

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

Thomas A. Russo, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ROBERT D. BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213166

APPENDIX

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CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

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1 he did get stabbed, it was probably by me because I took the knife.

2 That's exactly when it happened, and that's when we made the
3 second interview, and at the end of the interview I said, "Yes, he
4 was stabbed by me."

5 Q. So, you went in there going to tell the truth and just decided
6 to lie the first story so you could get a second story in?

7 A. No.

8 Because - - to be honest with you, both stories, being the
9 first one I was incoherent about. So I really didn't know,
10 basically, what I was saying, and the second one I didn't know what
11 I was saying. Anyway, I just did whatever the officer wanted me to
12 do to get out of there.

13 So, that's where the - - -

14 THE COURT: Now, let's move on to other things, please.

15 MISS BIAGIANTI: Thank you, sir. One last question.

16 THE COURT: One last one. Then we're going to other
17 matters.

18 Q. Did you tell the officer in the second statement, the last
19 question I'm going to ask you.

20 "The only reason I said what I said was because I really
21 didn't understand the whole concept about the stabbing as far as
22 the self-defense and stuff like that."

23 You admit or deny that?

24 A. I might have said that. I'm not - - I can't remember.

25 Q. Would you like me to play it for you, sir.

1 A. If I did say it - - if I did say it, it's because I really
2 didn't know about what the self-defense law is and - - and none of
3 that.

4 You know, this is what the officer was trying to explain
5 because one officer did say, "You sure he didn't come at you with
6 the knife?"

7 And, you know, so, I'm figuring, "Hey, look. Whatever. You
8 know. However y'all want to do this."

9 This is what I'm telling the officer.

10 "Whatever y'all want - - however y'all want to do this."

11 All I want to do is get out of there.

12 Q. If you're truly defending yourself, why not tell the officer
13 from the beginning, "So, this is what happened. He came at me.
14 I pulled a knife, and I was defending myself."

15 But, no. You went down a road that all of sudden you have to
16 recant. The first story you told was not the truth because your
17 story is not the truth.

18 Correct?

19 A. Medically - - medically, I was delirious, and I can prove that
20 because I was at the hospital that night.

21 So, basically, it's like to talk to somebody that done drink
22 a fifth of Tequila.

23 Q. You're right. It is like talking to someone who is like drunk
24 a fifth of Tequila because I can't follow what you mean.

25 A. I can't - - you know.

MR. BROWN - REDIRECT EXAMINATION BY MR. GOUDE

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1 THE COURT: Next question.

2 Q. As a matter of fact, on your direct examination by Mr. Goude,
3 you told our jury and everyone that, actually, it wasn't me that
4 had the knife. It wasn't you. It was Tywanda.

5 Because you said in your testimony, "She always carries a
6 knife in her pocketbook."

7 Did you not just say that?

8 A. I said.

9 Q. We can play it back, sir.

10 A. I said the knife belonged to Tywanda. I didn't say she had
11 it. There's no telling. If she - - if it's her knife, he could
12 have got it at home. She could have had it in the car. She could
13 have had it anywhere.

14 I said, "She owns a knife."

15 I didn't say that she had the knife. I said that Mr. Epps had
16 the knife.

17 MISS BIAGIANTI: I've concluded, Your Honor.

18 THE COURT: Any redirect?

19 MR. GOUDE: Thank you, Your Honor.

20 REDIRECT EXAMINATION BY MR. GOUDE:

21 Q. Sir, on these February 21, 2008, on this Thursday, on the date
22 this occurred - -

23 A. Yes, sir.

24 Q. - - when you were arrested that afternoon - -

25 A. - - uh-huh.

MR. BROWN - REDIRECT EXAMINATION BY MR. GOUDE

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1 Q. - - did you as the Prosecutor has pointed out on your CD's,
2 did you talk with the police officers two times that afternoon, you
3 say?

4 A. Yes, I did. Yes, I did.

5 Q. And the first one you started at 3:35 p.m. in the afternoon?

6 A. I wasn't exactly sure what time it was.

7 Q. Did the second one started about 4:57 which would have been an
8 hour after the first one started, not after the first one ended
9 but, roughly, they all occurred within about an hour of each other,
10 the two interviews?

11 A. Somewhere around there. Something like that. I'm not - -
12 you incoherent of time and everything.

13 Q. You had mentioned you had high blood pressure on that day?

14 A. Yes. Yes, sir.

15 Q. How long have you had high blood pressure?

16 A. I have had high blood pressure since I was - - I was - - I was
17 diagnosed - - probably diagnosed with high blood pressure about
18 three years ago.

19 Q. And do you take medicine for high blood pressure?

20 A. I was suppose to take medicine. I wasn't taking medicine at
21 that time, no. I hadn't taken my medicine none that day.

22 Q. And your age is what?

23 A. Fifty.

24 Q. What is your height?

25 A. I'm 5, 8.

MR. BROWN - REDIRECT EXAMINATION BY MR. GOUDE

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1 Q. When you finished with the interviews that day, where did the
2 police officers take you?

3 A. They took me to the jail.

4 Q. Well, did you go to the hospital that even, you say?

5 A. No. It wasn't until I got to the jail and I started to pass
6 out, and they called the nurse, and the nurse came out, and they -
7 - they - - she said, "You alright?"

8 And I said, "I'm - - I'm - - I'm real light headed. I'm real
9 light headed."

10 And she took my blood pressure, and she said, "Oh, my God. Two
11 hundred and something over two hundred and something."

12 And then they went and got the doctor, and the doctor said
13 immediately - - -

14 MISS BIAGIANTI: Your Honor.

15 Q. Don't tell me what he said. Did they take you?

16 A. Okay. Well, they took me straight to the Emergency Room.

17 Q. Did you stay there overnight?

18 A. I stayed there. I stayed there from probably about six hours.

19 Q. Alright.

20 When you talked to the police that evening, in the first and
21 the second interview - -

22 A. Yes.

23 Q. - - did you, basically, tell them on the second interview, did
24 you tell them that you called the girl on the telephone?

25 A. Yes. I told them I called her on the phone.

MR. BROWN - REDIRECT EXAMINATION BY MR. GOUDE

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1 Q. Did you tell the police on the CD that's in the Prosecutor's
2 laptop there that you asked if you could borrow money, and she said
3 five dollars on that?

4 A. Yes, I did tell them -- tell them that I -- I believe that's
5 what I did actually -- about the five -- that I asked her for
6 five dollars.

7 Q. Did you tell them on that same CD that's there on that laptop
8 at the second interview that you and the girl were talking? She
9 hollered something, and you turned around and saw the guy
10 approaching with the knife?

11 A. Yes, I did say that.

12 Q. Did you tell them on that CD right there on the Prosecutor's
13 table that you were able to twist it out of his hand?

14 MISS BIAGIANTI: Your Honor, I would ask that he clarify
15 with the witness the first interview or the second interview.

16 Q. The second interview, did you tell them that you were able to
17 twist it and get it out of his hand?

18 A. I'm not sure if I said that I was able to twist it out of his
19 hand or not.

20 It's a lot about that interview I definitely do not -- it's
21 been like six months ago. My condition was real bad. It's a lot
22 about that interview I really don't remember.

23 Like I said. I don't even remember signing the Miranda --
24 the Miranda papers.

25 As a matter of fact, I would never have signed the Miranda

MR. BROWN - RE-CROSS EXAM. BY MISS BIAGIANTI/DEFENDANT RESTS 278
1 papers without an attorney present.

2 Q. Just listen to the question. Just listen to my question.

3 THE COURT: Do you have any further questions, Mr. Goude?

4 MR. GOUDE: No questions, no other questions, Your Honor.

5 THE COURT: Alright.

6 You have any other questions?

7 MISS BIAGIANTI: Briefly.

8 RE-CROSS EXAMINATION BY MISS BIAGIANTI:

9 Q. Isn't it true you've been convicted of attempted burglary,
10 second degree, sir?

11 A. Yes, um, in Washington, D.C.

12 Q. Isn't true you were convicted of escape, sir?

13 A. Yes, in Washington, D.C. for leaving a half-way house.

14 MISS BIAGIANTI: Thank you, Your Honor.

15 THE COURT: Anything else, Mr. Goude?

16 MR. GOUDE: No, sir.

17 THE COURT: You may step down, sir.

18 MR. BROWN: Thank you.

19 (The witness leaves the witness stand.)

20 THE COURT: Any other witnesses, Mr. Goude?

21 THE DEFENDANT RESTS

22 MR. GOUDE: Judge, we have no other witnesses. We rest.

23 THE COURT: Alright.

24 Any witnesses in rebuttal?

25 MISS BIAGIANTI: Hold on for one moment, Your Honor.

MR. BROWN - RE-CROSS EXAM. BY MISS BIAGIANTI/DEFENDANT RESTS 279

1 No, sir.

2 THE COURT: Alright.

3 Ladies and gentlemen of the jury, that will conclude the
4 testimony in this case.

5 Now, ah, I was honored by the people in the State of South
6 Carolina and was elected to the Court of Appeals. I'll be going on
7 the Court of Appeals in three more months as soon as the gentleman
8 I'm succeeding is retiring, um, at the end of the year.

9 Tomorrow, another person who was elected at the same time as
10 I was elected is going on before me, and he's going to be sworn in.
11 He would expect his colleagues to be there to watch him be sworn
12 in.

13 So, tomorrow morning I'm going to go to that. I did not
14 anticipate us having this trial tomorrow morning. I'm going to
15 return as soon as that is over.

16 What's it, two and a half hours to Columbia to here?

17 MR. GOUDE: Yes, sir.

18 THE COURT: Okay.

19 Well, the swearing in is at 10:00. It's usually about a
20 thirty or forty-five minute thing, and they'll probably have a
21 small little thing there of, "Hello. How you doing?"

22 Um, I will - - I will then leave there around between 11:30
23 and 12:00 but I'll be back here, and we can do our arguments,
24 closing and arguments and everything else at 2:00.

25 I leave there at 11:30. I should be able to get back by 2:0.

MOTIONS AND RULING OF THE COURT

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1 Um, um, to make sure y'all don't have to wait, y'all just come
2 in at 2:30 tomorrow.

3 All we'll have tomorrow, it will be no more evidence. It will
4 be the arguments of the lawyers and my charge on the law. I'm
5 guessing an hour and half, something of that nature, and it will be
6 in your hands, and, um, then we'll wait and let you decide this
7 case.

8 Okay?

9 Um, so, do not discuss this case tonight at all, and we'll see
10 you tomorrow at 2:30.

11 See you then. You may leave at this time.

12 (The jury departs the courtroom for the day to return at 2:30
13 p.m. on Thursday.)

14 THE COURT: And when I get sworn, I'll invite all of y'all.
15 No, I'm kidding.

16 I'm doing my in Dillon, South Carolina, not in Columbia.

MOTIONS AND RULING OF THE COURT

17 THE COURT: Okay.

18 Motions by the State. Hearing none.

19 Motions by the defense?

20 MR. GOUDE: Not guilty - - a directed verdict of not
21 guilty, Judge, on the insufficiency of the evidence.

22 THE COURT: Well, I respectfully deny the motion.

23 So, um, any other matters?
24

REQUESTS TO CHARGE

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1 REQUESTS TO CHARGE

2 MR. GOUDE: Judge, I have four requests for charge on the
3 self-defense, on the ABWIK, one being - - well, the other three are
4 the lesser included offenses. We'd ask for the charge of ABHAN as
5 a lesser included offense of ABWIK on Mr. Lee.

6 We'd ask you to charge the lesser included offense of simple
7 assault and battery on Ms. Keith's ABHAN.

8 We'd ask you to charge lesser included offense - - on
9 kidnapping, the lesser included offense being assault of a high and
10 aggravated nature on Ms. Keith.

11 Those would be our four requests to charge.

12 THE COURT: Whoa, whoa.

13 Assault of a high and aggravated nature is a lesser included
14 of kidnapping?

15 MR. GOUDE: Yes, sir.

16 MISS BIAGIANTI: No, sir.

17 THE COURT: Well, if you've got a separate assault and
18 battery of a high aggravated nature, it's a separate offense. If
19 they feel he's not guilty of the kidnapping, they have a choice of
20 assault and battery of a high and aggravated nature.

21 MR. GOUDE: Well, the way I understand everything. He
22 assaulted her when they was in the reception room when he put his
23 arm around her and had a knife to her throat, and there's the
24 second thing out on the sidewalk where they were charging him with
25 the kidnapping, and I guess maybe both of them was kidnapping but

REQUESTS TO CHARGE

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1 whatever.

2 But, anyway, on the assault of a high and aggravated nature in
3 the reception room of putting his arm around her throat where the
4 Prosecution witnesses testified that the knife hit her, we'd ask
5 you to charge the lesser included of that as simple assault and
6 battery, and on the kidnapping making her go somewhere against her
7 will, we would ask that you charge assault of a high and aggravated
8 nature, not a battery but assault by touching - - by acting like he
9 was going to touch her or trying to touch her or something like
10 that.

11 MISS BIAGIANTI: Your Honor, I would like - - I would argue
12 that there's not a lesser included of kidnapping. Either he did
13 it or he didn't do it.

14 As far as the ABWIK, he never said he did it. So there
15 shouldn't be a lesser included offense. There's no evidence
16 pointing to a lesser included offense of ABHAN. Either he did it
17 or he didn't do it.

18 The jury is going to believe he did it or it's self-defense,
19 and then as far as simple assault and battery on Ms. Keith, as a
20 lesser included offense of ABHAN, he said he didn't do it. So he
21 shouldn't be given a lesser included offense.

22 So, there's no evidence to suggest - - if he's touches a
23 female or assaults a female, it's automatically not simple assault
24 and battery. It's automatically assault and battery of a high and
25 aggravated nature because of the difference in sexes.

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1 THE COURT: Alright.

2 Let's go over that.

3 Mr. Goude, you say that there's evidence in the record that he
4 did a simple assault and battery on Ms. Keith?

5 MR. GOUDE: If the jury believes the prosecuting witness
6 that Mr. Brown put his arm around this woman in a choke-hold in the
7 reception area, well, they may think he had a knife but they may
8 not think he had a knife.

9 He's charged with ABHAN, assault and battery of a high and
10 aggravated nature. So we would ask that the jury be instructed
11 that if they found that that would be the case that that really
12 happened, then they could find that's a simple assault and battery
13 instead of an aggravated assault and battery.

14 THE COURT: Alright.

15 I will deny your motion on that.

16 I will grant your motion on self-defense, um, to charge that.

17 Ah, the other one is you want a lesser included with ABWIK.
18 As far as kidnapping, to me either he did it or didn't. You know.
19 If you got some case law about a lesser included offense, I'll be
20 glad to see it tomorrow but I'm not included to.

21 The ABWIK, I'll think about that tonight about the lesser
22 included on that. I'll think about it.

23 MR. GOUDE: Thank you, sir

24 MISS BIAGIANTI: Your Honor, my only request to charge
25 would be for kidnapping and it should be in your charge that it can

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1 be for any length of time.

2 THE COURT: I'll check and see whether it is or it is not.

3 MISS BIAGIANTI: That, you know, it no longer is kidnapping
4 when freedom is restored.

5 That's what I would ask.

6 THE COURT: What did you say?

7 MISS BIAGIANTI: It's no longer it's kidnapping when
8 freedom is restored to that individual.

9 So, it just has to be for any length of time.

10 And then, what is your charge on reasonable doubt?

11 THE COURT: Just one second.

12 MISS BIAGIANTI: I think it's Ziegler, State v. Ziegler.

13 THE COURT: If not, you can get the language of that for me
14 tomorrow.

15 My reasonable doubt charge is a hybrid of Manning and, um,
16 and, um, Victor v. Nebraska. It says, "proof beyond a reasonable
17 doubt is proof that leaves you firmly convinced of the defendant's
18 guilt. Our courts have decided that a reasonable doubt is a doubt
19 that would cause a real person to hesitate to act.

20 Having said that, now let me say this. There are few things
21 in this world that we know with absolute certainty, and in criminal
22 cases the law does not require proof that overcomes every possible
23 doubt. The law requires proof beyond a reasonable doubt.

24 Reasonable doubt may arise from the evidence which is in the
25 case or from lack or absence of evidence in the case. You, the

REQUESTS TO CHARGE

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1 jury, must determine whether or not reasonable doubt exists as to
2 the guilt of the defendant."

3 MISS BIAGIANTI: I would request that you charge strongly
4 convinced. Just that you incorporate it into your charge.

5 THE COURT: Proof beyond a reasonable doubt is proof that
6 leaves you firmly convinced of the defendant's guilt.

7 MISS BIAGIANTI: Okay. Alright.

8 And can I hand up the charge for kidnapping that just says,
9 "The offense of kidnapping commences when one is wrongfully and
10 unlawfully deprived of his freedom and continues until his freedom
11 is restored."

12 THE COURT: She handed me up a quote from State v. Ziegler,
13 1979, 2002, excuse me, 274 SC 6.

14 MISS BIAGIANTI: It's actually Ervin's charge book, Your
15 Honor.

16 THE COURT: 260.

17 And 260 SE 2nd, 182.

18 Okay.

19 So, the only thing that I'm - - I didn't have a charge ready
20 here - - I didn't know whether the defendant was going to testify
21 or what he was going to say. I don't have a charge here on the
22 self-defense thing. I'll get that together and have that, and I'll
23 let you know my decision on the lesser included of ABWIK tomorrow,
24 and we will go from there.

25 Madame - - Mr. Clerk, do you still have the indictments down

REQUESTS TO CHARGE

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1 there?

2 DEPUTY CLERK OF COURT: Sir?

3 THE COURT: Do you have the indictments down there?

4 You never gave me the indictments today.

5 Is that because I didn't ask for them?

6 DEPUTY CLERK OF COURT: Probably, Your Honor.

7 THE COURT: That probably had something to do with it.

8 Aright. Good.

9 We'll see you all, then, tomorrow afternoon. I will hurry
10 back as quickly as I can.

11 MISS BIAGIANTI: Judge, could I just ask for scheduling
12 purposes about the rest of the stuff?

13 THE COURT: Sure.

14 We are in adjournment on this case until tomorrow afternoon.

15 (The Court adjourns the trial of this case for the day and
16 reconvenes the trial of this case on Thursday afternoon.)

FURTHER RULING OF THE COURT

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1 THURSDAY, JULY 31, 2008

2 (The Court convenes the trial of this case with all parties
3 present.)

4 THE COURT: Alright. Everyone be seated.

FURTHER RULING OF THE COURT

5
6 THE COURT: The cite for the State v. Brown case which I've
7 used and the state decided, the name of - - the cite for the State
8 v. Brown case is 296 SC 191. It's a 1988 case regarding the use of
9 the defendant's statement for impeachment, and there's also a case
10 out of the State of West Virginia, The State of West Virginia vs.
11 Brown, very interesting, 191, W. Virginia 681, 371 SE 2nd 609. It's
12 also an '88 case but it also addresses the issue of voluntariness,
13 and I know it's not from our state and well as the fact that it's
14 - - only West Virginia is in our circuit but, ah, it, ah, ah, it
15 just says, "Prior out of court statements may be used to impeach
16 the credibility of a witness."

17 And the prior statement, ah, if it's not introduced during the
18 State's case in chief and the defendant waived any objections as to
19 his voluntariness of the statement, um, um, when he testifies
20 inconsistently with the prior statement.

21 Ah, that's their reasoning which I find rational in this case
22 but I also did want to make a brief inquiry as to the conditions of
23 the statement which I did by viewing the DVD of the statement as
24 well as by testimony from Mr. Spartman, um, and after looking at
25 all of that, I didn't see anything that shocked the conscience of

CHARGE CONFERENCE

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1 the Court as far as how it was done.

2 In addition, I, um, I felt like that the overall fairness of
3 this matter would be that if the defendant takes the stand, the
4 State should be able to impeach him, and I know that the basic Rule
5 613 provides that anyway but I was concerned about him as a
6 defendant having his own statement used against him.

7 I was very cautious with the Solicitor, Miss Biagianti, and I
8 stopped her a couple of times when I felt that she was going beyond
9 impeachment by trying to introduce some of the statement itself
10 that the defendant hadn't even brought up.

11 So, I did my best to limit that even without objection from
12 the defense. I did my best in that regard.

13 But I just want to put those things on the record to just sort
14 of give you some more information regarding, Mr. Goude, why I
15 decided to permit the impeachment with the use of his statement

16 Okay.

CHARGE CONFERENCE

17
18 THE COURT: Now, we talked yesterday about charges. The
19 defense wanted self-defense. I'm going to charge self-defense.

20 I'm also going to charge ABWIK, and I will charge lesser
21 included on the ABWIK, and I will charge ABHAN. I will not charge
22 lesser included on that.

23 And then I will charge kidnapping, and I will not charge a
24 lesser included on kidnapping.

25 Now, ah, I will - - I told y'all my charges. I read you my,

CHARGE CONFERENCE

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1 ah, matter regarding reasonable doubt. I've added a sentence in
2 here that the State wanted regarding kidnapping about the length of
3 time until the person's freedom is restored, and I've pretty much
4 told you everything else I'm going to charge.

5 Miss Biagianti, any other charges or anything else you request
6 or anything else?

7 MISS BIAGIANTI: Your Honor, I'm going to hand up a cite
8 for State vs. Jeffrey. It's a quote.

9 "The fact that the perpetrator did not originally intend to
10 kidnap the victim or even know of the victim's presence the night
11 of the offense, when the perpetrator subsequently discovered the
12 victim and did not release him immediately."

13 That would go to, you know, even if the intent wasn't to
14 kidnap him immediately, it becomes kidnapping. I would like to
15 have something like that in the jury charge.

16 So, if the jury did not believe - - -

17 THE COURT: I think my charge covers it well enough. You
18 can argue that how you wish. I think my charge covers that.

19 MISS BIAGIANTI: Okay.

20 THE COURT: Anything else?

21 MISS BIAGIANTI: Not on the charges, Your Honor.

22 THE COURT: Mr. Goude, anything from you, sir?

23 MR. GOUDE: Judge, I was going to ask what does your charge
24 say about the intent on kidnapping.

25 THE COURT: I thought I read the charge to you yesterday.

CHARGE CONFERENCE

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1 I'll let y'all - - why don't - - if you all wish to come look at
2 the charge, you're welcome to come look at the charge.

3 Just let the record reflect that I'm letting them read my
4 charge on kidnapping.

5 (The parties approach the Bench and review the Court's charge
6 off the record.)

7 THE COURT: Okay, Mr. Goude, you ready?

8 You go first. So, you ready?

9 MR. GOUDE: Yes, Your Honor.

10 MISS BIAGIANTI: Your Honor, the only thing I would ask
11 before we bring the jury out is would you like for two of these
12 CD's, can we make them a Court's Exhibit and make them a Court's
13 Exhibit.

14 THE COURT: I'm the only one who viewed them.

15 MISS BIAGIANTI: I know you already reviewed them but just
16 in case there's ever an appeal, I'd like these as a Court's
17 Exhibit.

18 THE COURT: Well, you played them - - you played the audio
19 of them to the jury.

20 MISS BIAGIANTI: Yes, Court's Exhibit, yes, but it's not in
21 evidence. It's my understanding from the Court Reporter that it
22 will go anyway with all the other evidence but I would like for her
23 to make them a Court's Exhibit.

24 THE COURT: I don't want the word Court's Exhibit on
25 something that goes to the jury. It needs to be State's Exhibit.

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1 MISS BIAGIANTI: That's fine if it's State's Exhibit.

2 THE COURT: Any objection to it being a State's Exhibit,
3 Mr. Goude?

4 MR. GOUDE: Judge, I did not have down the CD's.

5 THE COURT: They are not in evidence.

6 I'll make them Court's Exhibits. They're not going to the
7 jury, though.

8 MISS BIAGIANTI: Okay.

9 MR. GOUDE: That's fine.

10 THE COURT: Because, obviously, one would be hearsay with
11 what the officer said.

12 MISS BIAGIANTI: Right.

13 THE COURT: But, anyway, they'll be Court's Exhibits.

14 (The Court Reporter accepts CD's previously marked for
15 identification only as State's Exhibits #19 and #20 as Court's
16 Exhibits #3 and #4.)

17 THE COURT: Anything else?

18 MISS BIAGIANTI: No, sir.

19 THE COURT: Now, have y'all checked to make sure that every
20 exhibit is evidence that you want in evidence?

21 MISS BIAGIANTI: Yes, sir, I've already done that.

22 THE COURT: You have? Okay.

23 You have, too, Mr. Goude.

24 Now, I assume that you're not opening on the law. So, Mr.
25 Goude will go first and after Mr. Goude, you, Miss Biagianti, and

CHARGE CONFERENCE

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1 then I'll give my charge on the law.

2 Bring the jury out, please.

3 (The jury returns to the courtroom at 3:17 p.m.)

4 THE COURT: Ladies and gentlemen of the jury, I can tell
5 you this. It's a long way to Columbia from Georgetown no matter
6 which way you try it.

7 I drove there one way this morning and drove back a different
8 way this afternoon.

9 This afternoon I drove back going I-20 to 51 through Pamplico;
10 Pamplico to Rhemes, I think it is and then pamplico to Kingsburg,
11 and then Kingsburg then into Rhemes, and then this way but going
12 there this morning, I went back through Conway. Man, either way.

13 In any event, we are now ready to proceed with the final
14 stages of the trial.

15 Ladies and gentlemen of the jury, the final stage will be as
16 follows.

17 The defense attorney, Mr. Goude, will give you his closing
18 argument in full. After he finishes his closing argument, the
19 Solicitor, Miss Biagianti, will give you her closing argument in
20 full. Then, after that, I will charge you on the law.

21 I anticipate my charge on the law will last about thirty
22 minutes. Their arguments I'm not sure. This is a very important
23 case to the State and a very important case to the defendant. So,
24 I'm not going to limit them.

25 So, if - - but if for some reason both of their arguments last

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1 more than an hour and a half, I will probably give you just about
2 five minutes to refresh yourself before I give you my charge on the
3 law because, you know, I've got to be concerned with your attention
4 span and everything else.

5 So, I'll watch out for you in that regard.

6 But, you know, you are here for justice. You are here to
7 make sure that you do your job as jurors and listen to matters and
8 make a decision that speaks the truth. So, I'm sure that you agree
9 with me. The hour of the day or the day of the week doesn't
10 really matter in that regard. We all have a duty to do.

11 So, please listen intently to both sides, the defense and to
12 the State and also my charge on the law. This case will be in
13 your hands in a short while.

14 If you would, Mr. Goude, are you ready for your closing
15 argument?

16 MR. GOUDE: Yes, Your Honor.

17 THE COURT: You may proceed, sir.

18 MR. GOUDE: Thank you, sir.

19 THE COURT: I need the indictments, Mr. Clerk.

20 SUMMATION BY MR. GOUDE

21 MR. GOUDE: When we started here on Tuesday, the Judge told
22 you that you guys were going to hear the evidence on the witness
23 stand. We asked you when we came back up here we were going to go
24 back over it with you and ask you how to vote in the case.

25 When I get through talking the Judge is going to allow the

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1 Prosecutor to give a closing argument, and the Judge is going to
2 tell you what the rules are in South Carolina. He might tell you
3 stuff you already know.

4 A unanimous verdict is all twelve of you got to vote the same
5 way. Y'all go back there and you'll vote together, and you'll come
6 back out with a verdict.

7 The technical rules or what constitutes and makes up the
8 charges, the Judge will tell you all of that. The Judge will also
9 tell you that the test that we have is when anybody is charged,
10 they're presumed not guilty. They are presumed to have done
11 nothing wrong, and if there is a reasonable doubt in your mind, a
12 doubt in your mind as to whether or not the person is not guilty or
13 not, then your job is to vote not guilty.

14 And there is - - you'll hear some arguments by prosecutors or
15 lawyers or instructions or whatever that makes it kind of
16 complicated as to whether you should not use any doubt. You could
17 not - - you may doubt that there is a rock on the planet Mars or
18 you may doubt that there is a star ten million light years from
19 here.

20 So that would be a crazy, stupid, unreasonable doubt, and you
21 don't have to prove if you're a prosecutor everything. You don't
22 have to prove that there is no planet ten million light years from
23 here or something like that.

24 Nothing like that, hopefully, is going to come out of my lips.
25 What I'm going to ask you to do is to think back to what you heard

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1 from the witness stand and look at the evidence that you have,
2 these exhibits and things and ask yourself, "Is there any doubt in
3 my mind?"

4 When I say any doubt, I mean reasonable doubt. I'm not
5 asking you to think that there are Martians that came here and
6 looked like Robert Brown and did what the prosecution witnesses
7 said he did and that he just actually reappeared and was arrested,
8 no. I'm not asking for a stupid doubt. I'm asking you to think in
9 your mind, "Is there a reasonable doubt in my head that what the
10 prosecution witnesses said occurred or a prosecution witness or
11 some prosecution witness said occurred, is there a reasonable doubt
12 in my head whether or not that's true, and if I have a reasonable
13 doubt that that's true, the Judge is going to tell me that my job
14 is to vote not guilty on the charge on Robert Brown."

15 Because right now when I'm talking to you, this second, 3:20
16 p.m. he is not guilty because y'all have not said anything
17 different, and he will stay that way unless y'all say something
18 different.

19 So, as far as any reasonable doubts that you can consider, the
20 witnesses that I heard that said that Mr. Brown did anything wrong
21 was the girl, the ex-girlfriend and the new boyfriend.

22 You have no testimony from 911. You have a Mrs. Browy. Those
23 witnesses or neither of those or none of those saw anything about
24 a knife except the girl said she saw a knife. The prosecuting
25 witness, the prosecution witness, Mr. Epps, the boyfriend, he said

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1 he saw a knife.

2 What happened?

3 You have the girl and her boyfriend. The girl, she was
4 living with Mr. Brown for a year in his house with his mother.
5 Didn't seem to be anything bad there going on he was doing.

6 She moves out of his house where she's living in his house
7 with his momma in a nice brick house in Georgetown in the back side
8 of Kensington. She meets Mr. Brown and moves in with him in a
9 month or a week or so after they start going together. Moves right
10 in with him.

11 Stays with him a year. December or so starts to go out with
12 a new boyfriend. Goes out with him a week, a few weeks. Moves
13 right in with him in his house in Andrews.

14 She did say she had a brother lives in Loris. She's works
15 here. It makes more sense to live in Georgetown. So she wants to
16 be close to her job where she works, and, apparently, she lives
17 with boyfriends in their property in their houses. Eats their
18 food. Stays in their houses.

19 There's nothing wrong with that. That's just what happens.
20 That's the truth of the case so far.

21 She and the boyfriend, they leave Andrews. They drive to
22 Georgetown. They come to amend or do changes her taxes at Palmetto
23 Tax Service Office, a brief change. It won't take very long, not
24 doing the whole taxes.

25 Mrs. Browy in the tax office and the prosecuting witness said

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1 she was coming to do a modification or a correction to her tax
2 return that's already filed but now she's got some more W-2's in,
3 and she needs to change the form.

4 So, she comes into the tax office. She goes up. Mrs. Browy
5 says she signs in the book at the tax office, and there's another
6 guy that standing there. She's ahead of him but he's got the quick
7 think. So, she turns and lets him go in the back. She goes over
8 there and sits down on the left side of the tax office up toward
9 the front of it, up toward the last window at the door on the wall
10 that y'all can see on these photographs.

11 When she comes in, already sitting down in the tax office
12 waiting for their turn are the two other witnesses, Mr. and Mrs.
13 Lowrimore, Jean and Heyward Lowrimore. They're over there sitting
14 down.

15 They see her come in and sign her name. They see her go over
16 there and sit down.

17 I think there was some question from the Prosecutor trying to
18 indicate that these witnesses for some reason, the Lowrimores,
19 didn't see what they said they saw. Obviously, it's the reason
20 the Prosecutor was trying to do that is because the lady, the
21 prosecution witness, says that Mr. Brown grabs her in neck lock
22 with a knife, drags her out the glass door of the tax office, and
23 these people just sitting over there minding their own business who
24 don't know any of the people involved. They don't know me. They
25 don't know the Prosecutor. They don't know Mr. Brown. They don't

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1 know the prosecution witnesses. They don't know the prosecuting
2 witness' boyfriend. They don't know anybody in Georgetown,
3 basically.

4 They're sitting over there minding their own business. Drive
5 down here from Gresham under a court ordered subpoena by me. Not
6 getting paid a penny to do anything and have to waste their gas
7 money to come to Georgetown, and they're working in Florence
8 somewhere at the IGA Grocery Store.

9 Come in here to tell us what they saw. I thought the
10 Prosecutor one time was going to say the guy was a chicken because
11 he didn't get up, Mr. Lowrimore, and jump into the fight.

12 "You just sit in your chair? You didn't do nothing?"

13 Anyway, they said they were sitting their minding their own
14 business waiting to do their taxes, and they see the lady come
15 inside and go over there and sit down in that chair, and they see
16 Mr. Brown. Of course, they don't really know him. They just know
17 a black guy came in and sat down beside her. They talk a little.
18 They get up and they walk out, and I think one of them said they
19 walked out side by side and one said they walked out a little in
20 front of the other. They couldn't remember who.

21 And I guess if I were the Prosecutor, I'd say, "Uh-huh.
22 That's a lie. They are lying creeps.

23 One of them said they walked out side by side and one of them
24 said one was in front of the other."

25 Well, you wonder if it could be possible if they sort of got

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1 up from the chairs where they were sitting together, this being one
2 person and me being the other and sort of walked side by side to
3 the door and then one opens the door and lets the other one go out
4 in front of him. Could not both of them be telling the truth?
5 Wouldn't they be walking side by side part of the time and part of
6 the time, one walks in front of the other so they can get out of
7 the door? Would that make sense?

8 And I think there was an indication that there was a little
9 stand or a little wall around the clerk, receptionist in the tax
10 service office, and I think it was trying to be pointed out that
11 Mr. and Mrs. Lowrimore also were lying creeps because there was is
12 a little barrier, a little cubicle around the Palmetto Tax Service
13 Office receptionist which they very courteously did not take a
14 photograph of to bring you to show you that magnificent wall that
15 would keep the Lowrimores from seeing the girl and guy sitting over
16 there.

17 They told you what they saw. The people got up, the
18 prosecution and Mr. Brown, walked out the door. No knife, nothing
19 in his hands. His hands down by side just like this, just like a
20 normal person is what Jean Lowrimore said. No loud talking. No
21 threats. No hollering.

22 If you were sitting in the tax service office or anywhere in
23 a public place of business and you got people down the hall
24 working, you got a couple sitting right across from you in broad
25 daylight 2:30 in the afternoon on a Thursday morning, and you

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1 sitting there. You got a reception to come and go in the back.
2 Mrs. Browy is sitting back there working with somebody, a guy who
3 just came in and asked her a question is back there with her.
4 Another man and his wife sitting right there across from you and
5 some maniac comes in and sits beside you in your doctor's office,
6 the lawyer's office, your accountant's office, the law office where
7 you work, anywhere, pulls out a knife. Sticks it to your throat
8 and says, "Bitch, I'm going to kill you."

9 Now, "Bitch, I'm going to kill you."

10 Pulls out a knife and sticks it to your throat, and you are
11 actually - - let's say that actually occurs, and you're afraid he's
12 going to kill you, are you afraid for the couple across from you to
13 see you to know that this guy's going to kidnap you, take you
14 outside the building and kill you? Wouldn't you at least say,
15 "Help. Please save my life."

16 Or something to those people sitting right over there, the
17 receptionist that's walking up and down the hall. Mrs. Browy is
18 down the hall with the man that's asking a quick question. You
19 know there's at least five other people in the tax office would
20 help you. Would you considerately go with the guy so he could
21 take you out there behind the bushes, around the building, out by
22 the Subway, out by Fred's? Take you out by the big oak tree where
23 he wants to stab me to death, probably rape me to? Would you do
24 that? Is that reasonable do to? Do you doubt it that you would do
25 that?

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1 Do you doubt that the Lowrimores, both of them, not one but
2 both of them were lying, the people that don't know any of these
3 people here that they didn't see a perfectly peaceful, they thought
4 they were husband and wife, boyfriend and girlfriend, walking out
5 the thing until they got outside, and they starting arguing?

6 And, remember, according to the impartial witnesses, the
7 Lowrimores, and the Lowrimores do not contradict Mrs. Browy. The
8 tax office portion of it do not contradict each other in any way.

9 She's said that some of the chairs goes down the hall. If you
10 sit there it may interfere, the little barrier around the
11 secretary, when people sitting in some of the chairs are over by
12 the side.

13 Did they ask her if she sat in the chairs that the Lowrimores
14 sat in and looked at the chairs that the woman and the man were
15 sitting in? Would that keep you - - they didn't ask her that
16 question?

17 She said some of the chairs on this wall. Maybe if you were
18 down here and the counter goes around this clerk here. You're
19 down here where I am by the witness box, and you have a witness
20 sitting in that chair over here on this wall, maybe that would keep
21 you from seeing it.

22 But if you got a witness sitting on the chairs right here
23 toward the window where the woman said she was sitting and the
24 Lowrimores were sitting over here on this wall, the chairs, does
25 that interfere with your vision? Can I see Mr. McCauley, the

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1 lawyer with his legs crossed over there? He's sitting there on
2 the other side.

3 Anyway.

4 Now, what difference does it make? The difference is that the
5 prosecution witness is the one saying that he attacked him, that he
6 kidnapped him and he pulls a knife and stabs the boyfriend.

7 Now, if she is inaccurate or incorrect on what she says
8 happened in the reception area, is she exaggerating it a little bit
9 to try to make it worse? Could it be that Mr. Brown - - she was
10 living with him, like, this is February the 21st. In December, she
11 moves out the first week of January. So, six weeks ago she was
12 sleeping with him.

13 He said they slept in the same bed and his momma's house where
14 his momma said the girl stayed until January with him there until
15 January.

16 Could it be that the man that she was sleeping with until six
17 weeks ago, the one that gave her the engagement ring three weeks
18 ago, January the 24th, even though she gave it back, could it be
19 that guy she still has ambivalent feelings about? She's still - -
20 sometimes she likes him. Sometimes she doesn't.

21 And she told him not to call her, and if a person tells you no
22 - - does every time a person says no, does that mean definitely you
23 can never ask that question again?

24 The Spider man movie that's in the movies right now, that's
25 common knowledge, the Spider man. The man gives an engagement ring.

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1 and asks his girlfriend to get married.

2 She says, "My husband asked me to get married and I wanted to
3 say yes but I said no the first time, and I made him ask me again."

4 She said no. They were married forty years, thirty-some
5 years, she said.

6 Well, now, if her husband had taken no meaning I can never
7 again ask you a question, they would not have gotten married and
8 lived together thirty-something years.

9 What about the saying of, "That is a great salesman. He is so
10 persistent. He will not take no for an answer."

11 If every guy that ever asked a girl to go out on a date if she
12 says no the first time he asks her, does that mean she hates his
13 guts and never wants to see him, and does that mean he is a
14 stalking creep if he ever asks her a second time? Would that not
15 just - - could it also not just mean that he likes her?

16 If I asked you to go on a date and you say no, and, like, in
17 two or three weeks from now, how do I know? You might have been
18 getting out of a relationship then. You might have been feeling
19 bad. Your dog might have died last night. Is there any harm in me
20 asking you again?

21 The point of that is they'd been together for a year because
22 she said, "Don't call me."

23 Okay. You got several choices. One is, "Never call me
24 again the rest of my life."

25 Another one is, well, next week she may feel differently. She

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1 and the new guy may have not getting along so well. Maybe now she
2 would think differently about it.

3 Maybe she would like me better. Maybe I've got a better tone
4 of voice.

5 Maybe the night I called on was bad because my lawnmower broke
6 down. I was talking mean to her. I was rushed. I didn't have any
7 money or something like this and was talking bad to her because I
8 was mad at myself for not having any money.

9 Maybe she was mad at a man at work. Came home from work.
10 Worked overtime. The old lady at the nursing home threw up all
11 over her dress five minutes before she was knocking off. She's
12 upset.

13 Calling somebody and asking more than one time does not mean
14 that you're a terrible person and that you want to hurt them or you
15 want to hurt their boyfriend.

16 Now, that's - - alright, now, she goes to the tax service
17 office to do a quick visit from Andrews at the shopping center.
18 Mr. Brown is at the house in Kensington. He calls her on the
19 phone. Asks her where she's at. The Palmetto Tax Office.

20 "Do you have any money? I'm broke."

21 "All I got is a five on me."

22 "Can I borrow it?"

23 "Okay."

24 Jumps on his bicycle. Comes from the back of Kensington
25 through and I know his momma said it wasn't way back here. I

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1 guess meant back in Colonial Estate way back to Dr. Skinner's
2 plantation or whatever but in the back streets of Kensington behind
3 the front streets.

4 Jumps on his bicycle. Peddles down out to somewhere on
5 Kensington Boulevard. Turns left. Rides down past Wal-mart. The
6 Sunoco I think use to be the station on the right. Turns down by
7 the Szechuan Restaurant on the right.

8 And the Solicitor tried to say, "You come down by all this
9 stuff."

10 I never got it straight what they were saying but, obviously,
11 you can by the Szechuan Restaurant and turn right at Szechuan and
12 bank and drive down to the left of the Subway or you can turn right
13 beside there at the bank and drive into the parking lot and go down
14 to Fred's and maybe come in from the left side over there. Peddle
15 on down to the traffic light at the post office. Make a left turn
16 here which makes sense. Go in this way.

17 So, he peddles down. Parks his bicycle outside the tax
18 office. Gets off the bicycle. Goes in to speak with her.

19 Now, the Prosecutor says, "He is a lying creep."

20 Three creeps we've got so far, the Lowrimores and Mr. Brown,
21 three lying creeps.

22 He is a lying creep because he doesn't call the prosecution
23 witness and ask her where she was and she never told him where she
24 was because she was terrified to death of him and there was no way
25 in the world she would be ignorant enough to tell him where she was

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1 because she hated his guts and never wanted to see him again, and
2 she never told him a thing, nothing.

3 The Prosecution's position is the girl and the prosecution,
4 the other gentleman, they drove from Andrews for this brief
5 modification of the tax return that takes how long?

6 Go in there. The other guy has got a quick question that
7 takes him a minute.

8 So - - -

9 (Cell phone comes on.)

10 THE COURT: Is that a cell phone?

11 MR. GOUDE: I'm going to use this is an exhibit.

12 THE COURT: Is that what it is?

13 MR. GOUDE: Yes, sir.

14 So, she - - the two prosecuting witnesses, they drive from
15 Andrews, and they got just a brief visit here. She's going to run
16 in and get this modification done on her taxes, and this is the tax
17 service office. It's not a CPR where they're going to do a
18 business form that's going to take three hours of questions. She's
19 going to just do a simple tax return. She works for Prince George
20 Nursing Home.

21 It is so quick anticipated that Mr. Epps says, "I'm just going
22 to drive right across the street, across the parking lot, across
23 to where Belk is to where Time Warner Cable is to pay the cable
24 bill, and I'm going to run right back."

25 "And I get over there and I wasn't there a minute, and I just

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1 got a feeling that I should go back over there at the tax service
2 office. So, I drive back across the street."

3 According to Mr. Brown, he says he sees the white Dodge car.

4 Back across here and park in the parking lot. Get there. See
5 the man and my girlfriend come out of the door in the tax office.
6 The man has my girlfriend in this headlock up there and he's doing
7 something to her on the sidewalk. I get out of the car and walk up
8 on the sidewalk.

9 Alright. Now that takes according to all the witnesses, the
10 prosecution witnesses and the Lowrimores and Mr. Brown, he walks
11 into the tax service office. Comes over here. Sits down. Talks
12 to the girl a minute or two, a second or two or whatever. Asks
13 her, "Can I have five dollars? Loan me five dollars."

14 The girlfriend says she doesn't have any money. Mr. Brown
15 says he asked her, and she gave him five dollars outside.

16 They get up and walk to the door. Open the door. Go outside.
17 She's standing with the - - I think Mr. Brown said her back is to
18 Fred's behind me, this being the tax service office where the Clerk
19 of Court is, and he's there with a hand on the wall I think the
20 boyfriend said.

21 And then they start arguing, and the girl says, "Watch out.
22 Look out/"

23 How long did that take for Mr. Brown to go in the tax service
24 office and come back out with the girl, a minute, thirty seconds,
25 twenty seconds?

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1 What is the point? The point is, okay. They come from
2 Andrews. Drop her at the tax service office. Mr. Epps drives
3 across the street, and in that minute Mr. Brown pops into the tax
4 service office. Now, how did he know? How did Mr. Brown know the
5 prosecuting witness is in Palmetto Tax Service Office?

6 Okay. Well, obviously, he said she called. The prosecution
7 witness said that's a lie. Well, let's say that's a lie. He did
8 not know. Okay.

9 So, what's he doing is he is on his bicycle driving around
10 Georgetown. He's driving around Kensington. He's driving
11 Maryfield. He's driving around East Bay Park. He's driving
12 White's Creek. He's driving around the West End. He's driving
13 around the downtown area. He's looking for the girl when he's
14 driving around, and, then, coincidentally, drives by the front door
15 of the Palmetto Tax Service.

16 This Mr. Epps has driven across the street. Even Mr. Brown
17 has to drive by the tax service office riding his bicycle. He's
18 probably not out there on Frazer Street, 701. He's probably not
19 out riding on that four-lane traffic highway between National Bank,
20 Sun Trust and in front of Belk and in front of Sunoco. He's
21 probably not riding on the four-lane highway there in the traffic
22 at 2:30 in the afternoon riding on his bicycle on the main highway
23 just looking all around not watching out for the two lanes of cars
24 if he's going towards Kensington. He's not out looking at the two
25 lanes of cars going towards Conway if he's coming from Kensington

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1 riding on the four-lane highway going in the main part of
2 Georgetown.

3 He's just riding on his bicycle and happens to look across the
4 car wash at the corner of Antwan and Frazer and looks across by the
5 Anchor Bank and the second car wash in front of the shopping center
6 and looks across the Army/Navy Recruiting place, the Christian
7 Bible Book Study business in between those buildings while he's
8 riding down the main highway on his bicycle watching out for the
9 two lanes of cars, he just happens to accidentally see the white
10 Dodge car parked in the other side of the parking lot over there
11 at Palmetto Tax Service unless he just noticed the prosecution
12 witness who drove right up to the door of the tax service and let
13 the lady and he could have done that.

14 Mr. Brown looks across the busy highway way back across all of
15 these buildings and through them. Sees the other side of the
16 parking lot in front of Fred's, a busy business and tax service
17 office and Subway. Sees the white car stop there. Knows it from
18 all the white Toyota Camrys, Chevrolets, Neons, little Buicks and
19 other Dodges that this one particular white car is the gentleman's
20 car he's seen two times in his life. Never met him. Never shook
21 hands with him. Talked with him or spoke to him. Exchanged words
22 but has seen him with his eyes when the boyfriend came to Mr.
23 Brown's house to pick up Mr. Brown's girlfriend.

24 Knows when he drives the bicycle that that white car is the
25 boyfriend's white car. Looks across Frazer Street to the tax

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1 service office. Recognizes the back side of the girlfriend with
2 the black hair and clothes on. Knows that by watching the back
3 side of that human being walking into Palmetto Tax Service, he
4 knows that there's going to be one black female of approximately 5-
5 5, 5-6 height, 125 or 45 pounds in Georgetown County.

6 Won't be able to see Mr. Epps because Mr. Epps is in the car
7 driving the car. So he won't be able to see him on Frazer but with
8 his eagle-eye keen vision in those split seconds coincidentally
9 peddling down Frazer Street for whatever purpose he had. Going to
10 buy groceries. Going to the library, whatever he was doing. He
11 was out stalking the woman searching to see in Georgetown in
12 desperate hope that somewhere in this city she would be there. He
13 had nothing to do. Was riding around looking for her.

14 The Prosecutor said that is perfectly sensible and reasonable
15 and you can have no doubt to accept that that's what happened.

16 Now, if you do have a doubt, if you think, "Well, that to me
17 with my brain power is not exactly simple," and you say that. Then
18 that is under the law the Judge will tell you is a reasonable doubt
19 because it's reasonable to ask that question.

20 "That does not make sense to me."

21 That is what reasonable doubt is. Something does not make
22 sense.

23 You say, "Oh, well. He may. It is a possibility."

24 The Prosecutor - - I would say there is always a possibility
25 that he did it. It is possible that Jesus was telling a fib when

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1 he told Pontius Pilot that he was the Son of God. He might not
2 have been the Son of God, and, therefore, since he might not, we
3 must crucify him.

4 Fine.

5 What about this possibility? Because if it is possible to
6 find Mr. Brown did something wrong, let us all join together in a
7 friendly manner and vote that way.

8 Was it possible it was coincidentally instead of him being at
9 East Bay Park, the public library, West End, the Plantation
10 Apartments, the boat yard, buying shrimp, at Wal-mart, in
11 Kensington at his house watching television, ah, in White's Creek
12 visiting somebody instead of all those thousands of possibilities
13 where he could be this one particular time on this Thursday
14 afternoon, let's say that for some reason he was over there at the
15 Palmetto Tax Service Office driving by?

16 Let's say that he said he had his taxes done there two years
17 before by Mrs. Browy. Let's say he had a fondness in his heart for
18 the Palmetto Tax Service Office, and he had nothing to do that day
19 but say, "Well, I'll run up town to that tax service office. I
20 just love being over there. I want to ride by it because I love
21 filing those income taxes."

22 Now, what I'm saying sounds ignorant to me. Hopefully, it
23 sounds ignorant to you, and that's what - - ignorance is a doubt.
24 If behavior is ignorant, does not make sense, and you say, "I doubt
25 that that's what happened."

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1 Then that's a reasonable doubt.

2 Why would he be there? He said the reason he was there is he
3 called the woman on this phone and that she had told him before
4 while she was seeing Mr. Epps. Remember, she - - they all said
5 she started dating Mr. Epps while she was still sleeping and
6 living, and there's nothing wrong with dating. No. My God. We've
7 all done that.

8 She said that she was still staying in Mr. Brown's house
9 sleeping with him in his bedroom in his momma's house while she was
10 dating Mr. Epps in December. She moved out with Mr. Brown at his
11 momma's house in January and moved in with Mr. Epps.

12 Mr. Brown said that she told him, she being the prosecution
13 witness, "If you call me on my cell phone, when you call me my
14 boyfriend now, the man I'm living with, Mr. Epps, he can see my
15 cell phone."

16 Just like I'm seeing this cell phone and these other two cell
17 phones. If you've got a cell phone in your pocketbook and I'm
18 living with you if I'm your husband or boyfriend or child, I can
19 see in your pocketbook your cell phone. You take it out and put in
20 on the dresser in your house or on the dining room table, and I can
21 look at it.

22 Now, what if he did call - - what he did do what she told him,
23 dial * 67? And he said that will show up as no name or a private
24 call, and it won't show the number, and it won't show the name of
25 the caller. What if he dialed that * 67 and then dialed her.

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1 number, in this case this number, . . . , and dialed that
2 number with her phone?

3 And what if on her cell phone it said, like, private number
4 calling, and it didn't have a name there? It didn't say Robert
5 Brown. It didn't say Robert Brown's number. It says private
6 number called.

7 What if she answers the phone in the tax office? She looks on
8 the phone and the message is still there. What if she got his
9 number and she went to - - and you go to her call log on that phone
10 that's in evidence and you look for a call - - and all it is said
11 was the call was at 7/31/08 at 3:53 p.m. and had on there "No
12 number"?

13 It didn't have a number. It didn't have a name on the cell
14 phone this boyfriend couldn't see that Robert Brown was still
15 calling the girl he is living with.

16 And what if after she gets - - gets the call - - she gets the
17 call in the tax service office, she just deletes the number so
18 instead of saying July 31st there is a received a call, it says now
19 July 26th, and there is no record of having received a call on your
20 cell phone?

21 What if that's the reason there was no received call on this
22 cell phone?

23 I am turning these two cell phones now off.

24 Now, would Mr. Brown know whether she had deleted his cell
25 phone number off after they had this terrible commotion and he sees

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1 Mrs. Browy right in front of him calling the police and he sees
2 that the beloved girlfriend that he's given an engagement ring to,
3 let him live with her for a year, take care of her. Provide her
4 with a place to live. She now actually what she is saying is
5 correct. She does like Mr. Epps better than she likes me.

6 Further, they're calling the police. Mrs. Browy's right
7 there in my nose outside the door of the tax service office calling
8 the police. Jesus Christ.

9 Maybe I better get her dadgum cell phone that my call was in.
10 You know, they say about me. I grab her cell phone, and I am gone,
11 and the cell phone is on him when he is arrested.

12 Also, what else is on him when he is arrested?

13 He says, "The reason I went down there was to borrow five
14 dollars."

15 So, when they arrest him as the sergeant from the Detention
16 Center said when they arrest him, Robert D. Brown, Robert Dexter
17 Brown.

18 Remember, when the officer said when he came over to the
19 nursing home one night to see her and asked him who he was, he said
20 his name was Dexter, and that's his name, Dexter. Robert Dexter
21 Brown. His momma sitting out there in the SUV at the nursing home.

22 I imagine this is a terrible conspiracy that he has in some
23 way to harm the girl by going there and asking her to marry him,
24 driving over there in the SUV, his momma driving it. Momma, now,
25 his momma who sitting back there with the hat in the third row

SUMMATION BY MR. GOUDE

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1 testified. He's going over there to do a horrendously horrible
2 thing to the girl at the public nursing home. Thirty workers all
3 around he said when he asked her to marry him and gave her the ring
4 and his momma sitting behind the driver's seat in the SUV. The
5 police officer said he got in the passenger side of the SUV.

6 So, when they arrest Mr. Brown, what does he have on him?
7 He's got the cell phone that he took from the girl's pocketbook and
8 five dollars in cash. Not seven dollars, not eighteen dollars,
9 not two dollars, not twenty-three dollars, five dollars. Just what
10 he said he went over there to borrow on his bicycle.

11 Now, is that a lot of money? Was he driving a Mercedes or
12 was he driving a Lexus? Was he driving a rented SUV? He was
13 riding a bicycle. He doesn't have much money. Five dollars to
14 him was worth peddling over there to get.

15 Ask yourself how in the world would he have known that that
16 girl was in the tax service office at that time and those few
17 minutes all it was going to take for her to sign in, sit down, let
18 the guy that came in that she was ahead of but needed to ask a
19 quick question that they took ahead of her down the hall. She's
20 going to come and have her stuff done as soon as the guy comes out.
21 She's next. She's ahead of the Lowrimores.

22 They drove from Gresham. So they didn't want to be late.
23 They were early.

24 In those minute or two that she's going to be in the tax
25 office, did he just coincidentally happen to be outside? It is

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1 not reasonable to believe that out of the whole vastness of
2 Georgetown or has he called her and she told him where she was at
3 and he went over there?

4 Now, why would she tell him that if she knows she's got a
5 boyfriend? Does she want to out of spite, has she got some
6 sadistic pleasure in seeing two men fight over her? Well, the
7 boyfriend was going over away to pay a bill. He was driving away.

8 He said what he did and he got over there to pay it, something
9 told him. He didn't go ahead and finish all of his business. He
10 said when he got across the street he had a feeling to go back over
11 there. So that's what he did. He cut short his trip. He didn't
12 stay there like he was suppose to. Go in. Wait for his turn to
13 pay the bill, whatever. Come back over.

14 So, if the boyfriend had went ahead and done what he was going
15 to do, take his time and pay the bill, Mr. Brown could have come
16 in.

17 "Hey. How you doing? You know I still love you to death.
18 Would you marry again. Would you finally consider it?

19 So, are you rejecting me? I got a big house. Mr. Epps has
20 got a small house."

21 How long does it take to say that and say, "No."?

22 He wanted to kiss her. Maybe say something a little more
23 romantic than what he was saying.

24 Mrs. Lowrimore sitting right there watching him and looking at
25 him in the open front room of the tax office.

SUMMATION BY MR. GOUDE

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1 "Let's go outside."

2 Maybe he thinks if they go outside, just the two of them
3 without many people listening them, she'll remember their golden
4 days or warm days, their loving days, their romantic days.

5 "Let's go outside."

6 They walk outside the door.

7 Pull around there talking. Gives him five dollars.

8 "I love you so much. You are so wonderful. I wish you'd say
9 that you would come back to me."

10 About that time the boyfriend, he drives us in his car.

11 "What in the world? That's my girlfriend there. I'm
12 getting out. I'm walking up to the sidewalk coming up."

13 The girl says, "Look out or watch out."

14 Now, was she telling Lee to look out, okay, or telling Dexter
15 as she sees him to look out?

16 You know, anyway.

17 The girl and the prosecution witness say Mr. Brown pulls out
18 a knife.

19 Mr. Brown says, "I turn around and the boyfriend is walking
20 right up to me on the sidewalk, and I see he's got a little knife
21 in his hand.

22 And after all of this is over and done with, I see the knife
23 and I get it and realize it is the one that my girlfriend has
24 carried when I met her in her pocketbook."

25 And it's still on him and now he's got it whether it was in

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1 the car or she left it in the car and the guy starting carrying
2 possibly to clean his fingernails with or eat apples.

3 Mr. Brown says he sees the knife and some way or another does.
4 I think the Prosecutor asked him, "When you were a young guy twenty
5 years old did you box or something?"

6 "Yes, I use to box and, also, I did a bunch of martial arts
7 when I was younger. I wasn't old aged with gray hair with high
8 blood pressure and taking blood pressure medicine.

9 And I see this young, healthy, attractive, good looking thirty
10 year old man same size as me."

11 He is 5-6. Mr. Brown says 5-8.

12 "I see this young man running up to the sidewalk at me with a
13 knife, and I'm able to grab it out of his hand and instinctively to
14 keep him off of me and try to defend myself. I don't know what
15 he's going to try to do to me next. I hit him with the knife."

16 The prosecution witness says that he goes into the door next
17 in the tax office because Mr. Brown has the knife. Now the
18 younger, healthy guy, a guy pretty healthy here, he's twenty years
19 younger, same size.

20 Maybe that's why the girl likes him better. He's a younger,
21 healthier, stronger man than the fifty year old man that's worn
22 out.

23 The young guy goes inside the tax service office. Mr. Brown
24 here has been slammed against the front door of this building.

25 Like Mr. Lowrimore said. "I heard this slamming at the front

SUMMATION BY MR. GOUDE

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1 door."

2 And Mrs. Browy says out there in the hall, "I hear them
3 slamming at the front door of the building. I come out and I see
4 a young guy come in and he says, 'Somebody's been stabbed or
5 stabbed or I'm stabbed. We're stabbed. You're stabbed."

6 She says, "Durn. Get out of here. I don't want no trouble in
7 my business. This is a professional tax office business. I don't
8 no stupid, moronic, juvenile actions to interfere with my
9 business."

10 And she does very courteously and good citizenship, picks up
11 the phone, a cordless phone off of the secretary - - maybe she did
12 not have to climb the Mount Everest, the high wall where the
13 bordering the receptionist to protect her from all these fights
14 that goes on in the Palmetto Tax Service Office.

15 Hopefully, they have a wall that the receptionist courteously
16 would be eager to see you, the customer, to come in and pay their
17 money. She'll be able to see them coming in the door and say,
18 "Hey. How you doing? Welcome to the Palmetto Tax Service Office.
19 We want to help you. We're here to take your business and serve
20 you."

21 Hopefully, that's the kind of wall they had there.

22 So, Mrs. Browy grabs that phone. Quickly dials 911. Calls
23 911. Goes out here. Makes it around right here. This prosecution
24 witness is still over here. Mr. Brown is here.

25 My Goodness. When it rains, it pours. If it isn't one thing,

SUMMATION BY MR. GOUDE

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1 it's ten.

2 I come down here on my bicycle to get five dollars. Now,
3 standing right in front of my nose is Mrs. Browy calling 911
4 saying, "There is a commotion and a fight going on at my tax
5 service office. How about send the police down here?"

6 Mr. Brown says, "Hey. May God have mercy. I got five
7 dollars to my name and they're going to arrest me for hitting this
8 guy with a knife after he comes up here. All I came down here to
9 do was to borrow five dollars from my girlfriend. I wish I'd never
10 met her.

11 Now, they're going to arrest me for hitting this guy with a
12 knife or swinging at him. I don't know if I hit him. I don't
13 even know if I touched him. I didn't hardly do anything to him.
14 I didn't know I hit him."

15 And, remember. All this is serious. At the same time
16 remember where the injuries were on the gentleman?

17 I thought they had one showing the whole picture of the guy
18 with this - - well, in this picture you see there is a - - a - - a
19 indication on the inside palm of his left hand, and he's got a
20 scratch on his left side.

21 And the doctor said the two injuries was each of them less
22 than an inch long. An inch long is about from the joint of my
23 little - - I got little, tiny, short fingers - - it's from the end
24 joint of your finger, that's an inch of it. That's the mark on the
25 side, the outside of the left side.

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1 Remember. She said none of the inside part of the flesh is
2 injured? And on the inside of the left hand, the scratch there.

3 And he's charged with assault and battery with the intent to
4 kill, Mr. Brown is. If you were trying to kill somebody and they
5 were standing tussling a foot, two foot from you so that you could
6 reach out and grab -- Mr. Brown can reach out and grab the knife
7 out of the other guy or if take the prosecution witness' story. If
8 Mr. Brown had the knife to start with and is close enough to hit
9 him with the knife, my God, if you got a little pocket knife in
10 your hand which is as long as an ink pen unless you want to cut
11 your own fingers on the blade to touch him on the left side, your
12 hand has to be right the body. So, you can only be like a foot
13 away from the person.

14 If I was trying to kill you and stab you with a knife, would
15 I stab you on the left side with your hand over there in your left
16 flank?

17 The flank is the outside of your area.

18 Why wouldn't I stab you in the stomach or in the chest or in
19 the groin or in the throat if I was trying to kill you?

20 That's one of the charges.

21 The Judge will tell you. Even if you believe everything the
22 prosecution witness is saying, you believe Mr. Brown had the knife
23 and you believe he dropped down from the parachute into the tax
24 office at that exact moment that she came in and that's how he knew
25 she was there and you believe he had the knife and he hated that

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1 new boyfriend, he was so resentful. And he was going to kill her.

2 "Bitch, I'm here to kill you. Let's go."

3 She says, "No. Don't kill me in here. I'm a good
4 housekeeper. Please don't kill me in here in the tax service
5 office. It will get blood all over the floor and mess these
6 people's office up, and they got nothing to do with it. Please
7 take me outside if you're going to kill me."

8 "Okay. I'm a courteous gentleman. You asked me to kill you
9 outside. I'm going to kill you outside.

10 Just walk out here on the sidewalk and stand right there so I
11 can kill you here."

12 "Watch out, Lee. He's got a knife."

13 Here's the hero running up to save the girlfriend.

14 Mr. Brown said, "Bitch, I'm going to kill you second but I'm
15 going to kill this one first."

16 And he turns around and he stabs at Mr. Epps.

17 Stand up, please.

18 Come out close enough so the jury can see you.

19 Close enough so I can touch him in his left side, left hand,
20 basically, I think Mr. Brown said on the police questioning, "I
21 swung at him two times with the knife. I grabbed the knife out of
22 his hand and swung at him two times."

23 When you're that close, why don't you just stick him in
24 stomach? Kill him.

25 Why didn't - - when Mr. Epps gets in there, he says, "Okay.

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323

1 You got away but you, bitch, now it's your turn."?

2 Why didn't he just go ahead and kill her right then?

3 That's what they all said - - they say he was trying to do.

4 He wasn't making up a joke. Make it humorous. He stabbed
5 her and he was going to end up in trial.

6 That's what they say he was doing. He was going to kill her,
7 too.

8 Isn't that what she said?

9 She said, "I'm going to kill you."

10 She said, "No, don't kill me in here. Please don't kill me in
11 here. Take me outside and kill."

12 Now, he's charged with a lot of things. Right here on our
13 stage Robert Brown is charged with assault and battery with the
14 intent to kill, that he did assault and battery of Lee Epps with
15 the intent to kill him.

16 Well, why didn't he kill him and why didn't he kill the lady
17 because when Mr. Epps stuck his head in that door, he could have
18 stabbed her right quick in the chest or in the heart or something
19 and done it?

20 What - - you say, "Reuben Goude, why do you ask all those
21 questions? That is confusing me. We suppose to have an easy
22 little case here where we can just go out and vote and say he did
23 something bad and go home. Why do you raise all these various - -
24 why is it I think you're raising?

25 Doubts. You're raising doubts. Why are you raising all these

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1 doubts in my head? Why aren't you serious? Why aren't you
2 sitting over there and, like, crying or something, Reuben Goude?
3 Why do you walk around and talk all this mess?

4 Everything that we said - - everything that we said here is
5 exactly the truth. Everything that has come out of my mouth that
6 you have heard, isn't that what was said from the witness stand?

7 And you say, "Okay. Reuben Goude, if you're so smart, now you
8 tell us what happened."

9 Okay. Well, you know what happened. You now know what
10 happened.

11 He calls her. She picks up the phone.

12 "I'm at the tax office. My boyfriend has gone across. He's
13 got business at the Time Cable."

14 Maybe he - - I don't believe - - maybe she's a nice person,
15 and her boyfriend - - I'm going to sit down. Let me stop. Let me
16 sit down.

17 Her boyfriend's gone and he's got some business he's going to
18 take care of on the other side of the street over yonder next to
19 Belk.

20 Ring. Yeah.

21 "Hey."

22 "Tywanda, this is Robert."

23 "God, is he calling me again. I got a boyfriend. I don't
24 need him. I need Robert."

25 Maybe she's a courteous person. She doesn't say, "Robert, you

SUMMATION BY MR. GOUDE

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1 old dead beat you, sorry thing you, too old for me, you ugly rust
2 age. I don't like you. You're no good in bed. You got a boring
3 conversation. Why do you keep calling me?"

4 She don't do that.

5 She says, "Hey, how you doing?"

6 He says, "You got any money?"

7 "Not only that, you got terrible breath and you trying to ask
8 me for money. My God. Why don't you have any money. You take me
9 out and buy me something to eat."

10 No.

11 "I have about five dollars."

12 "Where you at?"

13 "I'm at the Palmetto Tax Office."

14 "Okay. I'll leave here and I'll see you in a minute."

15 She is, "Well, how in the world did I ever get mixed up with
16 him?"

17 Okay.

18 In a minute or two later, he's peddling that bicycle.

19 "Five dollars. I can get me a six pack of beer and a six pack
20 of coca-colas and buy me a pack of potato chips.

21 Whatever.

22 He peddle over there. Jumps off and runs in.

23 "How you doing, baby?"

24 She says she'd loan me five dollars. That means she now loves
25 me again. All is forgiven. We back together. A circle, the

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1 circle will not be unbroken. You see one of us, you see the other.

2 I love that girl.

3 I go down there and say, "Hey, baby." -

4 Sit up side her and kisses her and walked outside like the
5 Lowrimores said, like a husband and wife, just a normal couple
6 doing their taxes.

7 They walk right outside the door.

8 "Hey, what's going on."

9 I put the five dollars in my pocket.

10 I be dog. Got a girl. She loves me and got money, too. How
11 lucky can you be?

12 Got that money.

13 "Watch out. Watch out. Here he comes."

14 Turn around and, may God have mercy. What's wrong with this
15 boy? What's he doing? There's that young guy that she's been
16 with. My God. He took my love from me. Now, he's going to attack
17 me.

18 He's got a knife in his hand. Wham, I got it out of his hand.

19 Umph, umph.

20 Lee goes in there.

21 Durn. He's walking out with Mrs. Browy who comes out the
22 door.

23 "911, call 911."

24 Jesus Christ. What is going on here? The girl is standing
25 up in front of me or beside me and I'm going to Fred's.

SUMMATION BY MR. GOUDE

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1 But where his bicycle is outside the wall, Mrs. Browy goes.
2 Mrs. Browy comes out of the door of the tax service office right
3 here behind the Court Reporter. The girl is standing there. Mr.
4 Brown says, "Let's get out of here. Come on."

5 And she's - - let's say she loves Lee. Let's say she no
6 longer loves me, Robert. So, she says, now Robert is Robert Brown,
7 and I, Reuben Goude, am the girl.

8 And she says, "Well, now, I don't want Robert. I saw him hit
9 his - - hit Lee with that knife. I've got to get away from him."

10 And I am Robert. To her, I'm going, "Let's go. Let's talk
11 over here. Come back over here. Back up over here."

12 You got these ramps here at Fred's.

13 "Come on and back up here and get away from Lee."

14 So, they go walking backwards like that, and Mrs. Browy.

15 Thank you very much. Have a seat.

16 Mrs. Browy coming out of the door trying to call 911 on the
17 phone wondering, "Are they going to mess the darn floor up in my
18 tax service office? Where is my phone?"

19 She said, "I got my phone."

20 Dial 911. "Durn. He is dragging her down the sidewalk away
21 from here."

22 Now, she is under much stress. Is she telling a fib? No, she
23 is not telling any - - I believe everything Mrs. Browy said she
24 thinks is exactly correct just I think everything the Lowrimores
25 said, I think what they said is exactly correct. Just like I

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1 think the sergeant from the Detention Center that was here. She
2 said this is their record. They made a 911 call. I think that's
3 exactly correct, too, because none of them have a reason to say
4 anything different. They just told it the best they can tell it.

5 She's trying to talk on the phone. Call 911. Nothing like
6 this has ever happened to her, Mrs. Browy, none of the Lowrimores
7 in their life.

8 She's excited. "My God. What is the world is going on? I am
9 the manager. I am responsible for this stuff.

10 Y'all go one. I don't want no trouble in here."

11 So she calls.

12 "There's a confrontation and she's walking - - he's walking
13 her down the street."

14 I don't know if she said that to 911. She said it here.

15 "He's taking her down the street."

16 Now, they backing up down there getting out of the way, Robert
17 and the prosecution witness.

18 And I think Mrs. Browy said, "They went a long way. They were
19 way over there. They went a long way."

20 Of course, you know, nobody's perfect. I think she also said,
21 "I think the girl, about this time, the boyfriend, he comes out
22 from behind me in the tax office. Jumps in his car and drives over
23 here to his girlfriend, and then he picks her up. They went over
24 toward Fred's. Drive by and by that time, Mr. Brown has come back
25 over here toward me.

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1 I don't know if he's coming over here to get me while I'm
2 standing in the door or attack me. He must think I've got money.
3 So, I'm going to go back in the office."

4 And he actually come back over and gets on his bicycle and
5 starts driving off, and she thinks that he was trying to run over
6 her with her bicycle.

7 Of course, like I say, nobody is perfect. Remember, she - -
8 Mrs. Browy thought that the lady, the prosecution witness, went
9 around time she was in the parking lot and came around and got in
10 the driver's side of the car.

11 Remember, that's what Mrs. Browy said. She thought she got in
12 the driver's side.

13 You remember. The two prosecution witnesses said Mr. Epps
14 drove the car toward her and drove it. Drove up here to the stop
15 sign and was trying to run over the guy with the bicycle and turn
16 left and went to the sheriff's office.

17 So, ah, and all the witnesses other than Mrs. Browy said that
18 the lady, the prosecution lady, got in the car on the passenger
19 side where you would expect her to get in on since the other guy
20 was driving. How else would the car get up to where she was?

21 To get to her, Mr. Epps was the one that was driving.

22 So, Mrs. Browy was wrong on that. So, what does that mean?
23 She was really not a falsehood. She was just telling the best she
24 could remember it.

25 Just like how far they walked down the sidewalk. They didn't

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1 go all the way to Charleston. They didn't go all the way on both
2 sides of the railing. They didn't go half-way down the street.
3 They just went a few feet down the sidewalk.

4 And then the lady got in the passenger side, the prosecution
5 witness, not went around to the driver's side.

6 And then Mr. Brown came over here.

7 "My God."

8 He gets his bicycle.

9 "I'm getting out of here."

10 He peddles and he doesn't go back toward Kensington.

11 "I'm going to get around behind this building because out
12 there's open streets and all. I'm going all the way down to Wal-
13 mart. Since I know they called the police, I'm just going to go
14 around this way and hide. I'm chicken. I'm going to walk through
15 down here."

16 And so the closest spot for him to ride back to is - - the
17 closest spot for him to ride naturally is straight down the street
18 over there at Fred's toward Palmetto Tax Center on the left hand
19 side.

20 So, he grabs his bicycle from the wall over there. Peddles
21 out on the sidewalk and peddles down getting away, and there's this
22 car, the white car, picking up the girl that's up there close to
23 the sidewalk. Naturally, the car wouldn't go over into the
24 parking lot on the left to pick the girl up that's standing there
25 on the sidewalk. The car pulls over here close to the sidewalk.

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1 Mr. Brown is closer to go on the sidewalk side than it is to go
2 around the car over these speed bumps out into the parking lot or
3 out into the traffic where there might be a car coming from the
4 other direction. So he goes between the car and the store, and,
5 naturally, the car is up towards the sidewalk, and the sidewalk is
6 what? Two or three feet from the front of the store. So the girl
7 is on the sidewalk trying to get into the car. Naturally, he's
8 going to ride close to her with his bicycle going away. So, it
9 looks to Mrs. Browy like he's trying to run over her.

10 How do you run over somebody with a bicycle when you doing a
11 half a mile an hour and the bicycle tires, what, that tall?

12 They don't even ride the bicycles anymore. Even grown people
13 ride the little ones now. How you going to run over a grown woman
14 with a bicycle doing a half a mile an hour and she's trying to get
15 in the car? It's just the car was close to Fred's and he goes
16 close by her.

17 And he leaves and they try or the boyfriend tries to run over
18 him with his car as the boyfriend said.

19 The police arrest him, Mr. Brown, find the cell phone on him,
20 and they ask him questions?

21 "Did you?"

22 "Well, no, I didn't mean to do anything. I was innocent. I
23 was over with Billy Graham and having a revival crusade, and I
24 didn't do a thing.

25 They must have the wrong guy. The Martians must have done

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1 that over yonder at the plaza. I didn't do anything."

2 And all this happens.

3 Now, they arrest him, and I asked what time did they interview
4 -- did the incident takes place, and the 911 tape says that this
5 is about 2:44 in the afternoon when Mrs. Browy calls.

6 We have the best police in the world. By 3:30 they got him at
7 the police station asking him question, forty -- forty minutes
8 later. Now, that is excellent and outstanding police work.

9 And by -- by 5:00, remember, I asked them. At 3:30 they
10 started the first interview and started the second one at 4:50, not
11 even 5:00, and they've already interviewed him two times, and the
12 durn thing happened at almost 3:00.

13 But in two hours they've already caught him and interviewed
14 him two times.

15 And he says, "My blood pressure was -- --"

16 Normal blood pressure as y'all know, common knowledge, is
17 about 120 or 130 over 80 or so.

18 He said, "They took me to the Emergency Room that night with
19 two hundred and something."

20 And he's got high blood pressure from all this durn
21 excitement, getting attacked, arrested and all this mess. So he
22 didn't know half what he was saying.

23 But let's say everything he said was the truth, and he didn't
24 tell them exactly what happened the start with.

25 "No, I didn't do anything."

SUMMATION BY MR. GOUDE

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1 Thirty minutes later or twenty minutes later, "Yeah. I called
2 the tax office. I went over and got the five dollars which was
3 right here in my pocket. It was on the receipt, and I did get her
4 - - take her cell phone to try to see that she didn't strike the
5 number where I called, but, durn, she'd already struck it off as
6 soon as I called her in the tax office so the boyfriend couldn't
7 see it.

8 And the guy then come up beating me with the knife, and I was
9 able to get it out of his hand, and I swung at him two times. I
10 didn't know he got cut to start with but y'all now told me. I cut
11 him and I'm charged with assault and battery with the intent to
12 kill. That's why you interviewing me again with my Miranda Rights
13 and stuff.

14 That's what happened."

15 And, basically, everything he said to the police - - the
16 Prosecutor asked him a lot of questions.

17 "Did you do this, and blah, blah, blah, blah?"

18 Everything he said to the police is basically what he told you
19 now.

20 He didn't have a lawyer. This was within an hour or so of
21 the incident.

22 I had not been appointed and I sat down and told him a bunch
23 of lies to tell this Court, to tell these police. I'd never even
24 heard of Robert Brown at 3:30 February 21, 2008. He talked with no
25 lawyer.

SUMMATION BY MR. GOUDE

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1 Now, that - - that to me gives y'all and this is a very
2 serious case. Kidnapping is one of the most serious charges you
3 can have on you other than murder.

4 Assault and battery with the intent to kill, that's the next
5 thing to murder.

6 And then he's charged with assaulting the girl. I reckon
7 they're he assaulted her when he put a headlock on her in the
8 reception and took her out.

9 But you remember? The Lowrimores said they didn't see him do
10 anything to her.

11 Outside, now, I think Mrs. Browy said and the prosecution
12 witness said that he put his arm around her and they walked down
13 the sidewalk.

14 He told you why he did that trying to get away from the guy,
15 run away from the guy. The girl maybe tried to separate then.

16 So, the Judge will tell you all when y'all vote, when y'all
17 think about it, the most serious charge is kidnapping and then the
18 next one is assault and battery with the intent to kill and the
19 third one is assault and battery of a high and aggravated nature.

20 The Judge will tell you on this kidnapping charge that I guess
21 anytime from the time Mr. Brown came into the tax service from the
22 time Mr. Brown rode away on his bicycle, the Prosecutor will tell
23 you - - the Judge will tell you that anytime during that time Mr.
24 Brown intended to kidnap her, intended to keep her from going where
25 she wanted to go or made her go where she didn't want to go or

SUMMATION BY MR. GOUDE

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1 something like that, that's what kidnapping is.

2 The Judge will tell you that you've got to look at it and see
3 if Mr. Brown intended to do that. Was he trying to keep her from
4 doing what she wanted to do, go to where she wanted to go or was he
5 just accidentally trying to keep her off of Epps, keeps Epps away
6 from them? Get over there with her and talk with her in a
7 pleasant, peaceful manner?

8 And the Judge will tell you if you have a doubt as to what
9 happened on that kidnapping, then, a reasonable doubt, and a
10 reasonable doubt that - - most of us. When we say, "I doubt that,"
11 you don't usually say, "I have a reasonable doubt."

12 You got a guy down the street that's a trucker and won't pay
13 back people and you know not to loan him any money or he's addicted
14 to crack and you know if he borrows money from you, he's going to
15 go buy crack, and he comes and borrows money from you, you don't
16 think to yourself, "Well, I have a reasonable doubt that he's going
17 to pay it."

18 You just say, "I have a doubt. I doubt he will ever pay me."

19 So, most of us in common language when we say doubt and
20 reasonable doubt we mean the same thing.

21 You got a sensible doubt, a reasonable doubt, the Judge will
22 tell you vote not guilty on the kidnapping.

23 On the assault and battery with the intent to kill the Judge
24 will tell you that he's charged with intending to kill.

25 If you have or you think that, "Well, we don't know if Mr.

SUMMATION BY MR. GOUDE

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1 Brown or Mr. Epps had the knife in his hand to start with," that's
2 a reasonable doubt and you would vote not guilty.

3 If you say, "Well, Mr. Epps had the knife or he may have had
4 the knife. We're not sure that he did not have the knife and that
5 Mr. Brown got it away from him and did strike at him because he was
6 trying to defend himself. Mr. Brown was trying to defend himself,
7 and Mr. Epps was on top of him, and Mr. Brown didn't know what he
8 was going to do next, and he couldn't turn around and walk away.
9 Mr. Epps was right there behind him and could have knocked him in
10 the back of the head," the Judge will tell you if you think that is
11 the case, you are to vote not guilty because that's self-defense.
12 You're allowed to defend yourself.

13 The Judge will also tell you that in criminal charges, all of
14 them are like Tuppaware bowls. You put a big bowl and put a little
15 bowl under it and a little bowl under that and a little bowl under
16 that one.

17 The Judge will say that the little Tuppaware bowl under
18 assault and battery with the intent to kill is assault and battery
19 of a high and aggravated nature.

20 If you think Mr. Brown did not try to kill the guy and you
21 think Mr. Brown was not acting in self-defense - - if Mr. Brown
22 tried to kill the guy which we say he did not because he got him on
23 the side and hand, not in a vital organ.

24 Of course, I now the Prosecutor is going to say, "The doctor
25 said it was possible if he had been stabbed in a vital organ, he

SUMMATION BY MR. GOUDE

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1 would have died."

2 Well, naturally, it's possible if he would have been stabbed
3 in a vital organ, he would have died, and, naturally, it's possible
4 if Mr. Brown had shot him in the head between the eyes, he would
5 have died. If Mr. Brown took an ax and chopped his head off, he
6 would have died, and if he stabbed him in the heart with the knife
7 he would have died but none of that is what happened. We're
8 talking about what actually happened.

9 The Judge will say that if you think Mr. Brown had no reason
10 to attack Mr. Epps and Mr. Epps was not making Mr. Brown scared.
11 Mr. Epps was not charging up to Mr. Brown and Mr. Epps was not
12 running up to Mr. Brown in a threatening manner, and if you think -
13 - and the Judge will tell you that Mr. Brown had no reason to be
14 afraid Mr. Epps was going to hit him or do anything to him, and the
15 Judge will tell you if Mr. Brown did not think that Mr. Epps, the
16 girl's boyfriend, was running over to knock him side the head or
17 something for talking to his girlfriend. They'd been having some
18 difficulties over the last month or two.

19 The Judge will tell you if Mr. Brown had no good reason to be
20 scared of Mr. Epps coming to hurt him and if Mr. Brown did hurt Mr.
21 Epps and was not trying to kill him, the Judge will tell you the
22 lesser charge here is assault and battery of a high and aggravated
23 nature for you to consider.

24 Of course, we say Mr. Brown was not doing that either because
25 he was acting on self-defense.

SUMMATION BY MR. GOUDE

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1 The third and final charge, the Judge will tell you, is the -
2 - Mr. Brown is charged with assault and battery of a high and
3 aggravated nature against the girl. So, I guess the Prosecutor
4 will say, "Well, anytime from the time Mr. Brown walked in until
5 the time Mr. Brown got on his bicycle, you can consider that when
6 he grabbed her around the throat and that was assault battery, and
7 he pulled the knife on her in the reception and stabbed her with
8 the knife. It was assault and battery when he took her outside and
9 beat her up. That's assault and battery.

10 He drug her and tried to choke her again. Dragging her down
11 the street or hurting her or doing anything to her like that,
12 that's assault and battery of a high and aggravated nature."

13 Of course, our position on this is for the crime, you have to
14 have the criminal intent. You cannot accidentally commit these
15 crimes.

16 If you do not think Robert Brown - - think he was trying to
17 kidnap the woman and keep her from trying to do something she
18 wanted to do, he intentionally was thinking that, that's one thing.
19 If he was not thinking something criminal, then he's not guilty.

20 And if he was not intending to hurt Mr. Epps, didn't think it
21 was good reason to defend himself. Thought he was trying to
22 intentionally with no cause strike Mr. Epps, that's one thing.

23 If Mr. Brown didn't think that, he's not guilty.

24 If Mr. Brown thought he was trying to hurt the woman at any
25 time, that's assault and battery of a high and aggravated nature.

SUMMATION BY MR. GOUDE

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1 If he did not think that, was not trying to do that, he is not
2 guilty of that charge, too.

3 This has been a sort of a long trial. We had some that are
4 a lot longer. We have some that's shorter.

5 It's 4 - - 4:30 and you guys are going to hear from the
6 Prosecutor and the Judge, and y'all going to go out and vote, and
7 we asked the Judge to tell you. There's twelve of you. That's
8 why you've got twelve jurors.

9 The average person's IQ is about a hundred. I'm about a
10 hundred. The Prosecutor is about a hundred. Each witness is about
11 a hundred. You guys have got 1200 IQ. If you had one human being
12 that had a 1200 IQ, you wouldn't have a genius. You would have,
13 like, something that is a genius to genius. It is like a genius
14 is to human beings.

15 So, all of y'all with y'all's brains together are way yonder
16 smarter than we, way yonder smarter than me. You know a lot more
17 and can see a lot more. You got more sense than I do.

18 So, think about all this stuff.

19 Not to be negligent in my arguing, I look at these exhibits
20 and see that the girl had a scratch on her chest, and, remember,
21 Mr. Brown said that when he saw the lady, the prosecution witness
22 get in the car, get in the front of car, and the boyfriend was
23 driving, the boyfriend he thought, Mr. Brown thought reached over
24 and grabbed her by the front of the blouse.

25 You will note, thank the Lord the Prosecutor and the police

SUMMATION BY MR. GOUDE

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1 made these photographs. You will note the girl was wearing a
2 sweatshirt with a zipper right up the front right where the scratch
3 is, and you will note that the scratch is kind of ragged, not a
4 sharp cut like a knife would make if he was trying to kill her or
5 hurt her. It was a ragged scratch sort of a zipper, a ragged teeth
6 of a zipper would make.

7 And in this photograph she doesn't have a blouse under the
8 sweatshirt under the zipper. There's just the sweatshirt zipper
9 and the ragged scratch.

10 When she - - if he - - if the boyfriend grabbed her like this,
11 "Why? What were you doing talking to Robert Brown? What is that
12 man that you lived with last year, how did he know you were here at
13 this tax office?

14 He was not up here when we came up here? How did he know that
15 you were going to be here and I was leaving?"

16 And the boyfriend's got his hand on her sweatshirt with one
17 hand while he's driving the car or under the steering wheel of the
18 car. There is a scratch.

19 You say, "Well, why would people tell on us?"

20 Well, would you like to be out on the street with no house to
21 live in or would you rather have a house in Andrews close to where
22 you work?

23 Everybody looks out for themselves first, you know?

24 I have told you guys basically everything I know to tell you.
25 Y'all got the brain power that you need to do the job. The Judge

SUMMATION BY MR. GOUDE

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1 is going to tell you what the law is. The Prosecutor is going to
2 say some points. First, she is going to say I am stupid, and
3 that's basically true. I am stupid. If you had a better, smarter
4 lawyer, you'd hear a lot smarter stuff.

5 As the Prosecutor - - but you guys are not stupid, and y'all
6 are not the Prosecutor. Y'all are the jury. So when y'all listen
7 to what the Prosecutor says, how about keep in mind what I said and
8 your own brain. Just keep your own brain and ask - - because it's
9 your job to vote.

10 It is not my job. It is your obligation and your oath and
11 your responsibility to give the truth and give the verdict.
12 There's nobody else here.

13 George Bush is not here. Obama is not here. Katie Curry is
14 not here. Hugh Heffner is not here. No celebrity from Hollywood
15 and Entertainment Tonight is here. It's all your responsibility.

16 If you have a doubt that Mr. Brown did what he's charged with,
17 it's like the buck stops here. Old Harry Truman use to say, "The
18 truth just stops here."

19 Y'all are a honest jury. You got nothing - - no countries in
20 the world, Iraq, Afghanistan, none of them in Africa, none in
21 India, they don't have y'all. That's why we the best country in
22 the world and the only one that is free. Everywhere else and you'd
23 have a Prosecutor and a police that charge you and you'd go to
24 prison.

25 Nobody else wants to go here to go to Iran to live. Nobody

SUMMATION BY MR. GOUDE

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1 wants to leave here to go to Nigeria. Nobody wants to leave here
2 to go to Bangladesh. Everybody there wants - - nobody wants to
3 leave here and go to Mexico.

4 They all want to go here because of y'all, the jury. That's
5 why we got freedom.

6 So, we ask you to do the right thing and vote not guilty on
7 the charge.

8 Now, let me just ask my client if he thought of one thing that
9 we've said that he'd like to say.

10 Thank y'all.

11 Thank you, Judge.

12 That's our argument.

13 THE COURT: Ladies and gentlemen, I'm going to let you take
14 five minutes and come back. Just step to the jury room. Don't
15 take more than five or ten minutes and then come on back.

16 Don't discuss the case. It's not yours yet.

17 (The jury retires to the jury room at 4:38 p.m.)

18 THE COURT: Okay. Let's take a minute for a break.

19 (The Court recesses the trial of this case for a short break
20 and thereafter reconvenes the trial of the case.)

21 THE COURT: Be seated.

22 Are you ready, Miss Biagianti?

23 MISS BIAGIANTI: Yes, sir.

24 THE COURT: Got your cell phone out?

25 MISS BIAGIANTI: No, sir, Your Honor.

SUMMATION BY MISS BIAGIANTI

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1 (The jury returns to the courtroom at 4:50 p.m.)

2 THE COURT: Okay, ladies and gentlemen, we now will
3 continue with closing arguments.

4 Closing argument from the State, Miss Biagianti.

5 MISS BIAGIANTI: Thank you, Your Honor. If it please the
6 Court?

7 SUMMATION BY MISS BIAGIANTI

8 MISS BIAGIANTI: Mr. Foreman, ladies and gentlemen of the
9 jury, Mr. Goude's closing was about an hour and a twenty minutes.
10 I promise I'm not going to be that long.

11 As I told you in my opening, this is a relatively easy case,
12 simple when you look at the facts. You know, the defense is
13 throwing all these red herrings out there about, you know, having
14 his momma testify that there were close still there.

15 There is a possibility, all these other things could have
16 happened. You know, maybe she called him. Maybe she didn't, all
17 these maybes. Well, your job as jurors, you're only to take the
18 evidence that you heard from the witness stand and the evidence
19 that's in front of you, the physical evidence.

20 You can't speculation. Speculation is not up to you.

21 I told you to keep your eye on the ball, and I think that if
22 you listened to the evidence as you have, you're going to see that
23 that man went to do business and harm his ex-girlfriend and new
24 boyfriend.

25 I'm not going to hit on everything, just the basics, just the

SUMMATION BY MISS BIAGIANTI

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1 highlights.

2 You've heard from Tywanda. She told you several times about
3 unwanted phone call after unwanted phone call to unwanted phone
4 call.

5 I told him, "No, stop calling me. Stop calling me. Stop
6 calling me. Leave me alone."

7 The funny thing is Mr. Goude tried to make a big deal, you
8 know, why when he came in she didn't holler; she didn't scream?

9 People do all kinds of things that we wouldn't normally do
10 when we're put in that situation.

11 So, unless you walked a mile in her shoes, you can't possibly,
12 "Why wasn't she screaming?"

13 Maybe if she would have screamed, maybe he would have killed
14 her but, again, that's not up to you for speculation.

15 The eerie thing though was he was very quiet and calm and
16 calculating. He went in there because he wanted to harm her.

17 And she told you on the witness stand, "I was compliant. I
18 was scared. I was doing what he said because I kept thinking about
19 my children."

20 I don't think any of you can fault her for that.

21 Some of the things that Lee, no, Mr. Goude said that Lee said
22 that, you know, he came up and saw a knife in his hand.

23 Mr. Epps never told you that, and if you doubt that, you can
24 ask the Court Reporter to play it back. He never said, "I saw a
25 knife in his hand."

SUMMATION BY MISS BIAGIANTI

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1 He said, "His fists were balled up. Something was in there
2 but I never saw a knife."

3 You know, if this were some big conspiracy, that's a pathetic
4 job for a conspiracy. None of the stories are exactly alike. If
5 it was a conspiracy, he would have said, "I had the knife. I saw
6 the knife."

7 If it was a conspiracy, they would have to get the doctor on
8 board. If it was a conspiracy, Mrs. Browy, you know, Mr. Goude is
9 trying to play up the Lowrimores, and, you know, these are people
10 who don't know anybody. They came here to tell the truth but Mrs.
11 Browy never talked about it. She's just as much an independent
12 witness as the Lowrimores but we have her 911 call, and I'm going
13 to play that for you later because I want you to listen to it.

14 Now, who has the biggest motive in here to lie? That man. He
15 has the biggest motive in here to lie. He has the most to lose.

16 For instance, about the phone. That was fascinating
17 demonstration by the way but we all know if you dial * 67, your
18 number is going to come up private but the funny thing is it comes
19 up private but it also documents that you had a call. It's going
20 to document when Mr. Goude calls his own cell phone, it's going to
21 say he missed a call from a private number at 4:30 on Thursday.

22 Hmm? When I started to ask the defendant, I think I made it
23 very clear. He's cooked on the phone. There's no incoming or
24 outgoing numbers that he says there was. Why lie about that?
25 Why lie about something so small?

SUMMATION BY MISS BIAGIANTI

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1 Look at the phone in the jury room if you don't believe me,
2 and when he was on the stand, the funny thing is, "I had to get
3 that phone because I knew what she was going to do. I knew she was
4 going to erase my number."

5 During all this happening she's worried about the phone number
6 that came as private number.

7 So, not only does she call him in the tax place, which the Mr.
8 Lowrimores never said they saw her phone, she has to erase the
9 number.

10 So, what would be the big deal if it was a private number
11 because she could always say it wasn't him?

12 "I didn't call. It must have been some other private number."

13 But there's no private number on the phone.

14 So, go through the phone. I urge you to go through the phone.

15 Another thing the defendant tried to say is, you know, this
16 must be a, again, a conspiracy or a lie so Tywanda could get back
17 at him because she caught him with another woman. Caught him with
18 another woman kissing but their just friends. Don't forget that.

19 "We're just friends."

20 I don't know about you but I don't kiss everybody who is just
21 my friend.

22 You know, he's admitting that he is two-timing her but yet
23 this is suppose - - he's suppose to be engaged to her. Great guy.
24 Great guy. Why should you believe anything that he has to say?

25 About the proposal thing, she told you it happened. She

SUMMATION BY MISS BIAGIANTI

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1 didn't have to tell you that. If she were trying to hide
2 something, she would have never brought it up.

3 You know, these witnesses saw ought. The burden is upon the
4 State to prove him guilty but the defense has just as much subpoena
5 power as we do. I don't see any photos. I didn't hear from any
6 witnesses that saw this man propose and it was such happy
7 situation.

8 I have no doubt he did it but the funny thing is she told you
9 she took the ring back to the Sheriff's Office, to the Sheriff's
10 Office because she didn't want it, and she told you why she took
11 it. She told you because she was scared.

12 Why was she scared? He kept calling her and calling her and
13 calling her.

14 I think the State proved from Officer Kosiak, an independent
15 witness, Georgetown Police police officer, working at Prince
16 George. You know, no motivation to lie in this case. I don't
17 think she's - - she was pleased to testify in this case.

18 You know, she was working on January 24th, the supposed day
19 that he proposed to her, and he goes when she's getting off work
20 about 10:45, and what does he do? Tells her, "I'm Dexter, her
21 brother."

22 Now, if it was such a happy engagement that happened earlier
23 that day, why would he say, "I'm her brother."

24 Stupid, it doesn't make any sense whatsoever. That's just
25 crazy.

SUMMATION BY MISS BIAGIANTI

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1 You know, and the police officer said, "I go back and tell
2 Tywanda that it's him. I knew she was fearful."

3 That's a happy engagement.

4 The police officer tells him, "Don't come back. She doesn't
5 want to see you. Don't come back."

6 God, that is freaky when she hears that he's hiding across the
7 street behind a trash can or whatever she said. He wasn't on the
8 property but he was still lurking.

9 That's a fatal attraction. That's a fatal attraction that I
10 told you in my opening. He's stalking her. He can't take the hint
11 that no means no.

12 You know, when Mr. Goude said, "No. Maybe we should ask a
13 second time."

14 You know, what he was saying about, you know, a girl turns you
15 down for a date and you want to ask her a week later.

16 In rape cases, does no not mean no in rape cases? You know,
17 I don't think so.

18 You know, all the defense is doing is talking about all this
19 collateral stuff, stuff about, you know, bringing up, you know,
20 about the pro boxer, and I'll get to more of that later but, you
21 know, saying he's thirty years old and such a healthy man.

22 Well, I think he's really almost forty, and he's disabled.
23 His arm gotten eaten up in a grain machine. That's a real healthy
24 man. I don't think it would be any trouble for him to whup Mr.
25 Epps.

SUMMATION BY MISS BIAGIANTI

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1 Something about five dollars, five dollars. So, that must
2 mean she gave him five dollars because that's he told the police.

3 Remember, that man's a convicted felon. You heard his record.
4 You don't think he's smart enough to tell you, "I've got five
5 dollars in my pocket. So, that's what I'm going to tell the
6 police. Tell the police she called me over there to give me five
7 dollars because I have it in my pocket."

8 Well, we don't even know whether it was a five dollar bill.
9 He said it was a five dollar bill but Joann Clarey that signed him
10 in the Detention Center, she said, "I don't know if it was five
11 thousand pennies or five dollars."

12 Well, if it is a five dollar bill, so what? So what? So
13 what if he had a five dollars? So what if she did call him? So
14 what if they were even still boyfriend/girlfriend? I submit to
15 you all of these things aren't true but so what? He stabbed that
16 man, drug her and caused that mark on her. So even if all these
17 things were true, it doesn't matter because he did those things.

18 Now, again, you don't have a knife in evidence, and that's not
19 for consideration. So, you can't speculate on it but I don't think
20 anyone in here doubts that Mr. Epps got stabbed.

21 You're going to have these photos. I don't think there's any
22 doubt in anyone's mind that he got stabbed.

23 So, unless Dr. Justice was, saw someone - - someone else that
24 day and, thankfully, nobody was confused. I don't think there's
25 any doubt about that.

SUMMATION BY MISS BIAGIANTI

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1 So, just because there's not a knife in evidence, I don't
2 think you should speculate why or why not there isn't one because,
3 clearly, he was stabbed.

4 Kathy Browy, some of the things she said, consistent things.
5 He was on a blue bicycle. He admits being on a bicycle. So, I
6 don't think there's any doubt in anyone's mind he was - - that's
7 the man we're all talking about.

8 You know, why - - why would she come here and swear to tell
9 the truth? You heard she has a family because she's going to risk
10 her family. She's going to risk her livelihood, her job, and more
11 importantly, she's going to risk perjuring herself and her freedom
12 for - - for two people she doesn't have any connection besides
13 having a business relationship?

14 You know, we should be commending Mrs. Browy because that's
15 the kind of person I want if something bad were to happen. That's
16 the kind of person any citizen should want to come and have enough
17 courage to tell the truth.

18 Now, as I told you, the 911 call. I guess Mr. Goude's theory
19 is she's just exaggerating so it will look better for her. You
20 know, the terrified woman sees what's going to on and is relating
21 it to the police as best she can, and, again, I guess it's his
22 theory that she was exaggerating. It's not really true. We're
23 making it up to make it look better for her because she's going to
24 get some award at the end of this. That's just crazy.

25 The Lowrimores, definitely not calling them a lying creep.

SUMMATION BY MISS BIAGIANTI

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1 You know, if someone were to come in here right now and rob
2 everyone in here, there would probably be ten different stories of
3 what happened and what he looked like. People remember things
4 differently.

5 You know, for instance, the man said, "I hear a bang."

6 Jean Lowrimore, his wife, says, "I didn't hear a bang."

7 They were sitting right next to each other. So how do you
8 explain that? I'm not calling them liars by any means but I'm
9 calling them inconsistent.

10 You know, supposedly, they didn't talk to anyone about this,
11 and then Mr. Goude subpoenaed them and they're expected to come to
12 court and tell their story. Well, they haven't thought about it
13 since February 21, 2008.

14 Again, neither one of them say she's on the phone. Very
15 interesting.

16 You know, the inference that, again, Mr. Goude, made about I
17 guess I'm calling him a big chicken. No. The inference was if he
18 never got out of his seat, he couldn't see what's happening
19 outside. That's the inference.

20 They both, though, say that they see him talking to her, and
21 they both say he leans down to tell her something. Maybe, that's
22 when he called her a name saying, "You're dead."

23 Again, she told you she was compliant and why. So, no one can
24 fault her for not standing up and yelling and saying, "Please help
25 me. Please help me."

SUMMATION BY MISS BIAGIANTI

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1 You know, poor lady, she didn't even remember getting her
2 social security card back when it was given to her in the
3 beginning, and I know she was nervous. So, maybe, that - - she was
4 nervous that day and maybe didn't see every thing she thought she
5 saw or didn't see.

6 Another inconsistency is the husband, the wife said that the
7 defendant was sitting up next to the left. The wife, she says the
8 victim sits right here and says the defendant sits right here.
9 Well, the husband, Mr. Lowrimore, says the exact opposite. He says
10 Tywanda is sitting in this chair, and the victim - excuse me, the
11 defendant is closest to the window.

12 Obviously, they weren't paying attention.

13 Going to the defendant's testimony, you know, I struggled
14 yesterday, and I apologize for getting a little short with him and
15 trying to - - to make him answer my questions but, clearly, I think
16 you can see that he was lying. Lie after lie after lie,
17 inconsistent lies in the statements he told the police. Why lie
18 if he is the true victim and defending himself from that crazed
19 lunatic right there and his crazy ex-girlfriend? Why lie to the
20 police? Why make multiple statements? Why lie?

21 You know, the simplest things, Tywanda's cell phone number, he
22 couldn't answer that because, you know, it's just too long ago.

23 So, I said, "Well, did you tell the police that that day?"

24 And I played it for them.

25 You know, on his first interview, remember, he'd been calling

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1 forever. He says, "I can't remember her phone number. I wrote it
2 down."

3 Engaged to be married to this woman and you don't know her
4 telephone number? That's just crazy.

5 Another simple question. How he got to Palmetto Tax
6 Service? Straight from his momma's house. His momma lives in
7 Kensington. Now, if I'm not wrong, Kensington is past Wal-mart in
8 Georgetown. So, that means your going to have to come past the
9 Wal-mart into town and come to this shopping mile, and Subway is
10 closer to Wal-mart than Fred's is but he clearly said, "I came from
11 the liquor store past Fred's and to Palmetto Tax Service."

12 Well, Wal-mart - - this is where he says he came from and road
13 up here to Palmetto Tax Service. Wal-mart is over here, and
14 Kensington is over here. So, if he went straight there, he would
15 have gone past Subway, past the insurance company and come by the
16 tax office.

17 Why lie? Why lie about something so stupid? Because his
18 whole story is a bunch of bull. That's why.

19 Another time, which way was he facing during this scuffle as
20 he calls it? You know, one time he's saying he had his back
21 turned. He had no idea that crazed male was coming at him with the
22 knife, just like, this coming at him with a knife, and then on
23 further questioning, he has his back towards Fred's. He has his
24 back towards Fred's. Well, if Lee is coming this way, he didn't
25 see him?

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1 Talking about the statements, you know, he gives two
2 statements to the police which you've all heard as I tried to
3 impeach him with them.

4 You know, he's covering up lie after lie and it's finally
5 crashing on him in court. Trying to get simple questions answered
6 was, you know, pulling teeth. He wanted to talk over me, dominate
7 the situation. Let us all know exactly what he wanted to let us
8 know.

9 Control.

10 "Sir, you need to answer my questions."

11 Imagine if that were your boyfriend how controlling that would
12 be.

13 I'm a Prosecutor and he tried to talk over me and run over me.
14 Imagine being his girlfriend.

15 You know, it's funny when his defense attorney Mr. Goude was
16 questioning him on direct examination. He could remember
17 everything but as I started asking questions, "My blood pressure.
18 I can't remember. My high blood pressure. My high blood pressure
19 was two hundred over two hundred. I should have been doctor. My
20 doctor said that."

21 Well, two hundred over two hundred probably would have been
22 dead? I'm not a doctor but I guarantee you he would not have been
23 able to sign this Miranda Form.

24 "Clearly, this is your signature?"

25 "Yes, but I don't remember."

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1 If his blood pressure was that high, he wouldn't be able to
2 speak coherently and sign his name but now, he can't remember.
3 Convenient, it's all convenient.

4 You know, the knife, Mr. Goude starts talking to him about the
5 knife. He blurts out, "Tywanda always keeps a knife in her purse.
6 It must have been her knife. She always keeps a knife in her
7 purse."

8 Then, also, Mr. Epps has a knife.

9 But remember when I was cross examining him on his first
10 statement? The police officers were bending over backwards.
11 Somehow, you know, he's trying to make his story make sense because
12 the police officers ask him, "Did you have a knife?"

13 "No."

14 "Did you take the knife away from Mr. Epps?"

15 "No."

16 Or he said, "Nah."

17 I think - - I think that was a direct quote yesterday.

18 Why say that because it's not true? Why would you say that
19 if you are defending yourself?

20 Going back to the unwanted phone calls, I questioned him about
21 that. You know, Lee and Tywanda both told him. He kept calling
22 and kept calling and kept calling. Lee had to get law enforcement
23 involved prior to the stabbing incident.

24 When I cross examined him, I asked him about February 13th.
25 I don't know. Maybe he was trying to shmooze her for Valentine's

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1 Day. I don't know but he said.

2 "Do you remember talking to Officer Jarod Bardon of the
3 Georgetown County Sheriff's Office."

4 He didn't deny that. He can't deny it because Officer Bardon
5 would have come in here and said, "Yeah, I talked to him."

6 He said, "Oh, I'll never forget that conversation," or
7 something to that effect.

8 "And isn't it true that Officer Bardon told you not to call?"

9 And he had to admit that, too.

10 Interesting the stabbing was eight days later but I tried to
11 question him again. * 67 private number later that day.

12 When Mr. Goude tries to ask him about how far the car was
13 away from the bike, again, simple question, he said ten, fifteen
14 feet. Mr. Goude talks about how ten feet goes all the way to
15 there, and all of sudden it's down to two or three feet.

16 Everything I tried to impeach him on, you know, I think I
17 clearly demonstrated yesterday that his testimony on the stand is
18 inconsistent with exactly what he told the police happened.

19 When I started putting a little heat on, you know, his
20 response to me on some questioning, "I was being sarcastic to the
21 police."

22 I'm on trial or, potentially, Immediately going to be on
23 trial for my freedom, and that's when I sarcastic with the police?
24 I don't think so.

25 Told the police during his interview, you know, "Never saw a

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1 knife," at one point, and then he says, "Well, Mr. Epps goes in his
2 pocket," but, again, he never sees a weapon.

3 And the best part is he said, "The guy stabbed himself."

4 "The guy stabbed himself," when he was interviewed on
5 February 21st, and then he actually says, "Well, I might have
6 accidentally poked him when I did my, you know, martial artist
7 moves on him, and I'm a pro boxer."

8 He said yesterday, and I had it written down as a quote. So,
9 I'm going to read it. I don't want to mess it up.

10 "But I know I didn't touch him. I at no point touched that
11 guy, not me. I'm an ex-fighter, a pro fighter. He's about my
12 size. I would have no problem whupping this dude, none. I could
13 have knocked him out with a three piece. I don't need no knife.
14 I sparred some of the biggest."

15 His direct quote from that defendant right there, and, again,
16 he contradicts himself on the stand. "Yeah, I may have stabbed
17 him a little bit."

18 The interesting thing is when he was doing his demonstration
19 on the witness stand yesterday, he said Lee was coming at him with
20 the knife and he grabbed his hand and take the knife away from him,
21 and that's how he actually got stabbed.

22 Hmm. No defensive wounds on him.

23 What does this look like? That looks like a defensive wound
24 if I ever saw one.

25 Now, Mr. Goude is saying, you know, if he wanted to kill him -

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1 - have killed him, maybe he should have poked him in the heart. I
2 would assume most reasonable people would probably not want that to
3 happen, would probably try and block and struggle and not just let
4 someone stab you and kill you. So, I think that's a little stretch
5 by Mr. Goude.

6 Another interesting thing the defendant said that I asked him
7 about yesterday is when he was pushing his story again. The
8 Officer, Investigator Spartman, asked him about, "Well, which knife
9 - - which hand did Mr. Lee have the knife in?"

10 What was - - what was his response?

11 "His left hand."

12 And Investigator says, "Well, tell me how he had the knife in
13 his left hand and he gets stabbed in his left hand."

14 Again, a crazy lie after lie after lie, and then what does he
15 tell the investigator after that?

16 "I didn't say that."

17 Well, you guys heard it yesterday. It's on tape.

18 I guess the other inference is as Mr. Goude plainly stated is
19 this is must be from the zipper during this incident. You know,
20 she must have been cold while her boyfriend was getting stabbed.
21 So, let me zip up my jacket, and that's how this occurred.

22 I would submit that's probably from the defendant's finger.

23 You know, yesterday, when the defendant said well, when she
24 jumps - - when he - - excuse me - - when she jumps in the car with
25 Mr. Epps, that's when he was so conscientious. He sees the other

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1 victim, Mr. Epps, grab her. That's a reasonable thing to do when
2 he's bleeding like a stuffed pig to grab his girlfriend, you know.
3 I guess *** (unintelligible).

4 But the smartest thing, the second smartest thing I should say
5 Mr. Brown said yesterday, "When I had the knife and her cell phone
6 in my hand and I was walking toward Mrs. Browy, I decided not to go
7 there because she might get scared."

8 You think. That's a good thought.

9 Another good lie is he tells the officers, you heard it on th
10 stand where I was asking him and Mr. Epps, he said Mr. Epps said,
11 or I asked him, and in response to my question he said he was never
12 asked about Mr. Epps threatening to blow his brains out.

13 Remember? He kept saying, "Well, I was never asked that. I
14 was never asked that."

15 Well, he told us about all - - every other thing that he
16 wasn't asked about but he forgot to mention the fact that, you
17 know, supposedly, Mr. Epps said he was going to blow his brains
18 out.

19 But, yeah, conveniently, when he was telling us about the two
20 times he's seen Mr. Epps, they were never face to face. He said he
21 was him dropping off the girlfriend one time and clearly saw the
22 Dodge the other time.

23 The defendant told you inside the tax office, it got a little
24 heated in there. He admitted to that on the stand. He also went
25 further on to say, "My gestures appeared that we were arguing."

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1 Well, the Lowrimores never thought that they were arguing.
2 The Lowrimores never thought that they were arguing but he said
3 that on the witness stand yesterday.

4 "My gestures appeared that we were arguing."

5 Hmm.

6 But I tell you the most interesting thing that we've heard
7 about was when I asked him a question about the detective's
8 interview, and I can't even remember what my question was but he
9 denied it. So, I played the second interview for him, a portion of
10 it, and said, "I really didn't understand the law of self-defense
11 on my first statement."

12 Hmm.

13 Again, I don't think Mr. Brown is dumb. I think he's smart,
14 and he messed up by saying that on the tape. He would have been
15 better served by going with that story from the get-go.

16 Because if it was really self-defense he would have said it in
17 the first statement.

18 Hmm.

19 "I didn't really understand the law of self-defense in my
20 first statement."

21 You know, in his theory yesterday, his demonstration, you
22 know, if it was self-defense, maybe that would explain one cut,
23 maybe, but what about the stab in the side? When I showed you
24 guys the clothes, and, again, you'll have that, too. I don't know
25 if you'll want to take them out of the bag. We'll give you gloves

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1 if you do but you can see on the shirt, the black shirt which was
2 the shirt he had on clearly had one perfect stab wound, and the
3 outer shirt he had had one perfect stab wound all these other - -
4 I shouldn't say - - one or two other slash marks on the shirt for
5 self-defense.

6 Now, if he didn't - - that to me looks like multiple stab
7 wounds, and that's exactly what Tywanda told you.

8 Now, even if you believe the Lowrimores and you don't believe
9 Tywanda about him making her go outside, and you say, "Well, that's
10 not - - she walked out with him willingly."

11 I submit to you that's not the case. She didn't walk out
12 with him willingly, and that is kidnapping but the Lowrimores never
13 saw what happened outside because Mr. Lowrimore never got out of
14 his chair, and the woman said she didn't see anything.

15 But we have Mrs. Browy and her 911 tape, and you can hear on
16 the 911 tape. He's pulling her towards Fred's. That's
17 kidnapping.

18 Now, the other think I want to mention briefly is, you know,
19 Mr. Goude made a big deal about there must have been a cell call
20 because how else would he know that she was there?

21 I can't explain that. I don't know how he she knew he was
22 there but I can tell you and I think I proved to you on the phone
23 there was no phone call.

24 But, guess what? Even if she did call him and say, "Come on
25 over to Palmetto Tax Service. I have five dollars."

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1 So what? So what? It's not a crime for her to come --
2 tell him to come over and get five dollars. The crime is that
3 man.

4 Now, the Judge is going to instruct you on reasonable doubt,
5 and reasonable doubt, the legal version, definition is the kind of
6 doubt that would cause a reasonable person to hesitate to act.

7 Now, what does that mean? That just means that you're firmly
8 convinced. If you're firmly convinced, then you must convict him.
9 If you're not firmly convinced, then you have to acquit him.

10 And the other portion of reasonable doubt is not just a
11 whimsical doubt like Mr. Goude but something you assign a specific
12 reason to.

13 And I submit that the State has proven everything beyond a
14 reasonable doubt.

15 You know, "any question in your mind as to who stabbed who?"

16 "No."

17 "Any question, Tywanda, who it was who assaulted you?"

18 "No."

19 The Judge is going to instruct you about ABWIK or assault and
20 battery with the intent to kill. Now, that does not -- he's
21 going to tell you. If I'm mistaken as to the law, you need to
22 listen to what the Judge says but the law is this.

23 You don't have to have a specific intent to kill.

24 He doesn't need to say, "I'm going to go over there and kill
25 that man."

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1 You don't need that. It just means the general intent to
2 inflict bodily injury.

3 Now, intent means something that occurs, not something that's
4 accidental or - - or - - or it just happens, it happens but intent
5 can be shown by acts and conduct which the defendant did, and one
6 of those things you can infer from it is the use of a deadly
7 weapon. So, I'll leave you with that.

8 Kidnapping, as I told you on my opening, kidnapping, you know,
9 you don't need someone to stuff you in the back in the trunk and
10 drive you to North Carolina. That's not kidnapping.

11 Kidnapping, or that is kidnapping. That's one version, one
12 example but kidnapping also is when you restrict someone's movement
13 either by force, and the Judge is going to define all these things
14 for you and vaguely all kinds of good legal definitions.

15 But in laymen's terms it means restricting someone's freedom
16 of movement. That can be physically, through coercion making you
17 do something you don't want to do.

18 And I submit to you that when he takes out his knife and puts
19 it in her side and says, you know, "B, you're dead. Come outside
20 with me," that's kidnaping.

21 And even if you don't believe that, when he's dragging her
22 towards Fred's, that's kidnapping. When he's holding her against
23 her will and not letting her go, that's kidnapping.

24 Now, ABHAN, assault and battery of a high and aggravated
25 nature, battery is a physical touching. Assault, and the Judge

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1 will explain it to you, assault is the threat of physical touching.

2 So, for example, assault - - if I were to throw a punch and
3 miss, that's assault but if I were to hit you, that's where the
4 battery comes in.

5 Well, when a man physically assaults a woman, it's not ever
6 simple assault and battery because assault and battery of a high
7 and aggravated nature, one of the examples is that the difference
8 between sexes. So, when a man assaults a woman, I submit to you
9 that that's automatically assault and battery of a high and
10 aggravated nature.

11 He touches her. He's dragging her. It doesn't even matter if
12 he leaves a mark on her, and when he touches her and it's an
13 unwanted touching, that's assault and battery of a high and
14 aggravated nature.

15 When he leaves his finger mark on her and scratches her,
16 that's assault and battery of a high and aggravated nature.

17 Again, don't be afraid of the obvious. It is obvious that
18 that man is guilty of assault and battery with the intent to kill,
19 kidnapping and ABHIAN.

20 And I'm going to leave you with this. If he didn't do it, he
21 truly did not do it he doesn't need you to compromise but if he did
22 do it, he doesn't deserve that you compromise.

23 THE COURT: Thank you, Miss Biagianti.

24 THE COURT: Alright. Instead of taking a break, everyone,
25 let's just stand up and stretch out a little.

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1 Okay. Sit down whenever you're ready.

2 CHARGE OF THE COURT

3 THE COURT: Ladies and gentlemen, it now becomes my duty to
4 charge you on the law, and I need everyone to sit down and be
5 still. We are now at the end of the break. There we go.

6 Now, ladies and gentlemen, it now becomes my duty to charge
7 you on the law. I'm going to do my best to talk with you and not
8 read too much. I'm going to have to read some, though. I've got
9 to read some because I don't want - - I want to make sure I don't
10 leaven anything out.

11 But as I go along through this, I'm going to do my best to
12 make everything clear and to make it such that it is clearly
13 understandable, too.

14 I told you that the State of South Carolina charges the
15 defendant, one Robert Dexter Brown, with three charges. They
16 charge him with assault and battery with the intent to kill,
17 assault and battery of a high and aggravated nature and kidnapping.

18 These charges are brought by these three pieces of paper,
19 indictments. I told you the fact that he's charged, the fact that
20 he's indicted with these crimes, that is not evidence he's
21 committed the crimes whatsoever. These indictments are not
22 evidence.

23 To these charges he has pled not guilty. Therefore, that
24 places the burden upon the State to prove his guilt beyond a
25 reasonable doubt because someone charge with a crime or crimes is

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1 not required to prove themselves innocent. They are presumed
2 innocent, and that presumption of innocence remains with the
3 individual from the moment of the charge throughout any and all
4 proceedings, and that presumption is not removed unless guilt is
5 proven by the State beyond a reasonable doubt. No matter what the
6 charge is, the State has that burden of proving guilt beyond a
7 reasonable doubt.

8 Now, some of you may have served as jurors before on other
9 cases on civil court where, remember, I told you earlier this week
10 about court when people have disputes about contracts or automobile
11 accidents and things of that nature, and if so, if you were
12 involved or watching or whatever else, you would have been told and
13 you would have heard the judge tell the jury that the person
14 bringing the claim, the person asserting the case has the burden of
15 proving something by the greater weight of the evidence but that's
16 in civil cases. That's the least burden there is. That means
17 that something is more likely true than not in civil cases.

18 However, in a criminal case, the government, the State having
19 brought the charge, has a more powerful burden of proof than that.
20 They have to prove something beyond a reasonable doubt.

21 Proof beyond a reasonable doubt is something that leaves you
22 firmly convinced of the defendant's guilt. Our courts have decided
23 that a reasonable doubt is a doubt which would cause a reasonable
24 person to hesitate to act.

25 Having said that now, let me say this. There are few things

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1 in this world that we know with absolute certain, and in criminal
2 cases the law does not require proof that overcomes every possible
3 doubt. It requires proof beyond a reasonable doubt.

4 Reasonable doubt may arise from evidence which is in the case
5 or from the lack or absence of evidence in the case. You, the
6 juror, you decide whether reasonable doubt exists as to the guilt
7 of the defendant.

8 If after considering all of the evidence in the case, you have
9 a reasonable doubt as to the guilt of the defendant of any one of
10 the charges, you should find him not guilty. If, on the other
11 hand, you do not have a reasonable doubt as to the guilt of the
12 charge, you should find him guilty of that charge.

13 Now, ladies and gentlemen of the jury, you are the finders of
14 fact, not I. I am not permitted by our constitutional laws to get
15 involved with the decision on the facts. That is left solely up to
16 you.

17 If for some reason because of a ruling I may have made or
18 anything else I may have done from the bench, it gives you a
19 thought I have an opinion about the facts one way or the other, you
20 are wrong. I leave that solely up to you.

21 Now, ladies and gentlemen, you decide the facts from the
22 evidence in the case, and in doing so, please understand that the
23 law does not require nor does the law desire that you leave your
24 common sense at home. The law wants the benefit of your
25 individual and your collective common sense as you consider these

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1 issues in a court of law. So, while you deliberate, while you
2 discuss these matters use your common sense.

3 In addition, in deciding these issues you must necessarily
4 pass upon, rule upon, judge upon, decide upon the credibility, the
5 believability of the evidence, the witnesses put before you, and in
6 doing so, you can consider such things as the demeanor of the
7 witness, the manner of the witness, whether the witness had a
8 reason to be biased or prejudiced in regard to the testimony he or
9 she gave, whether a witness' testimony was contradicted on the one
10 had or made stronger and corroborated on the other hand.

11 Was their testimony consistent? What was the witness'
12 opportunity for knowledge and observation of the matters about
13 which he or she testified? Did the witness have an interest in
14 the outcome of a case?

15 In considering the evidence and the credibility of every - -
16 of the evidence presented before you, you should not make that
17 determination based on the number of witnesses that testified for
18 either sided. That makes no difference.

19 You could believe a, ah, one witness against many or many
20 against one. You can believe a small portion of a witness'
21 testimony, disregard the larger or vice versa, all of this leaving
22 up to you to make the decision as to what you feel the truth is no
23 matter from where that evidence comes from.

24 Now, just as you are the deciders of the facts, I am the
25 instructor of the law. You must accept the law as I give it to

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1 you. Put aside, like I said the other day, any thoughts you may
2 have about what the law was before you came in here. Put aside any
3 thoughts you may have about what you think the law should be but
4 apply the law as I give it to you.

5 I cannot get involved in the decision on the facts. You must
6 accept the law as I instruct you.

7 In almost all cases, there are two types of evidence: direct
8 and circumstantial.

9 Direct evidence is the testimony of a witness who claims to
10 have actual knowledge of the event or happening such as an eye
11 witness. This is evidence which immediately attempts to establish
12 the main facts to be proven.

13 Circumstantial evidence is a proof - - is proof by a chain of
14 facts or a chain of circumstances indicating the existence of a
15 fact. It is evidence which immediately establishes collateral
16 facts from which the main fact may give birth. Circumstantial
17 evidence is based on inference and not on personal knowledge or
18 observation.

19 The law makes absolutely no distinction between the weight or
20 value to be given to circumstantial evidence or direct evidence nor
21 is a greater degree of certainty required of one than the other.

22 You should weigh all of the of a case, direct and
23 circumstantial, and after weighing all of the evidence in a case,
24 if you're convinced of the defendant's guilt beyond a reasonable
25 doubt, you should find him guilty. If you are not convinced of

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1 guilt beyond a reasonable doubt, you should find him not guilty.

2 You heard one witness qualified as an expert witness. I
3 explained to you then that, normally, a person is not permitted by
4 rules of evidence to come into the court of law and give opinion
5 testify. An exception to that rule, though, is so called expert
6 witnesses, a witness who by education and experience has been - -
7 has become an expert or a person very experienced in a certain art,
8 science or profession or calling. That person, then, may be
9 permitted by the Court to state an opinion as to relevant or
10 material matters in which that witness claims to be an expert.
11 They may also state a reason for that opinion.

12 You should consider it just like you do with all other
13 evidence an opinion given in testimony in evidence but you should
14 give it the weight you think it deserves. If you decide the
15 opinion of an expert witness is not based on sufficient education
16 or experience or you conclude that the reasons given as support of
17 the opinion are not sound or that the opinion is outweighed by
18 other evidence, you may disregard it totally or you may accept it
19 totally.

20 An expert witness' testimony is to be given no greater weight
21 than that of other witnesses simply because that person has been
22 classified as an expert. You are not required to accept that
23 expert's opinion even though it's not contradicted.

24 The first charge against the defendant is the charge of
25 assault and battery with the intent to kill.

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1 In order to prove an assault and battery with the intent to
2 kill, the State must prove beyond a reasonable doubt that the
3 defendant committed an unlawful act of a violent nature to the
4 person of another with malice aforethought.

5 An assault and battery, that means committing an unlawful act
6 of a violent nature with the person of another with malice
7 aforethought.

8 An assault occurs when a person unlawfully attempts or offers
9 to commit a violent injury upon another person and has the present
10 ability to complete the attempted injury.

11 An assault is the intentional creation of a reasonable fear of
12 immediate bodily harm. It is not necessary that the attempted
13 injury or harm actually takes place.

14 For example, if I were to walk up to one of you and if I were
15 to raise my arm within striking distance of you and draw back like
16 I'm going to hit you, that's an assault. Even though I didn't hit
17 you, that's still an assault.

18 A battery is the unlawful touching of another person by a
19 person who has committed the assault. An unlawful touching can be
20 caused by a part of the accused's body or any object the accused
21 puts in motion. A batter is the completion of the assault by
22 using or applying force to another person however slight in a rude,
23 angry or resentful manner without legal justice for doing so.

24 So, in using the earlier example, if I raise my fist back and
25 if I actually do come around and touch you with it in that violent

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1 way meaning to hurt you, it's assault and battery.

2 Malice is hate, ill will or hostility towards another person.
3 It is the intentional doing of a wrongful act without just cause or
4 excuse and with an attempt to inflict an injury or under
5 circumstances the law will - - will infer an evil intent.

6 Malice aforethought does not require that malice exist any for
7 particular length of time before the act is committed but malice
8 must exist in the mind of the defendant just before and at the time
9 the act is committed. Therefore, there must be a combination of a
10 previous evil intent and the act.

11 Malice aforethought may be inferred or it may be expressed.
12 These terms, expressed and inferred, do not mean different kinds of
13 malice but the manner in which malice may be shown to exist. This
14 is either by direct evidence or by inference from facts and
15 circumstances which are proven.

16 Expressed malice is shown, for example, by when a person
17 speaks words which express hatred or ill will for another or when
18 the person prepared beforehand to do the act which was later
19 accomplished.

20 For example, lying in wait for a person or another act of
21 preparation going to show that the deed was within the defendant's
22 mind, that would be expressed malice.

23 Malice may be inferred from conduct showing a total disregard
24 for human law. Inferred malice may also rise when the deed is done
25 with a deadly weapon.

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1 A deadly weapon is any article, instrument or substance which
2 is likely to cause death or great bodily harm. Whether an
3 instrument has been used as a deadly weapon depends on the facts
4 and circumstances of the case.

5 The following are examples of instruments which may be deadly
6 weapons: Pistol, shotgun, rifle, dagger, knife, slingshot,
7 razor, gasoline, fire bombs.

8 And a deadly weapon may be a weapon like a pistol that is not
9 even loaded sometimes.

10 If facts are proven beyond a reasonable doubt sufficient to
11 raise an inference of malice to your satisfaction, this inference
12 would be simply an evidentiary fact to be considered by you along
13 with the other evidence in the case, and you may give it the weight
14 you decide it should receive.

15 A specific intent to kill is not an element of assault and
16 battery with the intent to kill but there must be a general intent
17 to commit serious bodily injury. Intent means to intending the
18 result which actually occurs, not accidentally or involuntarily.

19 Intent may be shown by acts and conduct of the defendant and
20 other circumstances which may naturally and reasonably infer
21 intent.

22 Evidence of the character of the assault, the character of the
23 instrument used, the manner in which it was used, the purpose to be
24 accomplished and resulting wounds or injury may be considered in
25 determining the intent with which the assault was committed.

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1 Intent may be inferred when it is demonstrated that the
2 defendant voluntarily and willfully commits an act, the natural
3 tendency of which is to destroy another's life.

4 We have a concept in the law, ladies and gentlemen, called the
5 lesser is naturally included in the greater. So, therefore, within
6 the charge of assault and battery with the intent to kill there is
7 a lesser charge. That charge is assault and battery of a high and
8 aggravated nature.

9 If you determine that the State has not proven that the
10 defendant is guilty of assault and battery with the intent to kill,
11 you then may determine whether the State has proven that the
12 defendant is guilty of assault and battery of a high and aggravated
13 nature on this first indictment.

14 Assault and battery of a high and aggravated nature includes
15 all of the elements of assault and battery with the intent to kill
16 except the malice aforethought.

17 In addition, the State must prove with assault and battery of
18 a high and aggravated nature that there were circumstances of
19 aggravation in an assault and battery.

20 An assault and battery of a high and aggravated nature is an
21 unlawful act of violent entry to the persons of another accompanied
22 by circumstances of aggravation.

23 The key difference there is that assault and battery of a high
24 and aggravated nature does not have the requirement of malice
25 aforethought but the State must prove a circumstance of

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1 aggravation.

2 Circumstances of aggravation include the use of a deadly
3 weapon, the intent to commit a felony, the infliction of serious
4 bodily injury, a great disparity between the ages or physical
5 conditions of the parties, a difference in the gender of the party,
6 the taking of indecent liberties with a female through the use of
7 force, personal infliction of shame or disgrace and the resistance
8 of lawful authorities. These are only examples of circumstances
9 of aggravation.

10 Now, to this charge of assault and battery with the intent to
11 kill which also includes the lesser charge that you may consider of
12 assault and battery of a high and aggravated nature the defendant
13 has raised the defense of self-defense.

14 Self-defense is a complete defense, and if it is established
15 you must find the defendant not guilty.

16 The State has the burden of disproving self-defense by proof
17 beyond a reasonable doubt.

18 If you have a reasonable doubt of the defendant's guilt after
19 considering all of the evidence including the evidence of self-
20 defense, you should find the defendant not guilty.

21 On the other hand, if you have no reasonable doubt of the
22 defendant's guilt after considering all of the evidence including
23 the evidence of self-defense, then you must find the defendant
24 guilty.

25 The following are the elements that are required for self-

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1 defense:

2 One, without fault.

3 For the defendant to use the defense of self-defense, the
4 defendant must be without fault in bringing on the difficulty. If
5 the defendant's conduct was the type which was reasonably
6 calculated to and did provoke an assault, a deadly assault, the
7 defendant would be at fault, not only a deadly assault but any type
8 of assault. The defendant would be at fault in bringing on the
9 difficulty and would not be entitled to an acquittal based on self-
10 defense.

11 Self-defense is not available to a person who uses language
12 which is so contentious that a reasonable person would expect it to
13 bring on an encounter and which did actually contribute to the
14 physical encounter.

15 If the defendant voluntarily participated in mutual conduct
16 for purposes other than protection, then the assault and battery
17 with the intent to kill on the victim would not be self-defense.
18 This is true even if during the combat the defendant feared death
19 or serious bodily injury.

20 However, if before the assault and battery was committed, the
21 defendant withdraws and tried in good faith to avoid further
22 conflict and either by word or act makes that fact known to the
23 victim, he would be without fault in bringing on the difficulty.

24 For mutual combat there must be a mutual intent and
25 willingness to fight. This intent may be shown by the acts of

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1 conducts of the parties and the circumstances surrounding the
2 combat. In addition, it must be shown that both parties, both
3 parties were similarly armed.

4 Next, the second element required of self-defense is that the
5 defendant was actually in imminent danger of death or serious
6 bodily harm or that the defendant actually believed he was in
7 imminent danger of death or serious bodily harm.

8 If the defendant was actually in imminent danger, it must be
9 shown that the circumstances would have warranted a person of
10 ordinarily firmness and courage to strike a blow to prevent death
11 or serious bodily injury.

12 If the defendant believed he was imminent danger of death or
13 serious bodily injury, it must be shown that a reasonable prudent
14 person of ordinary firmness and courage would have had the same
15 belief.

16 In deciding whether the defendant actually was or believed he
17 was in imminent danger of death or serious bodily harm, you should
18 consider all the facts and circumstances surrounding the crime
19 including the physical condition and characteristics of the
20 defendant and the victim.

21 The defendant does not have to show that he was actually in
22 danger. It is enough if the defendant reasonably believed that he
23 was in imminent danger and a reasonably prudent person of ordinary
24 firmness and courage would have had the same belief.

25 The defendant has the right to act on appearances even though

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1 the defendant's beliefs may have been mistaken.

2 It is for you to decide whether the defendant's fear of
3 imminent danger of death or bodily harm was reasonably what would
4 have been felt by an ordinary person in the same situation.

5 Now, ladies and gentlemen, the final element that must be
6 shown is that there was - - that, ah, the defendant had no other
7 probable way to avoid the danger of death or serious bodily harm
8 than to act as the defendant did in this particular instance.

9 The defendant had no duty to retreat, though, if doing so the
10 danger of being killed or suffering serious bodily injury would
11 have increased.

12 And, also, ladies and gentlemen, in looking at the defense of
13 self-defense, a person cannot be required to make an exact
14 calculation as to the degree of or amount of force which may be
15 needed to avoid death or serious bodily harm. Therefore, in self-
16 defense, the defendant has the right to use the force needed to
17 avoid death or serious bodily harm.

18 The force used in self-defense does not have to be limited to
19 the degree or amount of force used by the victim. The victim has
20 the right to use so much force as appears to be necessary for
21 complete self-protection and which a person of ordinary reason and
22 firmness would have believed to be needed to prevent a death or
23 serious bodily harm.

24 If the defendant is justified in defending - - well - -
25 himself, um, then the defendant is also justified in continuing

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1 that defense until it is apparent that danger of death or serious
2 bodily harm has been completely ended.

3 Now, that is as to the first charge of assault and battery
4 with the intent to kill. The next charge is assault and battery
5 of a high and aggravated nature. In that charge the defendant is
6 charged with assault and battery of a high and aggravated nature
7 against Ms. Keith. Please - - please accept as if I just repeated
8 to you the elements of assault and battery of a high and aggravated
9 nature. I read it to you a minute ago as a lesser included of
10 assault and battery with the intent to kill. So, there's no need
11 for me to read it totally to you again. I've already read it to
12 you. It is an assault and battery of a violent nature with
13 circumstances of aggravation.

14 Now, ladies and gentlemen, as to the first charge of assault
15 and battery with the intent to kill and the lesser of assault and
16 battery of a high and aggravated nature, if you have a reasonable
17 doubt as to whether the defendant is guilty of assault and battery
18 with the intent to kill or whether he is guilty of assault and
19 battery of a high and aggravated nature, you should give the
20 defendant of that reasonable doubt and find him guilty of a lesser
21 charge of assault and battery of a high and aggravated nature.

22 However, you should not find him guilty of any of the charges
23 or of either of those charges if you're not convinced of his guilt
24 beyond a reasonable doubt.

25 Lastly, the defendant is charged, also, with kidnapping. The

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1 State must prove beyond a reasonable doubt that the defendant
2 knowingly and unlawfully seized, confined, inveigled, decoyed,
3 kidnapped, abducted or carried away another person without
4 authority of law.

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

7 Knowingly means with knowledge, consciously, not accidentally.

8 Seize means to take hold of suddenly or forcibly.

9 Confine means to limit, restrict or enclose within bounds,
10 imprison or shut or keep in.

11 Inveigle means to lure or entice or lead astray by false
12 representation, promise or other deceitful means.

13 Decoy means to lure by or if by decoy, decoy something, to
14 entice a person into a trap.

15 Kidnap is to remove a person against that person's will by
16 unlawful force or by fraud.

17 Abduct means to carry off secretly or by force and illegal
18 purpose.

19 Carry away means to remove.

20 The State does not have to prove that the defendant did all of
21 these things. Instead, if you find beyond a reasonable doubt that
22 the defendant did any of these things, you may find the defendant
23 guilty of kidnapping.

24 Something done without authority of law is something which the
25 law does not sanction, permit, allow, condone or provide

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1 justification for.

2 The kidnapping does not have to be for any personal or
3 monetary gain for any illegal purpose but it - - but may be for any
4 reason whatsoever.

5 The offense of kidnapping commences when one is wrongfully and
6 unlawfully deprived of that person's freedom and continues until
7 that person's freedom is restored.

8 Now, ladies and gentlemen of the jury, two days ago you were
9 sitting out in that audience out there, and you were selected as a
10 jury. You had to walk up and down the middle of the hallway.
11 Stand in the middle of the room, and both sides could have said,
12 "Excuse the juror," but both sides said, "Seat the juror."

13 I qualified you and determined that according to the laws and
14 the Constitution of this State that you would well and truly and
15 fairly try this matter and reach a decision based on the evidence
16 and the law as I instructed it to you.

17 You've now heard the evidence in this case. There is no
18 other evidence to present in this matter. You must make your
19 decision based on the evidence presented to you.

20 I've instructed you now, basically, on the law. Now, it
21 becomes your duty to go back to the jury room to discuss the
22 matters you have heard, to apply the law as I've given it to you
23 and once you've reached a decision, write it down on these - - back
24 of these indictment forms and bring it out.

25 Your decision must be unanimous. All twelve of you must agree

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1 on your verdict. So, all twelve should discuss and decide on your
2 verdict.

3 Your verdict does not have to be the same on the three
4 charges. You could have different verdicts on the charges.

5 As to the first charge of assault and battery with the intent
6 to kill, you have three possible verdicts.

7 You could find the defendant guilty of the charge of assault
8 and battery with the intent to kill. You could find the defendant
9 guilty of the lesser charge of assault of a high and aggravated
10 nature or you could find the defendant not guilty.

11 There's no preference in the way I say these. I got to put
12 one before the other.

13 You could find him not guilty, guilty of assault and battery
14 of a high and aggravated nature or guilty of assault and battery
15 with the intent to kill.

16 On the back of this indictment, Mr. Foreperson, there are
17 three lines. It says verdict. Under verdict, there are three
18 lines. On this indictment here you would write one of those three
19 things.

20 You can write guilty as charged. Guilty of assault and
21 battery of a high and aggravated nature. If you need to spell
22 that, it's written out in the other charge. I'll give it to you in
23 a minute.

24 Guilty of assault and battery of a high and aggravated nature
25 or not guilty, one of those three.

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1 Guilty as charged, guilty of assault and battery of a high and
2 aggravated nature or not guilty, one of those three on this
3 indictment here. It's indictment 213 on the charge of assault and
4 battery with the intent to kill, one of three decisions in that
5 one.

6 As to the other two charges, you have one of two decision:
7 Either guilty or not guilty. Not guilty or guilty.

8 So, on the back of these under the word verdict you either
9 write the word not guilty or guilty on either one of these, and,
10 once again, it could be different verdicts on all three of these or
11 it could be the same verdict on all three of these.

12 So, that's your choice in that regard.

13 And, once again, these indictments are not evidence. It's
14 just the means of recording your decision in this matter.

15 Ladies and gentlemen, while you are deliberating if you have
16 any questions write them down and we'll see if we can answer the
17 questions but as I said. There is no more evidence to present
18 before you. The evidence has been presented.

19 If you have something you want to see if we can find on a tape
20 or something, we'll try to find something if you don't remember
21 something one way or the other.

22 Or if you don't have any questions but you may have a question
23 about the law, let me know and I'll reread something that I read to
24 you.

25 But if you have no question about any of those, then once you

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1 do reach a verdict and you put the decision on the form and you
2 sign the verdict form in your name and put the date on it, then
3 knock on the door, and we'll bring you out and we'll receive your
4 verdict.

5 When I send you back to the jury room, we're going to - -
6 don't begin your deliberations yet. I need to get the exhibits
7 up. Get them in there and also get these indictments in there.
8 Once they come in, you may begin your deliberations.

9 And another reason I don't want you to begin your
10 deliberations until then is because I may have forgotten something
11 I needed to tell you, and so I'll bring you back out briefly to
12 tell you. So, don't begin deliberations until then.

13 While you are deliberating, if you wish to take a break and
14 step outside for a minute or any of your jurors do, that's fine as
15 long as everybody takes a break when somebody takes a break
16 because, remember. You all have to have the benefit of all your
17 deliberations. So, it wouldn't be right if somebody is not there
18 and you're talking and discussing. Everybody has got to be
19 together.

20 So, y'all decide on that but either everybody is taking a
21 break or everybody is deliberating, one or the other.

22 And, Mr. Foreperson, you have a duty to make sure that occurs.
23 Alright, sir?

24 We'll now let you step to the jury room but do not begin your
25 deliberations until I send the exhibits in. You may step to the

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1 jury room.

2 (The jury retires to the jury room at 5:58 p.m.)

3 MOTIONS AND RULING OF THE COURT

4 THE COURT: Okay. Exceptions from the State?

5 MISS BIAGIANTI: No exceptions from the State.

6 THE COURT: Exceptions from the defense?

7 MR. GOUDE: Judge, we have no exceptions. I do ask that
8 on the jury - - indictment form that goes back for the jury to
9 vote on that we redact the part where says action of the Grand
10 Jury, true-billed and signed by the Grand Jury Foreman. The
11 purpose we ask for that is the indictment is not evidence. Yet, if
12 we send it back as it is, the jury, this jury will see that some
13 other jury or human being of people has voted to charge my client,
14 and they may consider that against my client.

15 So, I'd ask you to send the front page and we can do a second
16 page that says just what you said or the second page a copy of the
17 indictment, and you can just redact that part by putting a piece of
18 paper over the action of the Grand Jury down through the Foreperson
19 and his date of April 2nd.

20 THE COURT: Two things there, Mr. Goude. One is the - -
21 you didn't request it until now, and I've already told them I'll be
22 sending this back there with them. It might make them wonder why
23 I didn't send what I told them I was going to send back there to
24 them.

25 The other one is I don't think that's prejudicial. I think I

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1 have instructed them that this is not evidence at all. I think
2 this jury will follow my instructions. I see nothing on the
3 indictment that would be prejudicial, and I would deny your motion.

4 Anything else.

5 MR. GOUDE: On the exhibits, I note the - - is the Miranda
6 Form, is that in evidence? If so, Ms. Reporter, what number is
7 that? Is the Miranda Form admitted into evidence?

8 THE COURT: Was it admitted into evidence in the Court?
9 I know I admitted it into evidence in the hearing.

10 COURT REPORTER: It was admitted as an exhibit for
11 identification, Number 22.

12 MR. GOUDE: Was it ever admitted into evidence?

13 THE COURT: No.

14 MR. GOUDE: I know the Prosecutor mentioned that on the
15 closing argument that that was coming to them and was shown to
16 them. I knew - - I didn't think it had been admitted into
17 evidence.

18 THE COURT: I thought she asked him questions about it,
19 though?

20 MR. GOUDE: Thank you.

21 THE COURT: You got it?

22 COURT REPORTER: Yes, Your Honor.

23 THE COURT: Anything else?

24 Y'all come make sure your exhibits are in and look at these
25 indictments.

EXHIBITS AGREED UPON/JURY BEGINS DELIBERATIONS AT 6:04 P.M. 387

1 If there is something else on there, Mr. Goude, that you see
2 that might be prejudicial, let me know.

3 Get them together as quick as you can so we can get them in
4 there.

5 EXHIBITS AGREED UPON

6 COURT REPORTER: Your Honor, I believe the attorneys are
7 ready to agree on the exhibits to be sent back to the jury.

8 THE COURT: So, everyone agrees?

9 MR. GOUDE: Yes, sir.

10 MISS BIAGIANTI: Yes, sir.

11 THE COURT: Alright. Hand them to the bailiff, and y'all
12 get the verdicts. Have y'all got the verdict forms there, too?
13 They go back and - - what is that CD there?

14 MISS BIAGIANTI: That's the 911 tape.

15 COURT REPORTER: The two statements, Your Honor, I have as
16 Court's Exhibits over here.

17 THE COURT: Okay. Good. Okay.

18 COURT REPORTER: The Court's Exhibits, of course, are not
19 going back.

20 MISS BIAGIANTI: You - - Judge, you want to send some
21 gloves in with the bag and see if they want to look at it?

22 THE COURT: Yes.

23 JURY BEGINS DELIBERATIONS AT 6:04 P.M.

24 THE COURT: This matter is in adjournment - - in recess
25 until we get the verdict.

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1 Make sure y'all stay close by.

2 (The Court recesses the trial of this case awaiting the
3 verdict from the jury. Upon the jury presenting a question, the
4 Court reconvenes the trial of this case for a response to the
5 jury's question at 6:22 p.m.)

6 JURY QUESTION AND RESPONSE OF THE COURT

7 THE COURT: Alright.

8 They want to know - - where is Mr. Goude and the defendant?
9 Bring the defendant in, too, please.

10 Alright. The jury says, "We need an explanation of malice
11 aforethought and intent."

12 They say, "What's the difference between assault and battery
13 with the intent to kill and assault and battery of a high and
14 aggravated nature?"

15 What I propose to do is charge them again on assault and
16 battery with the intent to kill and the lesser included of assault
17 and battery of a high and aggravated nature.

18 Um, that's what I perceive their question is.

19 Any objection from the State?

20 MISS BIAGIANTI: No, sir.

21 THE COURT: From the defense?

22 MR. GOUDE: No, Your Honor.

23 THE COURT: Alright.

24 I'm going to hand this note to the - - y'all can read it,
25 too, if you want to come read.

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1 Y'all want to come look at the note?

2 MISS BIAGIANTI: No, sir

3 THE COURT: Well, Mr. Goude, I request that you look at it
4 just to make sure.

5 (The counsel for the defendant reviews the Jury Question.)

6 THE COURT: Okay.

7 Bring the jury out, please.

8 COURT REPORTER: Court's Exhibit, Your Honor?

9 Court's Exhibit.

10 (The Court Reporter accepts the jury question as Court's
11 Exhibit #5.)

12 COURT REPORTER: Thank you, Your Honor.

13 (The jury returns to the courtroom at 6:28 p.m.)

14 THE COURT: Ladies and gentlemen, I have your question.
15 What I'm going to do is I'm going to reread, um, the, um, charge of
16 assault and battery with the intent to kill and the lesser included
17 of assault and battery of a high and aggravated nature, and within
18 that charge is also information about the malice aforethought.

19 The defendant has been charged with assault and battery with
20 the intent to kill. In order to prove assault and battery with the
21 intent to kill, the State must prove beyond a reasonable doubt that
22 the defendant committed an unlawful act of a violent nature to the
23 person of another with malice aforethought.

24 After I said that, I then went and told you what an assault -
25 - simple assault was and a simple battery. Remember, the raising

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1 of your hand and touching with your fist.

2 If you don't understand that as far as simple assault and
3 simple battery, let me know, and I'll reread that. If not, we'll
4 skip that part.

5 Alright.

6 So, assault is your raise your hand and the battery is when my
7 hand gets to you.

8 Now, the State then must prove beyond a reasonable doubt that
9 the defendant committed an unlawful act of a violent that's an
10 assault and battery to the person of another with malice
11 aforethought.

12 Malice is hatred, ill will or hostility towards another
13 person. It is the intention, excuse me, it is the intentional
14 doing of a wrongful act without just cause or excuse and with an
15 attempt to inflict an injury or under circumstances the law will
16 infer an evil intent.

17 Malice aforethought does not require that malice exist any for
18 particular time before the act is committed but malice must exist
19 in the mind of the defendant just before and at the time the act is
20 committed. Therefore, there must be a combination of a previous
21 evil intent and the act.

22 Malice aforethought may be expressed or inferred. These
23 terms, expressed and inferred, do not mean different kinds of
24 malice but, merely, the manner in which malice may be shown to
25 exist. That is either by direct evidence or by inference from

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 facts and circumstances which are proven.

2 Expressed malice is shown when a person speaks words which
3 express hatred or ill will for another or when the person prepared
4 beforehand to do the act which was later accomplished.

5 For example, lying in wait for a person or any other act of
6 preparation going to show that the deed was within the defendant's
7 mind, that would be expressed malice.

8 Malice may be inferred from conduct showing a total disregard
9 for human law. Inferred malice may also arise when the deed is
10 done with a deadly weapon.

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

15 And then I gave you examples of things that are deadly
16 weapons: Pistol, shotgun, rifle, dagger, knife, slingshot,
17 guns, and I told you that a gun even when is not loaded or being
18 operated can be a deadly weapon depending on how it's used.

19 If facts are proven beyond a reasonable doubt sufficient to
20 raise an inference of malice to your satisfaction, this inference
21 would be simply an evidentiary fact to be considered by you along
22 with the other evidence in the case, and you may give it the weight
23 you decide it should receive.

24 A specific intent to kill is not an element of assault and
25 battery with the intent to kill but there must be a general intent

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1 to commit serious bodily injury, and intent means intending the
2 result which actually occurs, not accidentally or involuntarily.

3 Intent may be shown by acts and conduct of the defendant and
4 other circumstances from which you may naturally and reasonably
5 infer intent.

6 Evidence of the character of the assault, the character of the
7 instrument used, the manner in which it was used, the purpose to be
8 accomplished and the resulting wounds or injuries may be considered
9 in determining the intent with which the assault was committed.

10 Intent may be inferred when it is demonstrated that the
11 defendant voluntarily and willfully commits an act, the natural
12 tendency of which is to destroy another's life.

13 Now, I told you that under our law the lesser is included
14 within the greater. I told you that assault and battery with the
15 intent to kill also includes as a lesser offense of assault and
16 battery of a high and aggravated nature.

17 If you find that the State has not proven that the defendant
18 is guilty of assault and battery with the intent to kill, you then
19 would determine whether the State has proven that the defendant is
20 guilty of assault and battery of a high and aggravated nature.

21 Assault and battery of a high and aggravated nature includes
22 all of the elements of assault and battery with the intent to kill
23 except malice aforethought.

24 In addition, instead of malice aforethought, the State must
25 prove beyond a reasonable doubt an aggravating circumstance without

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1 malice aforethought.

2 Including in the offense, as I say, is an assault and battery
3 of a high and aggravated nature. That's a lesser included offense
4 as I've said.

5 Assault and battery of a high and aggravated nature is an
6 unlawful act of violent entry to the person of another. Those are
7 the exact same words I read with assault and battery with the
8 intent to kill, the unlawful act of a violent injury to the person
9 of another but with assault and battery with the intent to kill I
10 said with malice aforethought. With assault and battery of a high
11 and aggravated nature my next words are accompanied by
12 circumstances of aggravation. Once again, it does not require the
13 prove of malice aforethought but the State must prove a
14 circumstance of aggravation.

15 Assault and battery of a high and aggravated nature is an
16 assault and battery accompanied by circumstances of aggravation.

17 Circumstances of aggravation include, could include the use of
18 a deadly weapon, the intent to commit a felony, the infliction of
19 serious bodily injury, a great disparity between the ages or
20 physical conditions of the parties, a difference in the genders of
21 the party, the taking of indecent liberties or familiarities with
22 a female through the use of force, the personal infliction of shame
23 or disgrace and the resistance of lawful authorities. These are
24 only examples of circumstances of aggravation.

25 I told you that as you consider the charges if you have a

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 reasonable doubt as to assault and battery with the intent to kill
2 and assault and battery of a high and aggravated nature, you should
3 give the defendant the benefit of that doubt and find him guilty of
4 the lesser charge of assault and battery of a high and aggravated
5 nature.

6 However, you should not find the defendant guilty of either
7 charge unless you are convinced of his guilt beyond a reasonable
8 doubt.

9 And then I charged you as to the other indictment regarding
10 Ms. Keith the charge is assault and battery of a high and
11 aggravated nature, and I said you might as well assume I repeat the
12 elements of that charge in regard to the charge on the indictment
13 involving her as an alleged victim.

14 If you would like for me to reread that again, I'll be glad to
15 do it. Just raise your hand. I'll be glad to. Anybody on the
16 jury?

17 Okay.

18 If not, then you can just continue to the jury room and
19 continue your deliberations.

20 (The jury retires to the jury room at 6:36 p.m. to continue
21 deliberations.)

22 THE COURT: Okay. Exceptions by the State?

23 MISS BIAGIANTI: No, sir.

24 THE COURT: By the defense?

25 MR. GOUDE: No, Your Honor.

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1 THE COURT: Alright. We'll still be in waiting.

2 Next matter, Miss Biagianti.

3 (The Court recesses the trial of this case awaiting the
4 verdict of the jury. The jury thereafter advises the Court that
5 it wishes to hear the 911 tape. The Court reconvenes the trial of
6 this case at 6:55 p.m.)

7 JURY QUESTION AND RESPONSE OF THE COURT

8 THE COURT: They want to know if they can have someone help
9 them play the 911 tape.

10 MISS BIAGIANTI: If you want to put them in the jury box,
11 I'll do so.

12 THE COURT: Go ahead and get it set.

13 MISS BIAGIANTI: Your Honor?

14 THE COURT: Let's make sure you've got your tape and
15 everything.

16 MISS BIAGIANTI: We do.

17 THE COURT: Try it and make sure it sounds alright.

18 THE COURT: We did.

19 THE COURT: Alright.

20 Everyone. Please. We need complete quiet in the courtroom.
21 Make sure they can hear.

22 The jury sent out the following question. "Can we get
23 something to play the 911 tape?"

24 We're going to bring them out and play it on that - - on the
25 CD player of the computer over there, and everybody has got it set.

JURY REACHES VERDICT AT 7:12 P.M.

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1 So, if anybody has got an objection, let me hear it. Hearing
2 no objections, bring them out.

3 Give this to the Court Reporter if you would. Court's
4 Exhibit. Y'all are welcome to look at it if you wish to.

5 (The Court Reporter accepts the Jury Question as Court's
6 Exhibit #6, and the jury returns to the courtroom at 6:56 p.m.)

7 THE COURT: Okay. Ladies and gentlemen, I got a question
8 from you that you wanted to hear the 911 tape. So, if you would,
9 please, play the 911 tape.

10 (The 911 tape identified as State's Exhibit #15 is played in
11 the presence of the jury.)

12 THE COURT: Okay.

13 If you would, please, step back and if you want to hear it
14 again - - if you want to hear it again, raise your hand if you wish
15 to hear it again.

16 Okay. Please step to the jury room.

17 (The jury retires to the jury room at 7:00 to continue
18 deliberations.)

19 THE COURT: We are back in recess on this case.

20 You got another matter?

21 (The Court recesses the trial of this case awaiting the
22 verdict of the jury.)

23 JURY REACHES VERDICT AT 7:12 P.M.

24 (The Court reconvenes the trial of this case to accept the
25 verdict of the jury.)

VERDICT

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1 VERDICT

2 THE COURT: Please be seated.

3 You ready to go, Mr. Goude and Miss Biagianti. I understand
4 we have a verdict.

5 Is the State ready?

6 MISS BIAGIANTI: Yes, sir.

7 THE COURT: Defense?

8 MR. GOUDE: Yes, sir, Your Honor.

9 THE COURT: Mr. Goude, I would ask that you and Mr. Brown
10 stand up when the Court receives the verdict. Alright, sir?

11 MR. GOUDE: Yes, Your Honor.

12 THE COURT: That's all I'm going to do is read the verdict.
13 Alright, sir?

14 MR. GOUDE: Yes, Your Honor.

15 THE COURT: Okay. That's all I'm going to do is read the
16 verdict.

17 Alright.

18 And, Officers, I know this has been an intense matter. So,
19 please, Officers, I don't want any emotion at all, outbursts
20 rather, anyway, no outbursts in the courtroom when we read the
21 verdict. So, if anybody causes any trouble, please help me keep
22 order.

23 Bring the jury in, please.

24 (The jury returns to the courtroom at 7:14 p.m.)

25 THE COURT: Okay. Mr. Foreman, they tell me y'all have

VERDICT

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1 reached a verdict. Is that true, sir?

2 FOREMAN: Yes, sir.

3 THE COURT: Hand the documents there to the bailiff.

4 Okay.

5 If you would, please, publish the verdict.

6 DEPUTY CLERK OF COURT: As to the charge of assault and
7 battery with the intent to kill, The State vs. Robert Dexter Brown,
8 we, the jury, by unanimous decision find the defendant guilty as
9 charged.

10 As to the charge of assault and battery of a high and
11 aggravated nature, The State of South Carolina vs. Robert Dexter
12 Brown, we, the jury, by unanimous decision find the defendant
13 guilty.

14 As to the charge of kidnapping, The State of South Carolina
15 vs. Robert Dexter Brown, we, the jury, by unanimous decision find
16 the defendant guilty.

17 THE COURT: Ladies and gentlemen, if this is your verdict,
18 please raise your right hand.

19 (All jurors raise their right hands.)

20 THE COURT: You may put it down.

21 Further polling required by the State?

22 MISS BIAGIANTI: No, sir.

23 THE COURT: Further polling required by the defense?

24 MR. GOUDE: No, Your Honor.

25 THE COURT: So, ladies and gentlemen of the jury, if you

MOTIONS AND RULING OF THE COURT

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1 would, please, step back to the jury room for a second. I'll bring
2 everybody back out in a minute.

3 (The jury retires to the jury room at 7:16 p.m.)

MOTIONS AND RULING OF THE COURT

5 THE COURT: Okay. Motions at this time by the State.

6 MISS BIAGIANTI: No, sir.

7 THE COURT: Motions by the defense?

8 MR. GOUDE: Judge, we have motion, ah, a new trial on the
9 grounds of the insufficiency of the evidence. That would be the
10 first motion.

11 THE COURT: I feel the evidence was sufficient for the jury
12 to reach the decision they reached. I will respectfully deny your
13 motion.

14 MR. GOUDE: Your Honor, the second motion would be what we
15 had made in our motion in limini that the Court on the Notice of
16 Intent to Seek Life in Prison by the Prosecutor, this Court rule
17 that that would be in this case unconstitutional under the South
18 Carolina and the federal constitutional prohibitions against cruel
19 and unusual punishment in that the aggravating prior conviction
20 occurred thirty years ago and the offense was approximately January
21 27, 1977, conviction approximately May 24, 1978, which is thirty to
22 thirty-one years before this offense occurred. So, that would be
23 the next motion.

24 THE COURT: Well, Mr. Goude, constitutionally I feel that
25 the statute itself is constitutional. Then, once I've done that,

MOTIONS AND RULING OF THE COURT

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1 it is a statute that I have no - - I have no authority to do
2 anything other than to follow.

3 So, and so I will follow the statute, and I will deny your
4 motion.

5 MR. GOUDE: And the third motion, Judge, is the Court - - -

6 THE COURT: By the way, you have put into evidence as far
7 as the Court the conviction, have you not?

8 MISS BIAGIANTI: We've got it clocked in, Your Honor. I'm
9 not sure if it's a Court's Exhibit yet but it was clocked in and
10 given to the Clerk of Court, Your Honor.

11 It shows the convictions as well as the delivery certificate
12 of our Notice to Seek Life of our Investigator Stephen Brown.

13 THE COURT: And what was the conviction, the exact title of
14 this conviction again?

15 MISS BIAGIANTI: You said the title, Your Honor?

16 THE COURT: Title of the conviction.

17 MISS BIAGIANTI: Yes, sir.

18 It was armed kidnapping and armed robbery.

19 THE COURT: Alright.

20 Mr. Goude, do you have any reason to challenge the - - the
21 convictions?

22 MR. GOUDE: The conviction I saw was an armed kidnapping.
23 I saw one, not two convictions or two charges.

24 THE COURT: Well, I just looked at it, and it says armed
25 robbery and armed kidnapping.

MOTIONS AND RULING OF THE COURT

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1 Alright.

2 MR. GOUDE: And the third - - -

3 THE COURT: Let the Court Reporter have that and mark it as
4 a Court's Exhibit for any appellate reasons.

5 (The Court Reporter accepts the Certificate of Prior
6 Conviction and Notice to Seek Life as Court's Exhibit #7.)

7 MR. GOUDE: The third motion I have, Judge, is like I also
8 made on the motion in limini to begin with at trial for the Court
9 to rule that the conviction thirty years ago is too remote to be
10 used to impose the sentence of life in the penitentiary on
11 somebody.

12 Using the analogy of the ten years being too remote to use a
13 prior conviction to impeach somebody, it would be using a
14 conviction that's thirty years old to give somebody life in the
15 penitentiary would be a basis for us asking the Court not to impose
16 the life sentence, and that's my motions.

17 THE COURT: Alright.

18 I will respectfully deny those motions.

19 Anything else?

20 MR. GOUDE: No, Your Honor.

21 THE COURT: Bring the jury back in, please.

22 By the way, let the record reflect I also note a motion for a
23 new trial as the thirteenth juror for a new trial. I note that
24 motion and respectfully deny that motion and a motion that the
25 evidence was not sufficient for a conviction and should result in

SENTENCE OF THE COURT

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1 a new trial, and I deny that motion. I deny that motion.

2 (The jury returns to the courtroom at 7:20 p.m.)

3 THE COURT: Um, ladies and gentlemen of the jury, you sat
4 here for the whole time. You should sit here for the end of the
5 matter, too.

6 Let's proceed to sentencing if you would, please.

7 Bring the defendant.

SENTENCE OF THE COURT

8
9 MISS BIAGIANTI: Your Honor, as the Court is aware and the
10 jury is not, the State served this defendant with notice to seek
11 life in prison because of his prior record. The jury is not aware
12 of his whole prior record.

13 As a matter of fact, in 1979, he was convicted of the same
14 offenses effectively, armed kidnapping and armed robbery, and
15 sentenced to eighteen years in Washington, D. C.

16 He also has a receiving stolen goods charge, a carrying a
17 pistol without a license for which his probation was revoked. The
18 jury heard about the escape conviction. He, also, has an attempted
19 burglary, second degree conviction, destruction of property
20 conviction, unlawful entry conviction as well as an attempted theft
21 conviction.

22 So, based on South Carolina law, the armed kidnapping and
23 armed robbery convictions from Washington, D. C. are what we
24 consider a most serious strike, and as you are aware, when you are
25 convicted of a second most serious strike, the Court has no

SENTENCE OF THE COURT

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1 discretion in sentencing the defendant. He must be sentenced to
2 life in prison, Your Honor.

3 THE COURT: Without parole.

4 Alright. So, Miss Biagianti, you have served the defendant
5 and the defendant's counsel that you intended to seek life without
6 parole upon conviction of assault and battery with the intent to
7 kill and/or kidnapping?

8 MISS BIAGIANTI: Yes, sir, Your Honor.

9 That was served on the defendant April 22nd of this year,
10 served upon himself personally as well as his attorney, Mr. Goude,
11 of the State's intention to seek life without parole.

12 THE COURT: And we had a preliminary hearing about that
13 before the case began, Mr. Goude and Mr. Brown, and I made sure
14 that y'all had been served with that.

15 Um, ah, anything else from the State?

16 MISS BIAGIANTI: No, sir.

17 Your Honor, I'm not sure if the victims would like to address
18 the Court.

19 THE COURT: I'll be glad to hear from anyone if they wish
20 to.

21 MISS BIAGIANTI: No, sir, Your Honor.

22 THE COURT: Alright.

23 Mr. Goude.

24 MR. GOUDE: Judge, you heard Mr. Brown testify about his
25 age. He was born in [REDACTED]. He'll be [REDACTED] years of age in

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1 September of this year.

2 He did have a prior conviction that he had served two years on
3 when he was twenty years old thirty years ago, the conviction that
4 the Solicitor talked about, and he's had the escape and attempted
5 burglary in 2000 which we brought out during the trial which was
6 eight years ago, and he's a had a few minor charges other than that
7 but none more recent than that that I know of.

8 THE COURT: How long has he been in the county jail now
9 awaiting this trial?

10 MR. GOUDE: He's been in the county jail since the day that
11 this occurred which was - - -

12 THE COURT: February 21st of '07?

13 MISS BIAGIANTI: '08, Your Honor.

14 THE COURT: '08 now?

15 MR. GOUDE: Yes, Your Honor.

16 He has testified during the trial. He has said what he said
17 happen. The jury has reached its verdict. That's our system, and
18 we stand before you now to receive sentence.

19 THE COURT: Mr. Brown, be glad to hear from you, sir.

20 MR. BROWN: Yes, sir, Your Honor.

21 Basically, Your Honor, what I've said is the truth, um,
22 however it came out. What I said was definitely the truth. I
23 had no intention to go to that tax place and hurt anyone. It was
24 not my intention. I'm sorry that Mr. Epps was hurt. I'm sorry
25 that Tywanda was hurt if - - you know, if she believed that's what

SENTENCE OF THE COURT

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1 my intention was to come there and hurt her but that was not my
2 intention.

3 Um, I - - I love her, yes. I loved her and, you know, I love
4 her still, and I probably always will to my grave. Right?

5 Um, but I didn't - - this - - this was something that didn't,
6 you know, I mean, I just woke up and I popped up at the Palmetto
7 Tax. It didn't - - it didn't occur like that at all, and that's
8 the fact.

9 How it came out, um, is probably, you know, the reason why the
10 jury, um, made the verdict that they did.

11 Like Mr. Goude had said, I had some sentences in Washington,
12 D. C. but I changed my life. I came here, um, almost three years
13 ago. My father got real sick and, um, and he had a lot of strokes,
14 and my mom was at the house, and I came home, and I took care of my
15 father for two years until he passed away in April.

16 Bible School teacher at the church, you know, and I'm familiar
17 with every church just about in Georgetown.

18 Um, so, you know, I - - I have no - - no - - no hard feelings
19 against them whatsoever. I am, I mean, as a matter of fact, I'm
20 calm, cool and collected as we speak now because I know I did no -
21 - did nothing wrong.

22 Um, I - - before I got incarcerated I was about to work at,
23 um, ah, ah, Marine Institute for the young boys. I had just did
24 training there, you know, because I wanted to work with kids who
25 grew up pretty much like I grew up, you know, kind of tough, you

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1 know, playing at, you know, the boxing gym and learning how to
2 fight and learning martial arts.

3 Um, I, you know, I - - I've done a lot of things. You know,
4 I've done a lot a things that I'm not, you know, proud of, you
5 know. But when you get my age some - - sometime God calls you and
6 he says, "You need to slow down, and you need to get your life
7 right."

8 And that's just what I did.

9 My mom said, "Don't go back on the gospel pyre."

10 My mom is a strong religious woman, and she raised all seven
11 of us like that. We've had a lot of tragedies in our family, and
12 we've endured those tragedies.

13 But I, actually, I actually came to the conclusion of before
14 I got incarcerated before this incident occurred. Like Tywanda
15 said, she sings gospel. I like gospel songs, you know, and I'm a
16 believer, and I believe that God is going to take care of this
17 situation the way He chose to. I left it in His hands in all
18 actuality.

19 I'm not trying to preach no sermon, you know what I'm saying.
20 I'm a pretty good theologist. I'm an intelligent man. I went to
21 - - I finished school. I went to college for a couple of years,
22 and then, you know, started fighting.

23 Um, I've met some prominent people. I was involved in the
24 Stop the Violence Program in Washington, D. C. where I - - where I
25 avoided two gangs from going to war. Al Sharpton was a part of

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1 that.

2 I've met some prominent people through my boxing career, and
3 I've trained some good guys.

4 I - - I didn't - - I didn't come to Georgetown - - this is my
5 hometown, first of all, this is my hometown. This is where I was
6 born, you know, and when I came back to Georgetown, I came back to
7 Georgetown to - - to - - to kind of work with the kids that were,
8 you know, going in the wrong - - on the wrong path, and I went in
9 that direction of doing that.

10 My mother told me something, and, you know, a lot of times you
11 have to pay attention to your mother.

12 Momma told me, she said, "When you put all your focus on
13 Tywanda, you took your focus off God."

14 And I'm inclined to agree with her this time, and I think, you
15 know, it's one of the things that she has always taught me.

16 See, you never get too old to momma's child, and so a lot of
17 things that my momma tried to tell me, I thought I was grown even
18 at [REDACTED] old.

19 Um, I'm well versed in my Bible. I'm awesome. I taught, like
20 I said, I taught Bible School.

21 Um, I was a Muslem for about five years. So I know
22 everything. I studied Judaism, and I'm pretty much a good
23 theologist.

24 Um, it - - it - - when God changed me, when God stepped into
25 my life, he stepped in my life in 2000, no 2005, and its something

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1 I'd like the jury to hear, and I respect their verdict but in 200 -
2 - 2005, yeah, I thing it was along about 2005. Um, I - - I would
3 have been involved in drugs, and I had really gotten back into
4 them, you know, as far as using drugs, and one day I was going to
5 get some drugs, and a house was on fire, and there was a lady
6 outside the house, a white lady, and she was crying hard, "My child
7 is inside."

8 I've never told anybody this story, and I've never told
9 anybody this story correctly.

10 And I ran in there, and I got that little girl out of there.

11 And I suffered third degree burns to my feet because my tennis
12 shoes caught on fire when I was trying to bring her out of there.
13 I've never told anybody this story. I've never went back to
14 collect a reward. The lady was on the news trying to describe the
15 situation.

16 And God changed my life that day because they was talking
17 about cutting my feet off. The scars are still very visible on my
18 feet. That was the day that I changed my life, and, now, my life
19 has been changed up until the - - up until the time that I met
20 Tywanda and this incident occurred.

21 Like I say, I was very active in the church. Getting ready
22 to work at the Georgetown Marine School for Boys.

23 I'm not a bad person.

24 THE COURT: Mr. Brown, I appreciate your comments, and I
25 can understand, ah, ah, that you had a varied experience in life

SENTENCE OF THE COURT

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1. and have been around and known many people.

2. Um, the jury, as you know, though, has made their decision,
3. and as you said, they've made their decision in this matter, and I
4. think you are aware of my responsibilities here.

5. I want to make sure you understand your rights to an appeal.

6. MR. BROWN: Yes, sir.

7. THE COURT: Mr. Goude, you are to make sure that he is
8. informed of his rights to appeal, Mr. Goude.

9. MR. GOUDE: Yes, Your Honor.

10. THE COURT: Um, and, um, so you do have a right to appeal
11. in this matter, Mr. Brown, and - - and, um, um, I just want to make
12. sure you are aware of that.

13. MR. BROWN: Yes, sir.

14. THE COURT: Mr. Brown, as to the assault and battery of a
15. high and aggravated nature, the sentence of the Court is ten years
16. concurrent with the other sentences you have, and I'll give you
17. credit for time served since February 21st of '08.

18. On the sentence for the assault and battery with the intent to
19. kill and the sentence for the kidnapping, they are also to run
20. concurrent with each other and concurrent with the ABHAN. The
21. sentence is according to the statute life without parole.

22. Um, and I hope God does have mercy on your soul. I hope you
23. stay close to God as you say you are now.

24. Good luck to you, sir.

25. MR. BROWN: Thank you, Your Honor.

REMARKS OF THE COURT

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1 MR. GOUDE: Thank you, sir.

2 REMARKS OF THE COURT

3 THE COURT: So, ladies and gentlemen, as I've said, the
4 matters we handle are very, very important. They are significant.
5 I know these things are not easy for you.

6 Ah, you have to make decisions you made and you all talked and
7 discussed the matters, and you did.

8 They're not easy for anyone, the victims, for family of the
9 defendant or the defendant, and they are not easy for us within the
10 Court, and we have duties to do and obligations to perform in these
11 matters.

12 And if you had found him not guilty, I would have performed my
13 duty and released him.

14 And you found you guilty, obviously, I performed my duties
15 and sentenced him accordingly.

16 You made your decision on the sentence, and our statutes by
17 the Legislature said that if anybody is convicted of two most
18 serious offenses anytime within their life, they must be sentenced
19 to life without parole, and armed robbery is a most serious offense
20 as is assault and battery with the intent to kill and as is
21 kidnapping.

22 Therefore, the obligation of this Court is to follow the law.
23 And, so, obviously, I had no choice but to sentence him to life
24 without parole.

25 Your jury term is now complete. Now, if you do not wish to,

REMARKS OF THE COURT

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1 you do not have to discuss your verdict, your decision with anyone.
2 You can choose to. No one can stop you. It's a free country. The
3 only thing I am directing you, though, is if you choose to do so,
4 you don't talk about other jurors by name. You can discuss the
5 jury as a whole or the jury as a group or any sense of generic
6 feelings of the jurors without identifying fellow jurors because
7 you need to know that it is safe for everyone in that room to talk
8 and be a secret as to your discussions.

9 So, you're not - - you are hereby directed not to disclose as
10 to any other jurors their thoughts and their statements.

11 If you want to talk about how you felt or whatever, how the
12 jurors felt as a group or how four, five - - five or six, whatever,
13 those things are fine. That's up to you.

14 If you don't wish to talk about this matter, do not. If
15 someone asked you to speak about it and you say no. Fine. If they
16 ask you to speak about it again after you've told them no, feel
17 free to contact me through the Clerk of Court, and I will handle
18 it. You're not to be bothered about these matters.

19 As a fellow American and as a person who is in the Judicial
20 System which you served this week, I want to thank you very much
21 for your service.

22 You are now going to be free to go. There is no more jury
23 service this week. There are going to be guilty pleas tomorrow
24 and probation violations.

25 You get a check in the mail. Is that right, Mr. Clerk?

REMARKS OF THE COURT

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1 DEPUTY CLERK OF COURT: Yes, that's right.

2 THE COURT: You will get your check in the mail for your
3 service of \$25 a day, \$75 and you also get something that will
4 indicate you were on jury service if you need it for your
5 employers. If you have to something tonight, then you can see him
6 and he can probably write you a note of some sort. If not, you
7 should get it in the mail.

8 I - - like I said. I am from Dillon County, and if you ever
9 get into Dillon County, I will only be a trial judge for another
10 four months, well, a little over four months, and then I will be
11 going on the Appellate Bench. I've been doing this now for
12 nineteen years, and it's never, never boring. It's never, never
13 doing the same thing because every case is a different person.
14 Every case is a different jury. Every case is different, and you
15 need to look at it differently. Whenever you start looking at it
16 like it's the same old same old, then, of course, you're not doing
17 your job, and you're not doing your duty.

18 As a judge, I'm not going to the Court of Appeals because I'm
19 tired of being a trial judge. I'm going to the Court of Appeals
20 because I only think it's my duty. With any training, you should
21 apply to do something new with that training, and I was fortunate
22 to be elected, and so I will be doing that.

23 Thank y'all for working with me today. It wasn't a pleasant
24 drive there and back. I went there and stayed an hour and a half
25 and then drove right back. I was on the road the whole time.

REMARKS OF THE COURT

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1 Thank goodness for Zaxby's and all that for lunch.

2 If you ever get to Dillon, please look me up or come by
3 Lockemy's Grocery. I grew up in a grocery store. We have the
4 store now it's Little Bill's. It was Lockemy's Groceries for
5 sixty-some years and we sold out in 2001 after my parents passed
6 away, and my brother was doing some other things. He's on the
7 radio, a beach music disc jockey, and so I couldn't run it. So, he
8 finally sold it but I have an agreement with the owner of the
9 grocery that if any jurors ever show up from anywhere and say they
10 were on the jury and I was the judge, you get a free soft drink for
11 a dollar and twenty cents.

12 So, please make sure you do that if you get to Dillon.

13 You all are free to go at this time. Thank you for your
14 service.

15 (The jury is released from this case and from jury service for
16 this week and depart the courtroom at 7:35 p.m.)

17 THE COURT: Oh, yeah, Mrs. Knox, let's make sure we keep
18 those notes.

19 Okay. Now, tomorrow morning we're going to do probation
20 matters. They have the floor tomorrow. If I can get the
21 probation matters done to their satisfaction, then we'll try to get
22 some guilty pleas but I'm going to go with y'all first at 9:30.
23 Okay?

24 So, be ready to go from there.

25 Waive the fees.

REMARKS OF THE COURT

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1 Mr. Goude, you did a good job.

2 (The Court adjourns the trial of this case and court for the
3 day at 7:37 p.m.)

4 - - - END OF TRANSCRIPT - - -

CERTIFICATE OF COURT REPORTER

415

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF GEORGETOWN)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the hearing of the captioned case on the dates
9 specified, relative to appeal, in the Court of General Sessions
10 of Georgetown, South Carolina.

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

13 November 26, 2008

14
15 Linda W. McCall

16 Linda W. McCall

17 Official Reporter
18
19

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

James E. Lockemy, Circuit Court Judge

THE STATE

RESPONDENT

v.

ROBERT DEXTER BROWN

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in admitting into evidence appellant's prior bad acts of trespassing and repeated telephone calls as these acts occurred under circumstances that were wholly unrelated to the setting that spawned the assault charges in the present case, and because the prejudicial value of this evidence outweighed the probative value.

STATEMENT OF THE CASE

Appellant Robert Dexter Brown was convicted of assault and battery with intent to kill, assault and battery of a high and aggravated nature, and kidnapping during the July 2008 term of the Georgetown County General Sessions Court before the Honorable James E. Lockemy, Judge. Appellant was sentenced to imprisonment for a period of life without parole.

Appellant appealed. This brief follows.

ARGUMENT

The lower court erred in admitting into evidence appellant's prior bad acts of trespassing and repeated telephone calls as these acts occurred under circumstances that were wholly unrelated to the setting that spawned the assault charges in the present case, because the prejudicial value of this evidence outweighed the probative value.

Twanda Keith testified that she and appellant began dating in November 2006, and that by December 2006, she moved in with him and they began living together. However, by December 2007, the relationship ended, and in January 2008, Keith moved into the home of her current boyfriend Lee Epps. Then, on February 21, 2008, appellant entered the Palmetto Tax Service Office (located in Georgetown) and sat down beside Keith, who was also there at the tax office at that time. Keith stated that appellant pulled out a knife, pulled her up and pushed her to walk out of the tax office. Thereafter, Lee Epps, who was parked nearby and saw what was happening, began walking toward them and became entangled in the brawl. Keith stated that at some point in the incident, appellant "did like this . . . two jabs like that" to her. Afterwards, Epps decided to get his vehicle, and when he drove up to the tax office, Keith managed to escape from appellant and jump in the vehicle. Thereafter, Keith and Epps went to the sheriff's department to report the incident. R. p. 152, l. 12- p. 184, l. 20. Keith received a neck injury from the stabbing. R. p. 29, line 5 – p. 32, line 6.

Lee Epps testified that he witnessed the event between appellant and Keith that occurred outside the tax office, and as a result of his intervening, he received a stab wound to his left hand. He later realized that appellant had stabbed him in his side as well. R. p. 13, l. 16 – p. 35, l. 18.

Appellant testified that he went to the tax office after having spoken with Keith earlier that day because Keith agreed to lend him some money. Appellant stated that he appeared at the office to get the money, and that while he was there, he asked Keith to return the engagement ring he gave her. At that point, a heated conversation commenced between them and they exited the tax office to discuss the matter. Appellant explained that when Epps saw this, he approached them. Appellant explained that Epps was the one who wielded a knife and that after he approached, a scuffle between them ensued and injuries resulted. R. p. 170.

During the trial, Officer Pamela Kosiak testified that she was working at the nursing home/health center where Keith worked on the evening of January 24, 2008, when appellant appeared insisting that he was Keith's brother and that he had arrived to transport Keith from work. Kosiak relayed this message to Keith, who told her that appellant was an ex-boyfriend. Kosiak confronted appellant immediately and asked him to leave the premises. Later on that evening, Kosiak caught appellant lurking and loitering at the property nearby the health center. Kosiak issued appellant a trespass notice pursuant to her finding. R. p. 7, line 13 – p. 12, line 8.

By way of background information, note that at trial both Keith and Epps claimed that appellant continued to call their household in January 2008 until law enforcement became involved in connection with the calls. R. 160, l. 22 – p. 161, l. 22; R. p. 16, l. 9 – p. 17, l. 9. Also, Keith admitted that appellant proposed to her on January 21, 2008. R. p. 205, l. 1 – p. 207, l. 25. Finally, Keith admitted that she caught appellant in the act of being unfaithful to her in the latter months of their relationship. R. p. 213, l. 1 – p. 214, l. 25.

Prior to trial, the defense moved to exclude evidence of trespassing and telephone harassment claims against appellant. R. 106, l. 23 – p. 110, l. 14; R. 130, l. 1 – p. 131, l. 17. Generally, prior crimes or bad acts cannot be presented to show that the defendant had the propensity to commit the crime charged. State v. Smith, 309 S.C. 409, 419 S.E.2d 816 (1992). Prior bad act evidence may be considered admissible “only where the prior bad act directly supports some substantial element of the state’s case or is relevant to establish a material fact or element of the crime charged.” State v. Hough, 319 S.C. 104, 459 S.E. 863 (1996); State v. Bell, 302 S.C. 18, 393 S.E.2d 365 (1990). The “bad act must logically relate to the crime which with the defendant has been charged.” State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006).

Here, the prior acts of trespassing and the repeated telephone calls constituted acts that had no bearing on the assault and kidnapping charges involved in this case. To the contrary, the central issue concerned appellant’s request for the return of the engagement ring from Keith. It was clear that appellant dated Keith, gave her an engagement ring, and after realizing that there was no hope of marriage between them, he decided to ask that the ring be given back to him.

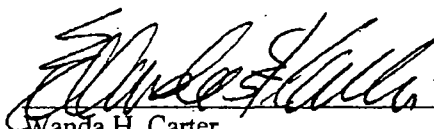
Information regarding appellant’s prior calls made to Keith and his appearance at Keith’s job served only to portray appellant as a man who was irrational and not in control of his actions, and who mishandled the stress of the end of their relationship and was thus clearly guilty of the assault charges. This portrayal of appellant as one prone to or possessing the propensity toward violence constituted an inaccurate description of him and was evidence that was more prejudicial than probative.

The lower court erred in allowing the prejudicial testimony of prior bad acts in question into evidence in violation of appellant's right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article 1 § 3 of the South Carolina Constitution.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the Georgetown County General Sessions Court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

July 27, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
James E. Lockemy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT DEXTER BROWN,

APPELLANT

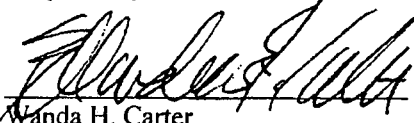
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert Dexter Brown states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge James E. Lockemy, which was held on 7-31-08, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed the arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Robert Dexter Brown.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

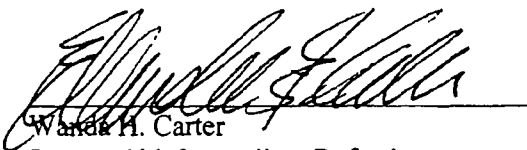
ATTORNEY FOR APPELLANT

July 27, 2009

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 27, 2009

A handwritten signature in black ink, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

James E. Lockemy, Circuit Court Judge

THE STATE,

RESPONDENT,

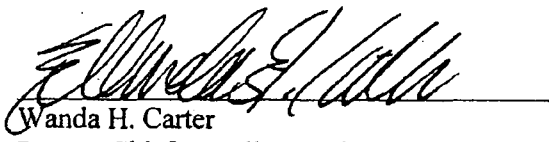
V.

ROBERT DEXTER BROWN,

APPELLANT

CERTIFICATE OF SERVICE

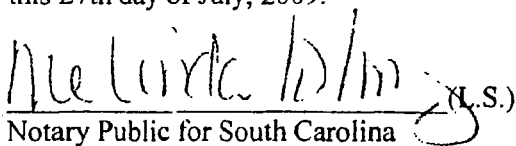
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal have been served upon Robert Dexter Brown, #329874 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 27th day of July, 2009.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2009.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018

NO RESPONDENTS BRIEF FILED

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SC Court of Appeals

STATE OF SOUTH CAROLINA
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Appeal from Georgetown County
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THE STATE

RESPONDENT,

V,

ROBERT DEXTER BROWN

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PRO-SE ANDERS BRIEF



Robert Dexter Brown,
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STATEMENT OF ISSUES ON APPEAL

1. Whether the lower court erred in admitting appellant's statements made while in custody?
2. Whether the solicitor violated appellant's Fifth Amendment privilege against self-incrimination when appellant was called back to the stand without warning and made to identify his signature at the onset of the Jackson v. Denno hearing?
3. Whether appellant's Six Amendment Right to confrontation was violated by the absence of Sgt. James Burke from the trial?
4. The solicitor violated the Golden Rule in her closing argument?

STATEMENT OF FACTS

Appellant Robert Dexter Brown was convicted of assault and battery with intent to kill, assault and battery of a high and aggravated nature, and kidnapping. Appellant testified in his defense and the State moved to impeach Appellant with statement he made while in custody. A Jackson v. Denno, hearing was held and the statements were admitted and used for impeachment over defense counsel's objection. Appellant was convicted and sentenced to imprisonment for a period of life without parole.

On the onset of the Jackson Denno hearing Appellant was asked to step down from the witness stand and thereafter, the following took place:

MISS BIAGIANTI: YOUR HONOR, we like to --Investigator Johnell Spartman.

The Court: By the way. If you want to while he's up here see if he wants to verify his signature, I'd be glad to.

Mr. Brown. Mr. Brown, come back up one second, please, sir.

Mark that for ID if you would.

MISS BIAGIANTI: WE DID SIR.

THE COURT: OKAY.

MISS BIAGIANTI: State's Exhibit #22 for ID.

The Court: Okay.

MISS BIAGIANTI: Tell this Court what the name of that form is.

Mr. Brown: Miranda Warnings.

MISS BIAGIANTI: And do you recognize that signature?

MR. BROWN: Yes. That's my signature.

The Court: okay.

You can step down for a second, now. Tr. p. 227, lines 1-17.

Thereafter investigator Johnell Spartman took the witness stand and the following testimony took place. Tr. 228, lines 1-2.

Direct examination by Miss BIAGIANTI:

Q. You work at Georgetown City Police Department?

A. Yes.

Q. Rank of Investigator?

A. Yes

Q. How long have you worked there?

A. Nine Years.

Q. And just tell us what are some of your duties as an investigator.

A. Ah, pretty much, we investigate and follow-up cases, mostly felony cases, ah, any cases that require further investigation.

Q. And are you familiar with the defendant in this case, Robert Dexter Brown?

A. Yes

Q. And are you familiar with, um, Miranda Warning that suspects often receive?

A. Yes

Q. And did you have on occasion that another officer that you work with advised Mr. Brown of his Miranda Rights?

A. Yes

Q. What officer was that?

A. My Supervisor Sgt. James Burke.

Q. And you weren't there. Just so we're clear. You weren't there when he Mirandized the subject but you walked in afterwards.

Correct?

A. Yes

Q. And then there was also a second interview that you solely did and at that time you inquired of the defendant, ah, you asked him if he still understood he was under his Miranda Rights, and he said yes?

A. Yes

Q. And, um---

I'm showing you what's been marked as State's Exhibit # 22 for ID. Can you tell us what that is?

(court Reporter accepts State's Exhibit #22 for identification only).

A. This is our department's version of the Miranda Warnings.

Q. And tell us for the record, um, the name, location and date of this.

A. Location, GPD, initials for Georgetown Police Department. The date is 2/21 approximately 3--I can't see the last.

Q. It was 3:50 something. Is that correct?

A. Correct.

Q. Last name, Brown. First name, Robert. Middle initial, D but it's spelled out Dexter.

Address, [REDACTED], Georgetown, South Carolina, 29440.

Social security number; date of birth [REDACTED].

Q. What else does it have on it? Type of Offense?

A. Type of offense is assault and battery with a high----correction. Assault and battery with the intent to kill.

Also, there is a phone number that was provided, 545-5196.

Q. And are you familiar with that handwriting at the top of this form?

A. Yes.

Q. And how are you so familiar with it?

A. It's the handwriting of my supervisor.

Q. How long have you worked with your supervisor?

A. Directly three and a half years.

Q. And how many interviews have you conducted with him during this three and half years approximately?

A. Several.

Q. And can you please read into the record exactly what the form says and whether or not there is a checkmark by that warning.

A. The checkmark, you have each warning there. The checkmark indicating that each warning was read.

Q. Is that the standard procedure?

A. Yes. We usually use a checkmark or a circle, whoever is conducting that interview.

Q. Yes, sir: See Tr. p. 227-230.

DISCUSSION

The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." The Fifth Amendment not only protects the individual against being involuntary called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceeding. Lefkowitz v Turley 414 U.S. 80, 94 S.Ct. 316 (1973)(quoting McCarthy v. Arndstein, 266 U.S. 34, 40, 45 S.Ct. 16, 17, 69 L.Ed. 158 (1924).

Here, Appellant was impermissibly called back to the witness stand to verify his signature on the Miranda Warning Form, under direction of Miss Biagianti, who acted without warning to Judge Lockemy's request. Tr. p. 227, lines 3-17. The Court nor Miss Biagianti never warned Appellant he didn't have to testify to his signature if he didn't want to. The Appellant was asked by Miss Biagianti, to tell the Court, what the name of that form is; Appellant answered: "Miranda Waring." Then Miss Biagianti asked: "And do you recognized that signature?" Appellant answered; "Yes. That's my signature."

Thereafter, Investigator Johnell Spartman, was shown the Miranda Form, marked as Exhibit # 22 for ID. Tr. p. 229, lines 13-18. Then Investigator Spartman, was asked to tell, the Court the name, location, date of the form. Tr. p. 229, lines 19.

Investigator Spartman, identified the name Brown, Robert, and middle initial D, its spell out Dexter. Tr. p. 229, 230, lines 25-1.

Investigator Spartman could not identify Appellant signature because he testified he was not present when Sgt. James Burke Mirandized Appellant. Tr. 228, line 25, p. 229, lines 1-4. The record is silent why Sgt. James Burke was not present in the Courtroom.

ARTICLE IX. AUTHENTICATION OR IDENTIFICATION (Rule 901, SCRE).

Requirement of authentication or Identification.

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponents claims.

The question whether the Miranda Form was used against Appellant in violation of his Fifth Amendment privilege is answered in the "Ruling of the Court." "After looking at the totality of the issues, the Court's determination, ah on a confession issue is whether Miranda was given and whether the defendant understood the Miranda. That's totally a court decision, and I looking at the DVD and the totality of the matters and this in camera hearing which is not held to the same standard of evidence rules as a hearing in front of a jury, ah, I find by the preponderance of the evidence that Miranda ruling, that Miranda was given and was understood by the defendant. Tr. p. 244, lines 1-9.

The on cross examination following the Jackson v. Denno hearing by Miss Biagianti:

Q. When you were arrested you went to the police department.

A. Uh-huh.

Q. You were interviewed. Correct?

A. Right.

Q. They gave you your Miranda Warning?

A. Right. Tr. p. 251, lines 2-8, and further on cross examination. Tr. p. 261, lines 14-22.

Q. Showing you State's exhibit 22 for ID.

A. I don't remember signing it. Its on there but I don't remember signing it. It's on there but I don't remember signing it ...

Q. Okay.

A. That's the Miranda Warning?

Q. Is that your signature?

A. That's my signature. I don't remember even seeing the papers and that's the truth.

SUMMATION BY MISS BIAGIANTI

"Well, two hundred over two hundred probably would have been dead? "I'm not a doctor but I guarantee you he would not have been able to sign this Miranda Form. "Clearly, this is your signature?" "Yes", but I don't remember." Tr. p. 354, lines 21-25. It is unclear whether the Miranda Form was entered into evidence for the jury to review during deliberation.

The Supreme Court in Arndstein supra, "squarely held that [t]he privilege is not ordinary depended upon the nature of the proceeding in which the testimony is sought or is to be used. It applies alike to civil and criminal proceedings, whenever the answer might tend to subject to criminal responsibility him who give it.

The privilege protects a mere witness as fully as it does one who is also a party defendant. Appellant is entitle to a new trial.

ADMISSIBILITY OF STATEMENTS

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights Miranda v. Arizona, 384 U.S. 436, 498-500 (1966). If a suspect was advised of his Miranda rights but made a statement, the "burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." State v. Saltz, 346 S.C. 114, 135, 551 S.E.2d at 252 (2001). A statement is not admissible unless it was voluntarily made. State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005); see also State v. Childs, 299 S.C. 471, 475, 385 S.E.2d 839, 842 (1989)(*The test of admissibility of a statement

is voluntariness.") This voluntariness requirement is in addition to the intelligent waiver mandate of Miranda. see State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986)("In order to secure the admission of a defendant's statement, the State must affirmatively show the statement was voluntary and taken in compliance with Miranda.")

This process requires proof of what warnings were given a suspect, and where the right have been reduced to a written form that is signed by a complaint suspect, all that needs to be done is for a law enforcement officer to identify the written form as the form read to (or by) the suspect, and the signature as that of the defendant. See Tague v. Louisiana, 444 U.S. 471, 100 S.Ct. 652 (1980). At the suppression hearing in the trial court, the arrest officer testified that he read petitioner his Miranda rights from a card ...

Sgt. James Burke was the sole witness to the statement and it was he who reduced appellant's oral statements to writing and had them recorded. The State had the burden that could only be met by Sgt. James Burke's testimony to prove the hearsay rule exception and appellant had the right to cross examine him. There is not only a Fifth Amendment violation, but also a Six Amendment confrontation violation. Appellant must be given the right to

cross examine Sgt. James Burke, concerning the contents of Appellant's statement. Because the accuracy of the contents remains to be tested after testimony from Sgt. James Burke, that the statement were lawfully obtained, appellant must be afforded his right of confrontation granted by the Six Amendment to the United States Constitution, and thus, a meaningful opportunity to present a complete Defense. See Washington v. Texas, 388 U.S. 14, 23, 87 S.Ct. 1920, 1925, 18 L.Ed.2d. 1019 (1967). He must be given the opportunity to cross-examine the party who prepared the writing which was signed by appellant.

Defense counsel, Mr. Goude, objected to the first interview DVD/CD on the grounds that the police officer, the officer who testified Mr. Spartman said that gave him these Miranda Rights is not present here in the court. Then he objected, to the CD/DVD of the first interview being admitted on the suppression hearing on the grounds of hearsay, or the Court using it because of the issue of the voluntariness of the statement by the defendant. We object to the Court using the CD/DVD of the first interview where Miranda Rights are actually being given on the grounds that the police officer is not present to testify, and therefore, the CD or DVD would be hearsay. We object to the Miranda Form on the same hearsay grounds as being signed by, the names on here are Jimmy Burke who is not present in court to testify that he signed that. Tr. p. 235, lines 8-25, p. 236, lines 1-21.

Wherefore, this trial error affects the substantial rights of Appellant and he is entitled to a new trial.

VOLUNTARINESS DETERMINATION

Under Jackson v. Denno, a defendant is entitled to a "reliable determination as to the voluntariness of his [statement] by a tribunal other than the jury charged with deciding his guilt or innocence." State v. Fortner, 266 S.C. 223, 226, 222 S.E.2d 508, 510 (1976). "In South Carolina, the judge makes this initial determination of voluntariness required by Jackson v. Denno[.]" Id.

A defendant in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of statements made by the defendant prior to submission of such statements to the jury." State v. Salisbury, 330 S.C. 250, 271, 498 S.E. 2d 655, 666 (Ct. App. 1998), aff'd as modified 343 S.C. 520, 541 S.E.2d 247 (2001); State v Creech, 324 S.C. 76, 84, 441 S.E.2d 635, 639 (Ct. App. 1993) ("Whenever evidence is introduced that was allegedly obtained by conduct violative of a defendant's constitutional rights, the defendant is entitled to have the trial judge conduct an evidentiary hearing outside the presence

of the jury at the threshold point to establish circumstances under which it was "gained." The trial judge must determine in under totality of the circumstances a statement was knowingly, intelligibly, and voluntarily made. State v. Salts, 348 S.C. 114, 136, 551 S.E. 2d 240, 252 (2001); State v. Rochester, 301 S.C. 180, 200, 391 S.E.2d 244, 247 (1990).

The State bears the burden of showing the statement was voluntary. State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E. 2d 689, 695, (1996); See also State v. Middletown, 188 S.C. 11, 24, 329 S.E. 2d 692, 694 (1986). ("In order to secure the admission of a defendant's statement, the State must affirmatively show the statement was voluntary and taken in compliance with Miranda."

In Washington, our Supreme Court addressed the standard of proof applicable to the Jackson v. Denno hearing. See Washington, 370 S.E.2d 611, 612 (1988).

"[T]he burden is on the State to prove by the preponderance of the evidence that his rights were voluntarily waived." State v. Needley, 271 S.C. 33, 40, 244 S.E. 2d 522, 526 (1978). (Emphasis Supplied).

"[T]he prosecution must prove ... by a preponderance of the evidence that the [statement] was voluntary." Leach v. Twomey, 404 U.S. 477, 489. (1972). (Emphasis Supplied).

* The appellant can not be made to identify his signature on the Miranda Form under guise his substantial rights were not violated. It is well settled if the State can't satisfy rule 901 (a) SCRE, the Miranda Form can't be admitted. When the State can't satisfy Miranda the CD/IVE would have been excluded also.

TOTALITY OF THE CIRCUMSTANCES TEST

The test of voluntariness is "whether a defendant's will was overborn' by the circumstances surrounding the given [statement]. The due process test takes into consideration 'the totality of all the surrounding circumstances--both characteristics of the accused and the details of the interrogation. '''Dickerson v. United States, 530 U.S. 428, 234 (2000)(citations omitted); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661 (Ct. App. 2005) ("The test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntary given under totality of the circumstances.") (internal quotation marks and citation omitted).

'''The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience and conduct of the accused. '''State v Ledford 351 S.C. 83, 87, 567 S.E.2d 904, 906 (Ct. App. 2002). In this case, Appellant did not testify at the Jackson v. Denno, except to identify his signature at the request of the State, and the police officer Sgt. James Burke was not present for examination in the court room. Tr. p. 229, lines 2-7.

Therefore, the judge's ruling is in error because there is nothing in the record to support the judge's ruling.

Wherefore, based on the totality of Circumstances Test the judge's ruling is not supported by evidence and Appellant is entitled to a new trial.

GOLDEN RULE VIOLATION

SUMMATION

During summation by Miss Biagianti, told the jury that:

"I'm not going to hit on everything, just the basics, just highlights."

You've heard from Tywanda. She told you several times about unwanted phone calls after unwanted phone calls to unwanted phone calls.

I told him "No, stop calling me. Stop calling me. Leave me alone."

The funny thing is Mr. Gouge tried to make a big deal, you know, why when he came in she didn't holler, she didn't scream? People do all kinds of things that we wouldn't normally do when we're put in that situation.

"So, unless you walk a mile in her shoes, you can't possibly, why wasn't she screaming?"

"Maybe if she would have screamed, maybe he would have killed her but, again, that's not up for speculations."

MEMORANDUM OF LAW

A solicitor's closing argument must be careful tailored not to appeal to the personal biases of the jury. State v. Reese, 370 S.C. 31, 633 S.E.2d 898 (2006) (quoting Ven-Dohlon v. State, 360 S.C. 598, 662 S.E.2d 738 (2004), cert denied, 554 U.S. 943, 125 S.Ct. 1645, 161 L.Ed.2d 511 (2005)). The argument must not be calculated to arouse the juror's passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom. *Id.*

Jurors are sworn to be governed by the evidence, and it is their duty to consider the facts of the case impartially. *Id.* A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice.

On appeal, the solicitor's argument will be reviewed in the context of the entire record. State v Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982). In order to constitute reversible error it must be shown that the argument so infected the trial with unfairness as to make the resulting convictions a denied of due process. Darden v. Wainwright, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986); Donnelly v De christofors, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431(1970).

Arguments that ask the jurors to place themselves in the victim's shoes are improper. State v. Prevatte, 570 S.E.2d 440, 476 (N.C. 2002).

CONCLUSION

Wherefore, based on the foregoing arguments Appellant's conviction should be reversed.

Respectfully submitted

August 10 2009



Robert Dexter Brown # 329874
Lieber Correctional Inst.
P O BOX 205
Ridgelyville, S.C. 29472

* The universal Rule exist against Golden Rule, Johnson v. Goldglazier, 348 F.2d 420, See also, 75 A. Am. Jur. 2d Trial § 650 (1991).

The golden Rule argument suggesting to jurors as it does that they put themselves in the shoes of one of the parties, is generally impermissible because it encourages the jurors to depart from neutrality and decide the case on the basis of personal interest and bias rather than on evidence.

RECEIVED

AUG 18 2009

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

Appeal from Georgetown County
James E. Lockemy, Circuit Court Judge

THE STATE

RESPONDENT,

V,

ROBERT DEXTER BROWN

APPELLANT

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned Pro-se Appellant hereby certifies that an original copy of the foregoing Answer's Brief has been served on Jeanette F. Barber, Clerk of Court for South Carolina Court of Appeals for filing this 10 day of August 2009 by depositing same in the United States mail postage prepaid.



Robert Dexter Brown, 329874
Lieber Correctional Inst.
P O BOX 205
Ridgeville, S.C. 29472

RECEIVED

AUG 13 2009

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown CountyJames E. Lockemy, Circuit Judge

THE STATE

RESPONDENT,

ROBERT DEXTER BROWN

APPELLANT

APPELLANT'S OBJECTION TO APPELLATE
COUNSEL'S MOTION TO BE RELIEVED.

Robert Dexter Brown objects as follows:

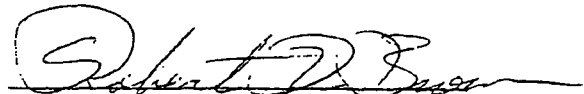
1. There are issues for direct appeal that should have been argued by counsel and there is a reasonable probability the outcome of the appeal would have been successful.
2. Although appellate counsel alleged she searched the record the Golden Rule violation was overlooked and could have been argued on appeal.
3. The right to effective assistance of appellate counsel guaranteed by the Six Amendment of the United States Constitution and counsel has deprive Appellant of that right by her failure to adequately search the record for meritorious issues for appeal.

CONCLUSION

Wherefore, appellate counsel should not be relieved and this court should order counsel to review the record and brief the issues argued by the appellant in his pro-se brief.

Respectfully submitted

August 10 2009.



Robert Dexter Brown

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
AUG 18 2009
SC Court of Appeals

Appeal from Georgetown County
James E. Lockery, Circuit Court Judge

THE STATE

RESPONDENT,

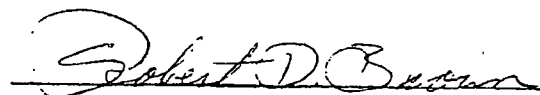
V.

ROBERT DEXTER BROWN

APPELLANT,

CERTIFICATE OF SERVICE

The undersigned Pro-se Appellant hereby certifies that an original copy of the foregoing Objection to Appellate Counsel's Motion has been served on Jeanette F. Barber, Clerk of Court for South Carolina Court of Appeals for filing this 18 day of August 2009 by depositing same in the United States mail postage prepaid.



Robert Dexter Brown, #129874
Lieber Correctional Inst
P O BOX 205
Ridgeville, SC 29472

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Robert Dexter Brown, Appellant.

Appeal From Georgetown County
James E. Lockemy, Circuit Court Judge

Unpublished Opinion No. 2010-UP-072
Submitted January 4, 2010 – Filed February 1, 2010

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, and Assistant Deputy
Attorney General Salley W. Elliott, of Columbia; and Solicitor
John Gregory Hembree, of Conway, for Respondent.

PER CURIAM: Robert Dexter Brown appeals his convictions and sentences for assault and battery with intent to kill, assault and battery of a high and aggravated nature, and kidnapping. He contends the trial court erred in admitting some prior bad acts related to the victim. After a thorough review of the record, counsel's brief, and Brown's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss^[1] Brown's appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.

SHORT, THOMAS, and KONDUROS, JJ., concur.

^{1]} We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of GeorgetownRobert D. Brown 329874
Full name and prison number (if any) of Applicant,

vs.

State of S.C.
Name of Respondent.2010-CP-22-00770
In the Court of Common PleasFILED
GEORGETOWN COUNTY, S.C.
2010 MAY 11 AM 10:18
ALISA Y. WHITE
CLERK OF COURTAPPLICATION FOR
POST-CONVICTION RELIEF**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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Lieber Correction Institution
P.O. 205 Ridgerville, SC 29472
2. Name and location of Court which imposed sentence Georgetown, County
Court 715 Prince Street Georgetown SC 29442
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) J535994 — 2008GS2200213
 - (b) J535997 — 2008GS2200215
 - (c) J535996 — 2008GS2200214
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 7/31/08 ABWIK Life without Parole
 - (b) 7/31/08 Kidnapping Life without Parole
 - (c) 7/31/08 ABHAN 10 Years

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty Yes
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. Court of Appeal
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. January 4, 2010
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Anders v. California, 386 U.S. 738 (1967)
 - ii. State v. Williams, 305 SC. 116, 406 S.E. 2d 352 (1991)
 - iii. Unpublished Opinion No. 2010-up-072
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Ineffective Assistance of appellate Counsel
 - (c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) Counsel Failed to object to prior bad Acts.
 - (b) Counsel Failed to research Transcript for meritorious Issues.
 - (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
 ii. _____
 iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
 ii. _____
 iii. _____

15. If any ground set forth in (9) 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) N/A
 (b) _____
 (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (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? YES

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Reuben Gaudin
P.O. Box 706
 ii. 114 1/2 Scriven Street Georgetown, S.C. 29442
Wanda H. Carter 1330 Lady Street,
 iii. Suite 401 Columbia S.C. 29201 - 3332
P.O. Box 11589

(b) the proceedings at which each such attorney represented you:

- i. General Session 15th. Judicial District
 ii. S.C. Court of Appeals
 iii. _____

18. State clearly the relief you seek in filing this application.

Reverse and remand
New trial

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of Georgetown, S.C.

VERIFICATION

I, Robert D. Brown, 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.



FILED
GEORGETOWN COUNTY, S.C.
2010 MAY 11 AM 10:18
ALMA Y. WHITE
CLERK OF COURT

SWORN to and subscribed before me this 5th
day of May, 2010

Sylva Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

I, Robert D. Brown, 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 therefor.



Applicant

SWORN or affirmed to and subscribed before me this

5th day of May, 2010
Sylva Jones
Notary Public

My Commission Expires 1/24/2018

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Robert D. Brown, # 329874,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-00770

RETURN
(Attorney Appointment Requested)

Respondent, making its Return to the Application for post-conviction relief filed May 11, 2010, by Robert D. Brown, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown County. The Applicant was indicted by the grand jury in April of 2008 for assault and battery with intent to kill (“ABWIK”) (2008-GS-22-213); assault and battery of a high and aggravated nature (“ABHAN”) (2008-GS-22-214); and kidnapping (2008-GS-22-215). C. Reuben Goude, Esquire, represented the Applicant on the charges. On July 29-31, 2008, the Applicant was tried before the Honorable James E. Lockemy. The jury found him guilty, and Judge Lockemy sentenced the Applicant to life without parole (“LWOP”), pursuant to S.C. Code Ann. § 17-25-45, for the ABWIK and kidnapping offenses,¹ and ten (10) years, concurrent, for ABHAN. A notice of appeal was timely filed, and an appeal was perfected, pursuant to Anders v. California, by Wanda H. Carter, Deputy Chief Appellate Defender. The Applicant also filed a *pro se* brief pursuant to the Anders procedure. The South Carolina Court of Appeals affirmed the convictions in an unpublished opinion issued on

¹ The predicate “most serious” offenses for the LWOP sentences were 1979 convictions for armed robbery and kidnapping from Washington, D.C.

February 2, 2010 (2010-UP-072). The Applicant's *pro se* Petition for Rehearing was denied on March 19, 2010, and the case was remitted to the circuit court on April 23, 2010.

Incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the convictions; the trial transcript, and the appeal records. The Applicant's records from the Department of Corrections will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. – Allegations and Relief Sought

In his Application, Mr. Brown alleges that his custody is unlawful for the following reasons:

- (1) Ineffective assistance of counsel – failed to object to prior bad acts; and
- (2) Ineffective assistance of appellate counsel – failed to research the transcript for meritorious issues.

III. – Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Stalk v. State, 375 S.C. 289, 297, 652 S.E.2d 402, 405 (Ct. App. 2007) (citations omitted); Rule 71.1(e), SCRCP. “Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that ‘counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.’” Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007) (citing Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007). “In order to prove that counsel was

ineffective, a PCR applicant must show that: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. (citations omitted). "Furthermore, when a defendant's conviction is challenged, 'the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Id. (citations omitted). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Id. (citations omitted). The applicant must overcome this strong presumption in order to obtain relief. Stalk, supra (citation omitted).

Respondent submits that the Applicant will be unable to prove his allegations of ineffective assistance of trial or appellate counsel. However, because the allegations may raise questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve the ineffective assistance of counsel issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is DENIED.

V.

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held.

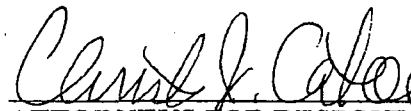
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

July 8, 2010

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Robert D. Brown, # 329874,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

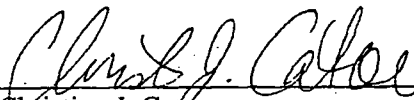
2010-CP-22-00770

CERTIFICATE OF SERVICE BY MAIL

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 State's RETURN in the above-captioned matter on the following person(s) by depositing in the United States mail, postage prepaid:

**Robert D. Brown, # 329874
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472**

DATED this 8th day of July, 2010.


Christina J. Catoe
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Robert D. Brown # 329874
 Lumber Co. P.O. Box 205
 Ridgerville, S.C. 29472

April 4, 2012

Alma Y. White
 Clerk of Court
 P.O. Box 479
 Georgetown, S.C.
 29442

2012 APR 13 PM 4:03
 ALMA Y. WHITE
 CLERK OF COURT

FILED
 GEORGETOWN COUNTY, S.C.

Re: Appoint Counsel
 PCR, Case No.: 2010-CP-22-770

Dear Ms. White

On June 16, 2011 a motion was filed
 to have Mr. Robert Laminack withdraw
 from my PCR Case, the motion was
 granted by Hon. Larry B. Hayman Jr.
 Chief Administrative Judge. However, I
 have not heard anything regarding
 appointed Counsel or Court date concerning
 my PCR Case. Any information concerning
 this matter would be greatly appreciated.

Sincerely,

A Believer

Robert D. Brown

Copy for
 Mailed on
 4/13/2012
 #15

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
	)	CA No. 2010-CP-22-770
Robert Dexter Brown, 329874	)	
	)	
v.	)	APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF

1. Place of detention Lieber Correctional Institution, Campbell Thicket Road, Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Court of General Session for Georgetown County, 15th Judicial Circuit, Georgetown, South Carolina.
3. Name(s) of co-defendant(s) (if any) Not applicable
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Assault and Battery of a High and Aggravated Nature (ABHAN) 2008GS2200214
 - (b) Assault and Battery with the Intent to Kill (ABWIK) 2008GS2200213
 - (c) Kidnapping 2008GS2200215
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) ABHAN: 7/31/2008, 10 years, concurrent with any other sentence
 - (b) ABWIK: 7/31/2008, Life without parole, concurrent with any other sentence
 - (c) Kidnapping: 7/31/2008, Life without parole, concurrent with any other sentence
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty A finding of guilty was made after applicant plead not guilty
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Applicant appealed from the judgment of conviction and imposition of sentence.
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. Applicant appealed his conviction and sentence to the South Carolina Court of

Appeals

- ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Applicant's appeal was dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. Applicant's appeal was dismissed January 4, 2010
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2010-UP-072
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) not applicable
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution when trial counsel failed to counsel Petitioner on the possibility of a mandatory sentence of life without when Petitioner declined a plea offer. (see 11(a).
 - (b) _____
 - (c) ALL ALLEGATIONS SETFORTH IN THE PRIOR APPLICATION DATED MAY 5, 2010 AND ACCOMPANYING 'MEMORANDUM TO SUPPORT PCR APPLICATION' REMAIN VALID AND ARE INCORPORATED BY REFERENCE HEREIN.

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

(a) During a conference with the Solicitor, Petitioner and Petitioner's counsel, Petitioner was offered a plea deal of 15 years. At no time before or during this meeting did trial counsel advise petitioner that he faces a mandatory sentence of life without parole under SC Code § 17-25-45 for prior convictions of armed robbery and armed kidnapping. Uninformed of the possible outcome at trial, Petitioner declined the offer. Petitioner never waived right to counsel.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Not applicable

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Not applicable

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Not Applicable

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Not Applicable

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Not Applicable

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Not Applicable

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Not Applicable

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) Not Applicable

(b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
 - (b) your trial, if any? YES
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
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. R ueben Goude, PO Box 706, Georgetown, SC 29201
 - ii. Wanda H. Carter, 1330 Lady Street, Suite 401
Columbia, SC 29201
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Applicant was represented at trial by Rueben Goude.
 - ii. Applicant was represented on appeal by Wanda Carter.
 - iii. _____
19. State clearly the relief you seek in filing this application:
Applicant seeks relief from his convictions and sentences.
20. Are you now under sentence from any other court that you have not challenged?
Applicant is not under sentence from any other court.

Respectfully submitted,

IAN A. TAYLOR
The Taylor Law Office, L.L.C.
P.O. Box 508
Pawleys Island, SC 29585
(843) 314-4313

BY: _____
ATTORNEY FOR APPLICANT
August 14, 2012.
Revised 3/2003

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
2010-CP-22-00770

Robert D. Brown,

vs.

State of South Carolina.

TRANSCRIPT OF RECORD

August 31, 2012
Conway, South Carolina

BEFORE :

The Honorable, Thomas A. Russo

APPEARANCES :

BY: T. Andrew Johnson, Sr., Esq.
Attorney for State of South Carolina

BY: Ian A. Taylor, Esq.
Attorney for Robert D. Brown

Brenda R. Babb
Circuit Court Reporter

2

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<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Robert D. Brown				
Mr. Taylor	3			
Mr. Johnson		40		
Reuben C. Goude, Esq.				
Mr. Taylor	45			
Mr. Johnson (No Cross Examination)				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	1978 Judgment and Commitment Order by Judge Alfred Burkner		12

Mr. Brown - Direct Examination by Mr. Taylor

3

1 Mr. Johnson: This is Robert D. Brown v. South
2 Carolina; it's 2010-CP-22-770. Mr. Brown was indicted by
3 the grand jury in April of 2008 for assault and battery
4 with intent to kill, assault and battery of a high and
5 aggravated nature, and kidnapping. C. Reuben Goude
6 represented him on these charges. He was tried before
7 Judge James Lockemy, found guilty. Judge Lockemy sentenced
8 him to life without parole for the abwik and the kidnapping
9 offenses and then ten years for the ABHAN. He filed an
10 appeal pursuant to Anders v. California. He also, this
11 was, this was by the appellate defense but Mr. Brown also
12 filed his own pro se pursuant to the Anders procedure. The
13 Court of Appeals affirmed his convictions. Mr. Brown filed
14 a petition for rehearing; this was denied March 19th, 2010.
15 The case was remitted to the Circuit Court on April 23rd,
16 2010. At this time I would turn it over to his lawyer Ian
17 Taylor.

18 The Court: All right, sir.

19 Mr. Taylor: Thank you, Your Honor, I'm Ian
20 Taylor, I'm representing Mr. Brown today. May it please
21 the Court I'd like to call Mr. Brown to the stand, please.

22 The Court: All right, Mr. Brown, if you'd
23 please come around, sir.

24 Robert D. Brown

25 being first duly sworn, testified as follows:

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1 Madam Clerk: Please be seated and state your
2 name for the record.

3 The Witness: My name is Robert Dexter Brown,
4 good morning, Your Honor.

5 Direct Examination

6 By Mr. Taylor:

7 Q Mr. Brown, what were you convicted of?

8 A I was convicted of kidnapping, assault and
9 battery of a high and aggravated nature, and assault and
10 battery with intent to kill.

11 Q And Mr. Goude was your attorney, right?

12 A Yeah.

13 Q How did you go about getting Mr. Goude as
14 your attorney?

15 A Mr. Goude was appointed by, by the State,
16 public defender.

17 Q And how many times did you meet with Mr.
18 Goude?

19 A I met with Mr. Goude approximately three
20 times.

21 Q And generally what did you discuss during
22 these times?

23 A Well actually we didn't get a chance to
24 discuss very much because all three times we argued.

25 Q Okay, so do you recall the first time, the

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1 date of the first meeting?

2 A The day of the first meeting I believe we
3 were discussing the bond hearing.

4 Q What was the date?

5 A I can't remember exactly what date that
6 was.

7 Q Let me back up just a little bit, do you
8 remember the date of the incident?

9 A February the 21st.

10 Q Okay, February 21st, were you arrested ---

11 A 2008, I'm sorry.

12 Q Of 2008?

13 A Yes.

14 Q And were you arrested on that date?

15 A I was, I was accosted by the police and
16 then I was let go, then later on I was arrested.

17 Q Okay, do you recall the date that you were
18 arrested?

19 A The 21st.

20 Q Okay, okay, so you were released ---

21 A Right.

22 Q --- that same day and then ---

23 A And then they came back and arrested me
24 again, yes.

25 Q And then at any time between February 21st

Mr. Brown - Direct Examination by Mr. Taylor

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1 and the trial were you released on bond, were you let go?

2 A I was still incarcerated.

3 Q You were still incarcerated?

4 A At the county detention center.

5 Q Okay, so that first meeting you had with
6 Mr. Goude do you recall whether or not that was within the
7 first month, so around March sometime?

8 A Maybe around March probably.

9 Q Okay, and you met at the detention center?

10 A Right.

11 Q Do you meet with the Solicitor at that same
12 time?

13 A No.

14 Q Okay, and so you just met with Mr. Goude?

15 A Right, out there, I never ---

16 Q And what did you discuss about your case?

17 A Not very much, not very much. I believe we
18 just looked through some, some of the details concerning a,
19 not very much. I just couldn't get it across to him what
20 the whole thing was about in regards to relationship
21 between me and the victim and the young man, which I didn't
22 know the, know the guy, so we didn't get into very much.
23 He just wouldn't, you know, wouldn't relate to me. We
24 couldn't get nothing across to each other.

25 Q Okay, and did he have any information about

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1 that time about you or about the case or anything like
2 that?

3 A No.

4 Q Okay?

5 A No.

6 Q And so the second meeting do you recall
7 when the second meeting was, do you, was that around April;
8 is that correct?

9 A Well it, well there was one thing in the
10 first meeting I was discussing, I was regarding the
11 restraining order that was taken out on me by Ms., Ms.
12 Keith and Mr. Epps, and I informed counsel that we had
13 restraining order, in the restraining order some things
14 that were said that were perhaps in my, in my favor in
15 regards to my defense.

16 Q okay, so do you recall the date of that
17 restraining order, that hearing?

18 A No, but I think I got it over there but I
19 don't, I can't, not off the top of my head, no.

20 Q I don't believe I have that in front of me
21 but I believe it was around that same time you had the
22 first meeting, but at that hearing who was at the hearing
23 of the restraining order?

24 A I was there, Ms. Keith and Mr. Epps.

25 Q Okay?

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1 A I requested counsel due to the fact that I
2 had the pending case with Ms. Keith and Mr. Epps.

3 Q Okay, did you have counsel for that
4 restraining order?

5 A No, I did not obtain counsel.

6 Q Mr. Goude was not ---

7 A Judge Powell would not give me counsel.

8 Q So Mr. Goude did not represent you?

9 A But Mr., Mr. Goude was my counsel at that
10 time, yes.

11 Q And in the second meeting with Mr. Goude do
12 you recall what you discussed during ---

13 A Well I, well that's when Mr. Goude, I asked
14 Mr. Goude about the restraining order tape; Mr. Goude
15 informed me that there wasn't a restraining tape. He
16 played a tape that was blank. I told Mr. Goude that I no
17 longer wished for him to represent me and that I wanted him
18 to withdraw. As I started to leave out of the, out of the
19 room in detention where I was, we was having a meeting he
20 told me, he said well I guess you don't want your witnesses
21 to appear. I turned around to Mr. Goude, looked at him and
22 said, man, what do you mean witnesses because I never knew
23 that there were witnesses, and that's when he told me about
24 the Larrimore's. I then went to my, we sat down, talked
25 about the Larrimore's, you know, testifying and so forth.

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1 I went to my cell, maybe about five minutes later I was
2 called back and offered a plea for 15 years.

3 Q This was at that second meeting; is that
4 correct?

5 A That was the second meeting.

6 Q Okay, so you got a plea offer from the
7 Solicitor at the second meeting; did you talk with the
8 Solicitor?

9 A I hadn't talked to anybody.

10 Q Okay?

11 A As a matter of fact Mr. Goude asked me, he
12 said what would you take and I said specifically, I said I
13 will take responsibility for Mr. Epps being stabbed but I
14 never attacked Ms. Keith.

15 Q Okay, during this time or before this
16 meeting just within the span of time that you were arrested
17 to this, this second meeting, correct?

18 A Uh-huh.

19 Q You were with Mr. Goude and you were
20 discussing whether or not you would take a plea offer, did
21 you have any discussion or did Mr. Goude at that time did
22 he know that you had a prior record?

23 A No.

24 Q He didn't?

25 A Not to my knowledge unless he, unless he

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1 investigated and found out about it because he never
2 discussed it from me.

3 Q What, specifically and you have, you have a
4 prior record; is that correct?

5 A Yes, I do.

6 Q And what charges do you have?

7 A 1977 armed robbery, armed kidnapping.

8 Q Okay?

9 A Assault and battery.

10 Q Was that an issue, was that, do you recall
11 if that was an issue at your trial?

12 A That was an issue in that I received that
13 sentence under the 5010(c) Youth Correctional Act and I
14 thought that the remoteness of that should not have been,
15 shouldn't have been an issue in regards to the enhancement
16 of my sentence because I felt that thirty years ago even
17 though I was seventeen, I was about nineteen by the time it
18 went to trial and was over with, I did receive a youth act
19 for reconsideration because I actually did not commit the
20 crime but I was associated with the people who did.

21 Q Okay, and that was, that was --

22 A 1970, 79, I believe.

23 Mr. Taylor: Do you mind if I approach?

24 The Court: That's fine.

25 Mr. Taylor: (Continuing)

Mr. Brown - Direct Examination by Mr. Taylor

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1 Q Do you recognize this, there's a couple of
2 sheets here, but do you recognize this; have you seen this
3 that was in your file?

4 A Yes, that's the, the judgment and
5 commitment order by Judge Alfred Burkner in 1979, I believe,
6 78, I'm sorry.

7 Q Okay, what were the charges, what are the
8 convictions, what are the ---

9 A Armed kidnapping and armed robbery.

10 Q And you were convicted of both of those; is
11 that correct?

12 A Yes.

13 Q Okay, and then --

14 A And then I was given ten to thirty, I mean
15 I was given seven to twenty-one, three to eighteen years.
16 Once it was realized that I was not an active participate
17 in the event I was called back to court, the thirty-six
18 years was removed and I was given a eighteen youth,
19 eighteen-year youth act and sent to a youth facility.

20 Q Okay, and under what, it's your
21 understanding under what statute were they able to seek
22 that?

23 A Under the 18 USC 5010(c).

24 Q Okay, and so how old were you when you were
25 convicted?

Mr. Brown - Direct Examination by Mr. Taylor

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1 A I had just turned nineteen, twenty, I had
2 just turned twenty.

3 Q Okay, and then what age were you when you
4 were, when, did they reduce your sentence, is that how that
5 sentence worked?

6 A Yeah, they reduced the thirty-six years to
7 eighteen years, made the thirty-six-year adult sentence
8 into an eighteen-year youth sentence.

9 Mr. Taylor: I'd like to put this into evidence.

10 The Court: Any objection?

11 Mr. Johnson: I'd like to see it.

12 Mr. Taylor: I got a copy.

13 Mr. Johnson: No objection, Your Honor.

14 The Court: All right, without objection.

15 (Applicant's Exhibit Number 1 marked and entered
16 into evidence.)

17 Mr. Taylor: (Continuing)

18 Q Okay, get my mind back on track here,
19 during that, so we're talking about that second meeting
20 that you had with, with Mr. Goude, at that time you had
21 discussions or you were given a plea offer; is that
22 correct?

23 A Yes.

24 Q What, what again was that plea offer?

25 A The plea offer was for fifteen years.

Mr. Brown - Direct Examination by Mr. Taylor

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1 Q Fifteen years, and you're saying that Mr.
2 Goude wasn't aware of your, your past record at that point
3 or the fact, was he aware of the fact that you had
4 convictions on your record that may be used for an
5 enhancement of your sentence?

6 A I'm not sure because like I said I, I
7 didn't even really talk to him.

8 Q Okay, okay, but was he there at the
9 meeting, that's what I'm trying to get to?

10 A At that, you talking about ---

11 Q Was he there at the meeting, so you had,
12 you were able to have a discussion with him?

13 A In regards to the plea offer?

14 Q In regards to anything. I mean the plea
15 offer specifically, but in both the plea and trial.

16 A Yeah, he was there for the plea offer, plea
17 offer and he was there for the interview in regards to what
18 was happening with the trial and what not, but he didn't
19 get very much information from me cause he wouldn't listen
20 to me.

21 Q Okay, so at that same time were you aware
22 that the Solicitor was recommending a life sentence without
23 parole?

24 A During the course of the plea?

25 Q Second?

Mr. Brown - Direct Examination by Mr. Taylor

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1 A The seeking ---

2 Q The second meeting ---

3 A The second meeting where ---

4 Q Or any time after you were arrested?

5 A Not at that point no.

6 Q Okay, so at what point were you aware that
7 it was a possibility that you could be sentenced for life
8 without parole?

9 A When I received, when I received notice.

10 Q When you received notice; do you recall the
11 date of that notice?

12 A I can't remember, that's five years ago,
13 going on six.

14 Q But it was sometime after that meeting,
15 right?

16 A Right.

17 Q Wasn't prior to that, did you talk to, did
18 you talk to the Solicitor?

19 A No.

20 Q At any time during this meeting?

21 A No.

22 Q Okay?

23 A No.

24 Mr. Taylor: May I approach again, Your Honor?

25 The Court: Yes, sir.

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1 Mr. Taylor: (Continuing)

2 Q Do you recognize this?

3 A That's the preliminary hearing transcript,
4 I never had a preliminary hearing.

5 Q Specifically in regards to your, the issues
6 of what your sentence might be; do you recognize this?

7 A I never received that; I don't have that.
8 As a matter of fact what I do have is a letter from Reuben
9 Goude statement that he, what I have is a letter from
10 Reuben Goude claiming that he waived his right to attend my
11 preliminary hearing.

12 Q Okay.

13 A I don't have that, if I signed that it was,
14 I don't, it had to been some time after me receiving that
15 notice.

16 Q Okay.

17 A It would have to have been.

18 Q What's the date on this sheet right here?

19 A Uh-huh.

20 Q On this piece of paper?

21 A Right.

22 Q Was that around the time of your
23 preliminary hearing?

24 A I never had one so I don't know.

25 Q Okay, okay, so you received notice of the

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1 Solicitor wanting to seek a life without a prison, life
2 without parole ---

3 A Right.

4 Q --- right?

5 A Right.

6 Q Did you understand the, the circumstances
7 under which she was able to seek life, life without parole?

8 A The enhancement from the offense that was
9 committed in 1977.

10 Q And when did you, when did you learn that
11 that might be the case; when did you understand that you
12 might be facing life without parole?

13 A Once I received notice.

14 Q Okay, once you received notice, so no time
15 before that even during that plea, even when you were given
16 the plea were you ever given any explanation in regards to
17 the significance of your prior record?

18 A I was innocent so it wasn't no need for me
19 to think about anything of that nature as far as I was
20 concerned, I done nothing wrong but defend myself.

21 Q Okay, did Mr. Goude give you any advisement
22 in regards to the plea and the state of your case at the
23 time of that plea was offered?

24 A There wasn't, the plea came out of nowhere.
25 I was not aware very much of anything. Me and this guy

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1 never really even conversed, man, we, you know, he wasn't
2 saying things the way I was saying them, you know. I
3 defended myself; Mr. Goude never presented a defense plea.
4 I mean, sorry, I mean a defense on self defense or anything
5 of that nature. He didn't even really want to hear that,
6 you know, and it's relevant in my, relevance of it in my
7 transcript.

8 Q And so you had one more meeting, do you
9 recall about when that last meeting, you had three
10 meetings, correct, you said three meetings?

11 A The last meeting that we had was basically
12 before going to trial; that's when I was trying to get Mr.
13 Goude to have Betty Gibson appear because I had been with
14 Betty Gibson earlier that day on the 21st, which would have
15 proven that I was with Betty at 2:00 so there was no way I
16 would have known that Tywanda was where she was at unless I
17 had conversed with her over a pay telephone.

18 Q Okay.

19 A He refused to call her; his exact words
20 were if I call her in this courtroom I will not question
21 her, those were his exact words to me.

22 Q And so that third meeting was right around,
23 was it the day of trial or right around the day of the
24 trial?

25 A The day of the starting of the trial.

Mr. Brown - Direct Examination by Mr. Taylor

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1 Q Okay, and then at that point did you feel
2 that Mr. Goude was prepared for your trial?

3 A I feel that Mr. Goude was about to railroad
4 me and take my life.

5 Q Okay, are you familiar with the, the
6 motions that are made, the pretrial motions that were made
7 before your trial?

8 A Not exactly, I know there was a motion for
9 a speedy trial. I think I have that in my records. I'm
10 not sure it's been so long, a lot of the motions I didn't
11 even get from Mr. Goude.

12 Q In regards to, there was some discussion
13 during the pretrial hearing in regards to prior bad acts;
14 do you recall the nature of those discussions?

15 A Yes, I do. The first prior bad acts was
16 the trespassing, I do believe. when I went to Ms. Keith's
17 job to pick her up. I went to Ms. Keith's job, went to the
18 door, asked, the officer know, the police officer Ms.
19 Coziack I believe her name is, that I was there to pick up
20 Ms. Keith. Ms. Coziack went back to tell Ms. Keith that
21 Dexter was there to pick her up. How Ms. Coziack managed
22 to turn Dexter into Tywanda's brother is beyond me. She
23 told in her statement, she made a statement that I told her
24 my name was Dexter, Tywanda's brother. My name is Dexter;
25 I know both of Tywanda's brothers. Not only that the

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1 officer stated that, the officer stated that she was given
2 my name and also an identification of me. but when I came
3 up to the officer and then it would have been unnecessary
4 for her to go back and tell Ms. Keith that I was there to
5 pick her up. Counsel failed to bring the State's witness
6 to the adversary testing because the officer lied. I am
7 Dexter; everyone in, everyone in Washington, D.C. and
8 Georgetown calls me Dexter. Why would I say my name is
9 Dexter, Tywanda's brother?

10 Q What were the other prior bad acts that
11 were presented?

12 A The other prior bad, and another thing
13 about that trespassing, I was with my mother, head of the
14 AME Missionary Church. I would never do anything in front
15 of my mother; she passed away while I was incarcerated.

16 The other bad act was the telephone calls which
17 were untrue and unfounded. I made a statement that I did
18 call and talk to Tywanda; me and Tywanda had talked to each
19 other the entire time. Tywanda stated that she had no
20 further association with me during the month of October,
21 however, I had proof that me and Tywanda was together all
22 the way up until January, so there's no way we could not
23 have had contact and stopped seeing each other in October
24 when I had this information. Mr. Goude knew about that
25 information because on December the 26th me and Tywanda got

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1 into a serious argument about her cheating and I told
2 Tywanda she would have to leave my mother's house because
3 we were staying with my mother at the time. The police
4 were called to my mother's house on the 26th because my
5 niece was frightened and she thought I was going to do
6 something to Tywanda but I have never assaulted Tywanda.
7 Through all of this I have never, there's not one bit of
8 evidence that shows where I made any attempt to attack her.
9 I do not attack women; that is not my style. Anyway that
10 was on the 26th; there was a police report. I was arrested
11 for simple assault, went before the Judge Isaac Pyatt and
12 found not guilty because Tywanda had lied. That was, that
13 was the first bit of proof that me and Tywanda were still
14 living together all the way up until January but that was
15 December so there was still contact. She was living in the
16 house; I had proof of that. That proof was not brought
17 forth nor was that charge brought forward or the
18 information regarding that charge brought forward to prove
19 that Tywanda had lied concerning the, the amount of time
20 that we were together.

21 The Solicitor presented a phone record but I
22 requested that Reuben Goude bring forth a phone record
23 also. I asked him to bring forth Tywanda Keith's phone
24 records for the calls that I had made to her. I admitted
25 making the calls to Tywanda because we were still talking

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1 to each other during the course of this relationship.
2 Where the confusion comes in, I believe, is because Tywanda
3 never told me that she was, I never knew she was really
4 actually living with Mr. Epps. She told she was staying
5 with a girlfriend of hers, so I knew nothing about Mr.
6 Epps. That's where the confusion comes in with this whole
7 mess, however, for some, for some unknown reason Mr. Epps
8 phone records pop up and it said that I made countless
9 phone calls to Mr. Epps, up to fourteen to sixteen calls to
10 Mr. Epps phone on February the 23rd, I believe, 2008.
11 There is not, from 545-5196 there is not one phone call on
12 those phone records from me from that number; I never calls
13 Mr. Epps' phone.

14 Q That phone number you recited?

15 A Uh-huh.

16 Q That phone you were referring to, whose
17 phone number is that, 545 number?

18 A That's my mom's phone, from my house.

19 That's the phone that I always use so you might as well say
20 my phone cause that phone was in my room.

21 Q Was there an issue with the records during
22 the trial and what, can you explain, I guess, what the, the
23 prosecution and your understand what the prosecution was
24 trying to do?

25 A Well in the transcript you have where Ms.

Mr. Brown - Direct Examination by Mr. Taylor

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1 Biagianti, the Solicitor, has those very same phone records
2 and she's asking me about the, the repeated phone calls
3 that I had made to Mr. Epps' phone. She holds up the phone
4 records and she says, well let's look at these phone
5 records. Judge Lockemy interrupted her, asked her was
6 those phone records in evidence; she stated, no, that they
7 weren't in evidence, however, she only wanted to ask me
8 questions in regards to those phone records. Judge, the
9 Judge stated to her I'm not going to allow the jury to hear
10 something that is not in evidence; she states again I only
11 wants to ask him questions. She asked me the first time
12 and I said I don't remember, then she asks me again and
13 again and she continued on and on and on until the Judge
14 told her that he would not allow that to continue. Mr.
15 Goude did not object.

16 Mr. Taylor: Your Honor, I don't know if it's
17 proper but he's referring to the testimony or the
18 transcript.

19 The Court: What page?

20 Mr. Taylor: It is page, he's reading from page
21 495, bold 495 and 496 and so this is during cross
22 examination.

23 A Right, and it's unclear whether or not the
24 Judge should have given curative instruction to the jury or
25 not. I think perhaps he should have because he never turns

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1 to the jury and tell them to disregard that, that evidence
2 or that, that information that was being presented before
3 them.

4 Q There was discussion, do you recall the
5 discussion?

6 A I'm not sure whether or not he did..

7 Q In regards to whether or not those phone
8 records should have been presented to the jury?

9 A Right, should have been even presented
10 because throughout the entire transcript the Solicitor goes
11 on even in her closing argument.

12 Q Mr. Goude does not make an objection?

13 A No objections whatsoever.

14 Q Was a request of curative instruction?

15 A No, he does not request a curative
16 instruction.

17 Q And the prosecutor continues to ---

18 A And she continues to badger me concerning
19 those phone records, however, the phone records are false;
20 there are no calls from me.

21 Q Just to back up a little bit to the
22 incident of trespass, the, do you recall whether or not the
23 prosecution was willing to limit herself or do you recall
24 the discussion during pretrial motions in regards to the
25 prior bad acts, both the trespass and the phone calls, do

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1 you recall whether or not there was discussion on whether
2 that was going to be limited, how to use?

3 A Well I know that Ms. Biagianti stated that
4 she was not going to go into the matter regarding prior bad
5 acts unless I take the stand, however, after Tywanda
6 testified Ms., Officer Coziack for the trespassing was the
7 next witness to take the stand; counsel did not object.

8 Q Okay, specifically again in regards to the
9 trespass --

10 Mr. Taylor: I believe the pretrial motions that
11 we're talking about, Your Honor, are page 118 or they begin
12 on 118, they begin on page 106.

13 Q (Continuing) And what you're saying, Mr.
14 Brown, is that the Solicitor was willing to limit her her
15 use of the testimony in regards to the trespass; is that
16 correct?

17 A I'm sorry, I couldn't --

18 Q What you're saying is that the Solicitor
19 was willing to limit the use of the trespass testimony,
20 questioning of trespass unless you took the stand; is that
21 correct, is that your understanding?

22 A She said she would not go into it, not
23 limit it, she said she would not go into it at all unless I
24 testified.

25 Q Okay?

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1 A I believe that's what it says in the
2 transcript.

3 Q Do you recall an incident of a proposal,
4 situation of a proposal from you to Ms. Keith?

5 A Yes, the same day that I was allegedly,
6 that night, it was earlier that day that I went to Tywanda
7 ---

8 Mr. Johnson: Your Honor, I'm going to object to
9 this. It doesn't relate to either of his two claims in the
10 application. Ineffective assistance of counsel and then he
11 specified failed to object to prior bad acts. He also had
12 an allegation about appellate counsel but none of this is
13 related to that so we're going to object to it.

14 The Court: All right, you have to stick to the
15 allegations that's contained in the application.

16 Mr. Taylor: I believe, what I'm trying to get
17 to is the background to show that Mr. Goude opened the door
18 to the trespass testimony that was going to be limited from
19 pretrial.

20 The Court: Which goes toward the issue of
21 ineffective assistance?

22 Mr. Taylor: Yes, sir, yes, sir.

23 The Court: All right, overruled.

24 Mr. Taylor: (Continuing)

25 Q And so just a couple of more questions and

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1 we'll, we'll get to that; and so the incident of the
2 proposal -- my brain strayed again, sorry, Your Honor --
3 the Solicitor was willing to limit the testimony
4 specifically to the trespass, was Mr. Goude, Mr. Goude was
5 aware of this incident of the proposal between you and Ms.
6 Keith; is that right?

7 A Yes, he was, because there were witnesses
8 who could have testified to me proposing to Tywanda earlier
9 that day, up to thirty witnesses as a matter of fact, and
10 also I told Mr. Goude the next day I called, I called the
11 nursing home and talked to, spoke with the manager and
12 apologized if I offended anybody or frightened anybody that
13 night the incident occurred and the officer spoke with me,
14 but he refused to call any of those witnesses or talk to
15 the manager to verify that I had called and made an apology
16 for any disturbance that I might have caused the night
17 before.

18 Q Do you recall or when, when during the
19 testimony did Mr. Goude talk about the proposal?

20 A I can't, I can't really remember when he
21 had, when he brought that out.

22 Q Okay, do you remember what witness it was
23 he was, he was talking with or he was questioning at the
24 time for the proposal?

25 A Concerning that?

Mr. Brown - Direct Examination by Mr. Taylor

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1 Q Yes, was it Ms. Keith?

2 A Yeah, I think it was Ms. Keith; she would
3 have had to been the only one because Ms. Coziack, Ms.
4 Coziack really didn't know, didn't really know anything
5 about the proposal because the proposal even though it was
6 the same day it was earlier that day. You know Tywanda
7 came, goes to work early and gets off around about 11 at
8 night.

9 Q Okay, and then --

10 Mr. Taylor: I think what we're referring to,
11 Your Honor, is page 207 of the transcript when Mr. Goude
12 was questioning Ms. Keith. At the same time, I believe,
13 the Solicitor objects. Later on in the transcript Judge
14 Lockemy puts on the record the discussions during the bench
15 conference for that. I believe that discussion is on page
16 216 and 217 in regards to the trespass.

17 Q In regards to ineffective assistance of
18 counsel, Mr. Brown, are there any other allegations you
19 would like to bring up at this time?

20 A Yeah, the phone records of Mr. Epps are
21 those necessary to go into evidence or they don't, because
22 they show that I never made those calls and Mr. Goude knew
23 that those records existed me not making those calls, he
24 knew that so he knew about the prior bad acts in regards to
25 the phone calls, so I mean --

Mr. Brown - Direct Examination by Mr. Taylor

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1 Q Did Mr. Goude have a record of your phone
2 calls; did he have a record of Mr. Epps phone calls?

3 A There they are, that's where they came
4 from; those records came from Mr. Goude. Those were the
5 records that he had in his file; that's where they came
6 from. That's how I got them, so he had to have known
7 during trial that those phone calls actually that was
8 claimed to have been made by me never existed and, and,
9 and, and another thing is that if you look at the date
10 where Officer Brandon talked to me on the phone I was
11 talking on Tywanda's phone not Lee Epps' phone and Lee Epps
12 testified that I talked to him on his phone. I was talking
13 to Tywanda; it was her cell phone the whole time. The
14 other issue I think in regards to the ineffective
15 assistance of counsel, which I had in my memo, is I think
16 one of them are, you have my papers on the desk right
17 there?

18 Q Yes, do you need them come up?

19 A Yes, they on the desk right there.

20 Mr. Taylor: Is this okay, Your Honor, if I
21 approach my witness?

22 The Court: Uh-huh.

23 A Thank you, Your Honor.

24 The Court: I tell you what, while you're doing
25 that we're going to take a short recess, all right? So

Mr. Brown - Direct Examination by Mr. Taylor

29

1 remember where you're at, go ahead and find what you need
2 to find. We'll just take just a short recess and we'll
3 start back in just a few minutes.

4 Mr. Taylor: Absolutely, Your Honor, thank you.

5 (Whereupon, a recess was taken and the following
6 takes place on the record after the recess.)

7 The Court: Mr. Taylor, if you want to pick up
8 where you left off on your examination, sir.

9 Mr. Taylor: Yes, sir, thank you.

10 Q (Continuing) I believe we were going to
11 discuss any other allegations, Mr. Brown, that you had in
12 regards to ineffective assistance of counsel?

13 A Yes, there was a situation, there was an
14 issue in regards to Ms. Browery's testimony and in that in
15 a sworn affidavit Ms. Browery testified that she was in her
16 office at 3:00. A 911 call was made at 2:46, the cad sheet
17 print out that you had that's on that desk right there
18 shows 2:46. Ms. Keith testified that I brought her out of
19 the tax place in a headlock. Witness verifies that that,
20 testified that that didn't happen. Ms. Browery testified
21 that I pulled her back and that Tywanda was facing, she was
22 looking at her towards Fred, however, what's amazing about
23 that is the fight between me and Mr. Epps where I had taken
24 the knife from Mr. Epps was now in my possession. Ms.
25 Browery never testified to me having a weapon; I found that

Mr. Brown - Direct Examination by Mr. Taylor

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1 very strange. All that she saw, however, she never saw the
2 weapon in my hand. I had the weapon and Tywanda's cell
3 phone in my hand. Not only that there's a printout of the
4 911 call also on the desk, the time is 2:40. This call was
5 transferred and received by the dispatcher at 2:41; I find
6 that relatively strange. Ms. Browery testified in the
7 transcript after being asked is there a 91, was the 911
8 tape changed or modified or anything; Ms. Browery stated
9 no, however, there is a part of the tape that's blank.
10 Counsel did not object to the authenticity of the 911 tape.

11 I further found out that Ms. Browery had been
12 talked to not by the investigators or police officers but
13 by Tywanda and the victim's advocate, the affidavit was
14 done by them, so Tywanda actually spoke with Ms. Browery
15 the next day which would have been the 22nd.

16 Q So the tape was, the tape was played for
17 the jury; is that correct?

18 A The 911 tape was played for the jury. For
19 some time now I have been trying to obtain that 911 tape
20 that was played for the jury. That tape and the tape that
21 I heard, 911 tape was somewhat different; even the printout
22 that's on that desk is somewhat different. I have a
23 letter, a friend of mine was in the United States Senate
24 who I asked to call in regards to the tape; I was told that
25 the tape was destroyed. I wrote Linda McCall; she told me

Mr. Brown - Direct Examination by Mr. Taylor

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1 that the tape had been sent to Ms. Desiree Allen in the
2 court administrator. I called the court administrator;
3 they said, this was 2011, I contacted the court
4 administrator, Ms. Desiree Allen said she had no way of
5 providing me the provisions of the tape. I have since been
6 trying to get this 911 tape to prove exactly the
7 differences in the phone calls because if the tape was
8 blank, the 911 tape that I heard that was played to me from
9 a friend of mine in Washington, D.C., who had hired Robin
10 Luminek for me the last time I was here, in that tape
11 there's nothing, blank. So even though Ms. Browery when
12 the Solicitor asked Ms. Browery so everything is pretty
13 much accurate then, Ms. Browery goes, yes, yes, but I mean
14 if you asked if the ball was blue and I said the ball was
15 blue I'm going to say yes, you know, that's accurate, you
16 know. So unless we actually hear the tape that was played
17 before the jury we won't know, and then it was played in
18 part not in its entirety, along with my impeachment tapes
19 that were played in part and not in their entirety. There
20 were questions asked of me that were not to the fullest of
21 their extent. In other words the officer asked me a
22 question, I gave the answer, but she, it's like the
23 question in regards to did I have the knife. Well there
24 was a part in there where I did have the knife because I
25 took the knife from the guy, so when she asked me didn't

Mr. Brown - Direct Examination by Mr. Taylor

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1 you say that Mr. Epps didn't have the knife and I said he
2 didn't have it because I took it. She then played the
3 tape, naw, he ain't had the knife and then it was off again
4 so the jury never heard what the officer actually asked me.

5 Q So you're saying that these tapes, the 911
6 tape, the other tape you're referring to, what tape is
7 that?

8 A There's a 911 call, there's a 911 printout
9 that I have right there on the desk right there.

10 Q Right, but what was the other tape you're
11 referring to of the testimony?

12 A Of the impeachment tape, the impeachment
13 tape.

14 Q Okay.

15 A And it's strange about the impeachment tape
16 because that was one of the issues that I have also, the
17 issue that I have in my memo in regards ---

18 Q Can you -- I'm sorry, Mr. Brown, can we
19 stay on the impeachment tape really quick, can you identify
20 what the impeachment tape is?

21 A The impeachment tape is the tape of me in
22 the interview of the officer.

23 Q Okay, and the day of your arrest?

24 A And I believe that's also had a little bit
25 to do with Miranda.

Mr. Brown - Direct Examination by Mr. Taylor

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1 Q Okay.

2 A Right where, where I have that also.

3 Q Okay.

4 A And in that situation that was kind of
5 ironic because in that, in that one Judge Lockemy, Judge,
6 sorry, Jimmy Burke was not present in the courtroom.

7 Q Okay, who is Jimmy Burke?

8 A Jimmy Burke was the police officer who was
9 supposedly had given me my Miranda, right.

10 Q Okay?

11 A He was not in the courtroom. Reuben Goude
12 did object to hearsay in regards to Jimmy Burke, however,
13 Judge Lockemy stated that he wanted to hear the tape of, of
14 Jonell Spockman, Officer Spockman who heard me, who was
15 supposed to re-initiated my right and ask me did I, did I
16 understand my rights, right, but there was no tape of
17 Jonell Spockman. So what the Solicitor did she actually
18 played, and it's in the transcript, she actually played the
19 tape of Jimmy Burke, the one Lockemy said I do not want to
20 hear because he's not in the courtroom, so the Solicitor
21 said you can clearly hear Jimmy Burke giving Mr. Brown his
22 rights.

23 Mr. Johnson: Your Honor, object to relevance on
24 this. He's just trying to retry his case and I'm not sure
25 how this falls into either of his two claims in this

Mr. Brown - Direct Examination by Mr. Taylor

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1 petition.

2 The Court: Again I need to refocus you on your,
3 the application, Mr. Taylor. This needs to be not, not to,
4 no pun intended, it needs to be tailored to his application
5 and the allegations contained in his application.

6 Mr. Taylor: Yes, sir.

7 The Witness: (Continuing)

8 A I think I got that on here, Your Honor.

9 Q Mr. Brown, if we would could just pay or
10 focus on ineffective assistance of counsel in this case.
11 You mentioned the tapes, I just want to get back to the
12 tapes that were played, you're saying that they played ---

13 A Well counsel was ineffective that counsel
14 did not object to the Solicitor playing the cd of Officer
15 James Burke for the Court after the Court ruled hearsay,
16 because Officer Jimmy Burke was not present in the
17 courtroom that's violating applicant's Sixth Amendment
18 right to confrontation, the Solicitor knowingly deceived
19 the court. It's in the transcript.

20 The Court: Well is that, is that an amended
21 application?

22 A No, that's what I have right here.

23 The Court: Cause the application I have states
24 ineffective assistance of counsel, ineffective assistance
25 of appellate counsel and it states under number ten counsel

Mr. Brown - Direct Examination by Mr. Taylor

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1 failed to object to prior bad acts, counsel failed to
2 research transcript for meritorious issues and that's the
3 extent of this application that I have.

4 Mr. Taylor: Your Honor, I believe there was a,
5 I have a memo, but I believe there was a memorandum in
6 support of the application that was filed with the
7 application to you.

8 A I show they filed it in 2010.

9 Mr. Taylor: My copy is not a not ---

10 Q And so, okay, so he failed to, what you're
11 saying is Mr. Goude failed to object for specifically for
12 the tapes. You were moving on to a Miranda issue that was
13 heard by the Court; now during that ---

14 The Witness: (Continuing)

15 A That was the Jackson Deno.

16 Q Okay, that was the Jackson Deno hearing?

17 A I was, that was during the Jackson Deno
18 where Jonell Spockman was the witness and that I was
19 called, I was called to the stand to testify to my
20 signature. I felt the Reuben Goude was ineffective in that
21 he did not object to that nor was I given my Fifth
22 Amendment, was I given the Fifth Amendment warning in
23 regards to taking the stand and testifying against myself.

24 Q Okay, and what specifically were you
25 testifying to?

Mr. Brown - Direct Examination by Mr. Taylor

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1 A Miranda.

2 Q Okay, Miranda --

3 A That whether or not I was given Miranda.

4 Q Okay?

5 A But that was up for Jimmy Burke who wasn't
6 present in the courtroom.

7 Q Okay?

8 A And Jonell Spockman testified that he
9 wasn't there when Miranda was given.

10 Q And so instead of objecting, objecting to
11 this Mr. Goude just --

12 A He just allowed it to go on, nor did Mr.
13 Goude question Jonell Spockman which I felt that he should
14 have, again ineffective assistance of counsel.

15 Q Okay?

16 Mr. Taylor: Your Honor, I believe that we have
17 been able to touch on all, most if not all the allegations
18 that I believe are most important in this case. I don't
19 have any other questions for Mr. Brown. What I was hoping
20 to do is give Mr. Brown an opportunity to not plead his
21 case over again but ---

22 The Court: I'm not doing this open ended. If
23 you've got anything else you want to say Mr. Brown and then
24 just let a witness take off. If there's an issue that has
25 not been addressed I want it to be addressed but we're not

Mr. Brown -- Direct Examination by Mr. Taylor

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1 just going to shotgun this thing.

2 The Witness: (Continuing)

3 A The only, the other issues I have with
4 Miranda that I submitted in 2010 right here was for
5 vouching. I felt that Reuben Goude should have objected to
6 the vouching when the Solicitor vouched for, on page, of
7 the transcript page 347.

8 The Court: 347?

9 The Witness: (Continuing)

10 A Three hundred forty-seven, yes, sir, and
11 also the vouching he did for Ms., Ms. Goude, I mean for
12 Ms., for Ms., Ms. Bowery and that would be on 350, page
13 350. On 347 line 14 to 21 and on page 350 lines 4 to 17
14 he, Ms. Biagianti vouches for Officer Coziack and also
15 vouches for Ms. Biagianti in a very serious nature.
16 Counsel should have objected.

17 Mr. Johnson: Your Honor, I'm going to broach
18 the same objection. I didn't see, certainly not in this
19 application, and he has apparently sent counsel a
20 memorandum and I didn't see the vouching argument in there
21 either, so we're going to object to that, and we would also
22 move to strike the testimony with regards to vouching for
23 witnesses.

24 The Court: All right, that was not part of the
25 application?

Mr. Brown - Direct Examination by Mr. Taylor 38

1 Mr. Taylor: Your Honor, it, it was not, it was
2 not a part of my amended application. I don't believe it's
3 part of the original, I don't believe it's in the
4 application.

5 The Witness: (Continuing)

6 A Your Honor, if I may, I, this, this is my
7 fifth lawyer, right. This was done, I did this in 2010. I
8 submitted this first to Paul, to John Fisher then to Paul
9 Archer, right. John Hilliard was my lawyer then he
10 conflict of interest, Beau Bryan a conflict of interest,
11 Robert Luminek whom I gave this to, all these lawyers had
12 nobody had did absolutely nothing. This is the first guy
13 I've had who's actually done anything and I've sent this to
14 them over and over again.

15 The Court: I'm going to overrule the objection,
16 I'm going to allow it.

17 Mr. Taylor: Thank you, Your Honor.

18 A Thank you, Your Honor.

19 The Court: All right.

20 Mr. Taylor: (Continuing)

21 Q I believe you were referring to page 576,
22 bold page 576 in regards to Ms. Biagianti's closing
23 arguments?

24 A Yes, sir.

25 Q And if you can just explain where or how

Mr. Brown - Direct Examination by Mr. Taylor

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1 she is vouching for which witnesses as well, please
2 identify the witness for the Court?

3 A Who the witness is?

4 Q Yeah, who is the witness that she's
5 vouching for?

6 A The first, the first witness who's vouching
7 is Officer Pamela Coziack and that's ---

8 Q And Officer Coziack's testimony was in
9 regards to what?

10 A The prior bad act.

11 Q Okay, the trespass?

12 A The trespassing.

13 Q I see?

14 A Ms. Biagianti vouches for her and, and it's
15 in the transcript, I don't have the transcript up here with
16 me but you can read it, it's up there, and the next one is
17 Cathy Bowery who, whom the Solicitor vouches for, counsel
18 failed to object to the vouching.

19 Q Specifically how did she vouch for, for Ms.
20 Coziack or Officer Coziack?

21 A She said that, I don't have the transcript
22 but it was basically that officer of the law has no reasons
23 to come in here and to lie and a little bit more in there,
24 too, but I can't remember word for word. She does the same
25 thing with Cathy Bowery, wouldn't come in here and risk her

Mr. Brown - Cross Examination by Mr. Johnson

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1 family and wouldn't do this and wouldn't do that, come in
2 here and tell you this and it's, you know, so it's a whole
3 lot of that. It's, it's right there in the transcript,
4 better for you read it or if you want me to read it.

5 The Court: Page 579.

6 Mr. Taylor: Five hundred seventy-nine, Your
7 Honor.

8 Q (Continuing) Is that all you have right
9 now, Ms. Brown, I believe that's all I have?

10 A It's obvious that a lot of my issues were
11 not presented before the Court the way they were supposed
12 to have been when I first received counsel back in 2010.
13 I'm not going to burden the Court with a whole lot of this
14 because I'm facing life without the possibility of parole
15 and you're the first lawyer that's even shown any interest
16 in trying to deal with this matter, so I'm, I'm done, Your
17 Honor.

18 The Court: All right, Mr. Johnson.

19 Cross Examination

20 By Mr. Johnson:

21 Q Mr. Brown, do you remember Mr. Goude
22 bringing an offer to you of fifteen years if you ---

23 A Mr. Goude did not do that.

24 Q Were you ever aware that the Solicitor made
25 an offer of fifteen years?

Mr. Brown - Cross Examination by Mr. Johnson

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1 A I was aware that the Solicitor made an
2 offer for me for fifteen years at the county jail.

3 Q So there was never a time then when, when
4 Mr. Goude brought a fifteen-year offer to you and you
5 responded that you would plea to probation but no more
6 prison time?

7 A That, I just explained to counsel Mr.
8 Taylor there that that's when Mr. Goude was at county that
9 day and I went back to my cell, five minutes later I was
10 called into the, to another room where Goude, the
11 Solicitor, and that's when I was offered the fifteen years.
12 Mr. Goude said well what will you take and I said I would
13 take probation, I believe it was I'd take responsibility
14 for Mr. Epps being stabbed even though he had the knife,
15 you know, and that's exactly what I told them to get the
16 whole thing over with. I said because it was necessary for
17 everybody to have to go through all these all this burden,
18 that's exactly what I told them.

19 Q So if Mr. Goude could have gotten a result
20 for you that would have been a probationary sentence would
21 you have filed the PCR?

22 A Filed the PCR?

23 Q Yes, sir?

24 A I wouldn't have probably got, came to
25 prison, what do you mean?

Mr. Brown - Cross Examination by Mr. Johnson

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1 Q So you, so you would not have, even if
2 you'd pled guilty but received a probationary sentence
3 would you, would you say that he was ineffective?

4 A Would I have said he was ineffective?

5 Q Yes, sir?

6 A Eventually I probably would have filed a
7 PCR to get that, get that other stuff off me, yes, sure,
8 why not, why wouldn't I?

9 Q All right, now Mr. Goude made a motion for
10 directed verdict on your behalf, didn't he?

11 A I believe he did.

12 Q And he even called the witness that you
13 refer to Ms. Larrimore, Jean Larrimore to describe the
14 incident as she saw it?

15 A He called both witnesses, Ms., Ms.
16 Larrimore and Mr. Larrimore.

17 Q I must have misunderstood you because I, I
18 understood one of your claims to be that he failed to call
19 this witness; is that not right?

20 A No, I never made a claim that I said he
21 failed to call favorable witnesses, not on, not regarding,
22 not regarding the Larrimore's, regarding Laticia, Betty,
23 and Judge Pyatt. Those three witnesses were the ones that I
24 have talked about in regards to favorable witness, you must
25 have something confused over there because I didn't say

Mr. Brown - Cross Examination by Mr. Johnson

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1 nothing about, he called those two witnesses. He did call
2 those witnesses but he did not ---

3 Q But did you mention, yes, sir, did you
4 mention the Larrimore's a little earlier?

5 A No.

6 Q All right, now you decided to testify on
7 your own; is that right?

8 A Yes.

9 Q In other words, Mr. Goude didn't instruct
10 you that you had to testify, you made this decision of your
11 own accord?

12 A In the beginning Mr. Goude wanted me to
13 testify and I started not to testify, but once I realized
14 that I was being railroaded I said I needed to save myself
15 and I testified.

16 Q That's when your prior crimes of attempted
17 burglary and escape came out; is that right?

18 A Right.

19 Q All right, and towards the end of the trial
20 Mr. Goude obtained a jury charge of self defense for you;
21 do you remember that?

22 A Right.

23 Q And what was the importance of that to you?

24 A The importance of that was that I was, I
25 had explained to Mr. Goude that Mr. Epps attacked me with

Mr. Goude - Direct Examination by Mr. Taylor

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1 the knife and I defended myself. I showed Mr. Goude the
2 maneuver in which I managed to use on Mr. Epps to obtain
3 the knife. Mr. Goude knew that I, that I had took, taken
4 the knife from that guy; I showed him how I did it.

5 Q And so because the Judge was going to
6 charge self defense to the jury did you perceive that this
7 was actually effective assistance of counsel by Mr. Goude?

8 A Mr. Goude did nothing to prove self
9 defense; if he did you need to show it to me cause he
10 didn't, he didn't do anything. He never, as a matter of
11 fact when he questioned Mr. Epps in regards to that he
12 asked Mr. Epps did Mr. Epps, did you have the knife, Mr.
13 Epps says, no, he says, Your Honor, no further questions,
14 adversary testing. He did not talk to that man or find out
15 any way possible how he could have, I could have, how he
16 attacked me, you know, where did it come from, he didn't
17 question the man at all, ineffective assistance of counsel,

18 Q Thank you.

19 A Thank you.

20 Mr. Taylor: No questions, Your Honor.

21 The Court: Thank you very much, sir, you may
22 step down.

23 A Thank you, Your Honor.

24 The Court: All right, Mr. -- go ahead, I'm
25 sorry, anything further.

Mr. Goude - Direct Examination by Mr. Taylor

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1 Mr. Taylor: I'd like to call Mr. Goude actually
2 as my witness if that's okay.

3 The Court: All right.

4 Reuben Goude

5 being first duly sworn, testified as follows:

6 Madam Clerk: Please be seated and state your
7 name for the record.

8 The Witness: My name is Reuben Goude.

9 Direct Examination

10 By Mr. Taylor:

11 Q Thank you, Mr. Goude, how long have you
12 been a criminal attorney?

13 A About thirty years.

14 Q And this case was in 2008, I believe, at
15 that time you probably had twenty-five or so years of
16 experience as a criminal attorney; is that correct?

17 A That's about right.

18 Q Do you recall the details of this case?

19 A Yes, sir, some, well I probably will not
20 recall every detail like what was the defendant's social
21 security number or something minute, but the overall here
22 is is my file and just like the last one we had I take
23 notes and I wrote all this stuff down, time sheets and all.

24 Q How many cases have you had, and you don't
25 have to be accurate here, in regards to possible

Mr. Goude - Direct Examination by Mr. Taylor

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1 convictions or convictions that might result in enhancement
2 due to prior conviction?

3 A You talking about how many where the
4 Solicitor have served notice of intention to seek life
5 without parole from a prior record?

6 Q Life without parole specifically would be?

7 A Not that many actually, probably less than
8 a dozen in all those years.

9 Q Have you seen a case where the, where the
10 prior conviction was, I think in this case at the time the
11 prior conviction was thirty years old, something like that?

12 A No, I thought that was pretty old and I
13 reckon you know we made a motion in limine that the Court
14 not be able to use that and on the sentencing at the end of
15 the transcript and the Judge was getting ready to sentence
16 Mr. Brown on page 600 and, where they ask about the motion
17 on page 628 down at the bottom left we made the motion
18 which starts on line 14 that like we made in our motion in
19 limine that the Court on the notice of intent to seek life
20 in prison by the prosecutor that this Court ruled that that
21 in this case be unconstitutional [sic] under the South
22 Carolina and the Federal Constitutional Prohibitions
23 Against Cruel and Unusual Punishment in that the
24 aggravating prior conviction occurred thirty years ago and
25 the offense was approximately January 27th, 1977,

Mr. Goude - Direct Examination by Mr. Taylor

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1 conviction approximately May the 24th, 1978, which is
2 thirty to thirty-one years before this offense occurred; so
3 that would be the next motion and the Court denied that
4 saying that the statute says what the Court has got to do
5 and the Court has no authority to do anything else other
6 than follow that statute and denied my motion.

7 Q And that was a renewal, correct, of a
8 motion in limine that was made in pretrial?

9 A Yes, sir.

10 Q Do you recall the other motion that you
11 made on Mr. Brown's behalf, your original motion?

12 A In limine or --

13 Q Motion in limine, that's correct.

14 Q Well I usually have a, usually in every
15 case in the Air Force JAG's one thing they taught us that I
16 still do now is do a trial notebook. I know one of the
17 prosecutors asked me one time you do a trial notebook in
18 every case, that's a lot of trouble. I said the only ones
19 I do one is whether I care if I win or loose which is every
20 case, so in every case we do a trial notebook and there's
21 our little trial checklist that we use at the beginning
22 where we have all our motions we're going to make and all
23 that stuff so, yes, I remember making the motion in limine
24 or at least that's written on my check, check sheet.

25 Q Do you recall the motion in limine in

Mr. Goude - Direct Examination by Mr. Taylor

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1 regards to the Youth Corrections Act for Mr. Brown; do you
2 need to refresh your memory?

3 A I got in here a prior conviction as a
4 juvenile or youthful offender.

5 Q That's correct, page 1, I believe it's 120
6 or it starts on page 1, it starts on page 118 and I think a
7 discussion continues through 126; do you recall making that
8 motion?

9 A I've got it checked off that I made that
10 as, I think as part of my motion in limine and the Court
11 said it would take it under advisement. In other words my
12 motion being that that was a juvenile or youthful offender
13 act and it shouldn't be allowed to be used to enhance and
14 give Mr. Brown life in prison.

15 Q And did you know at the time the
16 significance of that act whether or not it had an impact on
17 his sentencing, did you recognize at that point that that,
18 if that motion was made that that may help him or help Mr.
19 Brown in his, his motion against using his prior
20 conviction?

21 A That's the reason I made it asking that it
22 would help him so that the Court would say that the
23 prosecutor could not use that prior record when he was
24 about seventeen or eighteen years old to give him life in
25 prison without parole, if he got convicted on these

Mr. Goude - Direct Examination by Mr. Taylor

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1 charges.

2 Q Do you recall the discussion, I think the
3 following pages have the discussion in regards to the age
4 cause that was an issue with the Youth Corrections Act; do
5 you remember or do you recall even from the Act the age in
6 which the Act could be used, specifically I guess in Mr.
7 Brown's case, do you recall the age?

8 A No.

9 Mr. Taylor: Okay, Your Honor, this statute it's
10 been repealed; there's very little information about it.
11 The information I have I can certainly submit it to the
12 Court. It says that the Act it was for anybody between, of
13 course a juvenile up to age twenty two, so that Youthful
14 Corrections Act, and you may, you may already know this,
15 and he was even though there was discussion during the
16 trial about whether or not Mr. Brown was a juvenile, I
17 guess under the age of eighteen, he was actually convicted
18 over the age of eighteen but he was still subject to the
19 Youth Corrections Act due to his age because he was under
20 the age of twenty two when he was, when he was, when he
21 was, I guess, convicted and so I believe Mr. Goude made the
22 motion on that premise, of course what isn't evidence.

23 Q (Continuing) But at the time that the Judge
24 made a ruling on this pretrial motion he took them under
25 advisement until the sentencing; is that correct, Mr.

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1 Goude?

2 A I don't remember exactly when he made the
3 ruling. What my trial check list says is that I made the
4 motion that the prior conviction, this is in limine
5 according to my check sheet I think, the prior conviction
6 was as a juvenile or youthful offender and, therefore,
7 should not be allowed to be used and my notes say the Court
8 took it under advisement and the later the Court denied it,
9 denied my motion.

10 Q From what I understand from the transcript
11 from the same page as 628 to 631 that we've already looked
12 at, it appears that the issue of unconstitutionality by
13 itself, the issue of remoteness of those of that conviction
14 was preserved but it doesn't appear to me that the
15 conviction or that the Youth Corrections Act, the motion on
16 the Youth Corrections Act was preserved? I don't see a
17 ruling there from the Judge so do you recall renewing that
18 motion so the Judge can make a ruling on it?

19 A No, cause I have not reviewed the 600 and
20 some pages of that transcript so I don't know where in
21 there the Judge ruled.

22 Q Okay, and without that, without that final
23 judgment would Mr. Brown be able to appeal on that, that
24 issue?

25 A Well if the Court never ruled on the motion

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1 in the transcript, in the transcript and I guess when Mr.,
2 when we did the automatic appeal after Mr. Brown was
3 convicted then that would have been a good issue for the
4 appellate defenders to use if it's never been ruled in the
5 transcript, and I have not reviewed the transcript to see
6 that it was not or was.

7 Q Thank you, Mr. Goude. I think backing up a
8 little bit I kind of want to change gears, I want to get
9 back to the issue of the plea discussions from Mr., Mr.
10 Brown, now he was offered a plea; is that correct?

11 A Yes, we got appointed on this thing in
12 March of '08. We talked with the client, I think he said
13 we hardly ever talked, I wrote down on my notes that we
14 talked about two, four, six, about eight times before trial
15 either on the telephone or in person at the jailhouse or in
16 person at the courthouse on bonds or whatever. As far as
17 his offer, yes, Mr. Brown had called me from the jail a
18 couple of times and we met in April at a hearing in court
19 for bond and the Solicitor Dora Biagianti told us she was
20 going to give us, send us the notice of intent to seek life
21 in prison. She offered us a deal of fifteen to eighteen
22 years, this was in April, April the 16th, '08, and we're
23 there for a bond reduction since we were on the issue and I
24 told the client I thought the Judge would increase the bond
25 since the Solicitor was going to ask for life in prison

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1 with no parole and that we should waive our bond hearing.
2 Mr. Brown agreed and a little later we had received the
3 written notice of intent to seek life in prison, which I've
4 got in this file, and which said that the Solicitor said
5 given notice to Mr. Brown and we also, we being me,
6 remailed the same form to the client in the jail so he
7 would hear it orally from me, orally from the Solicitor by
8 being served by the Solicitor, and by me mailing the same
9 written notice that the Solicitor's did. That was May the
10 27th, which was about, which was about two months before
11 trial, and actually this was not a long case. The trial
12 was in the end of July; some of these things go on a year
13 or more. We just got appointed in March, but anyway what I
14 told Mr. Brown and is still true today, Mr. Brown he had
15 good points on his favor. Mr. Brown and this alleged
16 victim had been boyfriend and girlfriend, they lived at Mr.
17 Brown's house where he lived here in Georgetown in a nice
18 brick house with his mama. I went out to the brick house
19 where his mama was; she let me see it. The girl still had
20 some of her clothes there in the house. I photographed
21 those; I photographed her house. The girl had lived with
22 them in their house right here in Georgetown until like
23 December of '07 and these charges were like February of '08
24 just a month or two months or so before the incident the
25 girl was still living in the house. She moved out and got

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1 a new boyfriend, supposedly. My client said that he called
2 her to borrow money or something that day and she was at a
3 little tax service office here in Georgetown out near
4 Walmart right beside the Fred's Department store or
5 wholesale store or discount store or whatever it is, and
6 the client rode his bicycle out there to the little tax
7 service office and went in the little tax service office.
8 The witness, Cathy Browery, she was in the back of the
9 office with a customer doing the taxes. Two impartial
10 customers, the Larrimore's, husband and wife, were sitting
11 in there waiting in the reception room to do their taxes.
12 The alleged victim, the girlfriend, she was sitting in the
13 little reception room waiting to do her taxes. Mr. Brown
14 goes in the room, talk, in the reception, talks with the
15 woman and the reason I, on his behalf, subpoenaed the two
16 Larrimore's. They said, well they got up and walked out of
17 the office, he didn't have a knife, he didn't have a,
18 dragging her, he wasn't pulling her by the hair, he didn't
19 have her in a choke hold. They just walked out of the
20 little tax service office. The front of it has got glass
21 windows so we subpoenaed them to say that. When they got
22 out the two witnesses said we saw another man who was her
23 boyfriend, the new one, Mr. Epps, get out of his vehicle
24 and walk up to them. The two men started fighting, the two
25 witnesses in the tax service office could not tell if

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1 either one of the men had a knife or did not have a knife.
2 Epps and the girlfriend said that my client Mr. Brown had a
3 knife and pulled it out and cut Mr. Epps in the side and on
4 the hand. My client said that Epps had the knife and was
5 trying to cut Mr. Brown, my client, and that my client got
6 it away from him and he must have, Epps must have
7 accidentally gotten cut while my client was taking the
8 knife away from him. Well the only witnesses on the knife
9 that I remember was Epps, the one that got cut, Brown my
10 client, and the girlfriend, whatever her name was. She and
11 Epps both said that my client had the knife. I told my
12 client, I got it in my time sheet cause I knew just like on
13 the last case I had, I was going to be up here one day
14 cause he was facing life in prison. I told my client I
15 called the tax service manager, and Oaks is right there,
16 talked with her on the phone to see what she was going to
17 say and got her to give me the names of all the customers
18 in the little room, in the little reception area. We
19 subpoenaed them; they were present, but the problem I told
20 my client was, and I got it written right down, we're going
21 to get convicted of kidnapping because the manager says she
22 didn't know what happened when the woman was in the office.
23 She did not see the fight between the two men. What she
24 said in Court and told me on the phone before trial was
25 when she came out of the office Mr. Brown got his

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1 girlfriend behind the throat with his arm around her neck,
2 I don't remember about the knife, whether she said he had
3 one or didn't have one, but that he put his throat around
4 her, his hand around her throat like this and drug her or
5 backed her from the tax office down toward Fred's down the
6 sidewalk. I told my client we going to get convicted of
7 kidnapping because that is kidnapping. If the tax service
8 office manager, who has gotten nothing to do with the case,
9 he's not kin to any of ya'll, she ain't getting paid any
10 money, May the 30th, 2008, at the jail here's what my note
11 says, Your Honor. At the jail I reviewed the case with the
12 client. I advised the client of Cathy Browery's testimony
13 and of the Larrimore's that I had talked with just like he
14 wanted me to, I advised the problem of Browery's testimony,
15 the manager, she's going to say we drug her and that is
16 kidnapping. I recommended we ask for a deal. The client
17 said he will not take a deal. The client says the tax
18 service manager is lying and that what she said that
19 occurred on the sidewalk near Fred's did not occur so he
20 would not do it. He said he would take assault and
21 battery of a high and aggravated nature and probation,
22 that's the deal he told me that for me to tell the
23 Solicitor he would not take the Solicitor's deal of the
24 fifteen years. I told him the kidnapping, I've got my
25 little maximum penalty sheet here that we had just like in

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1 the last case, signed by Robert Brown April the 16th, 2008,
2 three or so months before trial, Solicitor Dora, I've got
3 it written up there, April the 16th, '08, says intent for
4 life, but he said he never got notice or didn't know about
5 life and parole, this is April the 16th, '08. I've gotten
6 written up there, Solicitor Dora says intent for life with
7 no parole because of an armed robbery and kidnapping in
8 Washington D.C. records. You're facing kidnapping, that's
9 zero to thirty, violent, no parole, serve eighty-five
10 percent, assault and battery with intent to kill zero to
11 twenty, violent, no parole, serve eighty-five percent, CDV
12 high and aggravated nature, zero to ten years or assault
13 and battery of a high and aggravated nature zero to ten
14 years. You got a right to a trial and all this other stuff
15 about serious and most serious, that stuff is attached,
16 too. The client knew what we were getting into; he knew we
17 were going to get convicted cause I told him that in plain
18 English and he wouldn't listen to me and we had the trial,
19 he wouldn't take the fifteen years so we got life with no
20 parole.

21 Q When you had the discussion regarding
22 kidnapping, if you look at your notes again, you said that
23 was May 30th; is that correct, when you said ---

24 A This particular time when I talked with him
25 and asked him to take the deal and that we were going to

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1 get convicted of kidnapping that was May 30th, 2008.

2 Q Was the plea offer on the table in May
3 30th?

4 A Well my time sheet says the plea offer or
5 the Solicitor offered us that the first time we ever, we
6 ever met which was back in April.

7 Q Okay, so April 16th probably about the same
8 time, I have a copy of the maximum penalty sheet, and so
9 about the same time that you had the maximum penalty sheet
10 for Mr. Brown; is that correct?

11 A If that date on the maximum ---

12 Q April 16th?

13 A --- penalty sheet ---

14 Q Okay.

15 A I got it here but I haven't looked at the
16 date.

17 Q It's on the bottom, but, but at that time
18 on April 16th did you have a discussion with Mr. Brown
19 about the mandatory nature that he was facing with the
20 enhancement statute, about the mandatory nature of the
21 enhancement with his record?

22 A I got it written right up there April the
23 16th, '08, the Solicitor is going to seek life in prison
24 with no parole because he's got a prior armed robbery and a
25 kidnapping in Washington, D.C., that's what's written right

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1 up there and I always give the client a copy of this and I
2 keep a copy so that when later they say Reuben Goude was
3 too stupid to know what I was charged with, too stupid to
4 tell me what I was charged with, would not help me, did not
5 care about me and never told me I was charged with nothing,
6 I'll have these little papers to remind us all of what
7 truth we have.

8 Q But you don't know whether or not in May
9 when you discussed the possibility that kidnapping, so
10 kidnapping, correct me if I'm wrong, is kidnapping a charge
11 that would result in his enhancement under his prior
12 convictions if he was convicted; it's a most serious
13 offense? I believe it's in the sheets but --

14 A Let me see, I've got the exact notice that
15 the Solicitor sent us and that I remailed and that I told
16 the client that that's what we were facing and I'll see ---

17 Q So I guess what I'm, what I'm trying to do,
18 Mr. Goude, is determine when in fact you had a discussion
19 about the most serious offenses that would enhance his
20 sentence in addition to the time period when he had a plea
21 offer on the table? I understand ---

22 A We would never use the word enhance.

23 Q Okay.

24 A I would not say the word enhance. I would
25 say something like the Solicitor said you got a prior

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1 conviction for kidnapping or armed robbery and that because
2 of those prior convictions under the law of South Carolina,
3 and I would probably not use the word serious, most
4 serious, less serious, or nothing else like that. I would
5 put it in plain English that anybody in kindergarten,
6 that's what that great guy that talked with us, that used
7 to give lectures from Washington, D.C., that famous Ervin
8 Younger, the one on cross examination and closing arguments
9 and stuff, he said never talk to a jury like they got PhD's
10 and nuclear physics. Always talk to them like they just
11 graduated kindergarten because everybody that's got a PhD
12 in nuclear physics went through kindergarten and will
13 understand you but everybody that went through kindergarten
14 does not end up getting the PhD in nuclear physics, so if
15 you'll talk to everybody when you in court like you are on
16 kindergarten level everybody will understand what you're
17 trying to say including your client and the only purpose of
18 talking, as I understand he it, is to communicate to the
19 person you trying to talk to that they will understand you.
20 It's not to try to show that you educated or that you read
21 a book or that you know what, you're a lawyer. I'm not
22 trying to tell him how smart I am or the jury, I want them
23 to understand what I'm trying to say. I can go home and
24 look in the mirror and try to tell myself how smart I am if
25 I want to do that.

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1 Q So you're saying you had this, you had this
2 discussion with, with Mr. Brown, is what you're saying?

3 A Yes, sir.

4 Q Okay, I'm going to move on, Judge, in
5 regards to the trespass testimony Mr. Brown or I guess the
6 transcript shows that during, during the pretrial motions
7 you made a motion to limit prior bad acts; what, what was
8 the Solicitor willing to do in regards to your motion and
9 during those discussions?

10 A I don't remember what the Solicitor was
11 willing to do and I didn't read the transcript.

12 Q Sure, I think it starts on 106 if you need
13 to refresh your memory?

14 A To see what the Judge ruled, sir, the
15 question for me is what now?

16 Q Well I guess the question is what, what was
17 the, was the, was the Solicitor willing to limit prior bad
18 act, testimony of prior bad acts and then how was she
19 willing to limit that and specifically I'm asking about the
20 trespass testimony and phone calls?

21 A I don't ---

22 Q I think it's, it's on page 106 is where I
23 believe they're talking about the prior bad acts in general
24 and then --

25 A I don't remember that stuff; I don't

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1 understand what, what your question is.

2 Q Okay, did you make a motion ---

3 The Court: I don't understand your question
4 either.

5 Mr. Taylor: Okay, I'm sorry.

6 The Court: You need to phrase your questions,
7 you're rambling a little bit cause I'm not understanding
8 what you're trying to ask him.

9 Mr. Taylor: Yes, Your Honor.

10 The Court: Go ahead.

11 Mr. Taylor: (Continuing)

12 Q Did you make a motion to limit the use of
13 prior bad acts?

14 A On my trial check list I've got down in a
15 motion in limine order that the prosecutor cannot mention
16 the defendant's criminal record unless the defendant
17 testifies and ask that the prosecutor not mention any prior
18 difficulties or incidents between Mr. Brown and the, and
19 the girlfriend. Now some of this stuff like I had down to
20 make a motion to suppress Mr. Brown's, I think he sort of
21 touched on that a while ago, I had originally made a,
22 written down on my check list to make a motion to suppress
23 Mr. Brown's confession to the police but I've got down here
24 or do we want it admitted and I've got down here written,
25 Reuben Goude, admit it, do not suppress because he put some

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1 stuff in it that was helpful to our side of the story, to
2 our theory, to our argument that we just went there to talk
3 with the girlfriend and borrow \$5.00, I think it was, and
4 came out to talk with her peacefully. The Larrimore's
5 backed that up, we came out peacefully and that the
6 boyfriend comes running up jealous and pulls a knife on us
7 and tries to cut us, like the client says, and that we got
8 the knife away from him and so we were trying to make all
9 the evidence in the case back up and go along with Mr.
10 Brown being not guilty. The only thing we couldn't get
11 away from, which is what I told Mr. Brown, which is what I
12 recommended we try do a deal, is the darn tax service
13 manager saying that we put our arm around the throat and
14 drug the woman down the sidewalk. We could not make that
15 jive with us being not guilty of a crime.

16 Q Part of that, I guess part of that strategy
17 you just mentioned there was the issue of a proposal by Mr.
18 Brown to Ms. Keith; do you recall the nature of that
19 proposal?

20 A As ya'll were talking this morning I'm
21 getting a glimmer, yeah, in him going to the nursing home
22 or where she worked as a aide at the nursing home or
23 something to propose to her. His position was he still
24 loved her and liked her and was trying to marry her or
25 propose or had given her a ring and she either took the

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1 ring or didn't take the ring, all the little details I
2 don't remember.

3 Q But in addition to that testimony there was
4 an issue about Mr. Brown coming back and there was a
5 trespass notice given to him by an officer, the officer
6 that testified, an Officer Coziak? During the motions, as
7 we just discussed, the Solicitor was willing to limit the
8 testimony of prior bad acts unless Mr. Brown has testified,
9 Mr. Brown was the last to testify, correct? He was the
10 last person to testify in the trial; is that right, Mr.
11 Goude?

12 A I don't remember if he was the last person
13 or not.

14 Q Okay?

15 A I don't dispute that.

16 Q Okay, so I guess on page 199 the transcript
17 shows that you brought up the proposal, my question to you
18 is if you recall and if you can use the transcript to help
19 you, do you recall the strategy you were trying to use in
20 regards to bringing up that proposal? If you read through
21 the transcript it looks like the Solicitor makes an
22 objection in order to use that testimony, use that proposal
23 testimony to open the door to prior bad acts, so my
24 question to you is what was the strategy behind the
25 bringing in the testimony of the proposal by Ms. Keith?

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1 A I don't remember all the details as to
2 whether she, and I reckon if I read back through all my
3 notes and the transcript I would remember, but I don't
4 remember in my head. I don't remember if the woman
5 accepted the ring and accepted the proposal or whether we
6 just made the proposal, whether she accepted it and at some
7 point gave it back to us, but anyway, obvious is we talking
8 a charge of trying to beat her up and hurt her. If we
9 proposed marriage to her that's going to show to me if I'm
10 on the jury that we loved her, that we're not trying to
11 kill her, we just liked her and went there to see her at
12 the tax office so that would be strategy for that.

13 Q And then at the time you didn't make an
14 objection, according to the transcript, according to what
15 Judge Lockemy put on the record, you didn't make an
16 objection or you didn't argue in regards to whether or not
17 Ms., the Solicitor could question Mr. Brown about that
18 trespass? She was going to limit it during the motion in
19 limine, if I understand it, here you opened the door, did
20 you know that you were opening the door to a prior bad act
21 that she was going to be able to use during that testimony?

22 A I don't remember all the details but if the
23 question would be that by us showing that Mr. Brown had
24 proposed marriage to the woman and given her a ring just a
25 month or two before this alleged incident and that was

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1 going to allow them to show that we went to the nursing
2 home where she was working and they didn't want us to come
3 back over there, I would have done that because not being
4 able to go back to the nursing home and having a
5 misunderstanding by the employees, employers, or the
6 employer saying my workers are here to work not to talk
7 marriage with you, get the hell away from here, don't come
8 back, she's here to work, I'm paying her \$10 an hour. I
9 don't want her talking on the phone to her family or her
10 kids about their soccer game or her boyfriend about getting
11 married, I don't think that's going to be very, if I'm on
12 the jury that's not going to prejudice me against Mr. Brown
13 as much as positive prejudice if I hear that he's wanting
14 to marry her and he gave her an engagement ring and loves
15 her to death and had her living in his house with his own
16 mama just a month or so before this alleged offense. The
17 whole point to keep in mind is that we're charged with
18 kidnapping and this manager is going to say we drug her
19 down the sidewalk so all this other little stuff about
20 whether we went to the nursing home when she was working
21 and they asked us not to come back or not I doubt that if
22 I'm the jury I'm going to vote guilty of somebody
23 kidnapping or somebody because he went to the nursing home
24 and they told him to leave and he didn't go back. You got
25 to weigh all that mess in the overall grand scheme of us

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1 trying to get out of life in prison on these charge when we
2 won't take the deal of the 15 years and Mr. Brown he was
3 about fifty years old then so maybe he figured that fifteen
4 years is equivalent to a life sentence cause that will be
5 sixty-five years old if we had took the deal, before we got
6 out of prison and that's what he wanted to do, run the
7 risk.

8 Mr. Johnson: Thank you, Mr. Goude, no more
9 questions, Your Honor.

10 The Court: Thank you, sir.

11 Mr. Taylor: I don't have any questions for Mr.
12 Goude, Your Honor.

13 The Court: Thank you, Mr. Goude, you may step
14 down, sir. Anything further, Mr. Taylor? Anything
15 further, Mr. Taylor?

16 Mr. Taylor: No, Your Honor, I'm sorry.

17 The Court: All right, anything, Mr. Johnson?

18 Mr. Johnson: Just a brief argument if you will?

19 The Court: I will, I'll hear from both of you.

20 Mr. Johnson: Your Honor, in trying this case
21 and taking notes I couldn't help but notice as they were
22 finishing up with Mr. Goude that I had a whole legal pad
23 full of issues most of which, some I didn't so much notice
24 of, but I noticed all these issues and in every single one
25 of these issues not one of them has established a key

1 element of their case and that's prejudice. One of the
2 elements they've got to establish under the Strickland v.
3 Washington standard not only was that if there was an error
4 of counsel, counsel committed some kind of an error, but
5 that they've also got to establish that that, that that
6 error resulted in a prejudice to Mr. Brown's case. They
7 don't have that and that's what I wanted to stand up and
8 argue this case.

9 There's a case I've got Cherry v. State that's
10 300 S.C. 115, it's a 1989 case that my boss Sally Elliott
11 argued, and the Cherry v. State establishes what do you,
12 what do you have to have before you have prejudice and the
13 outline in Cherry v. State is if there's, it's got to be
14 proven there's a reasonable probability, reasonable
15 probability that but for counsel's errors, if proved, that
16 the result would have been different and they failed to
17 prove that today, so based on that we would ask that the
18 petition be denied and the case be dismissed.

19 The Court: Mr. Taylor?

20 Mr. Taylor: I believe that some of the issues
21 in regards to prejudice or some of the prejudice that's
22 shown in regards to the issues that we've established some
23 self evident, and some I tried to elude to, I think, in the
24 case of the trespass what we have is a prior act. It was
25 initially going to be limited. We can show ineffective

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1 assistance there because Mr. Goude had opened the door and
2 what you have there is a prior bad act that would likely be
3 given to the jury to, you know, affect their judgment in
4 regards to their decision in this case, same with phone
5 calls. The issue of the Youth Corrections Act I think we
6 discussed that and I even asked Mr. Goude would he be able
7 to have that addressed on appeal if it wasn't, if it wasn't
8 preserved for that. I think that in and of itself is
9 prejudice because if we look at the Anders brief certainly
10 under Anders they're going to look at all, all the issues
11 in the case. Here it's not preserved, not even the
12 Court's can see it.

13 The Court: I never, I never understood that he
14 did in fact object and he filed an objection to that being
15 used, correct?

16 Mr. Taylor: Youth Corrections Act?

17 The Court: Yes?

18 Mr. Taylor: He filed a motion in limine, my
19 understanding ---

20 The Court: Right.

21 Mr. Taylor: Yes.

22 The Court: He filed a motion in limine and one
23 of the issues in that motion in limine was to not be able
24 to use that to enhance and the Judge denied it.

25 Mr. Taylor: The Judge, my understanding of the

1 transcript is that from the transcript is he deferred his
2 judgment to the sentencing and then during the sentencing -
3 --

4 The Court: They revisited it.

5 Mr. Taylor: They only revisit it to their visit
6 of remoteness and unconstitutionality but not specifically
7 the Youth Corrections Act.

8 The Court: But the bottom line is the Judge
9 heard it.

10 Mr. Taylor: Yes, sir, Your Honor.

11 The Court: He heard the argument and he denied
12 it.

13 Mr. Taylor: Yes, Your Honor.

14 The Court: Go ahead.

15 Mr. Taylor: And I think on the issue of, of the
16 plea discussions if Mr. Brown was facing a mandatory life
17 sentence due to an enhancement he either didn't understand
18 the effect of or due to a conviction he didn't understand
19 the effect of that conviction on a possible conviction.

20 The Court: Let me ask cause again I'm curious?

21 Mr. Taylor: Yes, Your Honor.

22 The Court: I hear what you're saying but when
23 someone is put on notice that there be notice that the
24 State is going to seek life without parole I'm not
25 understanding how that's not, that you're not on notice

1 that it's being enhanced.

2 Mr. Taylor: Well ---

3 The Court: I mean it doesn't get worse than
4 that other than the death penalty.

5 Mr. Taylor: I understand that and ---

6 The Court: So how would you not be on notice
7 that, in other words during the conversation of a 15-
8 fifteen year sentence, the plea offer, he was aware that
9 the State was seeking life without parole, and you're
10 shaking your head no, Mr. Brown, but, but it's clear from
11 the testimony what I've heard that that notice was, was on
12 the table as far as ---

13 Defendant Brown: I was already noticed, I was
14 offered the plea before then; they called me, me and Mr.
15 Goude had that conversation, I was in the cell, when I came
16 back after me and Mr. Goude argued that's when they offered
17 it to me. I hadn't received any notice then, then after
18 that, after that that's when I received notice.

19 The Court: All right, when you received notice
20 of the life without parole that they were seeking that did
21 you ---

22 Applicant Brown: That was after they had
23 offered me fifteen.

24 The Court: Did you then turn, did you then turn
25 to Mr. Goude and say, hey, get me that fifteen years?

1 Applicant Brown: No, I didn't, no, I didn't. I
2 didn't even know I was even aware if I could do that. I'm
3 a laynan, I don't know, I know enough about the law now
4 than I did then.

5 The Court: You don't have to be a lawyer to
6 know that you can go back and ask for, hey, can we get that
7 offer they offered me earlier.

8 Applicant Brown: I didn't think about it like
9 that; at that time honest I didn't know. I was told a
10 whole lot of things and I didn't think of it like that, you
11 know, but --

12 The Court: That would be first thing I would
13 have thought about.

14 Applicant Brown: I didn't think about it.

15 The Court: And that has nothing to do with me
16 being a lawyer.

17 Applicant Brown: I didn't think about it but
18 it's a fact I was not informed.

19 Mr. Taylor: I think on the issue of notice it's
20 not only an issue of notice but the timing of the notice,
21 so even if he was on notice that they were seeking life
22 without parole my understanding is any discussion in
23 regards to the possibility that he could have a self
24 defense that that's or, or the merits of his case in the
25 eyes of say somebody experienced like Mr. Goude he wasn't

1 aware of that at the time that that offer was on the table.
2 Whether or not he can go back and get it I guess is
3 certainly an argument but in my mind it's also an issue of
4 timing and then what he knew at the time that he had that
5 offer.

6 The Court: Okay, all right, Mr. Johnson?

7 Mr. Johnson: Your Honor, just the last thing,
8 this was a case where there was a self defense charge and a
9 jury charge. The Judge charged them the law of self
10 defense and the applicant testified, so the result of this
11 trial has more to do with the insufficiency of the
12 applicant's credibility than the effectiveness of counsel.

13 The Court: All right, I'm going to take this
14 under advisement. I want to look at some things here in
15 the transcript that ya'll have mentioned and I'll have an
16 answer for you after I have that opportunity.

17 End of requested transcript- - - -
18
19
20
21
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25

1

CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, official court reporter the South Carolina Court Administration; do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Georgetown County, South Carolina.

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

March 10, 2013

Brenda R. Babb
Brenda R. Babb, CVR-MASTER
OFFICIAL REPORTER

CD-46

Superior Court of the District of Columbia

CRIMINAL DIVISION

JUDGMENT AND COMMITMENT ORDER

United States of America

Case Number 53360-77A-C

vs

PDID Number 281-602Robert Dexter Brown

* * * * *

WHEREAS the above-named defendant having entered a plea of

☒ Not Guilty☐ Guilty

to the charge(s) of

A) Armed Kidnapping
C) Armed Robbery

and having been found guilty by

☒ Jury☐ the Court

and a pre-sentence investigation and report having been

☒ prepared and considered☐ not requested

IT IS HEREBY ADJUDGED that the defendant has been convicted of and is guilty of the offense(s) charged.

The defendant having been given an opportunity to make a statement in his own behalf, and the government having had the opportunity to reply thereto, it is hereby

ORDERED that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

As to Ct A - Def sentenced under 18 U.S.C. 5010C not to
exceed (18) eighteen years concurrent with any other sentence.
As to Ct C - Def sentenced under 18 U.S.C. 5010C not
to exceed (9) nine years concurrent with Court A.

IT IS FURTHER ORDERED that the Clerk or his Deputy deliver a true copy of this order to the United States Marshal and that the copy shall serve as the commitment of the defendant.

3/20/77
DateAlfred B. Burch
Judge

A TRUE COPY OF THIS ORDER DELIVERED TO THE U.S. MARSHAL OR HIS DEPUTY:

3/20/77
DateTESEER 03 2008

Deputy Clerk

J-5615-74

Clerk of the Court of the
District of Columbia

By:

Deputy Clerk

Superior Court of the District of Columbia

CRIMINAL DIVISION

JUDGMENT AND COMMITMENT ORDER

United States of America

Case Number

53360-77A

PDID Number

281-602

vs.
Robert Dexter Brown

WHEREAS the above-named defendant having entered a plea of

☒ Not Guilty☐ Guilty

to the charge(s) of

(A) Armed Kidnapping (C) Armed Robbery

and having been found guilty by

☒ Jury☐ the Court

and a pre-sentence investigation and report having been

☒ prepared and considered☐ not requested

IT IS HEREBY ADJUDGED that the defendant has been convicted of and is guilty of the offense(s) charged.

The defendant having been given an opportunity to make a statement in his own behalf, and the government having had the opportunity to reply thereto, it is hereby

ORDERED that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

(A) Seven to Twenty One Yrs. to run consecutive to any other sentence being served. (C) Three to Fifteen Yrs. to run consecutive to Count A

IT IS FURTHER ORDERED that the Clerk or his Deputy deliver a true copy of this order to the United States Marshal and that the copy shall serve as the commitment of the defendant.

5-24-78

Date

April Burch

Judge

A TRUE COPY OF THIS ORDER DELIVERED TO THE U.S. MARSHAL OR HIS DEPUTY:

A TRUE COPY
TEST: APR 1978
Clerk Superior Court of the
District of Columbia

Date

Deputy Clerk

By:

Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Robert D. Brown, # 329874,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-00770

ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, S.C.
2012 SEP 24 PM 4:42
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 11, 2010. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on August 31, 2012, at the Georgetown County Courthouse. The Applicant was present at the hearing and was represented by Ian Taylor, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Reuben C. Goude, Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown County. The Applicant was indicted by the grand jury in April of 2008 for assault and battery with intent to kill ("ABWIK") (2008-GS-22-213); assault and battery of a high and aggravated nature ("ABHAN") (2008-GS-22-214); and kidnapping (2008-GS-22-215).

C. Reuben Goude, Esquire, represented the Applicant on the charges. On July 29-31, 2008, the Applicant was tried before the Honorable James E. Lockemy. The jury found him guilty, and Judge Lockemy sentenced the Applicant to life without parole ("LWOP"), pursuant to S.C. Code Ann. § 17-25-45, for the ABWIK and kidnapping offenses, 1 and ten (10) years, concurrent, for ABHAN. A notice of appeal was timely filed, and an appeal was perfected, pursuant to Anders v. California, by Wanda H. Carter, Deputy Chief Appellate Defender. The Applicant also filed a *pro se* brief pursuant to the Anders procedure. The South Carolina Court of Appeals affirmed the convictions in an unpublished opinion issued on February 2, 2010 (2010-UP-072). The Applicant's *pro se* Petition for Rehearing was denied on March 19, 2010, and the case was remitted to the circuit court on April 23, 2010.

ALLEGATIONS

In his Application, Mr. Brown alleges that his custody is unlawful for the following reasons:

- (1) Ineffective assistance of counsel – failed to object to prior bad acts; and
- Ineffective assistance of appellate counsel – failed to research the transcript for meritorious issues

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1 The predicate "most serious" offenses for the LWOP sentences were 1979

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

convictions for armed robbery and kidnapping from Washington, D.C.

Meetings with Applicant

Applicant testified his counsel was ineffective because he only met with him three times. Counsel testified that he met with him at least eight times and even drove out to Applicant's house to meet with him and further prepare the case for trial and conduct a thorough and independent investigation. Applicant submitted that he and counsel argued each time they met, but this was not counsel's recollection. At one of the meetings, counsel testified Applicant snatched counsel's notes away and would not return them, stating he wanted new counsel. The evidence based on the testimony of the parties was that counsel moved forward in effective preparation of his case despite a difficult and uncooperative client.

Applicant's prior record

Applicant testified his counsel was ineffective for failing to exclude Applicant's prior record of a 1979 conviction from consideration in his sentence. Counsel testified, and the record supports, that counsel argued the prior conviction was too remote to be used against Applicant, but the Court simply disagreed. See trial transcript, P. 628, L. 11-23. Further, counsel made a motion *in limine* to exclude prior bad acts which was effective in obtaining the Solicitor's commitment that he would not go into the matters discussed.

Conduct of the trial

Prior to trial, counsel conveyed the notice to seek LWOP along with the State's offer of a fifteen year plea offer by the State. Applicant rejected the plea offer and proceeded to trial. When asked by the Court why he didn't seek to avail himself of the offer during the conduct of the trial, Applicant indicated that he didn't think of the offer being put back on the table after the trial began, nor did he inquire of counsel, or give counsel reason to believe he may have taken the plea.

Applicant averred that counsel was ineffective for failing to call the manager of a business where Applicant had caused a disturbance the night before. It is unclear of what import that person would have had, as Applicant did not call him in this PCR proceeding. Applicant averred that counsel was ineffective for failing to call Betty Gibson Bowser. Applicant did not call her as a witness in this proceeding, but counsel testified that she knew nothing about the case and did not fit into his overall trial strategy, and therefore there would have been no benefit to calling this witness.

Applicant argues that counsel was ineffective for failing to object to telephone records. In this regard, Applicant has not proved prejudice from the examination of the records, just that the prosecution continued to question him on the records which made him uncomfortable.

Counsel's testimony articulated a reasonable trial strategy that the victim's boyfriend was the aggressor. In this regard, counsel utilized an effective strategy in the face of unfavorable facts created by Applicant's conduct.

I find that counsel's performance was not deficient under these circumstances. In reaching this conclusion, this Court finds counsel's testimony credible and gives it great weight. This Court does not find Applicant's testimony persuasive. For these reasons, I find that counsel was not ineffective with regard to his investigation or conduct of the trial. I find that counsel was not deficient in this respect, nor was applicant prejudiced by any alleged deficiency. Further, I find counsel's trial preparation and actions were reasonable under prevailing professional norms, and therefore this claim is denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

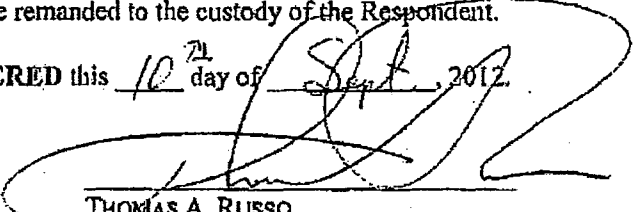
CONCLUSION

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10th day of Sept., 2012.



THOMAS A. RUSSO
Presiding Judge
15th Judicial Circuit

Florence South Carolina.

WITNESSES

Georgetown Police Department

DOCKET NO. 2008GS220213 ✓

RDB000019

The State of South Carolina

County of Georgetown

Dorle Biagianti

08G00092

DB

COURT OF GENERAL SESSIONS

APRIL, 2008 TERM

ARREST WARRANT NUMBER

J535994

CDR: 0014 \$16-03-0620

DOI: February 21, 2008

THE STATE

VS.

ROBERT DEXTER BROWN

ACTION OF GRAND JURY

TRUE BILL

Robert H. Hembree
 Foreperson of Grand Jury
 Date: 4/2/08

VERDICT

Guilty as charged
 of

Robert H. Hembree III
 Foreperson of Petit Jury
 Date: 7/31/2008

ATTORNEY: Goude, C. Reuben

Indictment for

ASSAULT AND BATTERY WITH
 THE INTENT TO KILL

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

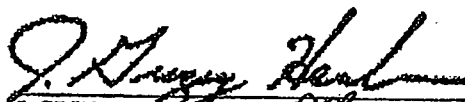
At a Court of General Sessions, convened on April 2, 2008, the Grand Jurors of Georgetown County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

CDR: 0014 §16-03-0620

That Robert Dexter Brown did in Georgetown County on or about February 21, 2008, commit an unlawful act of violent injury to the victim, Lee Epps, with malice, by Robert Dexter Brown, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, 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.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

ARREST WARRANT

J-535994

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of

Georgetown

THE STATE

against

Robert Dexter Brown

Address:

FILED
08002038
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

Personally appeared before me the affiant

Johnell Sparkman

being duly sworn deposes and says that defendant

Robert Dexter Brown

did within this county and state on or about

02/21/2008

State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of

Georgetown

violate the criminal law of the

State of South Carolina

in the following particulars:

DESCRIPTION OF OFFENSE

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

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Assault / Assault and battery with Intent to Kill (ABWIK)

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Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

AFFIDAVIT

ORIGINAL

2000 Approved
South Carolina
April 21, 2005
SCCA 618

SCANNED

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:

Robert Dexter Brown did willfully, unlawfully with malice aforethought, commit a battery upon the victim, Lee Epps. On 2/21/08, at approximately 1425 hours, located at [redacted] Street, Palmetto Tax Services, Mr. Brown confronted Mr. Epps with a knife and stabbed him. Mr. Epps sustained a stab wound on the left side of his body and a laceration to his left palm that required medical attention at the Georgetown Memorial Emergency Room.

Mr. Brown was apprehended a short time later and interviewed at the police department. During the recorded video/audio interview, Mr. Brown indicated he stabbed Mr. Epps twice.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

Affiant's Address

Affiant's Telephone

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 2/21/2008

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

☐ County/ ☒ Municipality of

Georgetown

as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

Assault / Assault and battery with Intent to Kill (ABWIK)

RETURN

A copy of this arrest warrant was delivered to defendant Robert Dexter Brown on 2-22-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

Georgetown Police Department

DOCKET NO. 2008GS220214 x

RDB0000016

The State of South Carolina

County of Georgetown

Dorrie Biagianti

08G00092

DOB

COURT OF GENERAL SESSIONS

APRIL, 2008 TERM

ARREST WARRANT NUMBER

J535996

CDR: 0013 \$17-25-0030/CL

DOI: February 21, 2008

THE STATE

VS.

ROBERT DEXTER BROWN

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Goude, C. Reuben

Indictment for

ASSAULT AND BATTERY HIGH
AND AGGRAVATED NATURE

VERDICT

Guilty

7/2/08
Foreperson of Grand Jury

George R. Hembree III
Foreperson of Petit Jury
Date: 7/31/2008

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on April 2, 2008, the Grand Jurors of Georgetown County present upon their oath:

ASSAULT AND BATTERY
HIGH AND AGGRAVATED NATURE

CDR: 0013 C/L, §17-25-0030

That Robert Dexter Brown did in Georgetown on or about February 21, 2008 commit an assault and battery upon the victim, Tywada Keith, accompanied with circumstances of aggravation, including but not limited to a difference in the parties' sexes and/or a great disparity between the ages and/or physical conditions of the parties and/or the infliction of severe bodily injury, in violation of the Common Law Crime of Assault and Battery of a High and Aggravated Nature.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

ARREST WARRANT

J-535996,

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of GEORGETOWN COUNTY, S.C.

Georgetown

JANUARY - 5 PM 4:21
08022008

Robert Dexter Brown

against

ALEXIA Y. WHITE
CLERK OF COURT

Address:

Phone:

M

Race:

DL #:

Height:

5

8

Weight:

190

SSN:

DOB:

Agency ORI #:

SC0220200

Prosecuting Agency:

Georgetown Police Department

Prosecuting Officer:

Johnell Sparkman - 0513

Offense: Domestic/ Criminal domestic violence of a high
and aggravated nature

Offense Code:

2938

Code/Ordinance Sec:

16-25-0065

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

Signature of Judge

(I.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Robert Dexter Brown
on 1-22-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P. O. Drawer 421270
129 Screven Street, Room 221
Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

AFFIDAVIT

ORIGINAL

I am Approved by
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant Johnell Sparkman
being duly sworn deposes and says that defendant Robert Dexter Brown
did within this county and state on or about 02/21/2008State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Georgetown)
in the following particulars: violate the criminal laws of the

DESCRIPTION OF OFFENSE Domestic/ Criminal domestic violence of a high and aggravated nature

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:Robert Dexter Brown did willfully and unlawfully inflict bodily harm in an aggravated manner against his former girlfriend,
Tywanda Keith. On 2/21/08 at approximately 1425, while she was sitting in Palmetto Tax Service, located at
Street, Mr. Brown approached Ms. Keith and brandished a knife and then repeatedly said to her, "Bitch I'm going to kill you" at
which time Ms. Keith pleaded with Mr. Brown not to kill her there. Mr. Brown forced Ms. Keith outside with the knife by
grabbing her around her head and neck. He then pushed Ms. Keith against the wall that resulted in 4 in. laceration on her chest.
Ms. Keith received medical treatment at the Georgetown Memorial Emergency Room.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

Affiant's Address

Affiant's Telephone

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 2/21/2008defendant Robert Dexter Browndid violate the criminal laws of the State of South Carolina (or ordinance of Georgetown)
☐ County/ ☒ Municipality of Georgetown) as set forth below:

DESCRIPTION OF OFFENSE: Domestic/ Criminal domestic violence of a high and aggravated nature

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 02/22/2008

(I.S.)

Judge's Address

Signature of Issuing Judge

Robert Harry O'Donnell

Judge Code: 6217

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

Georgetown Police Department

DOCKET NO. 2008GS220215 ✓

RDB000022

The State of South Carolina

County of Georgetown

Doris Bryant

08GS00092

DB

COURT OF GENERAL SESSIONS

APRIL, 2008 TERM

ARREST WARRANT NUMBER

J535997

CDR: 0095 \$16-03-0910

DOI: February 21, 2008

THE STATE

VS.

ROBERT DEXTER BROWN

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Goude, C. Reuben

Indictment for

KIDNAPPING

William Kennedy
Person of Grand Jury

Date: 4/8/08

VERDICT

guilty

J. Gregory Hembree, Solicitor

George R. Allen III
Foreperson of Petit Jury
Date: 7/31/2008

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

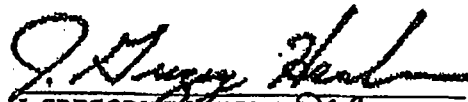
At a Court of General Sessions, convened on April 2, 2008, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Robert Dexter Brown did in Georgetown County on or about February 21, 2008, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Tywada Keith, 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.


J. GREGORY AMBREE DCB
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

ARREST WARRANT

J-535997/

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of Georgetown, S.C.

Georgetown

THE STATE

against

Robert Dexter Brown

08002038

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

violate the criminal laws of the

ALLEN Y. WHITE
CLERK OF COURT

Address:

Georgetown, SC 29440-

Phone:

M Race: SSN: DL #: Height: 5 8 Weight: 190

DOB:

Agency ORI #: SC0220200Prosecuting Agency: Georgetown Police DepartmentProsecuting Officer: Johnell Sparkman - 0513Offense: Kidnapping / Conspiracy to commit kidnappingOffense Code: 0017Code/Ordinance Sec: 16-03-0920This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
deal with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant Robert Dexter Brown
on 2-22-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

P. O. Drawer 421270

129 Screven Street, Room 221

Georgetown, SC 29442

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
March 2, 2007
SC04 518

Personally appeared before me the affiant

being duly sworn deposes and says that defendant Robert Dexter Browndid within this county and state on or about 02/21/2008

in the following particulars:

DESCRIPTION OF OFFENSE Kidnapping / Conspiracy to commit kidnappingI 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:Robert Dexter Brown did willfully and unlawfully seize, confine, abduct, and carry away the victim by force without authority of
law. On 2/21/08, while at Palmetto Tax Services Mr. Brown forced Tywanda Keith against her will to leave the building with him
at knife point threatening to kill her. Ms. Keith was in fear of her life and submitted to his demand until she could get away.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

Affiant's Address

Affiant's Telephone

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 2/21/2008defendant Robert Dexter Browndid violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Georgetown) as set forth below:DESCRIPTION OF OFFENSE: Kidnapping / Conspiracy to commit kidnappingHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me on 02/22/2008

Judge's Address

Signature of Issuing Judge

Robert Harry O'Donnell

Judge Code: 6217

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

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