would have seen that I ain't had nothing to do with
19 it if they had -- because they mentioned about
20 video. The witness couldn't pick me out. The
21 video couldn't pick me out. So if he would have
22 researched that he would know it was not me.

23 Q When the police searched your house, what did they
24 find that caused them to arrest you?

25 A A bag with a 38 on it.

1 Q Okay.

2 A Because with that type one, they made thousands of
3 bags.

4 THE COURT REPORTER: I'm sorry, what?

5 A They made thousands of the same bag with 38.

6 Q Did they find anything else?

7 A Loose change. Loose change. And some old sneakers
8 and a blue shirt.

9 Q Okay. Did they find any Newport cigarettes?

10 A No. A box. It was a box. They did not find no
11 cigarettes.

12 Q Are Newports the type of cigarettes that you
13 smoked?

14 A Yes, sir. And a hundred thousand other people.

15 Q Do you know what the allegations were about what
16 was stolen from the Dollar General?

17 A Not until the investigator told me.

18 Q Okay. You also said that, or alleged that counsel
19 failed to interview witnesses. And I don't think I
20 caught all of the names. Can you repeat the ones
21 that you wanted him to investigate?

22 A Sheila Ashley, Breanna Hampton, Elizabeth Coleman,
23 Kenneth C. Gardner.

24 Q Did you know Kenneth Gardner?

25 A I don't know none of them people but one.

1 Q Okay. So you don't know any of them?

2 A But one. She stayed next-door to my mother.

3 Q Is that Breanna?

4 A No, Sheila Ashley.

5 Q Okay. Did you give Sheila Ashley's name to
6 Mr. Ruffin?

7 A Yes.

8 Q Did you give Kenneth Gardner's name to him?

9 A Yes.

10 Q Did you give Breanna's name to him?

11 A Yes.

12 Q And how did you find out that those were -- if you
13 didn't know them, that those people needed to be
14 contacted?

15 A How I found out, through arrest warrants and my
16 Rule 5, and that is how I found their names.

17 Q And when did this conversation take place?

18 A Like, a few days. Like, the first time I seen him
19 when I got out of the county jail.

20 Q Okay. So you guys did talk about something?

21 A No. That was just that.

22 Q Just that?

23 A Just that. Nothing else.

24 Q Do you know if Mr. Ruffin tried to find those
25 people?

1 A No.

2 Q Okay. You testified that he needed to uncover more
3 facts, correct?

4 A Correct.

5 Q What specific facts do you think he should have
6 uncovered?

7 A If he uncovered the facts that surrounded the case
8 and therefore the things he missed, it would have
9 exonerated me from being ever accused of it. He
10 could have suppressed and brought it to the
11 attention that I had nothing to do with it.

12 Q But specifically what did you want him to figure
13 out? Or find out?

14 A Find out who the person was, because they couldn't
15 pick me out the photo line-up. They didn't know
16 who I was but the Co-Defendant. If he would have
17 did more investigation he would have knew that that
18 wasn't me.

19 Q Did the Co-Defendant give a statement saying that
20 it was you?

21 A Because he didn't want to go down for the theft by
22 himself. Of course he implicated me. He didn't
23 even know my name, so they told him my name.

24 Q Did you tell Mr. Ruffin that?

25 A No, because I didn't know until I read my

1 transcript.

2 Q And at the time of the robbery of the Dollar
3 General, you were on GPS monitoring?

4 A Yes.

5 Q So GPS monitoring allows people to be able to know
6 where you are at, right?

7 A Yes.

8 Q They didn't explain what a GPS monitor would do?

9 A No.

10 Q Have you ever used a GPS to get somewhere on your
11 phone or something?

12 A No.

13 Q When the police came to your house, where were you?

14 A At my aunt house.

15 Q Your aunt's house?

16 A Yes.

17 Q Is that where your uncle might live?

18 A I ain't got no uncle that stay on that side of
19 town.

20 Q Did you ever give Mr. Ruffin the address of your
21 parents' house or your mom's house?

22 A He already knew that.

23 Q He knew it?

24 A Yes, he already knew that because when I signed my
25 bond paper that is the address I used.

1 Q Okay. And how far away is your aunt's house from
2 your mom's house?

3 A Walking distance, about seven houses down.

4 Q Okay. So they are close?

5 A Yes.

6 Q So when they knocked on your door, what did you do?

7 A I wasn't there.

8 Q The day that the robbery happened?

9 A The day the robbery happened, I didn't know nothing
10 about the robbery. From Day One I didn't know
11 nothing about no robbery till they came and locked
12 me up.

13 Q And when they came to lock you up, you were at your
14 aunt's house?

15 A Yes.

16 Q Where in your aunt's house? Were you inside or
17 outside?

18 A On the porch.

19 Q You were on the porch when they came?

20 A Yes. And they took me back to my mother's house,
21 and then they searched the house.

22 Q So you weren't around the side of the house?

23 A No.

24 Q Did they send a signal for your GPS monitor to go
25 off?

1 A No.

2 Q Did they contact your parole agent?

3 A No.

4 Q You also allege that counsel failed to put a plea
5 agreement in writing or on the record. Can you
6 explain a little bit more about what you wanted him
7 to do?

8 A I had wanted him to accept the plea on my behalf
9 because he knew the fact I had went to the
10 hospital, you know what I'm saying, and he knew I
11 told him verbally that I had wanted to accept the
12 plea until my situation happened.

13 Q Would you feel differently if you knew that he
14 couldn't accept it on your behalf?

15 A How else was I supposed to feel? I thought he
16 could.

17 Q Did he tell you he could?

18 A He could. I thought he could. I didn't know.

19 Q He didn't tell you that?

20 A No.

21 Q Do you remember reading in the transcript that the
22 plea offer was on the record?

23 A When I read it, April Sampson said it was on the
24 table 20 years.

25 Q Okay. And the last allegation in your amended

1 application is Adam Ruffin was ineffective for
2 failing to properly investigate the facts and
3 circumstances surrounding your hospitalization
4 depriving you of a continuance and presence at your
5 trial?

6 A Correct. He moved for continuance, but the Court
7 denied it.

8 Q Okay. So on the day that you went to the hospital,
9 obviously it was continued that day, right?

10 A I don't know.

11 Q And the day afterwards the judge gave you one extra
12 chance to show up the next day?

13 A I didn't know I had a trial.

14 Q Okay. And you didn't have the transcript before
15 you filed your PCR application?

16 A No.

17 MR. DAVIDSON: Beg the Court's indulgence.

18 (Pause.)

19 MR. DAVIDSON: No further questions, Your
20 Honor.

21 Thank you, Mr. Elleby.

22 THE COURT: Mr. Waller, if you would indulge
23 me just for a moment.

24 Mr. Elleby, I just have a couple of questions.
25 Your trial was in 2014, is that what I heard?

1 THE WITNESS: Yes, sir.

2 THE COURT: And you came to the courthouse and
3 met with your lawyer, was it on September 15th?

4 THE WITNESS: I can't -- I can't recall what
5 date.

6 THE COURT: You talked -- was it a Monday, the
7 first day of court? Do you remember?

8 THE DEFENDANT: No.

9 THE COURT: You thought you were coming for
10 roll call?

11 THE WITNESS: Yes, sir.

12 THE COURT: You had a conversation with your
13 lawyer where in the building?

14 THE WITNESS: In his office.

15 THE COURT: In this building, or somewhere
16 else?

17 THE WITNESS: In this building.

18 THE COURT: And he told you then that an offer
19 had been made?

20 THE WITNESS: Yes, sir.

21 THE COURT: What was the offer?

22 THE WITNESS: Twenty.

23 THE COURT: You said that you would be willing
24 to take that?

25 THE WITNESS: Yes, sir.

1 THE COURT: And then you left the courthouse
2 that day?

3 THE WITNESS: By ambulance.

4 THE COURT: And you were here when you
5 suffered a seizure?

6 THE WITNESS: Yes, sir.

7 THE COURT: And where in the building were you
8 when you fell out?

9 THE WITNESS: In Adam Ruffin's office.

10 THE COURT: So you were with him when you had
11 a seizure?

12 THE WITNESS: Yes, sir.

13 THE COURT: An ambulance took you to which
14 hospital?

15 THE WITNESS: Baptist.

16 THE COURT: That was on the same day you had a
17 conversation with your lawyer?

18 THE WITNESS: Yes, sir.

19 THE COURT: And you said you woke up at the
20 hospital?

21 THE WITNESS: Yes, sir.

22 THE COURT: That is when you kind of came to
23 your senses?

24 THE WITNESS: A little bit.

25 THE COURT: You had no more conversations with

1 your lawyer that day?

2 THE WITNESS: No, sir.

3 THE COURT: Was any family with you in the
4 hospital?

5 THE WITNESS: No, sir.

6 THE COURT: They let you go that same day?

7 THE WITNESS: Yes, sir. I had called my
8 mother to come get me.

9 THE COURT: Your mom came and got you?

10 THE WITNESS: Yes, sir.

11 THE COURT: And where did she take you?

12 THE WITNESS: Back to her home.

13 THE COURT: To her house?

14 THE WITNESS: Yes, sir.

15 THE COURT: And that was your primary
16 residence?

17 THE WITNESS: Yes, sir.

18 THE COURT: And you are telling the Court that
19 you didn't know that a trial was going to start on
20 your case that week?

21 THE WITNESS: Yes, sir.

22 THE COURT: And then you had no more
23 conversations with your lawyer that week?

24 THE WITNESS: No, sir.

25 THE COURT: When you called your mom from the

1 hospital, did you call from your cell phone?

2 THE WITNESS: Yes, sir.

3 THE COURT: That was your regular cell phone?

4 THE WITNESS: Yes, sir.

5 THE COURT: Did you share that with anybody
6 else?

7 THE WITNESS: No, sir.

8 THE COURT: Your lawyer didn't have your cell
9 phone?

10 THE WITNESS: No.

11 THE COURT: So you go back to your mom's
12 house. And you are recovering there, is that
13 right?

14 THE WITNESS: Yes, sir.

15 THE COURT: How many days do you think you
16 were home before you got picked up?

17 THE WITNESS: I was in there for a good --
18 about a month or so.

19 THE COURT: So they had your trial in your
20 absence. Undoubtedly you were found guilty.

21 THE WITNESS: Yes, sir.

22 THE COURT: You got sentenced.

23 THE WITNESS: Yes, sir.

24 THE COURT: You were at your mother's house?

25 THE WITNESS: Yes, sir.

1 THE COURT: Did you stay anywhere else?

2 THE WITNESS: No, sir.

3 THE COURT: When did you come -- now, at the
4 time of your trial, you were not in a wheelchair?

5 THE WITNESS: No, sir.

6 THE COURT: And your trial was in 2014?

7 THE WITNESS: Yes, sir.

8 THE COURT: And you have been serving that
9 sentence since you got picked up?

10 THE WITNESS: Yes, sir.

11 THE COURT: When did you come to be in the
12 wheelchair?

13 THE WITNESS: Right before they picked me up I
14 had got in an accident with the Richland County
15 Sheriff, and I been in the wheelchair since
16 October 4th, I believe, of '15.

17 THE COURT: 2015?

18 THE WITNESS: Yes, sir.

19 THE COURT: So that is unrelated to your
20 epilepsy?

21 THE WITNESS: Yes, sir.

22 THE COURT: Do you have any use of your legs?

23 THE WITNESS: No, sir.

24 THE COURT: Okay. Do you still suffer from
25 epilepsy?

1 THE WITNESS: Yes, sir.

2 THE COURT: Do you know what medicine you
3 take?

4 THE WITNESS: Keppra 500. I take 500 twice a
5 day. I take one in the morning and one at night.
6 So all together I take 1,000 milligrams.

7 THE COURT: Okay. All right.

8 Mr. Waller, do you want to ask any questions?

9 MR. WALLER: Just a few, Your Honor. I guess
10 a little background for the Court. This hearing
11 has been continued at least twice, Mr. Davidson can
12 correct me, because Mr. Elleby was unavailable for
13 medical reasons. It was scheduled and he was
14 unable to be transported because he was being
15 treated medically for some reason or the other.

16 REDIRECT EXAMINATION

17 BY MR. WALLER:

18 Q Mr. Elleby, Mr. Ruffin works for the Public
19 Defender's Office, is that right?

20 A Yes, sir.

21 Q And that is why his office is in this building?

22 A Yes, sir.

23 Q You testified that when you were meeting with him
24 that last time, you didn't know your trial was
25 about to start?

1 A Yes, sir.

2 Q In your experience with your epilepsy, can those be
3 onset by stress, or does that make them worse?

4 A When I'm stressing, it is ten times worse.

5 Q And so does it happen more easily when you are
6 stressed out?

7 A Yes, sir.

8 Q Okay. All right. Mr. Davidson asked you about one
9 of your allegations that counsel failed to
10 research. When you say research, do you mean
11 research the facts of the case or didn't perform
12 legal research?

13 A Both. Legal research and the facts surrounding.

14 Q But your answer to his question was more of
15 investigating the facts of the case, is that right?

16 A Yes, sir.

17 Q Okay. All right. And then finally, one of the
18 allegations was discussing your inability to be
19 present at your trial. Did you want to be present
20 at your trial or did you want take the plea offer?

21 A I had wanted to take the plea.

22 Q Okay.

23 A And I never wanted to go to trial.

24 Q Okay. So that is kind of in the alternative, if
25 you couldn't get that plea, you obviously wanted to

1 be at your trial, is that right?

2 A If I had no other choice, yes, I wanted to be
3 there.

4 Q But your preference would be able to accept that
5 plea that you told Mr. Ruffin you wanted to accept?

6 A Yes, sir.

7 MR. WALLER: Nothing further. Thank you.

8 THE COURT: Mr. Davidson?

9 MR. DAVIDSON: Just a few questions, Your
10 Honor.

11 RECROSS-EXAMINATION

12 BY MR. DAVIDSON:

13 Q Mr. Elleby, you testified a few times that you were
14 unaware that the trial was happening when you went
15 to -- or was starting when you went to the
16 courthouse, correct?

17 A Correct.

18 Q And that was the courthouse on September 14th?

19 THE COURT: What was that date, Mr. Davidson?

20 MR. DAVIDSON: I think September 14th, 2015.

21 THE COURT: 2015?

22 MR. DAVIDSON: 2015.

23 THE COURT: Okay, thank you.

24 BY MR. DAVIDSON:

25 Q And you testified that you met with Mr. Ruffin on

1 September 1st and got the kidnapping indictment
2 charges?

3 A Yes.

4 Q And you testified you do not recall being served
5 that day from the State the notice of intention to
6 seek the life without parole sentence?

7 A I can't remember.

8 Q You can't remember?

9 A No.

10 Q Do you recall in that notice of intent to seek life
11 without parole it saying that you will have a trial
12 on a date at least ten days from that notice?

13 A I can't remember. I just remember they gave me the
14 kidnapping indictment.

15 Q And do you recall signing a form when you made
16 bond?

17 A Yes, so I could get out.

18 Q Right. And do you recall signing that on
19 August 26th, 2014?

20 A What are you asking?

21 Q Signing the form to be released on bond?

22 A August? I ain't get out August, I got out in
23 April. I got out April 2nd, 2015.

24 MR. DAVIDSON: Okay. No further questions.

25 THE COURT: Anything further?

1 MR. WALLER: Nothing further from this
2 witness, Your Honor.

3 THE COURT: Thank you. You may return to the
4 table with counsel.

5 MR. WALLER: I would call Adam Ruffin.

6 (Witness approaches.)

7 THE COURT: Madam Clerk?

8 THE CLERK: Do you swear or affirm the
9 testimony you are about to give in this case will
10 be the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 THE WITNESS: Yes, ma'am, I do.

13 THE CLERK: Have a seat, please.

14 THE COURT: Mr. Ruffin, if you will be seated.

15 (Witness seated.)

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Mr. Ruffin, would you tell us your
18 name for the record?

19 THE WITNESS: Do you mind if I take my mask
20 off?

21 THE COURT: Yes, sir, go ahead.

22 (Witness complies.)

23 THE WITNESS: Adam Ruffin.

24 THE COURT: Thank you, sir.

25 Your witness, Mr. Waller.

1 MR. WALLER: Thank you, Your Honor. May it
2 please the Court?

3 ADAM RUFFIN,
4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WALLER:

7 Q Good afternoon, Mr. Ruffin. How are you today?

8 A I'm good. How are you?

9 Q I'm doing well. Thank you for asking.

10 Mr. Ruffin, how did you come to represent
11 Emmanuel Elleby?

12 A I was appointed to represent him. I was a Public
13 Defender at the time, so a person gets arrested and
14 my boss just gives us the case.

15 Q Okay. Briefly, if you could, what were the
16 allegations against Mr. Elleby?

17 A That he and a Co-Defendant arm robbed a Dollar
18 General.

19 Q Okay. And I know it has been testified to that he
20 was in the detention center for a while and
21 ultimately made bond before his trial was scheduled
22 to start, is that right?

23 A Yes, that's right.

24 Q Were you able to meet with him and go over some of
25 the evidence in the case?

1 A Yes, we did.

2 Q What were the -- were any plea offers made to
3 Mr. Elleby?

4 A So, initially, no. And sort of as we progressed,
5 Devin Boler, who was the Co-Defendant, he got an
6 offer for ten years, and the State wanted him to
7 testify against Mr. Elleby.

8 Mr. Boler was actually brought over to court
9 to plead guilty to ten years, and the Solicitors
10 came and talked to me to ask whether Mr. Elleby was
11 going to plead guilty or not, and at that point I
12 didn't know. So they ended up not going through
13 with Mr. Boler's plea because they were saying, We
14 don't want to plead him until Mr. Elleby's trial is
15 resolved, if it goes that far.

16 Basically, the State said for Mr. Elleby their
17 offer was, We won't seek life if he will plead
18 guilty as charged. And, of course, that would be a
19 10- to 30-year range on the armed robbery. This
20 was before he was charged with kidnapping, before
21 they had indicted him for kidnapping.

22 So that was the initial offer was just
23 essentially, He can plead guilty as charged and he
24 will be sentenced between 10 and 30. And it wasn't
25 until very late, like just before trial, that we

1 got the 20-year plea offer.

2 Q Okay. Walk the Court through that a little bit.

3 When did you receive the offer of 20 years?

4 A I believe that we received that the day after
5 Mr. Elleby was served with the life without parole
6 notice. I believe it was around that time.

7 Q So a couple of weeks, maybe two weeks before the
8 trial?

9 A Right.

10 Q When did you have chance to speak with Mr. Elleby
11 about it?

12 A The 20 years we did not speak about I think until
13 the day of his trial.

14 Q Okay. Did he know that that offer had been
15 extended?

16 A No.

17 Q He did not. Okay. Did you attempt to contact him
18 after that offer was extended?

19 A Yes.

20 Q Okay. Do you recall or do you have any notes in
21 your file as to what you tried to do to get in
22 touch with him?

23 A So we called, because I'm not sure if it was his
24 cell phone number or what phone number, but I did
25 have a phone number for him, and I talked to him, I

1 don't want to say frequently, but I had several
2 phone calls with him. Either he would call me or I
3 would call him.

4 But after September 1st, I called him and left
5 him a message that same day that we got the offer,
6 and I didn't -- I left him a voicemail, I mean.
7 And according to my notes, then the following day
8 the phone was disconnected. So I looked -- I
9 actually went on Alvin S. Glenn's website. At that
10 time we had access, so I could pull up one of my
11 clients on the jail website because a lot of times
12 when they get booked, they'll give the jail contact
13 information and address, numbers, so I got the
14 other number that was listed. I called that, and
15 had no luck. Basically I would call any number
16 that I had.

17 Q Okay.

18 A And I called them repeatedly over the next several
19 days and got no answer.

20 Q The number you had was disconnected the day after
21 you got the offer?

22 A Correct.

23 Q Okay. Eventually you were able to meet with
24 Mr. Elleby about the offer, and his trial was about
25 to start. What was your conversation with him like

1 about the plea offer?

2 A I told him that it was 20 years, that it was
3 negotiated, which would mean that the judge could
4 just give it a thumbs up or thumbs down, couldn't
5 get more, couldn't get less, and that if he didn't
6 take it, the trial would be starting. Mr. Elleby
7 told me that he would take it.

8 Q Okay.

9 A So I thought that that was the right decision, that
10 was the best decision for him. So we were ready to
11 walk to court and sign plea paperwork and for him
12 to plead guilty. And then he had a seizure.

13 Q Okay. Did you have -- had the Solicitor's Office
14 provided you with the paperwork in advance or is it
15 something that would have to be generated for his
16 plea?

17 A Yes, typically we would not get plea paperwork
18 until like literally right before the plea.

19 Q Okay.

20 A So, no, I did not have any plea paperwork at that
21 point.

22 Q Do you use any sort of plea affidavit or any other
23 sort of documentation, either internal to you or
24 your office, when a client is going to plead
25 guilty?

1 A That was not my practice, no.

2 Q All right. So Mr. Elleby had a seizure? You
3 witnessed it?

4 A Yes.

5 Q You witnessed at least the situation?

6 A Yes, I witnessed it in my office. I can't remember
7 if he was actually having a seizure in my office.
8 It might have been that we made it to the hallway.
9 But I do remember it was very scary. Myself and
10 another lawyer in my office and some of our staff
11 witnessed it. He was on the floor in the hallway
12 up on the fourth floor. And we called -- we have a
13 panic button in our office, which -- so basically
14 the whole area got flooded with deputies with the
15 courthouse security. They got an ambulance there
16 and they put him on a stretcher and took him to
17 Baptist.

18 Q Okay.

19 A And I did ask EMS, you know, where they were going
20 to take him so I would be able to go there.

21 Q Okay. Did you ultimately go there?

22 A Yes.

23 Q Okay. That same day?

24 A Yes.

25 Q Was he -- what was his condition? Were you able to

1 see him?

2 A I did see him. He was -- I would say he was out of
3 it. I mean, it was like he was sleeping. I did
4 talk to the doctor. And my recollection, I haven't
5 seen the medical records, but my recollection was
6 that the doctor said he didn't know or he didn't
7 think that he had a seizure, but there was no real
8 way to tell, I guess, by examining him after the
9 fact.

10 The doctor did ask me if he had had a
11 stressful -- because Mr. Elleby had a court paper.
12 I think he had his notice of appearance with him,
13 because I think the doctor had it at that point so
14 knew he was coming from court, and asked me if it
15 was a stressful event. And I said yes, it was a
16 stressful event.

17 But the doctor indicated that Mr. Elleby was
18 fine from a medical standpoint and was going to be
19 discharged shortly.

20 Q Okay. Were you aware that he suffered from
21 epilepsy?

22 A No.

23 Q Okay. So it wasn't something you anticipated?

24 A No.

25 Q Okay. Had you made preparations for the trial to

1 start? I mean, where were you in that --

2 A Yes, we were ready for the trial to start. I had
3 another lawyer who was helping me, one of my
4 co-workers, Megan Eigenbrot. So the two of us had
5 been gearing up. I knew that Mr. Elleby did not
6 want to go to trial, but I also knew that we didn't
7 have, you know, a plea offer that he was willing to
8 accept either, because, again, at that point it was
9 10 to 30. And because of his prior, I want to say
10 that he may have gotten 15, so I expected him to
11 get, you know, that it was a real possibility he
12 would get more than that. And he didn't want that.
13 He wanted me to -- he wanted a guarantee that it
14 was going to be less than 15, is my recollection.
15 But he did want to plea and didn't want to go to
16 trial. But, of course, if he didn't plead, that
17 was the only other option was for us to go to
18 trial. So, yes, we were getting ready for trial.

19 Q Okay. So September 14th Mr. Elleby in your office
20 has a seizure and is transported to the hospital.
21 You go and visit with him there, or at least go to
22 the hospital, I don't know if you were able to
23 visit with him, but go to the hospital, speak to
24 the doctor.

25 At that point the trial was still scheduled to

1 start the next day, is that right?

2 A Yes.

3 Q Would you have continued to prepare? What was the
4 rest of your day and the next morning like?

5 A So at that point we were prepared for the trial.
6 At that point I was trying to essentially beg the
7 Solicitor to agree to a bench warrant. I wanted
8 the judge to issue a bench warrant for Mr. Elleby
9 if he didn't come in and not proceed with the trial
10 in his absence.

11 Q Okay.

12 A So that was my focus, because I wanted him to be
13 able to take the plea.

14 Q At what point did you find out Mr. Elleby had been
15 released from the hospital?

16 A I don't remember. It was probably later that
17 evening.

18 Q Of the 14th, of the first day?

19 A That is what I think. It may not have been until
20 the following morning. But, again, when I was at
21 the hospital, the doctor told me that they were
22 going to discharge him.

23 Q Okay. Later that evening or the following morning,
24 what steps did you take to get in touch with
25 Mr. Elleby?

1 A So we had -- of course I had his phone numbers that
2 we were calling. And it wasn't just me. I had
3 other people -- my co-counsel also was calling.
4 And we had an investigator who had been helping us
5 with the case. He actually went down there to Mr.
6 Elleby's house, whatever address we had, to go look
7 for him. And I believe that our investigator told
8 me that he met with -- or that when he got down
9 there he met somebody who said that they were
10 Mr. Elleby's uncle, and that Mr. Elleby wasn't
11 there, but that they would tell Mr. Elleby that we
12 were looking for him and that he had court.

13 Q Okay. Do you have any notes in your file or any
14 sort of documentation as to who the name of the
15 uncle or who the contact information was?

16 A I don't. I don't think that I have the name.

17 Q Okay.

18 A Of whoever that was.

19 Q And of course you continue to make your motion for
20 continuance and ask the Court to issue a bench
21 warrant, but ultimately you had to start the trial,
22 is that right?

23 A Yes.

24 Q In leading up to the trial, what investigation had
25 you done into the facts of this case?

1 A So the two victims wouldn't talk to us, as I
2 recall. That was Kenneth Gardner and Elizabeth
3 Coleman. I think they were the two cashiers at the
4 Dollar General when the robbery happened.

5 Now, we had spoken pretty extensively with the
6 investigator who, you know, who really was most of
7 the case, I guess. I mean, he was sort of the main
8 witness. Then there was a Co-Defendant, Devin
9 Boler. He was represented by a lawyer, so I spoke
10 with the lawyer. I never spoke with Mr. Boler
11 until he was on the witness stand.

12 Q Sure.

13 A And I don't believe we ever -- so there were two
14 neighbors that was talked about earlier, I think,
15 Sheila and Brenda. I can't remember their names
16 exactly. We were not able to get in touch with
17 them, and they -- I don't -- they didn't testify.
18 But they had given statements to the police, so we
19 had that in the discovery.

20 Q Okay.

21 A But I don't remember that we were ever able to
22 actually get in touch with them.

23 Q Okay. How involved was Mr. Elleby in preparing for
24 trial? I know you didn't believe he ever wanted to
25 go to trial, but if push come to shove, was he

1 involved in the preparation?

2 A No, I wouldn't say he was super involved. I mean,
3 when he -- I met him a couple of times at the jail.
4 And he bonded out like maybe, I can't remember,
5 maybe five months or so after he was arrested, and
6 he came to my office several times. We went over
7 the discovery. I gave it to him. But a lot of our
8 conversations were basically we were going to try
9 to get a plea deal. So I don't remember him being
10 super -- now, he did tell me that he wasn't
11 involved and gave me his story of what he had done
12 that day. So I had all that. I mean, he was
13 certainly involved to that extent where I kind of
14 got his version of events.

15 Q Okay.

16 A But in terms of like talking to witnesses or
17 anything, no. I mean, that would have been us.

18 MR. WALLER: Beg the Court's indulgence,
19 please?

20 THE COURT: Yes, sir.

21 (Pause.)

22 BY MR. WALLER:

23 Q Mr. Ruffin, did you have any issues with the
24 indictment for the kidnapping charge?

25 A I mean, I was angry that they brought that.

1 Q Okay.

2 A I mean, they -- because they brought that
3 indictment at the very last minute right before
4 trial. And I know that their reason was because
5 once they served him with life without parole
6 notice, they only needed to convict him of one
7 thing. So I know that they were giving themselves
8 sort of, you know, a second chance, basically.
9 They would have two charges to present to the jury
10 and they only needed to convince them of one.

11 Q Okay.

12 A So I was angry about it, but I don't think there
13 was anything -- I don't remember there being
14 anything necessarily defective.

15 Q Okay. Do you recall that there was an incorrect
16 date that was amended prior to the start of the
17 trial on the record in court?

18 A I mean, if that happened, I'll take your word. I
19 don't remember them amending the date.

20 Q But outside of that, you don't recall anything
21 defective that you felt needed to be challenged?

22 A No.

23 Q All right. When did you learn -- in relation to
24 the trial, when did you learn about the
25 Co-Defendant's offer? The specifics of the offer?

1 A I think -- I mean, we learned about that well
2 before Mr. Elleby's trial.

3 Q Okay.

4 A That was an offer that they made him, by my notes,
5 it looks like it was in July.

6 Q Okay. And is that common for there to be a
7 specific offer to a Co-Defendant that they intend
8 to have testify, or do they kind of leave it open
9 for impeachment purposes, I guess is the best way
10 to put it?

11 A Yes, I would say that it was very unusual that they
12 had made Mr. Boler a 10-year offer with wanting
13 him to potentially testify, because I did
14 cross-examine him about that.

15 Q Okay. You had the opportunity -- you knew in
16 advance and had the opportunity to question him
17 about that offer?

18 A Yes. And that he didn't want to take that offer.
19 He was hoping that his testimony was going to get
20 him a better offer.

21 Q Okay. All right. So your impeachment of him was
22 that he -- despite having a 10-year offer, he hoped
23 to get a better offer?

24 A Yes, correct.

25 Q Was there anything -- was that just questioning, or

1 did you have anything to base that on?

2 A I'm not sure I understand.

3 Q Did you have any reason to believe there was an
4 unknown offer that if the testimony was sufficient
5 it could have gone below -- I believe strong arm
6 robbery was used as an example.

7 A Right. I definitely expected him -- I mean,
8 this -- and this is from my personal experience --
9 I did not know for certain if the State was going
10 to give him a better offer, but I know from my
11 personal experience, that absolutely would be the
12 expectation from the lawyer probably, from
13 Mr. Boler's lawyer and from Mr. Boler. I mean,
14 they have already said ten years even if he doesn't
15 testify. You know, they were already going to give
16 him ten years, even if he didn't testify. So now
17 that if he does testify, you would expect to get
18 less than that.

19 MR. WALLER: Beg the Court's indulgence.

20 (Pause.)

21 MR. WALLER: Thank you, Mr. Ruffin. I have no
22 further questions.

23 THE COURT: Mr. Davidson?

24 CROSS-EXAMINATION

25 BY MR. DAVIDSON:

1 Q Good afternoon, Mr. Ruffin.

2 A Good afternoon.

3 Q All right. How many times did you meet with your
4 client, Mr. Elleby?

5 A Probably 15 or so. Maybe more than that. That
6 would not be including phone calls.

7 Q Okay. And you testified that you went over the
8 discovery with him, correct?

9 A Yes.

10 Q And in his testimony he mentioned that he never got
11 to see the video. Did you review the video with
12 him?

13 A Yes, we would have watched it in my office.

14 Q And what did that video show?

15 A I mean, the video shows two people robbing the
16 Dollar General, essentially. But you can't tell --
17 I mean, you can't see their faces. I can't
18 remember if they were wearing masks or if their
19 faces were covered, but you definitely can't
20 tell -- you can't see whose faces they were.

21 Q Was there anything besides their faces that could
22 have been used to identify them?

23 A I mean, they used a 38 bag, the George Rogers bag,
24 which is seen on the video.

25 Q Do you recall what was taken from the Dollar

1 General?

2 A As I remember, it might have only been cartons of
3 Newports and change.

4 Q Okay.

5 A And I think that one of the cashiers' cell phone
6 was stolen.

7 Q And did you go over all of that with Mr. Elleby?

8 A Yes.

9 Q Did you guys go over the information from the GPS
10 monitoring?

11 A Yes.

12 Q Did you explain to him what that GPS data showed?

13 A Yes. That was a significant problem for us. The
14 GPS showed him at the Dollar General at the time
15 that the robbery took place. And basically, you
16 know, he lived right there. I mean, he lived like
17 maybe a block, a couple of blocks away from the
18 Dollar General. So I think it is a Dollar General
19 that he frequented. So it was just, he was there
20 and just buying cigarettes, but not that he was
21 there committing robbery.

22 Q Okay. And he understood that the data showed him
23 at the Dollar General at that time?

24 A Yes.

25 Q And that it showed him at, I think you said, his

1 house afterwards?

2 A Correct, yes.

3 Q And what happened once Mr. Elleby got back to his
4 house, according to your understanding of the
5 facts?

6 A I think it might have been the next day that they
7 got -- they being law enforcement -- got a tip with
8 a nickname. Somebody was involved and the name was
9 Fats. I think there was a second tip that Fats
10 lives at this particular address. And my memory is
11 that they -- basically law enforcement ran the
12 address through their system to see if anybody was
13 on probation, or something, living at that address.
14 And they said Mr. Emmanuel Elleby lives at that
15 address and he is currently on -- he was on
16 community supervision at that time and he was on a
17 GPS monitor. So they talked to the probation agent
18 who was overseeing his supervision, who basically
19 said, Yes, I have him on GPS and he is at his house
20 right now at that address. So law enforcement went
21 to the house and apprehended him there.

22 Q And was this based on the tip, or did they already
23 have the GPS monitoring at that time?

24 A So at that point they had both.

25 Q Okay.

1 A Yes. They had the GPS information at that point.

2 Q Okay. And when they got there, what happened?

3 A They knocked on the door and didn't get an answer.
4 So they called the probation supervisor to say,
5 Nobody is answering the door.

6 The probation agent said, I'll page his GPS
7 monitor, because they can page and they can
8 actually make it talk where the monitor, the ankle
9 monitor will say, Call your agent.

10 So according to the officers who were at the
11 scene, they said that they started hearing, Call
12 your agent, coming from the bushes. I can't
13 remember if it was the side of the house or the
14 back of the house. So they went around there and
15 Mr. Elleby was in the bushes.

16 Q Did you go over all those facts with Mr. Elleby?

17 A Yes.

18 Q And after going over those facts, was there any
19 issue to be solved with the case as far as
20 something you could challenge that if you were to
21 go to trial?

22 A You mean like challenging the State's evidence?

23 Q Yes?

24 A Yes. I mean, I was hoping to -- Number 1, I was
25 hoping to challenge the search of the house. And,

1 I mean, that was the main thing, because when they
2 searched his house, that is when they find the
3 cigarette carton -- I can't remember if they were
4 empty or what, but the Newport cartons, the George
5 Rogers bag, the things that they said were
6 identifying, quote/unquote identifying, just
7 because they were seen on the video. So, yes, we
8 were hoping to challenge that. But with it being a
9 GPS, it was an uphill battle.

10 Q Yes. So knowing that it was an uphill battle, what
11 were your discussions about should he go to trial
12 or should he take a plea? Like what --

13 A I thought that he should plead guilty, and he
14 agreed with that.

15 Q So kind of the whole time the plan was to try to
16 secure a plea deal?

17 A Yes.

18 Q And he eventually was offered a plea deal. Can you
19 explain some of the prior negotiations you had?

20 A The prior negotiations between me and the Solicitor
21 were that she wouldn't seek life if he pled guilty.
22 That was the only offer. So he could plead guilty
23 as charged, which at that point he was not charged
24 with kidnapping, he was only charged with armed
25 robbery. It was plead guilty to armed robbery and

1 the judge will sentence him, you know, to whatever,
2 something between 10 and 30. Mr. Elleby didn't
3 want to do that because he was afraid that he would
4 get, you know, closer to 30. And I understood
5 that, so we were always hoping to get a better
6 deal, and eventually we did. But that happened,
7 you know, basically right after they served him
8 with life without parole, I think it was the very
9 next day the Solicitor turns around and says, Okay,
10 well, if he will plead to 20, I'll do a negotiated
11 20.

12 Q Before that point, did he tell you what amount of
13 time he would be willing to take a plea offer for?

14 A What I have written down was less than 15.

15 Q And was the Solicitor entertaining that?

16 A No.

17 Q At the September 1st hearing where he was served a
18 life without parole notice, did the Solicitor say
19 when she believed the case would be going to trial?

20 A I think that we were noticed that same day that it
21 was going to be the 14th. I mean, whenever -- I
22 mean, all this was kind of building up, I guess,
23 throughout the month of August where they are sort
24 of, He is either going to plead or it is going to
25 be a trial, and the trial is sort of imminent at

1 that point. You know, which is sort of like any
2 day the Solicitor could serve us and say, All
3 right, trial is in 14 days. So that was -- we were
4 anticipating that. But I knew that they wanted to
5 serve him with the life notice. There was talk
6 about the kidnapping indictment. They wanted to
7 serve him with that. So I think it was that day
8 that those documents were served that also was
9 trial noticed for September 14th.

10 Q Okay. So you knew that it was going to go forward
11 on the 14th based on those documents?

12 A Unless he pled guilty, yes.

13 Q And he was at that hearing, correct?

14 A Yes.

15 Q And so after that hearing did y'all discuss that he
16 was going to have a trial in two weeks on the 14th?

17 A Yes, unless he plead guilty.

18 Q And he understood that on September 14th if he had
19 not already pleaded guilty that y'all were starting
20 trial?

21 A Yes. But let me also add, probably even a couple
22 of weeks before that, or maybe almost a month
23 before that, Mr. Elleby was saying he was going to
24 hire a new lawyer, that he did not want me -- you
25 know, he wasn't happy with my representation and he

1 wanted to get a new lawyer. So that also is kind
2 of happening at the same time all this stuff is
3 going on. We are sort of getting backed into a
4 corner, so to speak, and he is saying to me and I
5 am saying to the Solicitor, you know, He says he is
6 hiring -- he is going to hire somebody else.

7 But, yes, we did discuss all that, plea or
8 trial. And, I mean, I remember telling him, you
9 know, You have to like hire a new lawyer, you know,
10 basically yesterday, you know, because otherwise
11 you are potentially going to get forced to go to
12 trial even if you have a new lawyer.

13 Q So did you have any phone calls with him prior to
14 the September 1st hearing?

15 A Yes. Yes, I had many phone calls with him.

16 Q And did you guys discuss anything -- I guess closer
17 to when he started saying he wanted to get a new
18 lawyer, did y'all discuss anything other than him
19 wanting a new lawyer?

20 A Probably not a lot. I mean, besides -- I mean,
21 besides me telling him that, you know, that we
22 needed to prepare for either a plea or a trial, but
23 he didn't want to talk about that. I mean, it was
24 just he wanted to get a new lawyer and didn't
25 really want to discuss it with me.

1 Q Were you preparing for trial from September 1st on,
2 or had you been preparing for trial for a while?

3 A Yes, I mean, we were pretty much preparing for
4 trial from, I mean, you know, since he gets
5 arrested. You know, I mean, I always knew,
6 especially with it being a Co-Defendant, there was
7 always going to be an issue with, you know, was
8 Emmanuel going to testify against Devin or was
9 Devin going to testify against Emmanuel, were they
10 both going to plead guilty, were they both going to
11 go to trial.

12 So we always -- and the reason I say we are
13 kind of always preparing for trial is because of
14 the severity of the charge and because of the
15 record, I always took the position that there is a
16 very real likelihood of the Solicitor is never
17 going to offer a plea that he would accept. So
18 because of that, even though I'm hopeful and I
19 think that it was in his best interest to plead
20 guilty, I always know that a plea might not happen
21 and we have to be ready to go to trial.

22 Q Do you know if his Co-Defendant had a prior record?

23 A He did.

24 Q So you testified that the day after the hearing on
25 the notice with intent to seek life without parole

1 you got an offer of 20 years?

2 A Yes.

3 Q And after that day you testified you tried to call
4 him and left a voicemail?

5 A Yes.

6 Q And the next day the phone was cut off?

7 A Yes. And I continued to call.

8 Q Was the number you were calling the number that he
9 typically called you from?

10 A I'm sure it was. I have the numbers written down.

11 Yes, it looks like it was -- yes, I mean, it
12 looks like I always talked to him on the same
13 number.

14 Q Do you recall him telling you at that September 1st
15 hearing or any other time that he might be getting
16 a new phone number?

17 A No.

18 Q And you also testified the day of trial that was
19 the first time you were able to speak with him
20 about this, right?

21 A About the 20 years, yes. Yes.

22 Q And that was because his phone had been cut off?

23 A Right.

24 Q Did you expect him to be there the day the trial
25 started?

1 A No.

2 Q And why not?

3 A Because I had not been able to get in touch with
4 him.

5 Q But he did know that trial was starting that day?

6 A Yes. He came to my office first thing that
7 morning, and that was the first time I had seen him
8 since September 1st, which is when he was served
9 with the kidnapping and the life notice. I did not
10 expect him to show up on the 14th, but he did. And
11 that is when I told him about the 20 years.

12 Q And he said he was going to take that offer?

13 A Yes.

14 Q All right. And then he had a seizure?

15 A Yes.

16 Q Or what he believed was a seizure?

17 A Right.

18 Q And did you -- I'm sorry, you testified that you
19 went to go see him in the hospital, correct?

20 A Yes.

21 Q Did you have a chance to speak with him?

22 A No, not really. I was in his room and he was in
23 the bed, but he was essentially unresponsive to me.
24 I tried to talk to him, and he wouldn't respond to
25 me.

1 Q And did the doctors do anything to try to assist
2 him in speaking with you?

3 A Yes, the doctor did come into the room. That is
4 when I spoke with the doctor. He put something
5 under Mr. Elleby's nose, some kind of, I guess some
6 kind of smelling agent to kind of wake him up. He
7 did wake up and sort of pushed the doctor away, but
8 still was -- and I tried speaking with him again,
9 but he wouldn't talk to me.

10 Q I know you said he wouldn't speak with you. Did
11 you tell him anything when you left?

12 A To come to my office.

13 Q When?

14 A The next morning.

15 Q All right. I'd like to go through the specific
16 allegations briefly just to make sure we hit all
17 the points.

18 Mr. Elleby first alleges that you failed to do
19 any research. Did you do any research on his case?

20 A Yes.

21 Q Can you explain?

22 A I mean, first I thought maybe it was legal
23 research, so we did research the search issues, the
24 search of the house, and the GPS issues. And then
25 also of course speaking with the investigator and

1 speaking with the Co-Defendant's lawyer to try to
2 figure out was he going to testify, what was he
3 going to say. And, again, the other witnesses, the
4 victims were unwilling to speak with us, and the
5 others, the neighbors, we couldn't get in touch
6 with.

7 Q Did you try to find out how to contact the
8 neighbors?

9 A Well, we had contact information for them. I mean,
10 I had phone numbers and addresses that were in the
11 discovery. I don't remember if those numbers were
12 disconnected or if they just never responded to our
13 calls. I can't remember. But we were not able to
14 make contact with them.

15 Q Did you assign that to your investigator to look
16 into?

17 A Yes, he would have gone by, because they lived on
18 that same area. I mean, they were like his
19 next-door neighbors. And he was not able to
20 contact them either.

21 Q And were the statements they gave, was there any
22 issues with those?

23 A The statements that they gave, I can't -- one of
24 them said -- I mean, they were essentially that
25 they saw him after whenever the robbery happened

1 smoking cigarettes on the porch and throwing up and
2 saying that, like he appeared stressed out, or
3 something like that. And they both -- I think both
4 of them identified him as being the person with the
5 nickname Fats, which that was the initial tip.

6 Q Okay. And did they ever do a photo line-up?

7 A I believe both of them did photo line-ups and
8 picked him out as the person they knew as Fats.

9 Q Okay.

10 A Now, it wasn't that he was the person that did the
11 robbery. The two neighbors, obviously they weren't
12 there at the Dollar General. They just said, This
13 is the guy that we know as Fats.

14 Q And of those two witnesses or people who gave
15 statements, did Mr. Elleby know either of them?

16 A I'm pretty sure he told me, at least Brenda maybe,
17 I think that he told me Brenda was coerced by the
18 police and basically essentially lied in her
19 statement.

20 Q Did he say whether or not he was going to try to
21 talk to her? He knew her?

22 A Yes. Yes.

23 Q Are you aware if he ever did talk to her?

24 A I'm not aware if he did or not.

25 Q And the next allegation he raises is that you

1 failed to prepare for trial. Were you prepared for
2 trial?

3 A Yes.

4 Q And you already testified to most of everything
5 that you did to prepare. Did you feel like you
6 were adequately prepared?

7 A I felt like we were. I felt like we were as
8 prepared as we could be. And I had another lawyer
9 helping me, so it wasn't just me, but there was two
10 of us.

11 Q His next allegation is that you failed to
12 investigate or locate people or interview
13 witnesses. I think you just went over that part.

14 A Right.

15 Q Is there any other names that he gave you?

16 A Not that I remember.

17 Q He also alleges that you failed to put the plea
18 agreement in writing or on the record. Was the
19 plea agreement ever put on the record?

20 A Yes.

21 Q Did the Solicitor ever put the plea agreement on
22 the record?

23 A Yes. Mr. Elleby wasn't there, he wasn't in court,
24 but, yes, it was put on the record. It was never
25 put in writing, the plea agreement was never in

1 writing. But, yes, it was put on the record
2 multiple times.

3 Q And did the Solicitor and the judge work with you
4 as far as keeping that agreement kind of open so
5 you could do something to locate Mr. Elleby?

6 A Well, they didn't work with me as much as I wanted
7 them to, but, yes, they did leave the offer --
8 because essentially once we got, I guess it was
9 really Tuesday morning, so Monday the seizure
10 happens, he goes to the hospital, he is discharged
11 from the hospital. The following morning I am sort
12 of begging the Court to stop the trial, to not go
13 forward with the trial. And the Solicitor --
14 because I wanted Mr. Elleby to take the 20 years.
15 He told me he was going to take the 20 years, so I
16 wanted that to happen. And the Solicitor starts
17 saying, Well, the offer is revoked. You know, I'm
18 no longer offering him 20 years. So then the judge
19 is in the position like, Well, Mr. Ruffin, I can't
20 force her to make this 20-year deal. Even though
21 he has accepted it, he has not actually pled guilty
22 yet, so she can revoke it. But they did agree that
23 they would basically give him until the jury was
24 sworn. And I think we picked the jury on Tuesday.
25 And the judge said, I'm not going to swear the jury

1 yet just so that in case Mr. Elleby shows up he can
2 plead and we'll give him the 20. And the Solicitor
3 did extend the deal until Wednesday. But then
4 Wednesday came, Mr. Elleby wasn't there, and we
5 proceeded with the trial.

6 Q So based on your argument before the judge and the
7 Solicitor, you basically got it continued until
8 Wednesday to be able to --

9 A Yes.

10 Q -- have him accept the offer?

11 A Yes.

12 Q And you were actively looking for him --

13 A Yes.

14 Q -- during that time?

15 A Yes.

16 Q And your investigator was too?

17 A Yes. We were calling hospitals, we were going down
18 to his house. I know my investigator talked to at
19 least one family member. So, yes, we were trying.
20 We were looking for him.

21 Q And just to clarify, and you may not know, the
22 house that your investigator went to and spoke with
23 his -- it was noted as his uncle?

24 A Right.

25 Q Was that his mother's house?

1 A I don't -- I don't know. I don't know if it was
2 his mother's house or not. I believe that it was
3 the house that he was arrested at. And it was the
4 address that we had always had, which I knew it as
5 Mr. Elleby's house. I thought that that was just
6 his personal house, so maybe it was his mom's
7 house.

8 Q And the uncle said that the TV was on in Emmanuel's
9 room?

10 A Correct. Yes, that's right.

11 Q He put that on the record at trial?

12 A Yes, that's right.

13 Q Okay. And the last allegation is that you were
14 ineffective for failing to properly investigate the
15 facts and circumstances surrounding his
16 hospitalization, thus depriving him a continuance
17 to be present at his trial.

18 I think you just testified that you called
19 local hospitals, not just Baptist?

20 A Right. Now, we never asked -- I never got his
21 medical records. And the reason for that is
22 because I went to the hospital and talked to the
23 doctor, and what the doctor told me I did not think
24 was helpful. Like, in other words, I did not think
25 it was going to be helpful to Mr. Elleby. So I

1 don't want to request records that I think could
2 potentially be harmful in court, if that makes
3 sense.

4 Q And why did you think that they may be harmful?

5 A I interpreted what the doctor told me as, There is
6 nothing wrong with him and I don't think he had a
7 seizure. That is kind of how I interpreted what
8 the doctor said. So I didn't want to have to like,
9 I guess, tell the Court or get records that say,
10 you know, He has got no medical problems. But I
11 don't know what the records say because I didn't
12 get them.

13 Q I apologize for that. Oh, I meant, the ones that
14 you got.

15 A Right, right.

16 Q I don't think he gave them to you.

17 So do you think you did everything necessary
18 to be able to have him found and at the trial that
19 he is claiming you deprived him of being at?

20 A Yes. I think we did everything we could to try to
21 get him to come.

22 MR. DAVIDSON: I have no further questions.

23 THE COURT: Mr. Waller, anything else?

24 MR. WALLER: Briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. WALLER:

2 Q Mr. Ruffin, earlier you testified in your notes you
3 had that Mr. Elleby wanted something less than 15
4 years for a plea offer?

5 A Yes.

6 Q Was that before the kidnapping indictment?

7 A Yes, I'm sure it was.

8 Q And that obviously would have changed everybody's
9 position?

10 A You know, I don't know. In terms of what offer we
11 would have gotten, or you mean in terms of what
12 Mr. Elleby would have taken?

13 Q The whole situation would be changed?

14 A I mean, it did change. Yes, I mean, yes, it did
15 change.

16 Q Okay. You testified that when you were in the
17 hospital, the doctor was there, the doctor had to
18 put some sort of smelling agent under his nose to
19 wake him up?

20 A Yes.

21 Q And I believe you testified that right after that
22 is when you told him to come to your office the
23 next morning?

24 A Yes.

25 Q Did he acknowledge you in any way?

1 A Not really.

2 Q Did he do anything to indicate that he heard and
3 understood what you were telling him?

4 A Definitely not verbally. You know, I can't
5 remember exactly, but, no, I mean, I don't think --
6 I don't think that he really was acknowledging much
7 of what I said.

8 Q All right. You just testified about getting
9 medical records. Did you attempt to get those, or
10 you were just going by what the doctor told you
11 that day?

12 A Just -- I just went with what the doctor told me
13 that day. We never attempted -- we never attempted
14 to get those records.

15 Q After the trial was concluded -- I know you were
16 trying to find him in the first couple of days.
17 After the trial was concluded, did you attempt or
18 your office make any further attempts to locate
19 Mr. Elleby?

20 A No, I don't think we did.

21 Q Okay. Did you, prior to the sentencing, did you
22 file any sort of motion for a new trial?

23 A No, I don't think I did.

24 MR. WALLER: Nothing further. Thank you,
25 Mr. Ruffin.

1 THE COURT: Anything further?

2 MR. DAVIDSON: No, Your Honor.

3 THE COURT: Okay. Mr. Ruffin, thank you for
4 your testimony. You can step down.

5 THE WITNESS: Thank you, Judge.

6 (Witness steps down.)

7 THE COURT: All right, Mr. Waller, anything
8 else?

9 MR. WALLER: Nothing further from the
10 Applicant.

11 THE COURT: Mr. Davidson, anything else?

12 MR. DAVIDSON: Nothing further.

13 THE COURT: It is 4:25. We were going to take
14 a break if there was.

15 Okay. If nothing further, then that will
16 conclude this trial. I will take this matter under
17 advisement, Mr. Elleby. You have been well
18 represented today. Good luck to you, sir.

19 All right, court is adjourned.

20 We had one exhibit.

21 MR. WALLER: That's correct.

22 (WHEREUPON, the hearing adjourned at
23 4:25 p.m.)

24

25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Certified Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 15th day of July, 2021.

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

July 30, 2023

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Certified Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Emmanuel Elleby, SCDC #27507,
Applicant,
Vs.
State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40- 591-91

ORDER GRANTING POST
CONVICTION RELIEF

2021 NOV -3 AM 9:13

RICHLAND COUNTY
CLERK OF COURT

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed January 29, 2018. Respondent made its Return on May 31, 2018, requesting an evidentiary hearing to be convened. Jonathan D. Waller, Esquire, was appointed by the Richland County Clerk of Court to represent the Applicant in this matter. An evidentiary hearing was held on July 15, 2021 at the Richland County Courthouse. Applicant was present and represented by Counsel Waller. Michael Davidson of the South Carolina Office of Attorney General represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Adam Ruffin. The Court had before it the Richland County Clerk of Court's records, Applicant's South Carolina Department of Corrections records, the PCR Application, with amendments, the Return, and the trial transcript.

PROCEDURAL HISTORY

Applicant was indicted during the November 2014 term of the Richland County Grand Jury for armed robbery (2014-GS-40-7355) and kidnapping (2014-OS40-7364). Applicant was represented by Assistant Public Defender Adam Ruffin of the Richland County Public Defender's Office. The case was prosecuted by Assistant Solicitor April Sampson of the Fifth Circuit Solicitor's Office. Applicant failed to appear for trial and was tried in his absence before the Honorable DeAndrea G. Benjamin, circuit court judge. The jury convicted Applicant as charged and Judge Benjamin sealed her sentence.

On October 16, 2015, all parties appeared for a sentencing hearing, during which Judge Benjamin sentenced to life without possibility of parole on both charges pursuant to Section 17-25-45 of the South Carolina Code (2014). Thereafter, counsel filed a motion to reconsider Applicant's sentence, which was heard and denied by Judge Benjamin on November 12, 2015. Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense-Division of Appellate Defense. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences by unpublished opinion tiled November 8, 2017. State v.

Elleby, Op. No. 2017-UP-420 (S.C. Ct. App. filed November 8, 2017). The remittitur was returned to the circuit court on November 30, 2017.

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to research."
 - b. "Counsel failed to interview witnesses."
 - c. "Counsel failed to prepare for trial."
 - d. "Counsel failed to investigate or to locate or interview witnesses."
 - e. "Counsel failed to put agreement in writing or the record."

In his requested relief, Applicant states he is seeking for his convictions to be vacated.

On June 17, 2019, Applicant filed an Amendment to Application for Post Conviction Relief in which he added claims of ineffective assistance of counsel, alleging that "Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding Applicant's hospitalization, thus depriving Applicant of a continuance and presence at his trial."

Prior to the commencement of the PCR hearing, Applicant, through counsel, indicated that he intended to proceed under the claims raised in his Amendment to Application for Post Conviction Relief. The remaining allegations of his original Application were thereby waived.

SUMMARY OF TESTIMONY

At an evidentiary hearing held July 15, 2021, at the Richland County Courthouse, both Applicant and trial counsel, Adam Ruffin, testified as to the facts and circumstances surrounding Mr. Ruffin's representation of Applicant. At the beginning of Applicant's testimony, he testified that he and Mr. Ruffin had met on several occasions that he and counsel had discussed some of the evidence against Applicant, but that Applicant was never provided with additional evidence that the State purported to possess.

Applicant testified that he believed that he was appearing in court for a roll call only when counsel informed him of both the State's plea offer as well as the fact that Applicant's trial was to commence the following week should Applicant reject the State's plea offer.

Applicant testified that he has suffered from epilepsy since he was a child and that he suffers multiple seizures per month. He further testified that stressful situations cause the onset of seizure activity to become more frequent and that at the time he met with Counsel and agreed to accept the State's plea offer, that his stress level was elevated. Applicant testified that he reluctantly accepted the State's plea offer because he felt that counsel was not ready to proceed to trial and that in the moments after signing the plea paperwork, he suffered a seizure which caused him to be taken to the hospital. Applicant testified that his reluctance to accept the State's plea was due in part to his lack of understanding his court appearance.

Applicant testified that following a seizure, he suffers from diminished mental clarity and other aftereffects that last several days. He further testified that he regained consciousness in the hospital with no recollection of the events after he agreed to the State's plea offer. Applicant testified that he was suffering the aftereffects of the seizure when he left the hospital and returned home. He further testified that he left the hospital because he knew what the recovery from an event that was commonplace to him, would entail. Applicant testified that he assumed that Counsel would make contact with him to reschedule the plea and that he did not think that there was any problem since he had accepted the State's offer.

He testified that he lives with his mother and had been residing with her for the entirety of Mr. Ruffin's representation. Applicant further testified that he is the only other individual who resides with his mother and that he has no knowledge of who the "uncle" is that spoke with the investigator for the public defender's office. Applicant testified that the next time he saw Counsel, it was following his arrest on the bench warrant issued at the outset of the trial.

Following Applicant's testimony, Counsel for Applicant, Adam Ruffin, testified as to his representation of Mr. Elleby. Mr. Ruffin testified that he was appointed to represent Mr. Elleby as part of his employment with the Richland County Public Defender's Office. Mr. Ruffin testified that he had been practicing in the area of criminal law for a number of years and that when he initially met with Mr. Elleby, he discussed his constitutional rights, the charges he was facing, the potential penalties, and the State's position on the evidence in the case, based on the limited discovery he had at the time. Counsel further testified that he obtained contact information for Mr. Elleby and some potential witnesses Mr. Elleby asked him to investigate.

Counsel testified that the witnesses Mr. Elleby asked him to speak to were either represented by counsel, in the case of his co-defendant, refused to cooperate, or were not helpful in providing a defense for Mr. Elleby. Counsel testified that the State alleged, and Mr. Elleby was ultimately convicted, of an armed robbery in which a money and particularly change, as well as cigarettes were stolen from a Dollar General store in Richland County. Counsel further testified that Mr. Elleby was identified through a combination of anonymous tip and the fact that he was being monitored by the South Carolina Department of Probation, Parole, and Pardon. Counsel testified that there was video of the robbery that did not show Mr. Elleby specifically, but that showed uniquely identifiable items such as a bag that were located upon the service of a search warrant at Mr. Elleby's residence. Counsel testified that Mr. Elleby's co-defendant had given law enforcement a statement implicating Mr. Elleby in the robbery and detailing that they had met at the probation office.

Counsel testified that Mr. Elleby had rejected an initial plea offer by the State and that immediately after the rejection, was served with an additional indictment for kidnapping as well as Notice of Intent to Seek Life Without Parole (LWOP) pursuant to §17-25-45, S.C. Code. Counsel testified that he believed that the State serving Mr. Elleby with an LWOP notice was intended to force a plea of the matter, which obviously worked since Mr. Elleby accepted the State's plea prior to suffering a seizure.

Counsel testified that he and Mr. Elleby had just finished discussing the State's plea offer and Mr. Elleby had just signed the plea paperwork when he collapsed in Counsel's presence. Counsel

testified that it was a scary moment as he was not regularly around individuals who suffer seizures. Counsel further testified that after Mr. Elleby suffered the seizure, Counsel had to appear in Court to inform the Judge of the situation and request that the case be continued.

Counsel stated that after Mr. Elleby was transported to the hospital by ambulance, and after Counsel's responsibility in court for the day, Counsel traveled to the hospital to inquire about his condition. Counsel stated that while he was at the hospital he attempted to speak with Mr. Elleby who was unresponsive to his communications. Counsel testified that he spoke with a doctor who was attending to Mr. Elleby's condition who informed Counsel that Mr. Elleby had been admitted for seizure activity. Counsel testified that he did not make an attempt to obtain any records from the hospital where Mr. Elleby was treating.

Counsel testified that once the trial commenced in Mr. Elleby's absence, Counsel had to be physically present in the courtroom and was unable to conduct any investigation into his whereabouts personally. Counsel further testified that the in-house investigator for the public defender's office travelled to Mr. Elleby's home in an attempt to locate him and was told by his uncle that Mr. Elleby was on his way to court. Upon questioning, Counsel was unable to provide a name of the uncle or to what address that the investigator went. Counsel testified that his strategy behind not attempting to obtain Mr. Elleby's medical records was that his goal was to get a continuance in the case and that he did not want the records to possibly contain information that would hurt that goal. Counsel testified that he did not believe that Mr. Elleby actually suffered from a medical condition.

APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance on 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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 counsel "rendered adequate assistance and made all significant decision in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). 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 117-118, 386 S.E.2d at 625.

FINDING OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the sentencing portion of the plea transcript, the probation revocation hearing transcript, Applicant's records from the South Carolina Department of Corrections, the Application for post-conviction relief, exhibits presented during the hearing, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Applicant's case is unique in that he contends that Counsel has a duty to investigate matters outside of his defense to the alleged crimes; specifically, that Counsel had a duty to investigate why he was not present to plead guilty after indicating his intent to do so and then requiring medical intervention. This court finds that in failing to conduct adequate investigation into Applicant's whereabouts, Counsel essentially caused Applicant to be denied the opportunity to go forward with the guilty plea. Absent some capacity issue, upon proper notice to a criminal defendant to appear in court, Counsel would not have any extra duty to ensure his client's attendance.

However, given the circumstances of this case, and in light of Counsel's arguments to the trial court in request of a continuance, the Court finds that Counsel failed to adequately investigate Applicant's circumstances following his medical issue, which was witnessed both by Counsel as well as indirectly by the Assistant Solicitor. Transcript, at 7. Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, 466 U.S. at 691, 104 S.Ct. 2052. While investigation as contemplated by *Strickland* and other cases, tends to be related to investigation of the offense, such investigation is not limited to a defendant's guilt. As *Strickland* points out, reasonable investigation is required unless a decision is made that "renders a particular investigation unnecessary." Id.

In the case at hand, Counsel knowingly decided not to attempt to obtain Applicant's medical records or present any evidence of the condition of an individual following a seizure. By making such a decision, the Court must then inquire as to whether or not to undertake such investigation was reasonable. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "*was itself reasonable.*" See, Wiggins v. Smith, 539 U.S. 510, 522-23, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (emphasis in original) (citation omitted). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). The Court finds that Counsel's decision not to obtain records, subpoena medical staff, consult with an expert, or otherwise investigate mitigating circumstances to why Applicant failed to appear in court fell below the minimum standard required of defense counsel. Counsel testified that he didn't obtain medical records¹ because he didn't want to potentially have his own disbelief of Applicant confirmed is without basis. Counsel would have no duty to disclose Applicant's medical records to the prosecution if those records failed to add to Counsel's argument. This Court finds that Counsel's decision and

¹ Admitted into evidence as Applicant's Exhibit #1

failure to investigate why Applicant did not appear in court fell below the standard required of defense counsel.

The Court must now turn its review to the second prong of Strickland and review the record for prejudice to Applicant. In the case at hand, the Court finds that Counsel's decision to not investigate Applicant's whereabouts following his medical episode did in fact prejudice Applicant. Counsel moved before the trial court for a continuance when Applicant did not appear the day following the scheduled plea/trial. The trial court had been informed of Applicant's medical emergency and had no issue continuing the case to the next day pending an update on Applicant's health. Transcript, at 6-10. The Court was not clearly advised of what medical issue Applicant suffered, believing it to possibly be a panic attack without being told otherwise. The trial court further stated that the case would be continued with documentation from a doctor that Applicant could not be present. Transcript, at 29-30. Counsel was the sole representative of Applicant in a position to present the trial court with such information or documentation but chose not to attempt to obtain any of the information. To do so deprived Applicant of the opportunity to continue to plead guilty pursuant to agreed upon terms. These decisions are similar to failing to communicate a plea offer to a criminal defendant in that the defendant does not have the option to enter a plea based solely on Counsel's conduct.

Our supreme court has also held "a defendant has the right to effective assistance of counsel during the plea-bargaining process." *Davie*, 381 S.C. at 607, 675 S.E.2d at 419. Although not directly on point, the Court of Appeals addressed similar issues in *Bell v. State*, 410 S.C. 436, 765 S.E.2d 4 (S.C. App. 2014), stating:

In *Davie*, counsel testified the State mailed him a written plea offer while he was in the process of changing his address. 381 S.C. at 606, 675 S.E.2d at 419. He testified he did not receive the offer until after the expiration of the offer, and if he had been aware of it, he would have communicated it to Davie. *Id.* Davie pled guilty to numerous charges without negotiation or recommendation from the State other than the dismissal of other charges that would have made him eligible for a sentence of life imprisonment without the possibility parole. *Id.* at 605, 675 S.E.2d at 418. He was sentenced to twenty-seven years in prison. *Id.* The supreme court found "plea counsel's failure to convey the State's initial plea offer to [Davie] constituted deficient performance." *Id.* at 610, 675 S.E.2d at 421. The court further found,

Even if counsel is given the benefit of the doubt that he was not aware of the plea offer until after the expiration date, we find counsel was deficient in not objecting at the plea hearing. During the plea hearing, the solicitor informed the circuit court judge that "[t]he original plea offer in this matter has not been accepted by the due date of September 11th of this year, and so we told the defendant we were ready to go to trial." In view of the solicitor's statement, it

was incumbent upon plea counsel to object or in some way indicate to the court that he had no knowledge of the original plea offer. Had counsel done so, he might have been able to convince the solicitor to reinstate this plea offer or persuade the circuit court judge to impose a fifteen-year sentence. Because counsel failed to make any attempt to protect Petitioner's interests regarding this significantly lower sentence, we conclude counsel's performance fell below the prevailing professional norms and, thus, constituted deficient performance.

Id. at 610–11, 675 S.E.2d at 421. The case at hand is similar in this Court's view in that Counsel's decision and failure to inform the trial court of information in Counsel's possession, or easily obtainable, cost the Applicant the difference in the sentence he had already accepted and the life without the possibility of parole sentence he received. "The difference is evidence of his prejudice." *See, Id.* There is no question that Applicant indicated to Counsel that he would accept the State's plea offer. By failing to ensure Applicant was able to go through with that decision, Counsel prejudiced Applicant.

As to any and all other allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based upon the foregoing, the Court finds and concludes that Applicant has met his burden and shown that counsel was deficient in his representation of Applicant in failing to investigate his absence after suffering a seizure. Applicant was prejudiced when he was sentenced to a term of imprisonment excess of the accepted plea agreement. Accordingly, Applicant's sentence is vacated, and the case is hereby remanded to the General Sessions court for further proceedings.

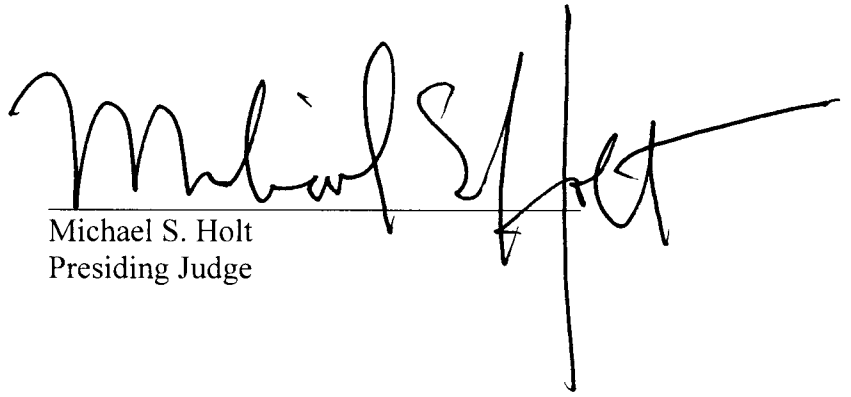
THEREFORE, the Applicant's Application for post-conviction relief is hereby granted and remanded to the Court of General Sessions for further proceedings consistent with this Order.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post Conviction Relief is hereby granted, and Applicant's criminal case is hereby remanded to the Court of General Sessions; and
2. Applicant will be released from the South Carolina Department of Corrections and transported to the Richland County Detention Center for further proceedings consistent with this Order.

AND IT IS SO ORDERED this 30th day of SEPTEMBER, 2021.

DARLINGTON South Carolina



Michael S. Holt
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Emmanuel Elleby, #275057,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-0591

**RESPONDENT'S MOTION TO
RECONSIDER, ALTER, OR AMEND
PURSUANT TO RULE 59(E), SCRPC**

This matter comes before this Court by way of an application for post-conviction relief filed on January 29, 2018, by Emmanuel Elleby ("Applicant"). A hearing on this application was held in the Richland County Court of Common Pleas before the Honorable Michael S. Holt, Circuit court judge. By written order filed November 3, 2021, and received by Applicant on November 8, 2021, this Court granted the post-conviction relief and remanded the matter to the Richland County Court of General Sessions for a new trial, finding Counsel's decision and failure to investigate why Applicant did not appear in court fell below the standard required of defense counsel, and therefore, Counsel was constitutionally deficient because, "Counsel knowingly decided not to attempt to obtain Applicant's medical records or present any evidence of the condition of an individual following a seizure." Order Granting Relief, p. 5-6. Additionally, this Court, relying on *Bell v. State*,¹ further found Applicant was prejudiced because "Counsel's decision and failure to inform the trial court of information in Counsel's possession, or easily obtainable, cost the Applicant the difference in the sentence he had already accepted and the life without the possibility of parole sentence he received." Order Granting Relief, p. 7.

Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter,

¹ 410 S.C. 436, 765 S.E.2d 4 (S.C. App. 2014)

or Amend, pursuant to Rule 59(e), SCRCP, would respectfully show unto this Court:

PROCEDURAL HISTORY

Applicant was indicted during the November 2014 term of the Richland County Grand Jury for armed robbery (2014-GS-40-7355) and kidnapping (2014-GS40-7364). Applicant was represented by Assistant Public Defender Adam Ruffin of the Richland County Public Defender's Office. April Sampson and Sandra Moser of the Fifth Circuit Solicitor's office prosecuted the case. The Solicitor's office, through a letter dated August 26, 2015, informed Applicant he was scheduled for trial the week of September 14, 2015. Applicant was informed again on September 1, 2015, on the record at his life without the possibility of parole notice hearing. ROA 5. ("[Applicant] is noticed for trial the week of September 14th of this year, Your Honor."). The next day, September 2, 2015, the solicitor extended a twenty year plea offer, set to expire the day trial was scheduled to start. ROA 12.

The first time counsel was able to speak with Applicant about the plea deal was the day of trial, September 14, 2015. Applicant verbally agreed to the plea offer and was filling out the plea paperwork when he collapsed in Counsel's presence. Applicant was taken to the hospital by ambulance. Counsel then went on record before Judge Benjamin and asked for a continuance. The continuance was granted until the following day, provided Applicant was out of the hospital by then. ROA 12-17.

The following day, September 15, 2015, around 11:30 am, Counsel informed the court that Applicant was on his way to court, and Counsel asked if he could have until 2:00 pm—the time the jurors were scheduled to arrive—to be able to get Applicant signed up for the plea. The Assistant Solicitor put the plea offer on the record and stated that once a jury was selected, the offer would be off the table. The judge agreed to wait until 2:00 pm, but emphasized that Applicant

needed to be present in court and “signed up ready to go if he was going to plead”; if not, the jurors would be brought up and trial would proceed. ROA 18–20.

At 2:05 pm, court resumed. Applicant was not present, and Counsel objected to Applicant being tried in his absence. Counsel asked the trial court to issue a bench warrant instead of trying him in his absence, since this was a mandatory life without parole case. The solicitor informed the court that the plea offer was off the table, but agreed to speak with the Solicitor if Applicant showed up during trial to see if the Solicitor would be willing to withdraw life without parole. The judge denied the motion for a continuance. ROA 36. Nevertheless, the trial court agreed to wait until the following morning to swear the jury, and the solicitor agreed to extend the plea offer until then. ROA 46, 169.

The following morning, Applicant still had not been located. ROA 170. Counsel again moved for a continuance based on his "objections to this being a TIA." ROA 170. The court denied the motion and the case proceeded to trial. Applicant never appeared over the course of the three-day trial, and was ultimately convicted as charged. Judge Benjamin sealed her sentence. ROA 501–502. On October 16, 2015, all parties appeared for a sentencing hearing, during which Judge Benjamin sentenced Applicant to life without possibility of parole. ROA 512–13.

Thereafter, counsel filed a motion to reconsider Applicant’s sentence, arguing section 17-25-45 was unconstitutional and he should be resentenced, which was heard and denied by Judge Benjamin on November 12, 2015. ROA 534–36.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender Kathrine H. Hudgins, who presented the following issue:

Did the trial judge abuse her discretion in denying the motion for continuance and proceeding with a jury trial in Appellant's absence with the State seeking a sentence of life without parole pursuant to S.C. Code §17-25-45 when the State had offered to allow Appellant

to plead guilty for a negotiated twenty year sentence and Appellant had indicated that he would accept the plea offer?

Following briefing, the Court of Appeals affirmed Applicant's convictions and sentences. *State v. Elleby*, 2017-UP-420 (filed Nov. 8, 2017). The remittitur was returned on November 30, 2017.

CURRENT ACTION

Applicant timely commenced this PCR action on January 29, 2018. Applicant asserts he is being held in custody unlawfully, alleging: Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to research."
 - b. "Counsel failed to interview witnesses."
 - c. "Counsel failed to prepare for trial."
 - d. "Counsel failed to investigate or to locate or interview witnesses."
 - e. "Counsel failed to put agreement in writing or the record."

On June 17, 2019, Applicant filed an amended application asserting Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding Applicant's hospitalization, thus depriving Applicant of a continuance and presence at his trial.

An evidentiary hearing was held on July 15, 2021, before the Honorable Michael S. Holt. Applicant was present and represented by Jonathan D. Waller, Esquire. The State was represented by Assistant Attorney General Michael D. Davidson. Prior to the commencement of the PCR hearing, Applicant, through counsel, indicated that he intended to proceed under the claims raised in his Amendment to Application for Post-Conviction Relief. The remaining allegations of his original Application were thereby waived. Applicant and his former counsel, Adam Ruffin, both testified. At the close of the evidentiary hearing, this Court took the matter under advisement. On August 4, 2021, by written letter, this Court notified the parties of its decision granting Applicant PCR and requesting PCR counsel prepare an appropriate order supporting the ruling of the Court.

By written order filed November 3, 2021, this Court granted the post-conviction relief and remanded the matter to the Richland County Court of General Sessions for a new trial, finding Counsel ineffective for failing to properly investigate the facts and circumstances surrounding Applicant's hospitalization, thus depriving Applicant of a continuance and presence at his trial. This motion to reconsider, alter, and amend pursuant to Rule 59(e), SCRCP, follows.

ARGUMENT IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden of establishing counsel was constitutionally ineffective.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "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.

In its order granting relief, this Court found Counsel ineffective for failing to adequately investigate Applicant's circumstances following his medical issue. This Court found Counsel was deficient because "Counsel knowingly decided not to attempt to obtain Applicant's medical records or present any evidence of the condition of an individual following a seizure." Order Granting

Relief, p. 5–6. Additionally, this Court, relying on *Bell v. State*,² further found Applicant was prejudiced by Counsel’s alleged deficiency because “Counsel’s decision and failure to inform the trial court of information in Counsel’s possession, or easily obtainable, cost the Applicant the difference in the sentence he had already accepted and the life without the possibility of parole sentence he received.” Order Granting Relief, p. 7. Respondent respectfully asserts this Court’s order is based on numerous legal and factual errors and that this Court’s grant of post-conviction relief should be reconsidered and relief should be denied.

Applicant failed to Establish Counsel Was Constitutionally Deficient for Failing to Adequately Investigate Applicant’s Circumstances Following his Medical Issue

In its order granting relief, this Court found Counsel was constitutionally deficient for failing adequately to investigate Applicant’s circumstances following his medical issue. Respondent respectfully asserts this Court’s finding that Counsel was constitutionally deficient is incongruous from the trial transcript and the testimony from the evidentiary hearing clearly demonstrate that Counsel’s investigation was thorough and the course of the investigation was based on highly reasonable decision under the circumstances. Therefore, Counsel was not constitutionally deficient.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S.at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance

² 410 S.C. 436, 765 S.E.2d 4 (S.C. App. 2014)

must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a **heavy measure of deference to counsel's judgments.**" *Id.* (emphasis added). "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Id.* "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." *Id.* "In particular, what investigation decisions are reasonable depends critically on such information."

In the present case, the trial transcript and the testimony from the evidentiary hearing clearly demonstrate that Counsel's investigation was thorough and the course of the investigation was based on highly reasonable decision under the circumstances. As the trial transcript reflects, on September 15, 2015, around 11:30 am, Counsel informed the court that Applicant was on his way to Court, and Counsel asked if he could have until 2:00 pm—the time the jurors were scheduled to arrive—to be able to get Applicant signed up for the plea. The judge agreed to wait until 2:00 pm, but emphasized that Applicant needed to be at the court and signed up ready to go if he was going to plead; if not, the jurors would be brought up and trial would proceed. ROA 18–19.

At 2:05 pm, court resumed and Applicant was not present. Trial counsel objected to Applicant being tried in his absence. Counsel summarized the prior day's events and explained to the Court that Applicant was not present. He told the court he sent his private investigator to Applicant's house. Counsel explained the private investigator spoke with Applicant's uncle, who informed the investigator he had "not seen [Applicant] this morning, but the TV is on in his bedroom, and I will let him know that you are looking for him and that he is supposed to be in court. And I will tell him to go to court if I see him." ROA 29. The investigator replied, "Well, I'll hang out around this area. If he shows up I will give him a ride to court if necessary." ROA 29. The investigator stayed in the area and went back to Applicant's house about thirty to forty minutes later. At that time, Applicant's uncle informed the investigator he told Applicant what the investigator said and Applicant told him he was going to go up to court. Trial counsel was under the impression that Applicant was going to take the bus to go up to court. ROA 29.

At the evidentiary hearing, Applicant testified he called his mom using his cell phone to come get him from the hospital on September 14, 2015, and when she arrived, she took him home.

Applicant testified he lived with only his mother and sister, and that his uncle did not live with them. Applicant testified no one tried to locate him while he was at his mother's house. Applicant testified his uncle lived a few houses down the street from his mother and the day he was arrested, he was at his Aunt's house. Applicant testified he did not go to court the following day because he did not know that he was going to trial, and that Counsel just told him that they were offering a plea. Applicant testified at the PCR hearing that he was having frequent seizures due to epilepsy during the time of his trial. Applicant testified he never told Counsel he had epilepsy or that his seizures were occurring more frequently around the time of trial. Applicant further testified that he did not find it important to let Counsel know that he had epilepsy. Applicant offered no evidence or medical documentation indicating he had been diagnosed with epilepsy prior to trial or at any time thereafter.

At the evidentiary hearing, Counsel testified Applicant never informed him that he had epilepsy and was not aware that Applicant suffered from epilepsy. Trial counsel testified that Applicant having a seizure was not something he had anticipated. Trial counsel testified after the case was continued on September 14, 2015, Counsel went to the hospital to see Applicant. Trial counsel explained at the hospital, he spoke with the doctor, who told him Applicant was fine, there was nothing medically wrong with Applicant, and the doctor was about to discharge Applicant. Trial counsel testified the doctor told him Applicant showed the doctor the notice of appearance for trial and the doctor said the episode could have been a panic attack, but there was nothing medically wrong with Applicant. Trial counsel testified he attempted to speak with Applicant, but Applicant would not respond to him. Trial counsel testified the doctor put smelling salts under Applicant's nose and he woke up, but Applicant still would not talk to Counsel. Trial counsel testified when Applicant was awake, he told Applicant to come to his office the next day. Trial

counsel testified he still thought Applicant wanted to take the plea, but he continued to prepare for trial just in case Applicant changed his mind the next day.

The medical records entered into the record at the evidentiary hearing as Exhibit #1 support Counsel's testimony. Specifically, Doctor Steven L Cruea wrote the following about Applicant's history of present illness:

This is a 34-year-old who presents today for evaluation of a seizure. He was brought in by EMS and the only information I got out of it was that he might have had a seizure. When he arrived, he was looking around but was nonverbal. He became verbal after ammonia was placed under his nose. His attorney later showed up, who reported that he saw almost like he was having a panic attack in the office. He walked down the hall, went to the ground and then had reported seizure-like activity. The patient is now talking and he reports that he just aches all over, but has no other complaints.

Exhibit #1, p. 11–12.

The following day, September 15, 2015, Counsel testified when Applicant failed to show up to his office, he checked the local hospitals to see if Applicant had been admitted anywhere. Trial counsel testified he tried calling Applicant, and sent his private investigator to the address they had on file. Trial counsel testified he did not attempt to get the medical records after speaking with the doctor because Counsel did not believe that the records would have been helpful. In contrast, Counsel testified that he thought obtaining the hospital records may have been harmful because based on what the doctor told him—there was nothing wrong with Applicant and the doctor did not think Applicant had a seizure—the records likely would have indicated that Applicant had no medical issues, which may have harmed his credibility before the court.

Rather than requesting hospital records on September, 15, 2015, Counsel testified he focused on trying to convince the solicitor to agree to a bench warrant for Applicant in the event that Applicant did not come to court before the 2:00 pm deadline to avoid a trial in absentia. Trial

counsel explained he focused on that rather than trying to get medical records to ensure Applicant was able to take the plea offer if he failed to show up by the 2:00 pm deadline. Lastly, Counsel testified he believed he did everything reasonably possible to get Applicant to come to court, and to ensure that Applicant was not tried in his absence.

Respondent respectfully asserts the trial transcript and Counsel's testimony clearly establish that Counsel's investigation to Applicant's whereabouts was extremely thorough and reasonable. Trial counsel went to the hospital to visit with Applicant, and testified he told Applicant to come to his office the following day. After Applicant failed to appear at court, Counsel attempted to call Applicant at a number which he had spoken with Applicant at before, and sent his private investigator to the address they had in his file. Trial counsel successfully argued to have the case continued until 2:00 pm, upon the belief that Applicant was already on his way to the courthouse. The solicitor informed the court that the plea offer was off the table, but agreed to speak with the Solicitor if Applicant showed up during trial to see if the Solicitor would be willing to withdraw the life without parole. The judge denied the motion for a continuance. ROA 36. Specifically, the court replied in response to the motion:

But the problem is he knew yesterday that he was supposed to be in court. He knew yesterday – he did not contact his attorney at all this morning. I'm sure you told him – I think you represented to the court yesterday that he was supposed to call you soon as he was released or yesterday evening. He has not done that. So I don't know how – I mean, everyone else has done what they are supposed to do. *It appears that your office has done a little bit more in sending the investigator to his house. Everyone has done what they are supposed to do except for him.*

And so that is the reason why – and I have given him additional time to get here even to this afternoon as opposed to calling this case this morning or earlier this morning to give him some time and give you some time to speak with him, and he still is not here.

ROA 39–40 (emphasis added). Nevertheless, the trial court agreed to wait until the following morning to swear the jury, and the solicitor agreed to extend the plea offer until then. ROA 46, 169. However, the following morning, Applicant still had not been located. ROA 170. Trial counsel again moved for a continuance based on his "objections to this being a TIA." ROA 170.

Under the circumstances, Counsel's actions were reasonable and therefore not constitutionally deficient because Counsel's actions were substantially influenced by Applicant's own actions and communications or lack thereof. *Strickland*, 466 U.S. at 690-91 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). In fact, it was Applicant, not Counsel, who chose not to inform Counsel that he allegedly suffered from epilepsy. Additionally, it was Applicant, not Counsel, who chose not to communicate with Counsel or to come to court the day following his hospitalization. In contrast, Counsel's actions of trying to ensure Applicant came to court and thereafter trying to continue the case or have the solicitor and judge agree to a bench warrant in order to allow Applicant to plead guilty went above and beyond what was constitutionally required of him because they were reasonably based on Applicant's failure to communicate with Counsel.

Applying a heavy measure of deference to counsel's judgments, these actions were reasonable under the circumstances, and Applicant failed to show what more Counsel could have reasonably done. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)) ("In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared."). Accordingly,

Respondent respectfully asserts Applicant failed to show that Counsel was constitutionally deficient.

Additionally, Applicant has failed to present any evidence to support that he actually has medical conditions that prevented him from being in court – everything shows that he was feigning seizures and does not support a finding of deficiency or prejudice. The medical records do not establish in any way how they would have helped counsel locate Applicant, nor do they provide anything further that Counsel could have argued to the Court to explain why Applicant was not in Court and not communicating with Counsel. Other than Applicant's own self-serving testimony, Applicant did not offer any evidence that he suffered from seizures or that he had been diagnosed with narcolepsy. Furthermore, Applicant testified he never told Counsel he suffered from seizures. And Applicant testified he did not consider it important to let Counsel know that. Counsel affirmed this by testifying Applicant never disclosed he suffered from any medical issues. Counsel testified he went to the hospital to check on Applicant and he spoke with the doctor about Applicant's condition. Counsel testified, and the record reflects, that the doctor informed Counsel there was nothing medically wrong with Applicant and the doctor planned to discharge him that day. Additionally, Applicant testified he did not inform the doctor of his condition.

Lastly, when Applicant was brought to the sentencing hearing, he again had what looked to be a seizure. Law enforcement took him to the hospital, but the doctor found nothing medically wrong, so law enforcement brought him back to the court. When Applicant appeared before the court, he again had an episode that appeared to be a seizure. When the court inquired if Applicant was alright, Counsel informed the court, "I was instructed by medical personnel the other day that shaking from side to side is impossible during a seizure." ROA 511. This testimony shows Applicant was likely feigning seizures, as the manner of the way he was "seizing" was medically

impossible. Accordingly, Applicant has failed to present any evidence to support that he actually has medical conditions that prevented him from being in court. In contrast, there is evidence showing that he likely was feigning seizures. Therefore, Counsel was not deficient.

Applicant failed to Show How He Was Prejudiced from Counsel's Alleged Failure to Adequately Investigate Applicant's Circumstances Following his Medical Issue

In its order granting relief, this Court found Applicant was prejudiced by because “Counsel's decision and failure to inform the trial court of information in Counsel's possession, or easily obtainable, cost the Applicant the difference in the sentence he had already accepted and the life without the possibility of parole sentence he received.” Order Granting Relief, p. 7. Respondent respectfully asserts this Court's finding that Applicant was prejudiced by Counsel's alleged deficiency was erroneous because Applicant's actions—his failure to appear in court to take the plea and his failure to contact Counsel after he got out of the hospital—not the actions of Counsel, were the cause of the undesirable outcome that Applicant received.

Counsel was constitutionally deficient is Respondent respectfully asserts Applicant failed to show how he was prejudiced by Counsel's alleged deficiency. After Applicant failed to show in court the day following his hospitalization, and after Counsel having his private investigator try to locate Applicant before 2:00, counsel moved to continue the case. Counsel argued the ways Applicant would be prejudiced if he was tried in his absence. In response, the trial judge stated:

Well I understand. I mean, the reason he is not here is because of himself and no reason else has been articulated to the Court.

And I think as far as fundamental fairness, he had a panic attack, or whatever it is he had yesterday, and I gave him until this afternoon to show up.

I don't know how much fairer you can be to someone who knows that they are on the trial docket and someone who knows they have been served life without parole and someone who was told that the offer would expire on yesterday, and now has somehow been pushed to 2:00 o'clock. I don't know how much fairer I can be in allowing

him to try to circumvent the process, the judicial process, and his not being here today. And I have even given him the option of providing us with a doctor's excuse to say he cannot be here, and he is still not here.

ROA 35–36. This statement, *supra*, makes clear that it was Applicant's actions that caused the outcome of the proceeding to be different, not Counsel's actions. In the trial judge's own words, "I don't know how much fairer you can be to someone who knows that they are on the trial docket and someone who knows they have been served life without parole and someone who was told that the offer would expire on yesterday, and now has somehow been pushed to 2:00 o'clock."

ROA 30. In other words, had Applicant communicated with Counsel or had Applicant appeared in court for his own trial, the outcome would have been different. Trial counsel's actions were reasonable under the circumstances. Accordingly, Applicant has successfully shown *his* own actions, *not* Counsel's actions, prejudiced Applicant, which is not the standard he must prove to successfully meet the prejudice prong. *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625 (*Counsel's* deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for *counsel's* unprofessional errors, the result of the proceeding would have been different.") (emphasis added).

Additionally, Applicant failed to show prejudice because it is likely the State would have rescinded the offer had they received information that Applicant was feigning seizure symptoms. There was no evidence presented showing that the State would have kept the offer open and the court had no legal basis to require an extension of time for acceptance even if it wanted to. The offer of a plea rests within the discretion of the State and the court cannot expand the confines of an offer. *State v. Thrift*, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346-47 (1994) ("Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case.

Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands. . . . Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." (footnotes omitted)). Although the court can enforce an agreement once made, until the plea is formally accepted, it is non-binding. *Reed v. Becka*, 333S.C. 676, 688, 511 S.E.2d 396, 402 (Ct. App. 1999) ("A plea agreement is only an 'offer' until the defendant enters a court-approved guilty plea. A defendant accepts the 'offer' by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court.").

Therefore, although the court could have granted the continuance, no evidence exists the result would have been different. Notably, in response to Counsel's request for the continuance, the trial court clarified that a continuance would not affect the status of the plea: "Well, see, what I think you all are missing is the Solicitor is saying that her offer has expired. Regardless of whether or not I start the trial or not, she is saying her offer has expired." ROA 41. Ultimately, the trial court *did* grant a continuance and agreed to not swear the jury that day. Further, the solicitor allowed Counsel the evening to locate his client, even though she had stated "[t]he offer is now - we are here at trial. The offer is gone. We are at trial." ROA 34. When Appellant again failed to in appear court the following morning, Counsel renewed his objection "to this being a TIA." ROA 170. He did not mention continuing the case to secure the plea deal as it was apparent such a deal was no longer available. The solicitor clearly did not intend to extend the deal as she opposed the motion for a continuance, stating the State was prepared to proceed and would be prejudiced by further delay. Lastly, the medical records that Applicant alleges Counsel was deficient for failing to obtain would not have changed the outcome of the proceeding as they offer no proof that Applicant actually had a seizure.

In conclusion, Respondent respectfully submits Applicant has failed to show how counsel was constitutionally deficient and also failed to show how he was prejudiced by Counsel's alleged deficiencies. Therefore, Respondent respectfully submits this Court's ruling to the contrary is erroneous and not supported by any evidence of probative value.

CONCLUSION

Based on all the foregoing, Respondent respectfully requests this Court reconsider its prior ruling and deny its previous grant of post-conviction relief and remand of this case back to the court of general sessions for a new trial.

Respectfully submitted,

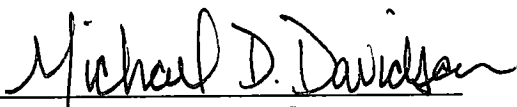
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Nov. 18, 2021

STATE OF SOUTH CAROLINA
COUNTY OF ~~DARLINGTON~~
RICHLAND

STATE OF SOUTH CAROLINA,
Plaintiff,

-vs-

EMMANUEL BASHAN ELLEBY,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO: 2018-CP-40-00591

**ORDER DENYING MOTION TO
RECONSIDER**

COMES NOW State of South Carolina, on its Rule 59 Motion for Reconsideration from the decision of the Court to grant Post Conviction Relief (PCR) on behalf of the Applicant Emmanuel Bashan Elleby.

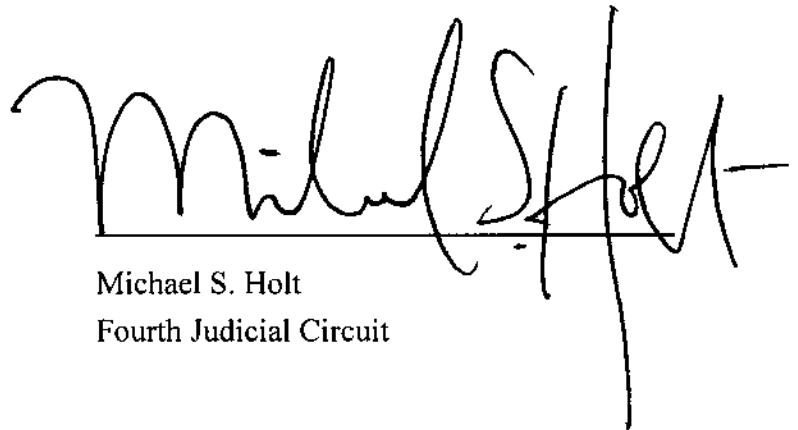
The Court granted PCR on behalf of the Applicant on November 3, 2021, and the State filed this motion shortly thereafter.

The Court respectfully denies the State's Motion for Reconsideration.

CONCLUSION

WHEREFORE, State of South Carolina's Motion for Summary Judgment is hereby DENIED.

IT IS SO ORDERED!



Michael S. Holt
Fourth Judicial Circuit

June 26, 2023
Darlington, South Carolina