

**VOLUME II OF II**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**May 22 2024**

**S.C. SUPREME COURT**

\_\_\_\_\_  
Certiorari to Marlboro County

Honorable Michael S. Holt, Circuit Court Judge

\_\_\_\_\_  
DERRICK DUPREE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001538

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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1           And the last sentence says, "Kadeem Hooks is excluded  
2           as a contributor to these items."

3           Q.   Now, interestingly, there is Item 3.2. I think that  
4           rectal swab indicates a mixture. Could you explain that  
5           particular portion of your report?

6           A.   He is referring to the third paragraph of my report,  
7           and it states that, "The D.N.A. obtained from Item 3.3,  
8           which is the rectal swab is a mixture of at least two  
9           individuals.

10           The D.N.A. profile of the major contributor is  
11           consistent with the D.N.A. profile of [LT] the  
12           victim in this case. And it further states that, "No  
13           conclusive statement can be made regarding the  
14           inclusion -- exclusion of Derrick Dupree to this mixture.  
15           Kadeem Hooks is excluded as a contributor to this  
16           mixture."

17           When, as I stated before, there are times when you  
18           have a mixture of the victim and the subject in a  
19           particular case. With this particular sample the amount  
20           of D.N.A. from the victim and the subject were pretty much  
21           balanced, but Miss [LT] was just a little bit more, and  
22           I could say that she's the major contributor.

23           But when looking at the minor contributor I could not  
24           pull Mr. Dupree out and be able to give a statistical  
25           value to his sample. So the statement that we use, based

1 on our protocol is, 'no conclusive statement can be made'.  
2 But there was nothing there to indicate that I could  
3 exclude him like I did Mr. Hooks.

4 Q. I understand. Now, moving on to that next paragraph,  
5 let's talk about the swab and the knife. Did you receive  
6 a swab from a knife handle sample?

7 A. Yes, I did.

8 Q. Now, did that show up as, I guess, a mixture of  
9 Kadeem Hooks as being the contributor to that mixture? I  
10 believe it's the fourth photograph.

11 A. Yes. The fourth photograph states that, "D.N.A.  
12 obtained from Item 8.1 is a mixture of at least two  
13 individuals. Partial D.N.A. profile developed from the  
14 major contributor to this mixture matches the D.N.A.  
15 profile of Kadeem Hooks." And it goes on, and I applied a  
16 stat to that, and it's one in 45 billion.

17 Q. Okay. Now, since you've been qualified as an expert  
18 let me ask you this. As far as the knife handle is  
19 concerned is there anything that you were submitted  
20 regarding the knife that indicated any blood or any D.N.A.  
21 from [REDACTED] on the knife?

22 A. The Item 3.1 was submitted to me as being touch  
23 D.N.A.

24 Q. Touch D.N.A. So no blood, no semen. Just the handle  
25 of the knife. So was there anything at all related to any



1 D.N.A. from LT [REDACTED] on that knife that you --  
2 submitted to you for testing? Any swabs submitted to you  
3 for testing from that knife?

4 A. No.

5 Q. Okay. I didn't ask you this, but as it relates to  
6 the items there were submitted to you based on S.L.E.D.'s  
7 protocol were they packaged according to your quality  
8 control protocol to maintain accuracy?

9 A. Yes, sir. Once I receive the evidence if the pouch  
10 was opened or an indication that there was some kind of  
11 tampering was done to it I would not proceed with the  
12 analysis until I was able to establish why it was in this  
13 particular state.

14 Q. Okay.

15 A. And it was not any tampering.

16 Q. Good enough. And to conclude, and we've talked in  
17 terms of Items 2.1, 3.2 and 5.1 being matches to the  
18 Defendant, Derrick Dupree. Could you, for the ladies and  
19 gentlemen of the jury, reflected in your report tell us  
20 again what items -- what specific items -- what those  
21 items were that tested positive for the defendant's  
22 D.N.A.?

23 A. I items that were positive for semen and were the  
24 semen matched Mr. Dupree were Item 2.1, which is the  
25 cutting from the nightgown; Item 3.2, swab from the

1 vaginal area; and Item 5.1 cutting from the underwear.

2 Q. Thank you. Please answer any questions that the  
3 Defendant may have.

4 THE COURT: Mr. Dupree, any questions?

5 MR. DUPREE: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. DUPREE:

8 Q. Ms. Gallman, you stated on Item 3.2 you were not able  
9 to identify was it the defendant's semen or not?

10 A. I could not separate out the defendant's D.N.A.  
11 profile from the mixture to be able to give a statistical  
12 value to them.

13 Q. Have your table identified on October 10th and  
14 October 13th. I think it's the 13th. October the 10th  
15 and May the 21st on your table identify? Can you read?

16 MR. DUPREE: Beg pardon, Your Honor.

17 BY MR. DUPREE:

18 Q. On tape identified on May the 21st -- just need a  
19 little explanation on them things to understand. If you  
20 don't mind, May the 21st where it says, "Item 16, Derrick  
21 Dupree." Can you tell me what the first block means when  
22 it says, '1214'?

23 A. Okay. As I stated that you get part of your D.N.A.  
24 match from your mother and part from your father. I can't  
25 tell you whether that 12 or 14 -- which one of your

1 parents it came from?

2 Q. Yeah.

3 A. But they are the contributors of that particular --  
4 that's your D.N.A. profile at that particular locus or  
5 that particular area on your chromosome?

6 Q. But it's either -- like you said you don't know if it  
7 came from the mother or the father, but you do know that  
8 it's Derrick Dupree's D.N.A.

9 A. The standard that was submitted to me as coming from  
10 Derrick Dupree generated that D.N.A. profile.

11 Q. Okay. And ---

12 A. And that's what I used to compare to the evidence.

13 Q. Okay. I'm looking at Item 3.3. If you go over to --  
14 on Item .33 [sic], and if you go over to the -- I think  
15 the fourth box if -- I'm trying to understand the numbers  
16 and stuff like that. I was reading over where it had 10,  
17 11 and, 12, whereas on Dupree identification had 12 and  
18 14. I'm just trying to understand what testing that was  
19 on the fourth block?

20 A. Okay. If -- he's referring to the chart. Once we  
21 develop D.N.A. profile from evidence and from standards we  
22 put it in a chart so that you will be able to -- bases on  
23 the statement we put in the report you can look at the  
24 chart and say, 'okay, this is what they're talking about'.

25 All right, so, if you look at the chart each one of

1 these columns is a different area on your chromosome.

2 Q. Yes.

3 A. Okay. So the numbers that are in that 12, 14 is what  
4 is at that particular chromosome. And if you go four over  
5 where you're talking about the 10, 11, 12, that's another  
6 area on your chromosome. Okay. So at that particular,  
7 what we call a locus, you are an 11, 12 or the defendant  
8 is an 11, 12.

9 Q. The defendant is an 11, 12?

10 A. Yes.

11 Q. So therefore -- basically, what I understand is that  
12 there was some indication that the defendant D.N.A. was  
13 found on Item 3.3?

14 A. Yes, but there is not enough information in there for  
15 me to make a conclusive call on that particular item.

16 Q. Okay. I understand. Can you tell me if -- do you  
17 have your report today that you finished your report?

18 A. That I finished the report?

19 Q. That you actually -- do you have with you the date  
20 that you actually finished your report on Derrick Dupree?

21 A. When the report has gone from me to a technical  
22 reviewer to an administrative reviewer then the final  
23 report is generated, and May 21st would be the date that  
24 that final report is generated.

25 Q. Okay. So -- but after you finished it it doesn't

1 leave -- I mean after you finish your report -- the day  
2 you finish it you're saying that it goes to some other  
3 people?

4 A. The day I finish writing up my report and making sure  
5 everything is correct it goes to a technical reviewer to  
6 check behind me to make sure that all of the analysis that  
7 I did, all of the work that I did, was correct and in  
8 order based on our protocol. And then it goes to another  
9 reviewer who checks the report itself to make sure that  
10 all of the information on that report corresponds to my  
11 results.

12 And then the final report is issued. All of this is  
13 check and balances.

14 Q. Okay. That is a part of the chain of custody as  
15 well?

16 A. No, it's not part of the chain of custody. It's the  
17 patrol we follow before we issue a final report. Chain of  
18 custody is when evidence flows from one hand to another.

19 Q. Okay. So the evidence didn't move? Just your report  
20 went from you to someone else?

21 A. Yes, I do the analysis and then I generate a report.  
22 Once the analysis is finished I'm finished with the  
23 evidence.

24 Q. Okay. And I'm going to go back to the question that  
25 I asked you, okay? You said once you finish -- I'm asking

1 you what date did you finish your actual report before it  
2 left you and went somewhere else?

3 A. Which report are we asking about?

4 Q. Right now May the 21st.

5 A. All of my analysis were completed April the 14th,  
6 factual analysis.

7 Q. Was completed April the 14th of?

8 A. 2014.

9 Q. Of 2014?

10 A. Yes.

11 Q. Okay. And did you by chance happen to speak to  
12 anybody from the State to your report at that time -- any  
13 time during that before your report on May the 21st came  
14 back? Well, was submitted cause you -- okay, when it left  
15 you -- you said April the 14th 21st?

16 A. When I finish all of my analysis.

17 Q. It was April the -- I'm sorry.

18 A. I'm too old for this. I can't remember that. It was  
19 April the 14th is when I finished all of my analysis.

20 Q. Okay. That's everything that you did on May 21st  
21 report, correct?

22 A. On May the 21st, yes.

23 Q. Okay. And you said when it left you it had to go  
24 somewhere else. That's why it wasn't submitted on May the  
25 21st to the State?

1 A. That is correct. Once I complete my analysis I write  
2 up my report and then it goes to a technical reviewer to  
3 clerk be behind my work and then to an admin reviewer and  
4 then the final report is issued.

5 Q. Okay. And that would be -- that's why I was saying  
6 like this your report going, and how would they know that  
7 your report is correct because you saying that they got to  
8 go and make sure it's correct.

9 A. Well, okay, when I complete all my analysis and I  
10 write out my report it goes to the technical reviewer.  
11 They do their review, sign off on it and return it to me.  
12 Then I hand it over to an admin reviewer to do their  
13 review.

14 Q. And that just on the report not on the items?

15 A. Once the analysis is done on the items that's it.

16 Q. That's it?

17 A. That is correct.

18 Q. Okay. And what would they -- when -- okay. And you  
19 said they would just to be reviewing the report. Could  
20 you explain to me what the examination of things they  
21 would be doing do identify to make sure your report is  
22 correct?

23 A. What we would do is this is my whole case file. I  
24 would hand this over to my technical reviewer. They would  
25 go through all of my analysis and make sure that the rates

1 I used were correct and everything was followed by  
2 S.L.E.D.'s protocol. If there is a problem they give it  
3 back to me for corrections. If not they would sign off on  
4 it and then it would go before the admin review whose  
5 checks is basically the paperwork and make sure that the  
6 wording -- everything is correct on the report.

7 Q. Okay. Did you talk to anyone in reference to your  
8 report after you completed your report? Before any time  
9 before you completed it and any time before you submitted  
10 your report, your May the 21st report? Did you talk to  
11 anyone in reference to that report as far as like anyone  
12 from the State or the representatives? Do you recall  
13 talking to anyone about the reports and anything like  
14 that?

15 A. I'm not understanding your question.

16 Q. I'm asking did you contact anyone from the State  
17 representatives as far as Marlboro County who was over  
18 this case? Did you contact any investigators or anyone  
19 from Marlboro County Sheriff's Department relevant to your  
20 report any time after you finished your report and before  
21 you submitted your report?

22 A. Well, I've issued two reports.

23 Q. I'm talking about the April the 14th and May 21st  
24 reports?

25 A. I don't remember speaking to anyone concerning this



1 report. Basically, with this report all of the analysis  
2 was done. This report was out with the profile on all of  
3 the evidence. What I received here was the standard from  
4 the subject, and what I did was compare what I had already  
5 done to the standard.

6 Q. Okay.

7 A. I don't know if I'm answering what you're asking.

8 Q. No. No. I was just wondering because I was told  
9 that you had spoke to someone and said that your report  
10 would be -- I heard that you spoke with someone in the  
11 month of March, the Investigator Alderman in  
12 Bennettsville, South Carolina? March? Any time in  
13 March 2014 relative to your report?

14 A. Stating that?

15 Q. That your report would be submitted in the month of  
16 March and not the month of May?

17 A. Okay. So -- I can't speak to that. I can't speak to  
18 that because it would involve some personal issues with  
19 me.

20 Q. But so you're saying that you can't answer that  
21 question whether you spoke -- called somebody and told  
22 them that?

23 A. Well, when I finish my analysis, and I don't have it  
24 in front of me to say whether I spoke with someone or not,  
25 I don't recall speaking with someone at this time. But if

1 I did, and they asked me about my results and everything I  
2 would have told them what I had at that time. But during  
3 that particular time I was ill. So the reports went out  
4 later than I expected.

5 Q. Okay. And I notice that on your October the 10th  
6 report you had received some items that were on you  
7 October -- your May 21st report that at the time on -- you  
8 received -- you had received the Items 8 point -- or 13,  
9 Item 13 and 14. And the -- you have your chain of custody  
10 sheet with you, madam?

11 A. No, I do not.

12 MR. DUPREE: Excuse me, Your Honor.

13 THE COURT: Are you looking for the chain of custody?

14 MR. DUPREE: Yes, sir. I'm looking for one in  
15 particular, sir.

16 BY MR. DUPREE:

17 Q. Miss Gallman, you received your Items 13 and 14 on  
18 12/9/13 -- okay. You did say you had an illness. That's  
19 probably why your report came a little late?

20 A. Yes, sir. That is the reason why. I finished my  
21 analysis, but the report was not issued until much later.

22 Q. Okay. Cause I was just curious to know because I  
23 notice that you have received the item, and I was just  
24 curious to know. I apologize. You said that it was cause  
25 you were going through some changes and stuff like that.

1 MR. DUPREE: No further questions, Your Honor.

2 THE COURT: All right. Any redirect?

3 MR. REDMOND: Just briefly, Your Honor. There are a  
4 couple of quick points.

5 REDIRECT EXAMINATION

6 BY MR. REDMOND:

7 Q. Just to be clear, and I think bases on some questions  
8 the defendant had asked you, is it unusual from time to  
9 time for an agency to contact you just to find out what  
10 the status of a report is?

11 A. Yes, they do. Often.

12 Q. And so that part is not unusual. Let me ask you  
13 this. Did anybody in any way, shape or form call you to  
14 try to influence your findings?

15 A. No, sir, they did not because It is what it is.

16 Q. Exactly. And if somebody had called, take me for  
17 example. If I called you and said, "Miss Gallman, I need  
18 you to I say 'X, Y, Z', what would you do if I did that?

19 A. We wouldn't be speaking any more.

20 Q. Okay. Thank you?

21 MR. REDMOND: Nothing further.

22 THE COURT: All right. You may be excused. Thank  
23 you very much.

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. You may call your next

1 witness.

2 MR. REDMOND: Your Honor, may we take a brief recess  
3 so we can review some evidence and make sure that we have  
4 everything in that we intended to have in, and then we  
5 might need to take up some administrative issues. But if  
6 the Court would allow us I think we're coming to the  
7 conclusion of our case. I just need to double check on  
8 some housekeeping matters.

9 THE COURT: Madam Forelady, ladies and gentlemen of  
10 the jury, I'm going to ask that your retire to the jury  
11 room. Do not discuss the case. Everyone remain seated  
12 while the jury exits the courtroom.

13 (WHEREUPON, the jury panel was excused from the  
14 courtroom at 10:42 a.m.)

15 COLLOQUY

16 MR. REDMOND: Your Honor, I forgot to ask if the  
17 witnesses can be released from their subpoenas that have  
18 testified this morning. But the main this is I just need  
19 to make sure that all the evidence that we intend on  
20 admitting has been admitted. At that point, we rest, Your  
21 Honor.

22 THE COURT: All right. Well, let's do it.

23 MR. REDMOND: Yes, sir.

24 THE COURT: All right. We'll stand at ease for five  
25 minutes.

## Colloquy

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1 (WHEREUPON, Court is in recess at 10:43 a.m. and  
2 reconvened at 10:50 a.m.)

3 MR. REDMOND: Your Honor, for the record there are  
4 two exhibits that inadvertently were not placed in  
5 evidence. I think one was, but because I was talking over  
6 the court reporter, which I tend to do, unfortunately,  
7 sometimes, she missed that one. That was Item Number --  
8 that was Exhibit Number 32, which was the evidence  
9 processing report from March 7th 2014.

10 We've got 31 in, but just out of an abundance of  
11 precaution I just want to make sure that the record  
12 reflects that we did seek to introduce State 32 in, and I  
13 don't think Ms. Gordon was able to get it because of the  
14 chatter that was going on. So we would like to make sure  
15 that that's admitted for the record.

16 THE COURT: Any objection from Defense?

17 MR. DUPREE: No, sir. I also have one that I want to  
18 enter an exhibit where -- well, Your Honor, I already  
19 spoke with him, and he said it is okay.

20 THE COURT: All right.

21 (WHEREUPON, State's Exhibit No. 32 was admitted into  
22 evidence.)

23 MR. REDMOND: I just got one more matter to address,  
24 Judge, and that's the serology report that Miss Ashley  
25 Bell testified. That report was not actually admitted

1 into evidence even though that was our intention. And at  
2 this point we would seek to admit -- well, let me back up.  
3 It's admit as a Defense exhibit so disregard that.

4 So the only issue is 32. So with that, Your Honor,  
5 the State respectfully rests at this time.

6 THE COURT: All right. Mr. Dupree.

7 MR. DUPREE: Yes, sir.

8 THE COURT: What article -- what item have you agreed  
9 with Mr. Redmond concerning the admission?

10 MR. DUPREE: It was my max out date, sir, that I was  
11 released from the Department of Corrections, sir.

12 THE COURT: All right. You have an objection to that  
13 being admitted?

14 MR. REDMOND: No, sir. If he seeks to introduce it  
15 we have no objection.

16 THE COURT: All right. Well, it is in evidence  
17 pursuant to stipulation of counsel.

18 MR. REDMOND: Thank you, Your Honor.

19 (WHEREUPON, Defendant's Exhibit No. 8 was marked for  
20 identification and received into evidence.)

21 THE COURT: While we're waiting on that, Mr. Dupree,  
22 how many witnesses do you anticipate?

23 MR. DUPREE: Sir, we were just discussing that now,  
24 and the State saying they were ready to get it over with  
25 so I don't have -- so I was just discussing should I have

1 my witnesses with me or not and try to see do it really  
2 matter at this moment as far as having them do my closing,  
3 sir. I'm discussing that now with my assistant, sir.

4 THE COURT: All right. Very good. All right. We're  
5 ready for the jury. Excuse me just one moment. Let's not  
6 do that. I'm going to allow you to rest on the record.

7 MR. REDMOND: Yes.

8 THE COURT: But at this time since you've concluded  
9 your presentation let's go ahead and address any motions  
10 that need to be made at this time. Any motions from  
11 anybody?

12 MR. REDMOND: None from the State, Your Honor.

13 MR. DUPREE: Your Honor, I motion to have the motion  
14 for directed verdict that the State have refused to  
15 produce all the evidence for the crimes that I have been  
16 charged with, sir.

17 THE COURT: All right. Mr. Redmond, be glad to hear  
18 from you.

19 MR. REDMOND: Briefly, Your Honor. To make sure the  
20 record is complete I'll cover each charge individually.  
21 Briefly, first as it relates to criminal sexual conduct,  
22 obviously, we've had the testimony of Miss LT and  
23 without going through each specific witness we've got her  
24 testimony. We've got actually his, what we would contend,  
25 confession. We've got forensic evidence that does -- and

1 the State's position is indicates criminal sexual conduct.

2 And as it relates to kidnapping, again, based on  
3 testimony of the victim, even based on the admission of  
4 the defendant, we contend that the standard has been met  
5 on the kidnapping.

6 As it relates to burglary first degree, Your Honor,  
7 as we have indicated at the defendant's motion at the  
8 begin -- at the outset of the trial the victim clearly  
9 indicated that her movements were confined. In fact she  
10 was told in essence to be still and was operating at the  
11 direction of the defendant. So that way, based on that  
12 confinement -- excuse me. That's kidnapping.

13 As it related to the burglary he had tricked his way  
14 into the house under the guise of wanting to buy the house  
15 when, of course, subsequently, once he had a chance to  
16 view the environment within the house he then committed  
17 the rape. So we would submit that his intentions, the  
18 jury can infer, were based on trickery. And so we would  
19 submit that we've met that burden.

20 And, finally, the testimony indicated that the  
21 defendant actually had a knife that was used, and that is  
22 based on the testimony of Miss LT and based upon the  
23 pictures that indicate the injury to the neck of Miss  
24 Thomas. So we would submit that we have satisfied the  
25 standard at this point in the light most favorable to the



## Colloquy

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1 State.

2 And the evidence has shown that we should have this  
3 matter decided by the jury.

4 THE COURT: Mr. Dupree, your motion is denied,  
5 however, you are protected on the record. And we are  
6 ready for the jury.

7 (WHEREUPON, the jury panel enters the courtroom at  
8 10:55 a.m.)

9 THE COURT: Mr. Redmond, you're recognized. Call  
10 your next witness.

11 MR. REDMOND: Thank you, Your Honor. May it please  
12 the Court. Ladies and gentlemen of the jury, that  
13 concludes the State's presentation, so we respectfully  
14 rest our case at this particular time.

15 THE COURT: Madam forelady, ladies and gentlemen of  
16 the jury, the State has concluded their presentation at  
17 this time. The Defense is given an opportunity to present  
18 any evidence they might have. Mr. Dupree, you're  
19 recognized.

20 MR. DUPREE: No, sir, I be through with my witnesses.  
21 Oh, yes, sir. Yes, sir. I will be testifying.

22 THE COURT: All right. Will you please come forward  
23 and place your left hand on the bible and raise your right  
24 hand as the Clerk administers the oath.

25 DERRICK DUPREE, after being duly sworn,

1 testified as follows:

2 THE COURT: Please come forward and have a seat in  
3 the witness chair. Pull up real close to that microphone.  
4 Speak loudly, clearly and slowly in order that we can hear  
5 everything that you have got to say, and let's start with  
6 your full name.

7 THE WITNESS: Yes. My name is Derrick Dwayne Dupree.

8 THE COURT: All right. You may tender your  
9 testimony.

10 MR. DUPREE: Sir?

11 THE COURT: You may tender your testimony.

12 MR. DUPREE: Oh.

13 DIRECT EXAMINATION

14 BY MR. DUPREE:

15 On September the 8th of 2013, the day of the  
16 incident, the crime, I was -- however whereas the crime  
17 was in Wallace, South Carolina I was, however, in another  
18 town, which was Bennettsville, South Carolina, celebrating  
19 my mother's birthday which is September the 8th which my  
20 father -- stepfather did state that I was at his house  
21 celebrating my mother's birthday.

22 MR. REDMOND: Your Honor, I object.

23 THE COURT: Sustained. You can't say what other  
24 witnesses might or might not say.

25 BY MR. DUPREE:

Derrick Dupree - Direct by Derrick Dupree

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1           Okay, well, however, I was at my stepfather's house,  
2           and, however, I left there. I can't remember the exact  
3           time that I left. After a while me and my wife had left.  
4           And I did, however, get dropped off another street whereas  
5           my wife had went home, but I never went back to Wallace,  
6           South Carolina. That day, whereas, I left -- we left home  
7           at maybe I guess around sometime that morning. And like I  
8           said I as dropped off somewhere in another neighborhood in  
9           Bennettsville to a friend's house where -- whereas, I left  
10          there after a couple hours and went back to my  
11          stepfather's house where is stayed until maybe -- I stayed  
12          6:00 or seven o'clock on September.

13                So I think it get dark maybe at this time at, I'm  
14                going to guess, 7:30 or somewhere around that,  
15                eight o'clock. I'm not sure, but I knew before I left it  
16                was still real daybreak. And I left there and I went to  
17                another friend's house. I left walking because my wife  
18                had went back home and she had the car.

19                So I left walking. Went to another friend's house on  
20                Marshall Street by in name of Larry, Larry McCrae, and I  
21                spoke with him for a little while and -- him and his wife.  
22                And I left there walking, and I went to -- I went to -- I  
23                think it's Cottingham Boulevard. I walked to Cottingham  
24                Boulevard from Marshall Street. And I was on my way to a  
25                friend house on Fletcher Street. I don't know -- which is

1 located right off Main Street which is known as the Mill  
2 Farm.

3 I don't know if anyone recognizes that, but I decided  
4 not to go there being that it started getting dark during  
5 my walk there. So I walked on to my sister's house from  
6 Cottingham Boulevard which she stays in Glenfield, South  
7 Carolina, which is stated on -- which is Center Street.

8 So I left like I said I walked from Cottingham  
9 Boulevard to Center Street which is an apartment complex  
10 called Glenfield. And I say when I got there it was  
11 maybe -- i think it was maybe, I guess, I'm going to  
12 assume it was around 8:30 or nine o'clock. And I called  
13 my fiance. I called any fiance from my sister phone and  
14 told her to come pick me up whereas she was still home.

15 She did -- she left -- well, she didn't leave right  
16 then and there. Maybe like an hour or 30 minutes.  
17 Something like that. She hadn't arrived yet so I called  
18 her back and asked her, you know, what was taking her so  
19 long cause I was ready to go home and eat and things like  
20 that. Cause I did -- I was drinking and I hadn't ate  
21 nothing on my -- on the alcohol. But, however, she did  
22 come pick me up from my sister house. And I say it was  
23 maybe 10:00. Somewhere, 10:00 or 10:30.

24 But before we left my mother had arrived at my  
25 sister's house, and she and my -- she still wanted to

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1 finish up celebrating her birthday, I guess, until  
2 12 o'clock. And she had -- in her possession she still  
3 had some beverages that she wanted to consume. And at  
4 that time, you know, I'm not a heavy drinker so I was  
5 like, well, I'm good. And I'm fine. And then at the time  
6 I knew I would be driving back home. So I told them that  
7 they can help themselves, and I was fine.

8 I had a cousin, Miss Graves, that stayed upstairs.  
9 Her daughter had arrived, and she asked us a few  
10 questions. And my mother was telling her that it was her  
11 birthday, and you know, they was laughing and joking, you  
12 know. I said a few things to her, and as far as how she  
13 was doing and things like that cause I'm usually not in  
14 Bennettsville.

15 We usually, me and my wife, we usually go out of town  
16 the majority of the time. But I'm not really known in  
17 Wallace, to be in Wallace cause I'm not from Wallace. I'm  
18 from Blenheim, South Carolina. So I don't know no parts  
19 of Wallace. I never walk around in Wallace. The majority  
20 of the time I'm in Wallace I'm driving a vehicle. I'm  
21 driving me and my wife, fiance, vehicle.

22 I never, like I said, I never really walked around in  
23 Wallace. So I don't know how I was seen in Wallace, but  
24 like I said we left my mother house -- my sister house  
25 around 10:00, 1030 or 11:00, and we did go back home.

1           The next day -- the next day -- I think it was the  
2 next day which would have been Monday, September the 9th.  
3 I'm thinking that's when -- I think it was that night that  
4 we found out that Kadeem Hooks then -- Kadeem Hooks was  
5 arrested for the charge. However, some people was asking  
6 questions around the neighborhood about rather if  
7 Kadeem -- well, if Kadeem Hooks had committed the crime or  
8 not. And people were just asking questions about D.N.A.  
9 and stuff like that.

10           And like I said this was the day after the crime that  
11 people were asking about D.N.A. and, however, some  
12 questions were brought -- well, some statements was  
13 brought to me and my wife house as well as my wife  
14 daughter and some of her friend's who socialize from the  
15 Wallace area which was here giving a statement.

16           I think Wilbert Harrington and his fiance came to me  
17 and my wife house on a Monday, and was at -- they were  
18 making statements as far as Kadeem being ---

19           MR. REDMOND: Your Honor, I would object to hearsay.

20           THE COURT: Sustained. You can't say what other  
21 people said.

22           MR. DUPREE: Okay. Well, we was asking questions  
23 about the D.N.A. whereas people was stating that -- well,  
24 we was -- I was asking questions about the D.N.A. because  
25 it was made a statement to us. But any way, on that day I

1 think me and my wife had went do -- I'm thinking we went  
2 to Bennettsville or either Rockingham shopping cause we  
3 shop a lot. We go grocery shopping a lot. We just go to  
4 stores, clothing stores.

5 But I know on September the 10th -- on September the  
6 11th I mean. September the 10th, I'm sorry, which was  
7 Tuesday, my name was mentioned. Somebody was stating --  
8 because that's how I went about to the police station  
9 myself to state, you know, that I didn't know nothing  
10 about the crime and I didn't want to be involved or didn't  
11 want to be a witness to the crime.

12 So, however, I was released and able to leave that  
13 night which was maybe at 9:00 or 10:00 that night. The  
14 next day, which was would have been Wednesday,  
15 September 11th, I think it was. Maybe me -- I know for  
16 sure that day me and my wife, we left home early that  
17 morning. We went to Wal-Mart in Bennettsville, South  
18 Carolina.

19 We left Wal-Mart in Bennettsville, and we went to the  
20 Wal-Mart in -- well, as a matter of fact, we went to the  
21 Wal-Mart in Bennettsville to have some money placed on a  
22 gift card, a Wal-Mart gift card and we left the Wal-Mart  
23 in Bennettsville and went to the Wal-Mart in Rockingham  
24 where we can buy certain stuff from a convenience -- like  
25 a convenience store that's somewhat part of Wal-Mart

1     instead of just buying stuff from the original shopping  
2     center Wal-Mart.

3             So we went to Rockingham because they have like a  
4     convenience store Wal-Mart which Bennettsville didn't  
5     have. So we left there and went -- and we left there to  
6     come back home where we shopped, bought some groceries. I  
7     left there to come back home. My wife and I, we went to  
8     pick up my step -- well, my grand -- her grandkids from my  
9     mother's house which we had to pass -- we had to pass  
10    Kadeem Hooks' grandmother' house.

11            However, at that time Mr. Hook family them was  
12    outside when we passed through there, and on the way back  
13    they wasn't outside. So I just felt a funny feeling. So  
14    I told my wife, I was like, "I think that the police  
15    coming to arrest me." And she was like, "Why you say  
16    that." I said, "Because just now when we passed Kadeem  
17    Hooks' grandmother them house" -- at this time Kadeem  
18    Hooks was still locked up for the crime.

19            I said that, "They was outside, but when we came back  
20    through all of them was gone inside the house." So I --  
21    and she was like, "Well, why you feel that they going to  
22    come and arrest you." And I said I feel like Kadeem  
23    Hooks' grandmother them probably went to the police  
24    station at that time in which they did.

25            And, however, it was like I said it was maybe at that



1 time four o'clock in the afternoon. And maybe when we got  
2 home I say -- my wife was cooking. I was sitting in the  
3 house watching t.v. or a movie we had bought from  
4 Wal-Mart. And the police from Bennettsville Police  
5 Department -- Sheriff's Department -- I think it was Shawn  
6 Feldner, Ricky Harris and James Campbell arrived at my  
7 house, and they said that you were under arrest for the  
8 crime of September the 8th. So I was kind of confused and  
9 discombobulated because I was like how am I arrested for a  
10 crime I didn't commit.

11 And at that time they didn't show a search warrant  
12 which I -- it really didn't matter. I just felt like, you  
13 know, that just was pulling me in because of some  
14 statement that people were making and stuff like that. So  
15 I felt like I would be alright. I wouldn't have nothing  
16 to worry about. However, we arrived at the Detention  
17 Center around -- well, the statement shows around 5:30  
18 that evening -- that afternoon.

19 And at that time I didn't make no statements as far  
20 as to the incident as far as signing my Miranda rights. I  
21 did, however, state that I was there and that was that. I  
22 was sent to the Detention Center because I didn't give a  
23 statement saying that I was there. And also because I  
24 wouldn't comply with anything that they were asking.

25 But I did go to the Detention Center. Like I said it

1 was on September the 11th. I did talk with some other  
2 inmates and stuff like that where I learned so much --  
3 somewhat about the crime that took place on September the  
4 8th. So I was thinking that maybe, well, I tell a lie  
5 then, you know, if they let the first suspect go and he  
6 lied -- and he confessed I said maybe if I do that I can  
7 get a bond and maybe see my wife and use the phone and  
8 things like that.

9 I'm nervous. I never been in a situation like that.  
10 I'm scared and, you know, it's like, you know, when you're  
11 accused of something like that. Especially C S.C,  
12 burglary first and stuff like that, serious charges. So  
13 I'm like I'm scared. Like I said I never been charged or  
14 been involved in anything like that. So the only thing on  
15 my mind was, man, how in the world am I going to get out  
16 of here.

17 So I, on the 16th, I wrote a statement saying that I  
18 would like to, you know, go ahead and help myself thinking  
19 that -- but I'm thinking that, you know, I'm get a bond  
20 and get out of here. So I did give a voluntary statement  
21 where I told a few lies and stuff like that.

22 And at the end, when it was saying that -- I was  
23 stating that, yeah, I was lying which I think I saw the  
24 video statement on the 16th where the detective left out  
25 and I was making the statement that I didn't commit this

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1 crime. And, yeah, I did know that the video was recording  
2 everything I said, and that's why I had stated that  
3 because I knew I just lied and said I committed this crime  
4 which I didn't.

5 So being that I knew that the video statement was  
6 recording it I made sure, when he left out, to state  
7 clearly that I was lying when I said that I done that.  
8 However, I went back to the County. On -- in -- and after  
9 that some things transpired, and I was asking questions  
10 relevant to the charges, relevant to the D.N.A, the  
11 samples of D.N.A.

12 I was asking questions of my first attorney who was  
13 Brandon Steen, and the questions that I was telling him --  
14 I would rather gave the statement saying that, man, you  
15 know, my D.N.A. is in the database system; you know what  
16 I'm saying. It's shouldn't take that long for my reports  
17 to come back. I'm thinking, basically, that I'm helping  
18 myself. I'm not thinking that somebody that -- somebody  
19 will try to put my, you know, frame me or something. I'm  
20 not thinking this would happen. Only thing I'm asking  
21 them saying that, you know, my D.N.A. is in this database  
22 system. It shouldn't be no points of whatever how long it  
23 come back.

24 And I'm -- as far as the fingerprints, I didn't know  
25 as far as the fingerprints at the time that do

1 fingerprints be held. I didn't see any reports stating  
2 that fingerprints were found at that time of my arrest.  
3 However, I was asked a statement -- I was making  
4 statements to my attorney on that as well as asking can I  
5 see the fingerprint reports and stuff like that. And he  
6 was like, well, oh -- he was like, the State hasn't turned  
7 over the reports yet at that time.

8 So I went to the Lee Correctional Institution where I  
9 studied a little bit about the case and the charges that I  
10 was charged with as far as the -- and the testing of the  
11 D.N.A. and stuff like that. And things wasn't adding up.  
12 A lot of it was complicated, and my attorneys -- well, at  
13 that time I was asking any attorneys for different  
14 information, too, because things were very complicated and  
15 not adding up.

16 And I did, however, have a statement -- a letter from  
17 my public defender which I'm sorry I didn't ask to be  
18 exhibited as far as any evidence. Whereas, I found out  
19 that due to the law enforcement -- the close association  
20 that law enforcement had to this case that I might not  
21 have a fair case; that things might not go in my favor  
22 because I found out that the victim's family son was the  
23 Chief of Police of Chesterfield, South Carolina.

24 And I found out that the Chief of Bennettsville had  
25 worked ---

1 MR. REDMOND: Your Honor, I'm going to object cause  
2 he's talking about things he found out. I don't know if  
3 he's allowed ---

4 THE COURT: I'm going to allow him to testify.

5 MR. REDMOND: Yes, sir.

6 THE COURT: Tell them what -- go ahead.

7 BY MR. DUPREE:

8 Okay. And I found out that there was -- that the  
9 Sheriff of Bennettsville, South Carolina had worked with  
10 S.L.E.D. I was sent to S.L.E.D. on September -- on -- let  
11 me think. September the 15th of 2014. I was escorted by  
12 Terry Legette, the gentlemen that is sitting behind me now  
13 relevant to a handwriting sample that was said to be found  
14 on Item One.

15 That was said -- while I was at S.L.E.D. giving this  
16 handwriting sample which was conducted by a forensic  
17 scientist that wasn't called to this. I don't know why  
18 she wasn't called, but I do have the test where I find out  
19 there was no indication on my handwriting statement that  
20 it was wasn't my handwriting.

21 MR. REDMOND: Your Honor, I'm going to object to  
22 that. Now, if he wants to introduce it I don't have a  
23 problem with it.

24 THE COURT: Sustained.

25 BY MR. DUPREE:

1           However, I did ask Miss Gail Heath questions relevant  
2 to the report where she gave a few questions to that and  
3 where she made some other statements where I was asking  
4 questions about -- I don't know if I can tell -- ask the  
5 question that I asked her and the statements that she made  
6 to the question. If they object then that will be on  
7 them. I did, however, ask her did she know anybody from  
8 Bennettsville, whereas, she did said that she knew a few  
9 people.

10           MR. REDMOND: Your Honor, I object to hearsay.

11           THE COURT: Sustained.

12           BY MR. DUPREE:

13           Well, however, September the 15th I was escorted back  
14 to my facility. However, I was waiting for the evidence  
15 to return. At that time I was missing a lot of evidence  
16 from my case which why -- which is why it was -- and as  
17 you know I was representing myself which is why it was  
18 kind of complicated for me to really break dawn the things  
19 and the elements of the crime. Not just the elements, but  
20 the D.N.A. reports, it was complicated for me to break  
21 them down.

22           Not saying -- I'm not here to state that whether it  
23 was a lie or try to get somebody to lie. I just wanted to  
24 state the truth and the facts. However, like I said a lot  
25 of my evidence was received late. Whereas, I received

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1 some evidence the day that this trial started. So like I  
2 said it was kind of complicated for me to look over the  
3 reports and go through.

4 I was having a lot of difficulties, like I said, with  
5 my attorneys, whereas, I felt like -- like I said due to  
6 the close association the law enforcement had to this case  
7 I felt like a lot of discrimination would be made in this  
8 case. And like I said I felt like a lot of things were  
9 called in the case. Like I said I couldn't break down a  
10 lot of things, but hopefully, you know, I will be able to  
11 break down some things at the closing.

12 However, like I said I was having difficulties as far  
13 as attorney as far as assistance and stuff like that. And  
14 like I said that's why it was kind of complicated and hard  
15 to explain the D.N.A. results and the fingerprint results  
16 as well which is the D.N.A. results.

17 However, like I said I'll do that at closing. But as  
18 far as my story on about September the 8th, once again, I  
19 was in Bennettsville, South Carolina on that day. And  
20 like I said I left home maybe around ten o'clock that  
21 morning. I'm going to say ten o'clock that morning. And  
22 I arrived in Bennettsville at maybe -- because where I  
23 stay is on 177 which is Wallace, South Carolina. It's  
24 like the end of Wallace, South Carolina close to Hamlet.  
25 Hamlet, North Carolina line.

1           And so from there to 15/401 Bypass -- I don't know if  
2   y'all know where it is. It will take 30 minutes to get  
3   there from 15/401 Bypass about where my stepfather stay  
4   at, which is Amelia Street. So like I said we arrived  
5   there, maybe, 11:00. I'm going to say close to 11:00. So  
6   we started watching the game and stuff like that. But I  
7   never did go back to Wallace, South Carolina until later  
8   that night which was at 10:00. Maybe 10:00 or  
9   eleven o'clock that night. And that's all that I have as  
10   far as I can think of at this moment as my testimony.

11           THE COURT: All right. Cross-examination?

12           MR. REDMOND: May it please the Court, Your Honor

13                           CROSS-EXAMINATION

14           MR. REDMOND: Let me make sure I'm clear on something  
15   because earlier you testified about when -- you testified  
16   about not being from -- familiar with Wallace and what  
17   not. But then the last thing that you said was that you  
18   didn't get back to Wallace until about ten o'clock that  
19   night. Is that what you just said just a minute ago?

20   A.    Yes.

21   Q.    And the reason you said that is because you lied,  
22   didn't you? Kim Mance, the lady you refer to as your  
23   wife, isn't it true, and it's reflected in State's 39,  
24   isn't it true that she actually lives in the Wallace area  
25   of Marlboro County? And you were living with her? Isn't



1     that the truth?

2     A.    If you mean to say she stay in Wallace, South  
3     Carolina, yeah.

4     Q.    And you stayed with her? Your wife, as you call her?

5     A.    Exactly?

6     Q.    But isn't it true that earlier you told this jury  
7     that you didn't know anything about Wallace? In fact, you  
8     lived in Wallace?

9     A.    I didn't say that I don't know anything about Wallace  
10    because I stay in Wallace.

11    Q.    You didn't even say that much before, did you?

12    A.    I don't understand what you're saying.

13    Q.    In other words, I'm saying that you did not tell the  
14    truth about whether or not you lived in Wallace or were  
15    even in Wallace? In fact you live in Wallace?

16    A.    I mean, well, that was introduced. If I didn't make  
17    that in my statement then I'm sorry. But, yeah, of  
18    course, I lived in Wallace. I mean ---

19    Q.    Let's talk about a lot of things you didn't put in  
20    your statement. For instance, now, today, I think, and  
21    let's count with me. You came in on the 10th. You told  
22    them a story then. Told them you didn't know anything.  
23    Matter of fact, you said that on the 10th and 11th of  
24    August. That would be one story. You count those two  
25    days as one story.

1           Then on the 16th, and we've heard the tape, you  
2 actually told two stories that day.. You didn't mention  
3 the fact -- hadn't explained the fact that you lied on  
4 Wilbert and Perry and Kadeem and tried to put them in the  
5 house and said, 'oh, you know, I was walking away. I saw  
6 them. I went in the house' trying to explain how your  
7 print got in there. Then you lied on the other three  
8 people. Tried to get them in trouble. That's story  
9 number two.

10           Then in the same interview later, isn't is also true,  
11 that you ended up telling what was perceived to be a lot  
12 of consistency with what happened to Miss **LT**

13 A. And as well as Kadeem Hooks, too, sir.

14 Q. Well ---

15 A. I mean what I did, however, stated in my testimony  
16 just now that I did learn some things from the County  
17 jailhouse that was stated ---

18 Q. Of course, you did.

19 A. About the ---

20 THE COURT: All right, now.

21 MR. REDMOND: Yes, sir.

22 THE COURT: One thing we're going to have to do is  
23 one speaks at a time.

24 MR. REDMOND: Yes, sir.

25 BY MR. REDMOND:

1 Q. Sorry I interrupted you. Go right ahead.

2 A. Yes. Like I said I did state it in my testimony that  
3 I learned some things in the County through inmates about  
4 the crime. About what took place at the crime. However,  
5 like I said I used that in hopes of thinking that I will  
6 be released from the jail house because I thought that  
7 since Kadeem Hooks had been released with nothing proving  
8 him innocent at that time as far as a fingerprint that  
9 doesn't prove that his innocence after a confession and  
10 him being said spotted by eye witnesses.

11 I don't think that a fingerprint was really enough  
12 weight to hold as far as to say that this person, Derrick  
13 Dupree, actually committed this crime. So like once again  
14 like I said I thought that maybe if I stated the same  
15 thing and hoping that like -- once again, I did ask them  
16 will I -- will they help me get out and stuff like that  
17 and let me speak to my wife and stuff like that before I  
18 made that statement.

19 And on that statement which was not plaid I did tell  
20 them that I would be lying if I said that I committed this  
21 crime. I mean -- and I told them like three times before  
22 I test -- before I even gave that statement.

23 Q. But you said that. You're saying all this stuff you  
24 learned, but isn't it true that when you first got there  
25 on the 16th at your request you lied then? Isn't it true

1 that a pattern in this whole thing is that you've lie  
2 about a lot of things; isn't it?

3 A. I mean, of course, I lied. Yes, sir.

4 Q. Thank you. Thank you. Thank you. Now, again, and  
5 today the fourth story is the fact that -- and remember in  
6 your first statement you claim that you were with Kim all  
7 day. As a matter of fact you mentioned about being in  
8 Isaac's all day and then leaving, but, of course, that  
9 wasn't true cause we heard from Isaac.

10 So then you started to rambling. So let me ask you  
11 this. Isn't it also true that today this is the first  
12 time that you talk in terms of the fact that you actually  
13 did leave Kim Manse's company? That she was not with you  
14 the whole day? That in fact you walked several places?

15 I think you talked about going to a couple of  
16 friends' house, going down Cottingham Boulevard. Today is  
17 the first day that you mention any of that; isn't it?

18 A. Sir, to answer your question from the beginning of

19 ---

20 Q. If you can answer yes or no and then if you need to  
21 explain fine. But isn't today the first time that you  
22 mention about all of this walking you did by yourself  
23 without Kim Mance other than the times when you confessed?

24 In other words, let me ask you like this. You have  
25 gone from the first statement saying, 'I was with her all

1 day. I was with Isaac'. Second statement saying, 'well,  
2 I was there. I went inside, but then I left and these  
3 other guys went inside'. To then saying, 'okay, yeah, I  
4 did it. I wrote the name,' and, of course, you wrote  
5 Dwayne Stanton's name, your middle name. So then that was  
6 your third story.

7 And now, today, you're saying, 'well, it's kind of  
8 like the first statement but a little different because I  
9 wasn't with her all day. I did go off on my own, but I  
10 never went to Wallace'. Isn't that your fourth statement?

11 A. Sir, to answer your question, once again, at the time  
12 when I gave my testimony there wasn't no real question on  
13 the 11th what I done that day. Can I explain?

14 It wasn't no question asked of me, 'can you explain  
15 what you did from Point A to Point B'. Only thing that I  
16 told them was that I was in Bennettsville, South Carolina  
17 all day. Me and my wife at that -- if I said that me and  
18 my wife was in Bennettsville all day like I said, sir, I  
19 just give the testimony saying that I was in Bennettsville  
20 all day.

21 However, I was in Bennettsville all day, which as, I  
22 did state in cross-examination that I did ask the  
23 stepfather did he recall seeing me later on that day.  
24 Whereas, I did state that I did leave his house, and I did  
25 come back to his house. Now, he stated that he did not

1 see me ---

2 Q. I'm not asking for any hearsay.

3 MR. REDMOND: My question did not allow for any  
4 hearsay, Your Honor. So I would object to any hearsay.

5 THE WITNESS: Okay, well, yes, I stated that I was in  
6 Bennettsville all day which I was in Bennettsville all  
7 day. Like I said there was no question asked on who else  
8 was in Bennettsville with me all day. Well, I stated that  
9 my wife was in Bennettsville all day with me. Then she  
10 was in -- I stated that she wasn't in Bennettsville all  
11 day with me.

12 BY MR. REDMOND:

13 Q. Isn't it true that at the time that you actually gave  
14 the, what I'm going to call your third confession, second  
15 story you gave on the 16th that we saw, isn't it true that  
16 you described where in the house you went? What she was  
17 wearing? And, particularly, I'm going to show you State's  
18 Exhibit 49.

19 You went into great detail as it relates to how the  
20 house was laid out, isn't that true?

21 A. Well, sir, it was basically ---

22 Q. Isn't that true?

23 A. --- indicated to me ---

24 MR. REDMOND: Your Honor, if I could just ask him to  
25 answer my question?

1 THE COURT: Mr. Dupree, the way it works on  
2 cross-examination is that he asks a question, and it  
3 requires that you answer yes or no. But you will be given  
4 ample opportunity to explain your answer. But his  
5 questions, the way they're fashioned, require a yes or no  
6 answer then you can explain. So before you do anything  
7 you need to answer yes or no, but you can explain. You  
8 understand?

9 MR. DUPREE: Yes, sir.

10 THE COURT: Very good.

11 THE WITNESS: Yes, I did make some statements  
12 relevant on the I guess what presumed to be the truth.  
13 Yes, sir.

14 BY MR. REDMOND:

15 Q. Okay. And in fact isn't it also true that in your  
16 statement that you described where Mr. Thomas was sitting?  
17 Recall. Isn't it true that you testified going into the  
18 house, making a left down the hallway, which I'll show you  
19 State's 14. In the house, making a left down the hallway,  
20 and this is the kitchen sitting area. Isn't that what you  
21 described in the statement from the 16th?

22 A. Okay. Yes.

23 Q. And ---

24 A. As far as I can remember I guess if it's stated that  
25 I said that then I guess that's what I said.

1 Q. Okay. Fair enough. And isn't it also true that you  
2 talked about that fact that once you got into that area  
3 that it was Mr. Thomas that was actually sitting down in  
4 the corner area to the right? Isn't it true that you  
5 actually indicated that you saw him and how he was sitting  
6 and where he was sit any relation to that house?

7 A. I don't know if I said how he was sitting or not on  
8 that statement. Like I said anything that I said on that  
9 statement, sir, the statement speaks for itself.

10 Q. Okay. And isn't it also true that you talked about  
11 the furniture, State's Exhibit 37? You talked about the  
12 fact that when y'all were walking back towards the front  
13 door that you bent her over, and you bent her over the  
14 sofa or the couch as you may have called it? Isn't that  
15 true?

16 A. Sir.

17 Q. Didn't you say that?

18 A. Sir, once again, I -- if that's what I said. I don't  
19 recall saying all these things, but if I said that then  
20 the video statement speaks for itself, sir.

21 Q. And, again, isn't it true that, and I think you said  
22 it already, but during the course of this case you have  
23 told several lies; isn't that true?

24 A. I told lies. Yes, I did tell lies on whether I  
25 committed the crime or not which I did say that I



1 committed the crime which was a lie.

2 Q. Okay. And so you're telling this jury that that is  
3 the only thing you lied about?

4 A. Yes, sir. That's the only thing I lied about.

5 MR. REDMOND: I have nothing further, Your Honor.

6 THE COURT: You may step down. You may call your  
7 next witness, Mr. Dupree.

8 MR. DUPREE: Your Honor, I would like to call  
9 Miss Renee Dupree, sir.

10 THE COURT: All right. Miss Dupree, please come  
11 forward. I'm going to ask if you could to place your left  
12 hand on the bible and raise your right hand as the Clerk  
13 administers the oath.

14 RENEE DUPREE, after being duly sworn, testified  
15 as follows:

16 THE COURT: Please come forward. Have a seat in the  
17 witness chair. Pull up real close to that microphone.  
18 Speak loudly, clearly and slowly in order that we can all  
19 hear everything that you've got to say. Let's start with  
20 your full name, please, ma'am.

21 THE WITNESS: Shanesia Renee Dupree.

22 THE COURT: Yes, sir. You're recognized.

23 DIRECT EXAMINATION

24 BY MR. DUPREE:

25 Q. Miss Dupree, I'm not asking you to tell a lie

1 about -- or forcing you to change your story because I'm  
2 aware that you did speak with somebody from the Sheriff's  
3 Department about the incident -- about your brother --  
4 about the defendant's whereabouts?

5 A. Yes.

6 Q. I don't know if you know that -- well, do you  
7 remember who you spoke with?

8 A. No.

9 Q. Can you just tell me at that time the date which was  
10 the -- do you know what day it was that you spoke with  
11 them?

12 A. I can't remember what day it was.

13 Q. Did they -- well, who asked you to come give a  
14 statement?

15 A. Well, they didn't ask me to come. They asked -- they  
16 were looking for my mom so I took her down there. But  
17 once I went in with her they called me in the back, asked  
18 me did I see you. I told them I seen you earlier that  
19 day. That was it.

20 Q. Okay. But they -- but you're saying they -- you mean  
21 the Sheriff's Department did ask to speak with the  
22 defendant's mother and stuff like that?

23 A. Yes.

24 Q. Okay. And you did say that they just asked you did  
25 you see the defendant that day, and you said, 'yes'?

1 A. Yes.

2 Q. Like, once again, I'm not asking you to lie or  
3 anything like that, but can you just tell, you know, what  
4 you recall when you -- what happened that day when you saw  
5 the defendant?

6 A. That was all I seen earlier that day. After that I  
7 don't know where you went, what you did. So I can't say.

8 Q. Okay. Well, Miss Dupree, I'm sure they probably  
9 going to ask you what time. You don't know what time it  
10 was that day?

11 A. It was probably around 11:30 something like that.

12 Q. And that's in the morning?

13 A. Yes.

14 Q. Do -- that was your mother's birthday that day,  
15 correct?

16 A. My mother's, yes.

17 Q. Okay. The day of the crime which was September the  
18 8th. Do you remember -- do you remember -- I'm asking you  
19 do you remember that that night your brother coming to  
20 your house and using your phone to call his fiance to come  
21 pick him up?

22 A. Well, I can't remember. I can't remember that. It's  
23 been about a year. I can't remember.

24 Q. Okay. Miss Dupree, I have no further questions for  
25 you, ma'am.

1 THE COURT: Cross-examination, Mr. Redmond?

2 MR. REDMOND: Yes, Your Honor. Just real briefly.

3 CROSS-EXAMINATION

4 BY MR. REDMOND:

5 Q. And, of course, I understand you can't remember  
6 seeing him after that, but I think you did indicate to the  
7 police that you saw him earlier in the day. And I think  
8 you testified about eleven o'clock. You remember that,  
9 right? But you don't remember anything after that?

10 A. No.

11 MR. REDMOND: That will be all the questions I have.

12 THE COURT: Any redirect?

13 MR. DUPREE: No, sir.

14 THE COURT: All right. You may step down. You're  
15 free to leave. You may call your next witness.

16 MR. DUPREE: Your Honor, I call Robin Dupree.

17 THE COURT: All right. Please come forward and put  
18 your left hand on the bible and raise your right hand as  
19 the Clerk administers the oath.

20 ROBIN DUPREE, after being duly sworn, testified  
21 as follows:

22 THE COURT: Come forward and have a seat in the  
23 witness chair here. Watch your step. I want you to pull  
24 up real close to that microphone. Speak loudly, clearly  
25 and slowly in order that we can hear everything that

Robin Dupree - Direct by Mr. Dupree

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1 you've got to say. And let's start with your full name  
2 please, ma'am.

3 THE WITNESS: Marilyn Dupree.

4 THE COURT: All right. Pull up real close to that  
5 microphone. There you go.

6 DIRECT EXAMINATION

7 BY MR. DUPREE:

8 Q. Miss Dupree, on September the 8th 2013 do you recall  
9 speaking to anybody from the Sheriff's Department? Well,  
10 no. I'm going to take that back. On September the 8th  
11 eight do you recall seeing the Defendant, derrick Dupree?

12 A. Yes.

13 Q. And can you tell me whereabout you saw the defendant?

14 A. At Ike's house, but it was my birthday so he came to  
15 celebrate my birthday. I don't know what time it was when  
16 he came, but me and him and Kim and them, we celebrate our  
17 birthday. What time they left, I don't know because I was  
18 high. So I don't know.

19 Q. Miss Dupree, was it other members there at the house  
20 as well?

21 A. It was a whole lot of people there.

22 Q. And usually that -- you did say that was your  
23 birthday which I understand, but it usually -- on Sundays  
24 at Ike's house which is -- a lot of people come there just  
25 to watch the football game and pretty much just, you know,

1 get along with each other and have a few drinks; isn't  
2 that correct?

3 A. Yes.

4 Q. Okay. I'm not going to ask you a lot of the times  
5 and stuff. You said that you really don't remember, but  
6 that night, and if you can remember that night, did you --  
7 when -- did you -- can you recall leaving wherever you was  
8 going to your daughter's house that night?

9 A. No.

10 Q. Do you recall seeing your son again that night, him  
11 and his fiance, at his -- on your birthday at Miss  
12 Shanesia Dupree's house?

13 A. Yes, I saw y'all that night leaving.

14 Q. Okay. And did y'all -- did y'all -- did you -- can  
15 you tell me a little bit it cause I don't want to put  
16 statements of anything in your mouth? Can you tell me  
17 when you saw him that night I guess before they left to go  
18 home? Can you tell me a little bit about what happened  
19 that night before they left I guess to go home?

20 A. That night I saw you -- saw y'all leaving. That's  
21 the night I was coming back from the -- to the connard.  
22 They called me ---

23 Q. Not that night, Miss Dupree. Miss Dupree, I was  
24 still speaking about the day of your birthday when -- I'm  
25 trying to refresh your memory a little bit. When the

1     defendant and his wife was -- when the defendant and his  
2     wife was at Miss Shanesia Dupree's house and I think that  
3     you had came up. And I think this still on your birthday.  
4     And I think, if I'm not mistaken, that you still had a --  
5     some beverages that you want to consume, and you -- do you  
6     recall you, the defendant and his wife, his fiance,  
7     sitting outside on your daughter apartment in Glenfield  
8     talking and stuff like that to finish celebrating your  
9     birthday?

10    A.    Like I say I don't really know.

11    Q.    You don't know, okay.

12    A.    Cause I was ---

13    Q.    I'm going to ask you this. Do you remember I think  
14    you were on you way to Walter -- to your mother --- "

15           MR. REDMOND: Your Honor, I'm going to object. Now  
16    he is really leading.

17           THE COURT: Sustained. You can't ask questions that  
18    suggest an answer. You can ask her open ended questions,  
19    and if she can response.

20    BY MR. DUPREE:

21    Q.    Do you have a mother that stay in Glenfield?

22    A.    Yes, I do.

23    Q.    And forgetting all that, I heard she recently passed,  
24    and bless her soul. But were you sometimes living with  
25    your mother?

1 A. Yes, was.

2 Q. Do you -- you don't -- do you recall the defendant  
3 and his fiance that night of your birthday taking you  
4 to -- instead of you walking took you to ---

5 MR. REDMOND: Your Honor, I'm going to object again.  
6 Leading.

7 THE WITNESS: Yes. Yes.

8 THE COURT: Sustained.

9 MR. REDMOND: Yes, sir.

10 THE COURT: A good way to start a question is who,  
11 where, what, when, how, when, who, rather than suggesting  
12 an answer.

13 MR. DUPREE: Yes, sir.

14 BY MR. DUPREE:

15 Q. Once again, Miss Dupree, do you -- can you recall the  
16 defendant and his fiance taking you to your mother's  
17 house?

18 A. Yes.

19 Q. But, and like I said, I'm not trying to make you  
20 remember times, but do you remember what time it was?

21 A. No.

22 Q. Was it day or dark?

23 A. Night.

24 Q. So you wouldn't -- you pretty much presume that it  
25 was somewhat after 7:00 or eight o'clock?



1 A. Like I said I don't know what time it was.

2 Q. But it was dark?

3 A. It was dark.

4 Q. Okay.

5 MR. DUPREE: That will be no -- no further questions,

6 Your Honor.

7 THE COURT: All right. Cross-examination,

8 Mr. Redmond?

9 MR. REDMOND: Briefly, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. REDMOND:

12 Q. Miss Dupree, do you -- you don't from your own  
13 observation know what the defendant did from the time he  
14 left when y'all were at the party earlier in the day until  
15 you saw him later that night?

16 A. No, I don't.

17 Q. You have no idea what he did?

18 A. No, I do not.

19 MR. REDMOND: Thank you. That will be all the  
20 questions that I have.

21 THE COURT: Any redirect?

22 MR. DUPREE: No, sir.

23 THE COURT: You may step down. You may call your  
24 next witness.

25 MR. DUPREE: Your Honor, I call just one more

1 witness, Miss Kim Mance, sir.

2 THE COURT: Yes. If you could please come forward.  
3 Place your left hand on the bible and raise your right  
4 hand as the Clerk administers the oath.

5 KIM MANCE, after being duly sworn, testified as  
6 follows:

7 THE COURT: Please come forward and have a seat in  
8 the witness chair. Watch your step. Pull up real close  
9 to that microphone. Speak loudly, clearly and slowly in  
10 order that we can hear everything that you've got to say.  
11 And let's start with your full name.

12 THE WITNESS: Okay. Good afternoon. My name is Kim  
13 Mance.

14 THE COURT: Spell that last one for us.

15 THE WITNESS: M-A-N-C-E.

16 THE COURT: All right. Very good.

17 DIRECT EXAMINATION

18 BY MR. DUPREE:

19 Q. Miss Mance, I'm going to ask you about the time the  
20 first ---

21 A. Going to ask me about what?

22 Q. I'm going to ask you about the day of the incident,  
23 if you can recall, but does sometimes you have a little --  
24 are you having a little trouble with your memory  
25 sometimes?

1 A. I do, and I definitely do now. I had a stroke in my  
2 sleep May 27th, so I do have a memory problem now. But  
3 I'm doing the best of my ability.

4 Q. All right. I want to ask you a few questions. Do  
5 you know the defendant?

6 A. You? Yes.

7 Q. I mean and what relations is the defendant to you?

8 A. You was my boyfriend.

9 Q. Okay. Thank you. Miss Mance, on September the 8th  
10 do you recall going to ---

11 A. I'm not good with my dates, but my days and dates, I  
12 always get them -- but I will do the best I can to  
13 remember.

14 Q. Okay. It's going to be short. Do you recall going  
15 to Bennettsville the day that Miss ---

16 A. That Sunday? Your mother's birthday? Yes.

17 Q. Yes, ma'am.

18 A. Yeah.

19 Q. Okay. At that time -- do you remember what time  
20 y'all, you and the defendant, got there to y'all  
21 destination?

22 A. It was like kind of early like ...

23 Q. Now you -- it really don't matter. I was just trying  
24 to see if you remember.

25 A. It was like between like maybe morning. Like make

1     afternoon. Maybe like mid -- maybe like mid morning,  
2     afternoon. I say like maybe almost between 10:30, 11:00.  
3     Somewhere like that. I don't think it was after 12:00.

4     Q.    Okay. Miss Hooks -- Miss Mance, you did state where  
5     I saw that -- okay. You and the defendant left  
6     Bennettsville maybe seven o'clock cause it wasn't ---

7     A.    You've got to speak up.

8     Q.    I said you did state -- I'm asking did you state or  
9     can you recall any of your statements that you and the  
10    defendant left Bennettsville maybe seven o'clock that  
11    evening?

12    A.    We left Bennettsville seven o'clock that evening?

13    Q.    Yes, ma'am. I'm asking do you remember stating that?

14           MR. REDMOND: Your Honor, I'm going to object. Of  
15    course she's answered. It's leading and it's a subjective  
16    answer?

17           THE COURT: Sustained. First of all, what you've got  
18    to do is ask her if she remembers. Ask her the direct  
19    question not what me said previously. Ask her what she  
20    recalls here today and if it contradicts something she  
21    said previously you can ask her about that.

22           MR. DUPREE: Okay.

23           THE COURT: But the relevant thing here today is ask  
24    her the relevant question.

25           MR. DUPREE: Yes, sir.

1 THE COURT: When she left to go wherever. Ask her  
2 that and ask if she remembers it now.

3 MR. DUPREE: Okay.

4 BY MR. DUPREE:

5 Q. Okay. Miss Dupree -- Miss Mance, you remember what  
6 time y'all left?

7 A. Probably about -- I think about -- maybe about --  
8 anywhere between -- maybe -- maybe I think it was about  
9 3:00, 3:30, 2:30, three o'clock. Something like that.  
10 Maybe 3:00, 3:30. Then when we left we went to Dawson's  
11 house. Then I believe we went to Dawson's house. I think  
12 we went to the Shell station up there on Number Nine.  
13 Then I believe we went home, whatever.

14 Q. Miss Mance ---

15 A. Grandchildren.

16 Q. That will be all on that. What I'm asking -- okay.  
17 My next question is you, on September the 10th, you and  
18 the defendant went to the Sheriff's Department in  
19 Bennettsville, South Carolina? Okay. Before that you  
20 heard that -- did you hear about the defendant -- did you  
21 here about the defendant's name being mentioned relevant  
22 to the crime at any time between September the 8th and  
23 September the 10th?

24 MR. REDMOND: I'm going to object to hearsay at this  
25 point, Your Honor.

1           THE COURT: Sustained. Just let him ask you another  
2 question.

3 BY MR. DUPREE:

4 Q. Okay. Miss Mance, did you come to your home, 2771  
5 Pond Lane, Wallace, on September the 10th and tell your  
6 boyfriend that his name was mentioned in reference to a  
7 crime?

8 A. I think it was maybe -- may have been the 10th or the  
9 11th. One of those days. I believe it was the same day I  
10 went -- we went to Wal-Mart in Bennettsville and then we  
11 went to the Wal-Mart in Rockingham and then we arrived  
12 home. I think it was those days. It was the 9th or the  
13 10th. I can't remember the days.

14 Q. I think it was the 10th, too.

15 MR. REDMOND: Your Honor, again, objection.

16 THE COURT: And the objection being?

17 MR. REDMOND: I'm sorry; that he actually just  
18 answered the question for the witness. He said he wasn't  
19 sure.

20 THE WITNESS: Went to -- I went to Wal-Mart and told  
21 the detective. I think it was Shawn something. The  
22 detective. I'm not good with my dates and times cause I  
23 had a 32-inch flat screen t.v. that was take and ---

24 BY MR. DUPREE:

25 Q. Excuse me. I was -- Miss Mance, I was trying not to

1 tell -- really get into the statements or go into the  
2 statement because I thought that wouldn't be relevant  
3 since you assume that I keep making a statement for you.  
4 I'm just going to give them your statement?

5 A. But Tuesday it was brought to my attention that you  
6 committed a crime about a Caucasian -- that you had raped  
7 a Caucasian woman, and that Mr. Wilbert Harrington and  
8 Perry Williams was going down to the Sheriff's Department  
9 to tell on you. And I came home, you know, very  
10 aggressive with you and asked you, "Well, What's up with  
11 that."

12 And I was very violent, getting violent -- getting  
13 ready to get violent with you. And I told you that you  
14 need to get on up before, you know, you know what's up.  
15 And got on down to the police department and let's get  
16 this together because Keith Thomas and I are very good  
17 friends. that's my best friend.

18 Q. Miss Hooks, did you -- excuse me. Miss Mance, did  
19 you state that -- okay. I just heard you just say that  
20 you stated that you wanted to go to the police department?

21 A. I told you we need to go because ---

22 Q. So.

23 A. --- Perry and Cockle was going down to say that you  
24 had raped a Caucasian woman. And you got up and you went  
25 down there with me to find out what was going on. And

1 they told us to wait. I'm going to the best of my  
2 knowledge and my memory so don't cut me off. And we  
3 waited and then they talked to you. They talked to me,  
4 and they let us go home. And then they came back and I  
5 know they locked you up. But at the same time that, that  
6 Sunday, when we came home.

7 Q. Miss Mance, I'm trying to be brief, but I know that,  
8 you know, everyone really don't get it over -- what I'm  
9 saying is -- okay. You said that you stated to the  
10 defendant that y'all should go to the Sheriff's  
11 Department? Are you ---

12 A. No. You should go.

13 Q. Okay. You done stated that. Are you sure that the  
14 defendant didn't tell you that he wanted to go to the  
15 Sheriff's Department?

16 MR. REDMOND: Your Honor, that was leading. I'll  
17 object to the leading.

18 THE COURT: I'll overrule the objection.

19 BY MR. DUPREE:

20 Q. Once again, did the defendant -- are you sure that  
21 the defendant didn't state that?

22 A. No, I told you cause you were home. You didn't know.

23 Q. No. Okay. What I'm saying -- so, okay, I can  
24 understand you say you came and told the defendant that  
25 his name was mentioned and somebody was going to the



1 police department?

2 A. Right.

3 Q. But what I'm saying do -- you stated that you told  
4 the defendant that y'all should go to the police  
5 department. You sure that the defendant didn't state that  
6 he wanted to go to the police department?

7 A. Well, I told you you needed to put your shoes on and  
8 go with me down to the Sheriff's Department.

9 Q. I'm just asking ---

10 A. That's what you're asking me?

11 Q. Yeah, they want me to be direct so I'm just going  
12 direct with the questions. That's why I'm saying just  
13 answer the question to the questions that I ask you. Did  
14 the defendant ---

15 A. The defendant is you.

16 Q. Yes, ma'am. Okay, listen. Did -- are you sure that  
17 the defendant didn't say, "Let's go to the Sheriff's  
18 Department?" Yes or no?

19 A. No. How could you ask me when you didn't even know  
20 if you was home? I came and told you, correct?

21 Q. Yes, ma'am. Miss Mance, let me ask you this  
22 question, and don't worry. I'm going to bypass that. I'm  
23 going to let you -- I'm going to let you --

24 MR. DUPREE: Your Honor, if you don't mind I'm going  
25 to have her read this report.

1 THE COURT: Is that a statement?

2 MR. DUPREE: Yes, sir.

3 THE COURT: You can't do that. What you can do is  
4 you can ask her the information that is portrayed in that  
5 statement. Ask her direct questions about the information  
6 that's on there.

7 MR. DUPREE: Okay.

8 THE COURT: And if she answers differently.

9 THE WITNESS: I ---

10 THE COURT: Hold on. Wait a minute. Hang on. If  
11 she answers differently than what's on the text of that  
12 statement then you can cross-examine her or you can ask  
13 her about that. And you get her -- you can impeach her  
14 with that statement.

15 If she says something different than what she says  
16 here today, but you can't just introduce the statement.  
17 It's inappropriate to do so. You can ask her the  
18 information portrayed on that statement. If it's  
19 different than what she testifies to today is different  
20 than what's on the statement then you can point that out  
21 to her by refreshing her memory about the statement. But  
22 you can't introduce it or publish a statement.

23 MR. DUPREE: Okay. Thank you, Your Honor.

24 BY MR. DUPREE:

25 Q. Miss Mance, 9/10/2013, at the Marlboro County

1 Sheriff's Department with Susan Alderman and Jamie Seals,  
2 investigators, did you tell them that you and the  
3 Defendant left home around 5:30?

4 A. Say what now?

5 Q. Did you tell them you and the defendant left home  
6 around 7:30, eight o'clock a.m. that morning?

7 A. When they asked me a question I told them like on a  
8 regular basis we always left early in the morning going to  
9 Bennettsville every day 7:30, eight o'clock, you know.  
10 That's on a regular basis every day of that. But the way  
11 they asked me the question, you know, I had to really  
12 comprehend, you know, the way they had asked, you know.  
13 That's just, you know, that was the way they asked me. I  
14 took it as a -- that where we would go every day which we  
15 would. 7:30, 9:30. It would be every day.

16 Q. Okay. Well, but I'm ---

17 A. But that morning, you know, I think we were just  
18 leaving a little late.

19 Q. Okay. Cause didn't you ---

20 A. Cause I don't check -- look at the time.

21 Q. Excuse me, Miss Mance, if you don't mind. I'm trying  
22 to get to the point?

23 A. Well, If you want me to just make a long story short  
24 I can. My memory if you just want to do it like that.

25 Q. Yes, ma'am.

1 A. Yeah.

2 Q. Once again, Miss Mance ---

3 A. Cause I'm ready to get off the stand.

4 Q. I know. Did you, however, 9/11, gave another  
5 statement to the department, Sheriff's Department?

6 A. I don't remember. I keep having strokes. I don't  
7 remember what happened. I don't remember that long, but I  
8 can just tell it like this. I'm going to tell it like it  
9 is.

10 That Sunday all I know is you left the house. I  
11 begged you not to leave. You left. You know, I begged  
12 you not to leave. I asked you to stay home to eat. You  
13 didn't want to do that. You said, "Babe, I'll be back.  
14 Okay." When you left I know you were gone. And about 45  
15 minutes at the most, and when you called me you called me  
16 from the other house to come pick you up.

17 Q. Okay. Well ---

18 A. I went to the house, picked you up and came back  
19 home. That's all I know.

20 Q. That's all you know. Okay. Miss Mance, but do you  
21 ---

22 A. Take you nowhere and ---

23 Q. Okay, Miss Mance ---

24 A. I just picked you up. I took you ---

25 Q. Okay. I ---

## Colloquy

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1 A. I took you home. That's all I know.

2 Q. Okay. Miss Mance ---

3 A. I don't know nothing about nothing. That's my right  
4 hand on my dead child. I don't know anything about  
5 nothing.

6 Q. No further question questions.

7 A. They got the cell phones.

8 Q. Madam, there will be no further questions.

9 A. They got your phone.

10 THE COURT: All right. Any cross-examination?

11 MR. REDMOND: Absolutely not, Your Honor.

12 THE COURT: You may step down. You're free to leave.

13 All right. Let's have order. You may call your next  
14 witness.

15 MR. DUPREE: Your Honor, that would be all, sir.

16 THE COURT: Okay. Madam Forelady, ladies and  
17 gentlemen of the jury, I'm going to ask tat you retire to  
18 the jury room. Do not discuss the case. Do not discuss  
19 the case. Everyone remain seated while the jury exits the  
20 courtroom.

21 (WHEREUPON, the jury panel was excused from the  
22 courtroom at 12:00 p.m.)

23 COLLOQUY

24 THE COURT: All right. I'll be happy to entertain  
25 motions at this time.

1 MR. REDMOND: None from the State, Your Honor.

2 MR. DUPREE: No, sir, Your Honor.

3 THE COURT: All right. At this time I'm going to  
4 engage in a brief charge conference. I'm going to charge  
5 the law we regards to the indictment not being evidence.  
6 I'm going to charge how to evaluate multiple charges.  
7 They have to be decided separately and distinctly. I'm  
8 going to charge presumption of innocence. I'm going to  
9 charge reasonable doubt. The duty of a trial jury and a  
10 trial judge, direct and circumstantial evidence,  
11 credibility of witnesses, how to evaluate an expert  
12 witness. I'm going to charge the law concerning the  
13 statement of a defendant and whether they are to give it  
14 any consideration.

15 I'm going to charge the law concerning  
16 identification. I'm going to charge first -- the  
17 substantive law with regard to first degree burglary.  
18 First degree criminal sexual conduct. Charge the  
19 substantive law regarding kidnapping. Possession of a  
20 weapon during the commission of a violent crime. I'm  
21 going to charge the law concerning alibi.

22 Any objections and, of course, y'all are going to  
23 have an opportunity to listen to the complete text of the  
24 charge and make an objection at the appropriate time. But  
25 as a preliminary matter is there anything that you object

## Colloquy

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1 to or anything you want to add, Mr. Redmond?

2 MR. REDMOND: And, Your Honor, I apologize if I  
3 missed it. The only thing I think I had written down was  
4 voluntary intoxication. I don't know if you had indicated  
5 an instruction, but in the defendant's 9/16/13 statement  
6 he indicated I think on a couple of occasions of being  
7 drunk, being out of his mind and being drunk, and I would  
8 respectfully ask for voluntary intoxication instruction  
9 based on that.

10 THE COURT: I'm give that some consideration.  
11 Anything that you would like? Any objections that you  
12 would have or additions, Mr. Dupree?

13 MR. DUPREE: No, sir. But I -- however, Your Honor,  
14 I did ask about the video being plaid again. The video  
15 being plaid again, sir, at the close.

16 THE COURT: All right. What part -- what do you want  
17 plaid?

18 MR. DUPREE: Just September the 11th of Derrick  
19 Dupree when he was first arrested and I think it was  
20 Derrick Dupree and Kim Mance on September 11th and I  
21 think -- not quite sure. I had wrote it down. I keep  
22 forgetting what I wanted. I know for sure September 11th  
23 of Derrick Dupree and Kim Mance.

24 THE COURT: Where he admitted -- where he made a  
25 statement that would inculcate him? You want the

1 statement that was plaid?

2 MR. DUPREE: Well, to be honest, this statement --  
3 no, this is -- when he was arrested on September 11th.  
4 That will be fine. Just of Derrick Dupree. That will be  
5 it. I already asked him, and he said he will agree with  
6 the one of Derrick Dupree, and that's the one I just asked  
7 for.

8 MR. REDMOND: That isn't exactly what I said. Just  
9 to be clear, Your Honor. When he asked me about it I made  
10 it clear that if he wanted to introduce it during his  
11 testimony or during his case I didn't have a problem with  
12 it. He didn't do that. So it's not in evidence, the one  
13 from the 11th.

14 The one he's referring to, which we had indicated,  
15 Your Honor, that he had invoked his Miranda rights. So  
16 we -- agreement of the parties at the time of the Jackson  
17 v. Denno Hearing, we have no intention -- I don't think we  
18 even marked that particular exhibit due to that -- those  
19 circumstances. So that's why we didn't get into that.

20 THE COURT: Well, certainly, we aren't going to  
21 introduce any additional -- the only thing you can have  
22 plaid is what is already been introduced into evidence and  
23 shown to the jury. That's all that we -- that's why I'm  
24 trying to ascertain what portion do you want plaid and you  
25 want in.



1           MR. DUPREE: Your Honor, I think I asked you that one  
2 time, too, as far as introducing that at my closing for  
3 the jury to see again. I don't remember did I ask that  
4 September 11th be introduced or not, but I did if I'm not  
5 mistaken, I did want it to be introduced at closing.

6           Okay. He said it would have to be ---

7           THE COURT: Regardless of what you said to anybody.

8           MR. DUPREE: Yes, sir.

9           THE COURT: Regardless of whatever discussion has  
10 taken place you're not going to be able to introduce a  
11 video to the jury that not been shown to the jury already  
12 and introduced into evidence.

13          MR. DUPREE: Oh, yes, sir, if I'm not mistaken, it  
14 has been shown to the jury.

15          THE COURT: I think we are -- we have no idea what  
16 you're talking about. What portion, you know, we sat  
17 there and we showed some video to the jury. And you can  
18 select any portion of that to show them in your closing  
19 argument. What portion of that do you want shown?

20          MR. DUPREE: Well, sir, like I said, it was just the  
21 September the 11th. They saying that the only one that  
22 was shown was September the 16th so if I'm not allowed ---

23          THE COURT: Do you want that?

24          MR. DUPREE: If I'm not allowed to have September the  
25 11th, sir, I have no questions. No requests, no, sir.

1 THE COURT: Okay. All right.

2 MR. REDMOND: And, Your Honor, just so the record is  
3 clear, briefly. He's referring to the 11th. We plaid the  
4 16th and we plaid the interview from Kadeem Hooks. Those  
5 are the only two statements that were plaid in front of  
6 the jury. What he's requested is one that is not in  
7 evidence. So that's why I want to make sure everybody was  
8 clear on what we discussed.

9 THE COURT: Already. Very good. What is the State's  
10 pleasure with regard closing arguments? You think we can  
11 proceed? How long do you anticipate going?

12 MR. REDMOND: I'm actually -- we were just discussing  
13 that. I'm think I'm going to yield to Ms. Johnson Lee as  
14 it relates to the closing. As we've preliminarily been  
15 talking.

16 THE COURT: Okay.

17 MS. JOHNSON LEE: About 25 minutes.

18 THE COURT: All right. And how long do you  
19 anticipate, Mr. Dupree?

20 MR. DUPREE: Sir, I can't really say. I'll try to go  
21 as quick as I can.

22 THE COURT: That's not a problem. You're not going  
23 to be limited in time. I was just trying to get an idea  
24 for timing with regard to the lunch break. I think that  
25 we have enough time. We're going to take about a three

1 minute recess. We're going to come back and proceed  
2 forward and you will go first, Mr. Dupree.

3 MR. DUPREE: All right, sir. Thank you, sir.

4 THE COURT: Very good. We'll take about a three  
5 minute recess.

6 (WHEREUPON, Court was in recess at 1:07 p.m. and  
7 reconvenes at 12:10 p.m.)

8 THE COURT: All right. We're ready for the jury.

9 (WHEREUPON, the jury panel enters the courtroom at  
10 12:11 p.m.)

11 THE COURT: Madam Forelady, ladies and gentlemen of  
12 the jury, as I had mentioned to you in my opening remarks  
13 about how the trial progresses, we've heard all the  
14 evidence that's going to be presented in this trial. And  
15 this is the opportunity where the Solicitor's Office and  
16 Mr. Dupree are going to have an opportunity to stand  
17 before you and give a closing argument.

18 These are similar in form to opening statements in  
19 that it will be a summary fashion. They're going to stand  
20 up and they're going to talk with you directly. But they  
21 are truly argumentative in nature because at this point in  
22 time the evidence has been introduced, and they can point  
23 to the evidence that supports their relative position.

24 Pay very close attention. What they say is not  
25 evidence. It will aid you immensely in your deliberation

1 process. The State goes first under the rules of criminal  
2 procedure. They will be going first under these  
3 circumstances. And then -- actually, the Defense will go  
4 first and then the Solicitor will have an opportunity to  
5 present closing arguments. Then we will break for lunch  
6 and we will come back and I'm going to charge you the law.  
7 Then we'll begin deliberations.

8 But do not begin deliberations or discuss it among  
9 yourselves or with anyone else until I give you  
10 instructions to do so. Mr. Dupree, you're recognized.

11 CLOSING STATEMENT BY MR. DUPREE

12 MR. DUPREE: Like I said, again, I'm not here to like  
13 dispute, you know, assume things or say that things that  
14 was said is not true or isn't true. However, some things  
15 I will bring up that wasn't true. I mean it will be on  
16 y'all to figure out if those statements were true which is  
17 what these statement that I am referring to are on  
18 S.L.E.D. which I know that y'all heard from a few forensic  
19 scientist that is experts.

20 And, once again, the Judge did tell y'all that, you  
21 know, that even through they are experts doesn't mean that  
22 they statements can be true. But, once again, I'm not  
23 here to see if it was true or not. I'm just here to state  
24 truths and facts. Like I said I am going to show some  
25 statements they could not have been true. It will be up

## Closing Statement by Mr. Dupree

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1 to y'all to judge it and balance it out on the scale how  
2 it went and stuff like that.

3 But like I said I was in Bennettsville the day of the  
4 crime. Had no where and knowing of going walking about to  
5 commit a crime. Never have committed a crime that was  
6 violent in my life. Have been arrested which I will get  
7 into that later in my closing.

8 But like I said I did -- I received a lot of the  
9 evidence late. So it was kind of hard for me to just  
10 break down the truth or find out the truth and the facts.  
11 As you heard from my last witness, Miss Mance, whereas,  
12 she did stated that she knew the defendant, the victim's  
13 son and things like that which is the chief of police.  
14 And I'm quite sure she was scared to just take sides. And  
15 I don't know how that went about or anything like that.

16 Only thing I can say relevant to that is that she did  
17 state we was in Bennettsville that day on the 10th. Now,  
18 on the 11th she was -- she was interviewed by some of the  
19 polices from Marlboro County Sheriff's Department. And  
20 what it was they basically told her that she was involved  
21 with the case. And when someone tell you, especially a  
22 female, when somebody that don't know nothing about the  
23 law, don't have any understanding about the law, when they  
24 tell you that you pretty much scared. See what I'm  
25 saying.

1       Like I said it's a real serious crime so you're  
2       scared, and they telling you that, 'if you don't tell us  
3       something then, you know, we're going to charge you with  
4       conspiracy and stuff like that and you can catch 20 to  
5       life and so on and so on'. They already knew that she  
6       didn't know nothing about the law, but I guess they did  
7       that to manipulate her to change her story.

8       However, she changed her story, and stated in her  
9       story that -- well, she stated that, you know, she did it  
10      because she felt like the defendant did not commit the  
11      crime, and she felt that by him being -- by her placing  
12      him on Shanty Road, which is not where the crime took  
13      place at, she felt like that doesn't place him at the  
14      crime.

15      So like I said she changed her story, and like I said  
16      she was more scared. But, however, you heard most of the  
17      story were she said Mr. Hooks was identified -- spotted by  
18      eye witnesses in the area. Just like you heard the story  
19      where Mr. Hooks did stated, you know, certain things about  
20      the victim as well without no one directing him. He made  
21      his own statements which was accurate and true.

22      Like I said the defendant already heard most about  
23      what took place at the crime which he did state what he  
24      heard. Like I said earlier in the testimony in reference  
25      to hoping to be out on bond with his family, which he

## Closing Statement by Mr. Dupree

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1 thought to be family anyway which was his fiancée since he  
2 thought that she loved and cared so much about.

3 But, anyway, he was hoping to get back out there to  
4 her and the rest of his family. However, you heard the  
5 statements from his stepfather which stated that he was in  
6 Bennettsville, and he did leave Bennettsville at 3:30.  
7 Like I said the time might not be accurate so I don't want  
8 y'all to say, 'well, we just gone go off the time', but I  
9 still want to bring it to y'all attention anyway.

10 But for him to -- I don't know. Like I said do y'all  
11 know where the area is Amelia Street which is located in  
12 Bennettsville close to 15/401 Bypass. And I don't know if  
13 y'all know where 177 is located which is in Wallace, South  
14 Carolina.

15 But, however, like I said earlier in my testimony  
16 from Bennettsville, Amelia Street, to Wallace, [REDACTED] [REDACTED]  
17 Lane, is approximately -- I'm a say a 30 to 40 minute  
18 drive. But like I said the defendant's father did say he  
19 left around 3:30. I'm just going by what he said. Like I  
20 said y'all don't have to -- both times or whatever. I'm  
21 just going by what he said.

22 But I'm saying if he left at 3:30 or four o'clock and  
23 it take that much time to get to Wallace, and that would  
24 mean that he got to Wallace maybe four o'clock or close to  
25 four o'clock. I'm going to say he left at three o'clock.

1 I'm not going to say he left at 3:30. I'm going to say he  
2 left at three o'clock, and if he left there and went  
3 straight to Wallace he didn't go nowhere else. He left  
4 there and went straight to Wallace.

5 Okay. That would have gave it maybe four o'clock in  
6 the afternoon. Close to four o'clock in the afternoon.  
7 Okay. Now, for the defendant to walk from 177, which I  
8 don't know if they have Highway 177 on the -- in the  
9 evidence. I'll find out later, but from 177 to [REDACTED], [REDACTED]  
10 [REDACTED] Lane to -- I don't know the victim -- I mean I don't  
11 know where the crime scene, the address of the crime  
12 scene.

13 But from [REDACTED] where the defendant  
14 and his girlfriend were staying to where the crime took  
15 places it's like in walking distance. It probably would  
16 take a person, I know, at least -- I'm approximate. I  
17 don't want to give y'all the wrong information. I'm going  
18 to say at least 30 minutes top. Thirty minutes top as far  
19 as walking the distance. And it could be more than that.  
20 I'm quite sure it's 30 minutes or more.

21 But at that time that would be 4:00, 430 or maybe  
22 4:40. They said the crime took place around that time and  
23 stuff like that. Okay. But what I want y'all to see is  
24 that this person left from one place, Bennettsville, one  
25 town, went back to another town, left there walking his



## Closing Statement by Mr. Dupree

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1 destination where he went to, left there walking and went  
2 and committed a crime and left there and walked somewhere  
3 else. Walked back to Shanty Road where they said where he  
4 was said saw by a few people and he made a statement  
5 saying relevant that he was with a female girl, Kiara and  
6 he was asking about a D.N.A. test.

7 But, anyway, walked from where the crime scene is at  
8 which is [REDACTED] back to the Shanty Road which is  
9 approximately a three to five minute walk. Called his  
10 girlfriend. Went back, I guess, back to Bennettsville. I  
11 would presume he went back to Bennettsville cause the  
12 defendant said he was in Bennettsville all that day.

13 But what I'm showing is that if the defendant saying  
14 that he was in Bennettsville that day I'm just trying --  
15 I'm basically trying to get y'all to see if a lot of stuff  
16 don't add up as far as with the statements that was made  
17 and things of that nature.

18 However, like I said I didn't call as many -- as many  
19 witnesses as I could. I tried to, but sometimes it's hard  
20 to locate some of the witnesses that would have stated,  
21 'yeah, I saw the defendant at that day'. Like I said I  
22 wasn't -- I'm not here to get someone to lie or get  
23 someone to do anything other than tell the truth.

24 So like I said some of the witnesses I wasn't able to  
25 reach to verify that, yes, I did saw this person at this

1 time which would, like I said, it wouldn't add up for the  
2 person to leave one place, go all the way back cross town  
3 almost to another end of town, leave there walking almost  
4 an hour to commit a crime, leave there and go here and go  
5 back there and be back in Bennettsville to someone else  
6 house at this time.

7 Like I said it would -- it would be real kind of  
8 complicated and difficult for all that to have took place.  
9 Like I said once again I couldn't here everybody hard  
10 because it was hard for them to be found which I did  
11 subpoena them to Court. At this time I'm going to  
12 introduce Item 15 and Item Eight. I'm going to get into  
13 it a little bit more about the evidence, the print  
14 evidence. I think this is Eight.

15 This is the -- I'm going to the beginning of this  
16 trial where the first person was called which was the  
17 latent print analysis who said she did identify the person  
18 print on her -- through her examination, whereas, it was  
19 said that they need to have the person's prints to  
20 identify.

21 The chain of custody. I believe that's Defendant's  
22 Three. Okay, chain of custody was on -- the latent prints  
23 was on Kimberly D. Mears. First, I'm going to show -- I'm  
24 going to state that y'all -- I mean you, ladies and  
25 gentlemen of the jury, you did hear that Mr. Albert Smith,

## Closing Statement by Mr. Dupree

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1 the defendant's probation officer, did say that he did  
2 however sent these cards of the defendant's prints,  
3 Derrick Dupree, on February the 1st of 2012.

4 He said he sent these prints to S.L.E.D. on February  
5 the 1st 2012 to be entered into the A.F.I.S. System which  
6 is a automatic fingerprint index system which holds a  
7 person's fingerprint just in relevant to just in case a  
8 crime they warrant to use the person evidence for a crime  
9 or what not. And he said that he took these on February  
10 the 1st of 2012.

11 Okay. If it serves right I'm looking at the chain of  
12 custody, and I'm thinking she said that she -- any way,  
13 I'm going to come back to it, but right now what I want  
14 y'all to see is that he stated that he sent these to  
15 S.L.E.D. to be entered into A.F.I.S. once again on  
16 February the 1st 2012.

17 Well, I did state at cross-examination that, sir, I  
18 was arrested. I was still incarcerated at Kershaw County  
19 which is -- I forgot. Well, it's a correctional  
20 institution that's in Kershaw County. I stayed for a --  
21 well, sir, I still was incarcerated at that time. I  
22 didn't get out until March the 1st of 2012. I asked him,  
23 I said, "Sir, can you -- could you provide a record  
24 showing the exact date that the defendant got out." And  
25 he stated -- well, he said, "Well, you got out on February

1 the 1st. I know this." And I mean this is a person of  
2 the law. This is someone of the law.

3 So like I said it's, you know, it's -- I had a  
4 printout from which my assistant, my counselor, had me  
5 print out. And I'm going to let y'all see the exact date  
6 that the defendant was released from the Department of  
7 Corrections. Whereas, this lady, Miss Kimberly DeMears  
8 [sic], said that -- and she needed these to do this now.

9 She needed these prints to get her report because  
10 they said these prints were sent and that's how she found  
11 out about Dupree hand prints because these prints were  
12 sent to her on February the 1st and they were entered --  
13 submitted through A.F.I.S. which was scanned and submitted  
14 through a machine that each county may hold but it  
15 transfers it through it electronically.

16 But I'm -- she said she found these prints which like  
17 I said came from this card that was sent on February the  
18 1st. I just want y'all to look over this as far as to see  
19 that it was impossible for her to have these prints when  
20 this person never took -- this person was locked up on  
21 that day. So he never could have took these prints in  
22 Bennettsville, South Carolina when he was all the way in  
23 Kershaw County up under -- still completing his sentence.

24 I will, however.

25 MR. DUPREE: Sir, can I introduce this? Let the jury

## Closing Statement by Mr. Dupree

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1 see this, Your Honor?

2 THE COURT: If it's in evidence you can show it.

3 MR. DUPREE: Thank you, Your Honor.

4 BY MR. DUPREE:

5 That's the date said that S.L.E.D. sent ---

6 COURT REPORTER: Keep your voice up.

7 BY MR. DUPREE:

8 Okay. That's the -- I'm sorry. That's the date as  
9 you see -- do you see it. Okay, and you can show the next  
10 person as you go down.

11 Okay. On this I'm showing you the date that the  
12 defendant was released where he was incarcerated  
13 terminated date. Hold on. Let me see that again. I'm  
14 sorry. Maybe i looked at this wrong, and I'm going to  
15 ask -- and I'm going to ask that that I have -- yeah --  
16 excuse me, please.

17 MR. DUPREE: Your Honor, may I approach the bench for  
18 a second, please?

19 THE COURT: Yes.

20 (WHEREUPON, a bench conference was held off the  
21 record in the presence of the jury, but out of the  
22 hearing of the jury.)

23 BY MR. DUPREE:

24 Q. Well, it has been a little misunderstand, and like I  
25 said I'm kind of going through -- I'm not focused right

1 now, so, I kind of like lost -- well, I overlooked the  
2 date, whereas, the date still says it was February the 1st  
3 2012.

4 But, however, like I said I was released on  
5 March 2012. Like I said by me overlooking I don't know  
6 how that happened. I asked just now -- tried to go back  
7 and have it done over just to make sure. However, you,  
8 like I said, on March the 1st I was released. And I can  
9 give you a little explanation to that why I wasn't  
10 released on February the 1st, whereas ---

11 MR. REDMOND: Your Honor, we object to him testifying  
12 to facts not in evidence.

13 THE COURT: It's his closing argument. Let him say  
14 whatever he wants to say.

15 BY MR. DUPREE:

16 Like I said at the time I'm going through a lot, but  
17 my date, my actual date, was January the 27th of 2000 --  
18 well, my first date was February -- I mean December of  
19 2011 which the Department of Correction don't release you  
20 on the end of the month or the middle of the month. They  
21 release you on the first of the month which is the 1st.

22 It's not the middle or the end, so my date actually  
23 was like December the 20th or something. But, however,  
24 during my time of incarceration I had got into some  
25 trouble where I was placed in a lockup unit where I had

## Closing Statement by Mr. Dupree

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1 got found with, which I don't mind saying, I was found  
2 with contraband of tobacco and cell phone.

3 However, like I said, I was placed on lockup during  
4 that time so my conviction date release changes from  
5 December to January. Whereas, I was a 85 percenter. When  
6 you're 85 percent it means that you do 85 percent. But  
7 you can, however, run it up and do more time. But it  
8 won't just jump like how non-violent offenders time may  
9 jump where a non-violent offender time may jump three to  
10 six months because they can earn work credit. A  
11 85 percenter don't get work credits so they pretty much  
12 can get away and not have their time pushed up.

13 But, however, like I said, my time went from December  
14 to January. And when I went on lockup, automatically when  
15 you're on lockup you don't have a job. So automatically  
16 it pushes back another month which went to February --  
17 which went to March.

18 However, I can't remember the exact date, but I do  
19 know that I was released on March the 1st 2012. Like I  
20 said I'm sorry I could provide that to better explain my  
21 information. And I'm not going to try to do much  
22 explaining on that.

23 But like I said a lot of things was said that I know  
24 wasn't true because I didn't commit the crime, and I  
25 wasn't there. However, that will be on y'all to judge and

1 figure out. You know, like I said a lot of things I can't  
2 remember. And like I said throughout this crime and  
3 hearing some of the stuff its kind of messed me up even  
4 more. It's kind of confusing me. You know what I'm  
5 saying. So right now it's hard for me to really explain a  
6 lot of things. Just like as you see I made a mistake on  
7 getting that because I felt like that would have showed a  
8 lot as far as the difference in explaining it or an expert  
9 testimony expert giving a lie.

10 But if you notice when I was asking most of them  
11 about their reports and stuff a lot of them got offended.  
12 You know, like I was asking them something wrong. Some  
13 didn't get offended. I don't know if that means something  
14 or not to y'all, but you looking at a person that's  
15 government official. That's here to serve and protect and  
16 make sure that people is treated fairly. And for them to  
17 get offended to a person question who is only trying to  
18 defend himself or whoever it don't adds up.

19 I mean like I said it's just things that it will be  
20 up to y'all to see. It will be up to y'all to judge. It  
21 will be up to y'all to figure out. I'm not going to sit  
22 here and try to answer to most of the things that was said  
23 and brought forth because like I said I'm not here to put  
24 on a show or to assume anything or that nature.

25 Only thing I want to state is I know once again that



## Closing Statement by Mr. Dupree

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1 I didn't commit this crime. I'm sorry I wasn't able to  
2 prove that. Once again, I'm sorry I wasn't able to prove  
3 that. But I feel that -- I feel that -- that right now  
4 y'all the ladies and gentlemen. Right now y'all have my  
5 life in y'all hands. I mean y'all the ones that make the  
6 decision on rather, you know, this person leaves here for  
7 the rest of his life or whatever. Whether he goes back  
8 home or things like that. It's on y'all to judge. It's  
9 on y'all to figure out is he innocent or guilty. It's on  
10 y'all to tell. What y'all say or what y'all think is on  
11 y'all.

12 I mean y'all are entitled to y'all own opinions. The  
13 Judge told y'all that. Y'all are entitled to your own  
14 opinion. Like I said, my life is in y'all hands. Just to  
15 give a brief summary about myself cause like I said I  
16 can't do much as far as with this statements and stuff  
17 like that. I'm not going on the evidence that's in here.  
18 I'm not trying to do much. I'm not even going to try to  
19 take up much of people's time.

20 You know, I hate that I wasn't able to break things  
21 down, but I hate that I wasn't able to present properly  
22 evidence cause, you know, because like I said, you know,  
23 at the end I had to represent myself cause I felt like the  
24 close association that law has to this case, I mean, I  
25 felt like, man, I don't have a chance. The only chance I

1 got is to represent myself. See what I'm saying. I tried  
2 hard to learn as much as I can about the law.

3 It's still a lot of things, of course, that I didn't  
4 know because I did not study law. But as far as things  
5 like the case, I've been trying to look up to go with the  
6 evidence I already had received then. And, you know,  
7 that's what I was trying to do. Like I said I'm going to  
8 give a little brief summary about me, myself, the  
9 defendant.

10 I come from a good background. You know, raised in a  
11 church. You know, I can say that I have kids, but as far  
12 as me saying that I live or I'm still with the kids'  
13 mother no, I can't say that. For me to say that I have  
14 been a part of their life. No, I can't say that either. I  
15 can say that.

16 Like I said, I've been a good citizen in this County  
17 as far as respect. I have done and treated a lot of  
18 people good, especially my elderly people. I never  
19 disrespected my elderly people. Never. Like I said I'm  
20 not saying that I'm perfect, but I always had a lot of  
21 respect. And a lot of people always said that, man, that  
22 dude there. He all right. He got a lot of respect. I  
23 like Dupree. You know what I'm saying. Things like that.

24 I helped a lot of people especially my elders. I  
25 helped them. A lot of them, and like I said I'm just

1 giving you a little bit about me because like I said I'm  
2 not going to sit here and try to argue these documents  
3 cause I don't have no proof. So I can't sit here and  
4 argue something that I don't have no proof to argue with.  
5 You see what I'm saying.

6 But like I said, you know, I'm -- my life as who I  
7 was I consider me to be a very honorable and respectable  
8 young man. But like I said I'm not perfect. I have been  
9 incarcerated before. I have not don't nothing violent  
10 like breaking in nobody's house. Not for none of that.  
11 The only charge I have been incarcerated for is crack.  
12 Whereas, I come up -- I came from a family that wasn't  
13 wealthy. You see what I'm saying. So I'm going to say I  
14 grew up somewhat the slums.

15 I'm not going to say the slums. The Hood. I grew up  
16 where, you know, you had to fit in if you wanted to be  
17 somebody. So as a young man you saying to yourself,  
18 'well, hey, I want to be somebody', but, you not knowing  
19 that the tension you about to take, you know, could be  
20 fatal mistake.

21 But, anyway, I was introduced to things that could  
22 have helped me gain money to, you know, get the things  
23 that I liked in life as a little child having dreams of  
24 having a nice car and a nice house and things of that  
25 nature. And nice, you know, as a man, a nice, young woman

1 and stuff like that. So I'm thinking, well, man, can't  
2 get no job. You're still in school walking about school  
3 with these raggedy shoes on. Everybody picking at me, you  
4 know.

5 So, you know, I started selling crack, and I got  
6 arrested for selling crack. And I went and served -- I  
7 think it was a little over 12 months. A little over a  
8 year for my first offense of selling crack. I got  
9 released on that in 2003. And I'm still that good dude,  
10 but I still haven't really learned my lesson yet with  
11 selling crack, you know. But I'm still the same dude who  
12 wanted to obtain -- wanted to make a difference in his  
13 life.

14 I always gave to people. I always try to help young  
15 people. You know, never lead nobody to the wrong way.  
16 Even though I sold crack I never took nobody and said,  
17 'look, man, if you're going to be like me you're going to  
18 sell this dope'. I ain't never wanted nobody to be like  
19 me cause I knew what I was doing wasn't good, but, like I  
20 said, I'm caught up.

21 So when I'm caught up -- when you caught up, you  
22 know, it's hard to tell yourself that. It's hard to make  
23 yourself believe what you're doing is good, but you don't  
24 want nobody else to be like you. Like if you had a child,  
25 and I'm just saying, you out there and you getting high

1 and you doing whatever, I'm just gone just say you smoking  
2 dope and stuff like that, you don't want your child to go  
3 and smoke dope. You don't want your child to grow up  
4 smoking dope like you and drinking like you.

5 But like I said I came home in 2003, and I didn't  
6 have nothing as far as clothes and stuff because a lot of  
7 my stuff I had outgrown. You know I tried to get a job.  
8 I applied for job. I worked at the Rehabilitation Center  
9 for maybe a couple of months, and I felt like that wasn't  
10 enough. So I felt like, man, I'm going to sling a few  
11 more rocks, man, until, you know, I can get a job and  
12 stuff.

13 I'm just going to sling a few rocks and sell a few  
14 crack or whatever. Try to get me some new clothes, shoes,  
15 maybe a new car or whatever. And I started back selling  
16 dope. And I was a convicted in a trial, whereas, a went  
17 to trial on that because at the time, and I'm not going to  
18 lie, I did went to trial on that, whereas, a person stated  
19 that I sold the dope. I sold him the dope. They never  
20 caught me with no dope in my pocket or nothing like that.

21 It was said that somebody was going to testify and  
22 say that I sold them dope. So I felt like -- and they  
23 offered me five years. And I felt like, man, they I  
24 didn't get no dope off me. Man, I'm not about to the seel  
25 nothing and then they didn't catch me with no crack or

1 nothing and stuff like that. I mean, like I said, I'm  
2 giving you the truth, you know, because that's all I can  
3 do right now.

4 So I was convicted, but the Judge -- whereas, I was  
5 facing 35 years, but the Judge told me, he said, and I  
6 forgot the judge name at that time. He said, "Mr. Dupree,  
7 I see something nice in you." He said, "I see potential  
8 in you, sir." He said, "Sir, I'm not going to give you  
9 the max for this crime that you was found guilty of by a  
10 jury." He said, "I'm not going to give you the max." He  
11 said, "Mr. Dupree, I'm going to give you the minimum."

12 And he gave me ten years for distribution of crack,  
13 and he gave me ten years for the proximity to school and  
14 playground. And I said, "Man, that's 20 years, man.  
15 Golly. I don't want to be gone for 20 years of my life,  
16 you know." And he said, "Dupree, the good thing about it,  
17 sir, he says I'm going to run your ---

18 MR. REDMOND: Your Honor, at this point, I hate to  
19 interrupt.

20 THE COURT: I will allow him to finish.

21 MR. REDMOND: Yes, sir.

22 BY MR. DUPREE:

23 He said ---

24 THE COURT: If he wants to.

25 MR. DUPREE: Yes, sir.

1 BY MR. DUPREE:

2 He said, "Mr. Dupree, I'm going to run that  
3 concurrent," he said, "whereas, you would serve ten years  
4 and you will be back home." So throughout my time in  
5 incarceration after the ten years I told myself I'm like,  
6 man, enough is enough, man. You got to tighten up. You  
7 got to do better than you were doing, man. You know, you  
8 getting old. By this time I was like getting -- about to  
9 get out to be released from prison. So I'm like in my  
10 30's. Close to my 30's. Might have been 29 or 30.

11 And like I said I was caught with a cell phone so I  
12 had to be about 30 cause when I got out I was close to 31.  
13 But, anyway, I said, 'man, it's time to change and do  
14 better with yourself'. So when I was released from  
15 Kershaw Correctional Institution, when I was released,  
16 what I done was my -- I paroled out in Columbia, South  
17 Carolina.

18 When I paroled out in Columbia, South Carolina I  
19 paroled out to a halfway house, whereas, some people told  
20 me that, well, Dupree, you can get into a halfway house.  
21 Man, they will help you get a job and it won't be as hard  
22 as far as you going out there to find a job by yourself.  
23 Whereas, these people will help you get a job. So I  
24 paroled out to the halfway house in Columbia.

25 But my mother and my great-uncle them, they was

1 concerned and they was calling the institution, whereas  
2 they came to pick me up from Kershaw Correctional  
3 Institution, but I had caught the bus to Columbia, South  
4 Carolina. And I found out that my people were trying to  
5 contact me, whereas, when I got to Columbia, South  
6 Carolina, whereas, I had a check where I worked at this  
7 plant. They got plants at the Department of Corrections  
8 that they call, 'P.I.' Prison Industries. You can make  
9 minimum wage making money doing certain jobs and stuff.  
10 Pre-assembly work.

11 However, I had a check that I earned from working at  
12 this plant. So when I got to Columbia I went and  
13 bought -- went straight and bought me a phone, you know,  
14 cause I'm thinking everybody need a phone. You know, you  
15 need communications, you know. So I went and bought a  
16 phone, and I called my family. So they was like, "Man,  
17 where you at. We looking for you. We done went to  
18 Kershaw and everything to pick you up."

19 So I was like, "I'm in Columbia, man. You know, I'm  
20 about to go to this halfway house." So my mother them,  
21 you know, and my grandmother, bless her soul, they were  
22 like, well, no, you need to come home cause they felt like  
23 I get in some trouble in Columbia. You know, they was  
24 like, 'no, Derrick, you need to come home'.

25 So I was -- my uncle, my great-uncle, which is more



1     like my godfather, he accepted me in his home, he and his  
2     new wife, whereas, his first wife, which was my godmother  
3     passed years ago, bless her soul. But him and his new  
4     wife, they accepted me in their home. Nice brick home.  
5     So, you know, pretty much I had things pretty much that I  
6     needed. I had, you know, like I said, I had money so I  
7     brought me clothes and stuff like that, shoes. Living in  
8     a nice home with my uncle which is, like I said, something  
9     like my godfather.

10         I'm the only child there at that time. Well, adult.  
11     Area adult. Young adult rather. And things all right for  
12     me, you know. Things was pretty much looking good for me.  
13     So, you know, at that time I got a job cause I knew living  
14     with my great-uncle, well, I knew I was going to have to  
15     do -- I was going to have to tighten up. You know what  
16     I'm saying, cause as far as he wasn't going to allow me to  
17     do just anything I want to up under his roof.

18         Whereas some of my uncles, my mother's brother, told  
19     done told me like, 'boy, look don't mess up, you know,  
20     cause your uncle's giving you a chance that ain't going,  
21     you know, have something to do something.

22         Whereas, you know, he might inherit a lot of things  
23     to you if he ever leave this earth. So I was like I'm  
24     going to do right, you know. So, anyway, I went and got a  
25     job. I applied for a job at the Rehabilitation Center. I

1    went and got a job at the Rehabilitation Center. I worked  
2    there for a couple of months, and I was real specific in  
3    them finding me a job.

4            So they was like, 'Dupree a good worker. Go ahead  
5    and get Dupree a job. Find Dupree a job'. So they found  
6    me a job in Dillon, South Carolina working at Perdue.  
7    Okay. That didn't work out well at the time because of  
8    transportation, so what happened was I went back to the  
9    Rehabilitation Center.

10           So after that I found a job on my own. I found a job  
11    on my own at Mountaineer that's located in I think Red  
12    Springs, North Carolina. It's in Maxton County. But, I  
13    found a job at Mountaineer as a -- I was working debone.  
14    I was deboning the breast.

15           THE COURT: Mr. Dupree, I've given you some leeway.  
16    We might want to start focusing on the case. I'm going to  
17    allow you a lot of leeway we regard to closing arguments.  
18    You might want to focus more on the relevant issues on  
19    this case.

20           MR. DUPREE: Okay.

21    BY MR. DUPREE:

22    Q.    Well, like I said I can't say much on the case and I  
23    guess I'm going to go ahead and bring it -- try to sum it  
24    up.

25           MR. DUPREE: Maybe I can have five more minutes, Your

## Closing Statement by Mr. Dupree

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1 Honor, sir, if that's okay?

2 THE COURT: Sure. I'm not cutting you off. I'm just  
3 saying that you need to focus more on the substance of  
4 this case.

5 MR. DUPREE: Well, like I said, Your Honor, it's not  
6 much I can say on the case so I'm going to go ahead and  
7 just sum it up with a little more brief -- briefing on  
8 myself as far as with the jury.

9 THE COURT: Very good.

10 BY MR. DUPREE:

11 Okay. Like I said, and I'm going to try to go ahead  
12 and sum it up, but like I said my life is in y'all hands.  
13 I mean it's up to y'all, you know, and I hope that y'all  
14 think about and consider my life as well. Not saying --  
15 I'm not asking y'all to overlook what was said or none of  
16 that. I'm just asking y'all to see that this is a young  
17 man that says he innocent. That's on y'all to believe.

18 That says he innocent, and that would love nothing  
19 more to be back to his life. Productive, being  
20 productive. Y'all are going to hear from the State, and  
21 I'm sure they're going to tell you some things that might  
22 not be good, you know.

23 But I mean the decision is still on y'all. Decision  
24 still only y'all. What y'all are thinking, and like I  
25 said, you know, everyone might not agree. Everyone might

1 not say he innocent. It don't matter. Everyone don't  
2 have to say. It only take but one of two to say he  
3 innocent. Just one to say he innocent. It don't take  
4 five to say he innocent or six.

5 So like I said, you know, I just ask that if not all  
6 that y'all make a decision not just relevant to what y'all  
7 heard, you know. Cause like I said these still not to be  
8 true facts. But like I said, I'm not telling y'all to not  
9 believe that. I ask that y'all make a decision relevant  
10 to my life as a young black man striving and hoping to get  
11 back to his life and be productive.

12 And with that said, you know, that, like I said, I  
13 hope that y'all think about that, and like I said, I'm  
14 sorry I wasn't able to introduce the fact that I was  
15 released on March the 1st, whereas, my public defender did  
16 look that up for me which, like I said, there wasn't very  
17 much existing in the beginning any way. So, I mean, I  
18 can't say it was meant for me to -- meant not to be the  
19 right date or not the -- if I could have got it myself, if  
20 I was approved to get it myself, I'm quite sure I could  
21 have got the right date.

22 But it wasn't, even though I was pro se, I still  
23 wasn't authorized to get that. So I had to go through  
24 them still. So like I said, he did got that for me and it  
25 still say the same. So, like I said, I'm sorry that I

1     wasn't able to introduce the truth where it could of have  
2     had balance a few things out.  Anyway, maybe, a little  
3     help.

4             But like I said, I hope y'all just basically just  
5     base y'all decision on my life as far as, you know, a  
6     young man hoping to be back out in society doing something  
7     productive.  And as a matter of fact, if I'm blessed to be  
8     back out in society, man, I'm -- truthfully, man, I'm -- I  
9     would love to do nothing more than get from South  
10    Carolina; to get out of Bennettsville, South Carolina  
11    especially.

12            So, you know, I mean, like I say, I'm not a problem.  
13    I definitely will never be committed -- commit another  
14    crime.  Not saying that I committed this crime.  I'm  
15    talking about never sell another piece of crack or  
16    anything of that nature.  And like I said, I just ask  
17    y'all to judge me by that, and you know, like I said I am  
18    a good man and respectful man.  And like I said I was  
19    brought up in the church, and I have prayed a lot  
20    throughout this time.  I prayed for even the victims.

21            I prayed for everybody in this courtroom, the Judge  
22    and everybody.  I asked God bless all of us; that he work  
23    through these people to help me.  I'm not sitting here and  
24    lie.  I asked and prayed that he will work through these  
25    people to help me be back out there in society with my

1 freedom. You know, so I just ask that y'all will look  
2 more and respectfully. Judge me by that cause like I said  
3 y'all are the judges. You know, it's in y'all hands to  
4 judge wether I be back out there in society. Back out  
5 there to my family. Back out there with my life as a free  
6 man.

7 It's up to y'all, and like I said, it don't take  
8 everybody to say he innocent. Just one, two, three. It  
9 don't matter. That's all I have. I don't want to hold up  
10 the Court so that will be all. Thank you.

11 THE COURT: Yes, ma'am, you're recognized.

12 MS. JOHNSON LEE: May it please the Court, Mr.  
13 Dupree.

14 CLOSING STATEMENT BY MS. JOHNSON LEE

15 MS. JOHNSON LEE: Ladies and gentlemen of the jury,  
16 that quite well spoken man who was standing here talking  
17 to you all this time is the same quite well spoken man  
18 that tricked [REDACTED] into letting her [sic] into her  
19 house on September 8th 2013; that same quite well spoken  
20 man who presents himself so well in an instant had a knife  
21 to her throat, was bending her over the couch and was  
22 raping her while she's begging for her life, praying to  
23 God, and he was telling her I'm going to kill you if you  
24 don't shut up.

25 You heard a lot of witnesses. You've seen a lot of

1 evidence introduced. Some of it you haven't seen up  
2 close, but everything is going to go back with you to the  
3 witness room -- to the jury room. And I'm going to touch  
4 on the highlights of what you have heard and seen because  
5 that's very important. The most important thing you heard  
6 this week was LT [REDACTED] who sat up on this stand as  
7 the first witness and told you her story. She told you  
8 what happened to her, and she told you that Derrick Dupree  
9 is the one who did it. She looked right at him. She  
10 showed him that she wasn't agreed of him. She talked to  
11 him. She said, "You. You did this to me."

12 And let's look at how the evidence bears out what she  
13 said. She talked about how he brought -- he came into the  
14 house. Tricked his way to going through the house to the  
15 back because he wanted to leave a note, leave name and  
16 number, in case she ever wanted to sell the house.

17 Well, we have the note. Now, one of the officers,  
18 John Walters, wrote on the back of it, so please disregard  
19 that. But on the front of it there is a 537-9389, Dwayne  
20 Stanton. Fake name. Fake number.

21 S.L.E.D. got his fingerprint out of A.F.I.S. Got his  
22 fingerprint card, and his fingerprint is on there. His  
23 fingerprint is on there, an John Walters' fingerprint is  
24 on there. This is what first identified Derrick Dupree.  
25 If the State was just looking for somebody to send to

1 prison like he danced all around without coming right out  
2 and saying, if we were just looking for somebody to send  
3 to prison, my God, we already had Kadeem Hooks with  
4 somewhat of a confession. We could just send him down the  
5 road if that's all we wanted to do.

6 But was weren't. They kept investigating because  
7 they did their jobs. They wanted to make sure they had  
8 all the evidence, and the first piece of evidence comes  
9 through saying, hey, it was somebody else. Derrick  
10 Dupree's name. It's his print. It is Derrick Dupree's  
11 print. And his name is on the report that came later from  
12 S.L.E.D.

13 And Derrick had already gotten suspicious because  
14 Wilbert and Perry and Lisa, they all talked about how  
15 Derrick had been standing in the road right outside  
16 Perry's house on that afternoon. And how Kim came through  
17 to pick him up. And then Wilbert talked about how Derrick  
18 admitted to him that he had just raped somebody, and he  
19 claimed that it was a girl from Cheraw that he had just  
20 raped.

21 And I know it's nasty, but the language used was he  
22 nuttied in her which is ejaculating and wanted to know  
23 about D.N.A. tests, and you know, getting -- the police  
24 getting the D.N.A. So he admitted to raping somebody. He  
25 just wasn't going to say that it was an elderly lady there



1 in Wallace.

2 So he knew that they were at the Sheriff's Office  
3 telling what happened. So he goes up there. Kim, you  
4 heard Kim. She told him you've got to get up there. They  
5 did go up there, and he made a statement to Investigator  
6 Alderman about not having anything to do with it. And at  
7 that point he was not a suspect. They had not gotten that  
8 information about the note back yet. They just thought  
9 that he was somebody in there just trying to clear  
10 himself.

11 You heard Agent Alderman. They took his statement.  
12 Talked to all the people he brought with him, and they let  
13 him go. The next day she gets a call from S.L.E.D.  
14 saying, "We've got a print off this note that matches a  
15 person in the system whose name is Derrick Dupree." And  
16 they were like, oh, my God.

17 Of course, they begin the necessary paperwork to let  
18 Kadeem Hooks go and begin getting arrest warrants for  
19 Derrick Dupree. Well, let's go forward. After Derrick is  
20 arrested on September 11th, of course, S.L.E.D. is still  
21 doing their job, evidence is still being collected,  
22 S.L.E.D. is still examining evidence, the underwear goes  
23 to S.L.E.D. The rape kit from the hospital went to  
24 S.L.E.D. The gown that Miss LT was wearing went to  
25 S.L.E.D.

1 All of those things are over there, and you heard the  
2 serologist. You heard Miss Gibson. The cutting from what  
3 looks like it could be physical evidence was taken from  
4 the nightgown. A cutting was taken out of the underwear.  
5 And, of course, there is the rape kit. Certain things  
6 tested positive for semen. The cuttings from the  
7 underwear tested positive for semen. The cutting from the  
8 nightgown, the stains on the nightgown, tested positive  
9 for semen. The -- let me get the S.L.E.D. report cause I  
10 don't want to say anything incorrect in my closing.

11 Also tested positive for semen were the vaginal swab  
12 and the rectal swab. All those things were sent to D.N.A.,  
13 and D.N.A. still did their job. Now, when D.N.A. got the  
14 first positive test for something; that Item 2.1, which  
15 was the cutting from the nightgown, the first positive  
16 they get, they go enter that sample that was developed  
17 from the profile from that sample and they put it in  
18 C.O.D.I.S.

19 The folks in the C.O.D.I.S. Department then check  
20 that sample that was put in there against the national  
21 database, and whose name comes out? None other than  
22 Derrick Dupree. That's just one more piece of evidence.  
23 One more piece of evidence showing that he did it. That  
24 C.O.D.I.S. hit was September 23rd. Derrick's had already  
25 been arrested. You saw the order that we discussed

1 earlier in testimony yesterday.

2 We actually went to Court and got a Court order that  
3 Derrick consented to get another buccal swab from him just  
4 to reverify that this C.O.D.I.S. hit is correct. That is  
5 his D.N.A. Susan Alderman goes. She swabs him. That  
6 swab goes to S.L.E.D. They test everything. It comes  
7 back to him. All of those things come back to Derrick  
8 Dupree. His D.N.A. was in the vagina of **LT**  
9 How in the heck did it get there if he didn't put it  
10 there?

11 His D.N.A. was on the stain on her nightgown. His  
12 D.N.A. was on the underwear that she put on to go to the  
13 hospital. Derrick Dupree. Now, the statement that he  
14 gave on September 16th after he had wrote that note at the  
15 jail saying, "I want to come talk to you," when he came in  
16 at first he tried to lie his way again. Then he said,  
17 "Yeah, I did go to the house, and I did write a note."  
18 And he admitted writing the name, 'Dwayne Stanton'.

19 Well, before that time that name, Dwayne Stanton,  
20 wasn't in the newspaper. There was nothing whatsoever in  
21 the newspaper or on the media saying that the name of  
22 Dwayne Stanton was written on a note with a certain  
23 number. Yet, he knew that information.

24 Then later on in the interview when he finally  
25 confesses to the rape think of the things that he knew

1 that nobody but the perpetrator would know. He said the  
2 gown was red in color. Now, to me it's like a hot pink or  
3 a lightish, reddish pink. LT [REDACTED] calls it red. He called  
4 it red. No matter what color it was he knew the color.  
5 That was not public knowledge. That was not made  
6 available to the media.

7 Also in his statement he talked about how she was  
8 bent over the sofa. How she was raped was never made  
9 public knowledge. That was not in the media. Getting  
10 raped from behind. He said he nuttet her from behind.  
11 That was never public knowledge. That was not in the  
12 media. All of those things are things that only the  
13 perpetrator of this heinous crime would know.

14 And those are things that Derrick Dupree himself said  
15 in that interview. You will have the video from  
16 September 16th. If you want to watch any portion of it or  
17 all of it we can make that available to have everything  
18 taken back there for you to watch it because that is in  
19 evidence.

20 In closing, I'm not going to hold you up too much  
21 longer. I know we are we are late and it's lunchtime and  
22 you're hungry, but I'm not going to hold you up much  
23 longer. A couple of things I wanted to put out.

24 He keeps mentioning how he got the evidence late.  
25 Remember he also mentioned he had attorneys. His

## Closing Statement by Ms. Johnson Lee

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1 attorneys had everything. Also, he kept trying to tell  
2 you what Kim said. You heard the witness. You look back,  
3 and you remember what the witness said. If you have a  
4 question about what a witness said you can ask for some  
5 portion of that to be read to you or provided to you.

6 Just send a note out for the Judge.

7 Also, the incarceration term date, that exhibit was  
8 his, the item from the Community Supervision Program  
9 Certificate. Defendant's Exhibit Eight shows he was  
10 incarceration termination date was February 1st 2012.  
11 That's his exhibit.

12 Also, and then the one final thing. When he was  
13 giving his closing argument he started to say something at  
14 one time, and I wrote it down. He started to say -- he  
15 was referring to the victim's house, and he said, "Where  
16 the victim" and he stopped and corrected himself and said,  
17 "I don't know the address of the crime scene."

18 He started to say where the victim lived. He knew  
19 where it was at, but then he corrected himself. And that  
20 was something he said just a few minutes ago. But we do  
21 ask that you find him guilty of all charges. The burglary  
22 charge, burglary first. If you trick your way into  
23 somebody's house, lie to them, give false information in  
24 order to get access that's burg first.

25 Kidnapping, obviously, she couldn't go anywhere when

1 he had her bent over that sofa with that knife to her  
2 throat. And if you have any doubt about whether he had a  
3 knife to her throat, whether it was a pen versus a knife,  
4 you have the picture here.

5 The C.S.C, obviously, you have the evidence for that.  
6 And possession of a weapon during the commission of a  
7 violent crime, you heard the victim say she felt the knife  
8 at her throat, and then you have the pictures again  
9 showing that that weapon was pressed against her throat.

10 We just ask you to please find him guilty as indicted  
11 on all charges. He did say government officials are here  
12 to serve. Yes, they are. Police officers, they're the  
13 first line of defense in the war on crime. They're the  
14 ones that come running when any of us call 911. But  
15 you're the last line of defense. You're the one's who  
16 say, "We are not going to let you get away with raping an  
17 elderly woman in Marlboro County. We are not going to let  
18 you go free so you can move away from here and start your  
19 life all over again. We're holding you accountable.  
20 Thank you.

21 COLLOQUY

22 THE COURT: Madam Forelady, ladies and gentlemen of  
23 the jury, we've completed all the evidence. You heard the  
24 close arguments. We're going to break until 2:15 allow  
25 you to get some lunch. Come back at 2:15. 2:15 sharp.

1           As I mentioned earlier the next thing is I will  
2 charge you the substantive law that governs this case, and  
3 then I will discharge you back at the appropriate time  
4 into the jury room and tell you to begin deliberations.  
5 And that's real important. Do not begin discussing this  
6 case amongst yourselves or anyone else. Do not discuss it  
7 with anyone until I give you instructions to do so. There  
8 has been some media coverage with regard to this case.  
9 Once again, direct your attention from any articles or  
10 news broadcasts in that regard. Come back at 2:15. 2:15  
11 sharp. Everyone else remain seated as the jury exits the  
12 courtroom.

13           (WHEREUPON, the jury panel was excused from the  
14 courtroom at 1:10 p.m.)

15           THE COURT: I'm going to ask counsel to step up to  
16 the bench, please.

17           (WHEREUPON, a bench conference was held off the  
18 record, but out of the presence of the jury.)

19           THE COURT: All right. We will stand at ease until  
20 2:15.

21           MR. REDMOND: Thank you, Your Honor.

22           (WHEREUPON, Court was in recess at 1:12 p.m. and  
23 reconvened at 2:20 p.m.)

24           THE COURT: Anything from the State before we have  
25 the jury come out?

1 MR. REDMOND: No, sir, Your Honor.

2 THE COURT: Anything, Mr. Dupree?

3 MR. DUPREE: No, sir, Your Honor.

4 THE COURT: We're ready for the jury. Court.

5 (WHEREUPON, the jury panel enters the courtroom at  
6 2:20 p.m.)

7 CHARGE OF THE COURT

8 THE COURT: Madam Forelady, ladies and gentlemen of  
9 the jury, at this juncture it's my responsibility to  
10 charge you the substantive law that pertains in this case.  
11 Y'all have sat through some very long days listening to  
12 testimony. I've watched each of you. You've paid very  
13 close attention, so y'all have the tools necessary to  
14 determine what the facts are in this case. But you have  
15 to do two things. You have to find out what the truth is  
16 and you have to apply it to the law.

17 I wish there was an easy way to do that, but there is  
18 really no easy way to do it. You're going to have to perk  
19 up and pay close attention because this is a very  
20 important matter. I know that you've already had some  
21 lunch. Sometimes we have a tendency to fade, but you need  
22 to paid very close attention because these are important  
23 matters.

24 Madam Forelady, ladies and gentlemen of the jury, the  
25 indictment charges the defendant with burglary first



## Charge of the Court

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1 degree, kidnapping, criminal sexual conduct first degree,  
2 possession of a weapon during the commission of a violent  
3 crime. I remind you of the fact that even though the  
4 defendant was arrested, charged, and indicted is not  
5 evidence and cannot be considered by you as evidence of  
6 guilt.

7 Nor does it create any presumption or inference of  
8 guilt. This document is simply the formal written  
9 instrument which contains the charges made against the  
10 defendant. It is the formal document by which this case  
11 is brought into the Court.

12 Each indictment charges a separate and distinct  
13 offense. You must decide each indictment separately on  
14 the evidence and the law after, to wit, uninfluenced by  
15 your decision as to any other indictment.

16 The defendant may be convicted or acquitted on any or  
17 all offenses charged. You will be asked to write a  
18 separate verdict of guilty or not guilty for each  
19 indictment. The defendant has pled not guilty to this  
20 indictment, and that plea puts the burden on the State to  
21 prove the defendant guilty. A person charged with  
22 committing a criminal offense in South Carolina is never  
23 required to prove himself innocent.

24 I charge you that as an important rule of law that  
25 the defendant in a criminal trial, no matter what the

1     seriousness of the charge may be, will always be presumed  
2     to be innocent of the crime for which the indictment was  
3     issued unless guilt has been proven by evidence satisfying  
4     you of that guilt beyond a reasonable doubt.

5             This presumption of innocence does not end when you  
6     begin your deliberations, but it accompanies the defendant  
7     throughout the trial and until you reach a verdict of  
8     guilt based on evidence satisfying you of that guilt  
9     beyond a reasonable doubt.

10            The presumption of innocence is like a robe of  
11     righteousness placed about the shoulders of the defendant  
12     which remain with the defendant until it has been striped  
13     from the defendant by evidence satisfying you of the  
14     defendant's guilt beyond a reasonable doubt.

15            The presumption of innocence is not a mere legal  
16     theory. It's not just a legal phrase. This is a  
17     substantial right which every defendant is entitled unless  
18     you the jury are satisfied from the evidence of the  
19     defendant's guilt beyond a reasonable doubt.

20            What is reasonable doubt in the law? A reasonable  
21     doubt is the kind of doubt that would cause a reasonable  
22     person to hesitate to act. The State as the burden of  
23     proving the defendant guilty beyond a reasonable doubt.  
24     Some of you may have served as jurors in civil cases where  
25     you were told that it is only necessary to prove that a

## Charge of the Court

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1 fact was more likely true than not true, such as by the  
2 greater weight or by the preponderance of the evidence.

3 In criminal cases the State's proof must be more  
4 powerful than that. It must be beyond a reasonable doubt.  
5 Proof beyond a reasonable doubt is proof that leaves you  
6 firmly convinced of the defendant's guilt. There are very  
7 few things in this world that we know with absolute  
8 certainly, and in criminal cases the law does not require  
9 proof that overcomes every possible doubt. If based on  
10 your consideration of the evidence you are firmly  
11 convinced of the defendant's guilt of the crime charged  
12 you must find the defendant guilty.

13 If on the other hand you think there is a real  
14 possibility that the defendant is not guilty you must give  
15 the defendant the benefit of the doubt and find him not  
16 guilty.

17 Ladies and gentlemen of the jury, I remind you that  
18 during this trial that you and I have certain duties to  
19 perform. As the trial judge it is my responsibility to  
20 preside over the trial. I also have the duty to rule on  
21 the admissibility of evidence. You are to consider only  
22 the competent evidence before you. You are to consider on  
23 the testimony which has been presented from this witness  
24 stand, any exhibits which had been made a part of the  
25 record and any stipulations of counsel.

1           I have the additional duty to charge you the law  
2     applicable to this case. As the presiding judge I am the  
3     sole judge of the law, and it is your duty as jurors to  
4     accept and apply the law as I now state it to you. You  
5     already have an idea as to what the law is or what the law  
6     ought to be and it does not agree with what I now tell you  
7     the law is you must abandon this idea cause you are sworn  
8     to accept and apply the law exactly as I state it to you.

9           In every case tried in this Court before the jury the  
10    jury becomes is sole and exclusive judge of the facts. A  
11    trial judge cannot intimate, state, comment on or make any  
12    statement to the trial jury about the facts.

13          Since you the jury are the sole judge of the facts  
14    you are not infer from what I've said during the progress  
15    of this trial in ruling upon the admissibility of evidence  
16    or otherwise or anything that I say now during the course  
17    of this instruction to you that I have any opinion about  
18    the facts. The law simply does not allow me to have an  
19    opinion about the facts. This is a matter solely for you  
20    the jury to determine. As jurors it is your duty to  
21    determine the effect, the value, the weight and truth of  
22    the evidence presented during this trial.

23          Madam Forelady, ladies and gentlemen of the jury,  
24    there were two types of evidence which are generally  
25    present during a trial, direct evidence and circumstantial

1 evidence. Direct evidence is the testimony of a person  
2 who claims to have actual knowledge of a fact, such as an  
3 eyewitness, as evidence which immediately establishes the  
4 main fact to be proved. Crimes maybe proven by  
5 substantial evidence.

6 Substantial evidence is based on inference and not on  
7 personal knowledge or observation. The law makes no  
8 distinction between the weight or value to be given to  
9 either direct or circumstantial evidence. However, to the  
10 extent that the State relies on circumstantial evidence  
11 all the circumstances must be consistent with each other  
12 and when taken together point conclusively to the guilt of  
13 the accused beyond a reasonable doubt.

14 If these circumstances merely portray the defendant's  
15 behavior as suspicious, proof has failed. The State has  
16 the burden of proof of proving the defendant guilty beyond  
17 a reasonable doubt. This burden rests with the State  
18 regardless of whether the state relies on direct evidence,  
19 circumstantial evidence or some combination of the two.

20 Necessarily, you must determine the credibility of  
21 the witnesses who have testified in this case.  
22 Credibility simply means believability. It become your  
23 duty as jurors to analyze and to evaluate the evidence and  
24 determine which evidence convinces you of its truth. And  
25 in determining the believability of witnesses who have

1 testified you may believe one witness over several  
2 witnesses or several witnesses over one witness. You may  
3 believe part of the testimony of a witness and reject the  
4 remaining part of the testimony of that same witness.

5 You may believe the testimony of a witness in its  
6 entirety or reject the testimony of a witness in its  
7 entirety. You may consider whether any witness has  
8 exhibited to you any interest, bias, prejudice or other I  
9 motive in this case. You may also consider the appearance  
10 and manner of a witness while on the witness stand, their  
11 demeanor.

12 The rules of evidence ordinarily do not permit  
13 witnesses to testify to opinions or conclusions. An  
14 exception to this rule exists for witnesses we call expert  
15 witnesses. A witness who by education and experience has  
16 become an expert in some art, science, or profession or  
17 calling may state an opinion as to the relevant material  
18 matter which the witness claims to be an expert may also  
19 state the reason for the opinion.

20 You should consider any expert opinion received into  
21 evidence in this case and like any over evidence give it  
22 the weight you think it deserves. If you decide that the  
23 opinion of an expert is not based on sufficient education  
24 or experience, if you conclude that the reasons given in  
25 support of the opinion are not sound, the opinion is

1     outweighed by other evidence, you may disregard the  
2     opinion entirely. An expert witness's testimony is to be  
3     given no greater weight than that of any other witnesses  
4     simply because the witness is an expert. Further, you are  
5     not required to accept an expert's opinion even though it  
6     is not contradicted.

7             Madam Forelady, ladies and gentlemen of the jury, a  
8     statement alleged to have been made by the defendant has  
9     been admitted into evidence in this case. While the Court  
10    had determined that the statement is admissible I instruct  
11    you that you make the ultimate decision on whether or not  
12    the defendant made the statement. If the defendant did  
13    make the statement you must determine whether the  
14    statement made by the defendant was made voluntarily and  
15    of his own free will. This means that the statement was  
16    not caused by pressure, force, fear, threats or coercion  
17    or intimidation or by hope or a promise of lenience or a  
18    reward of any kind.

19            In determining whether the statement was voluntary  
20    you should consider both the characteristics of the  
21    defendant and the details of the questioning. Some of the  
22    factors that you must consider are the age of the  
23    defendant, the defendant's education or lack thereof, the  
24    defendant's mental ability or capacity, the defendant's  
25    I.Q. or intelligence, the defendant's background and

1 environment, place and length of detention, the nature of  
2 questioning, advice or lack thereof to the defendant of  
3 his constitutional rights including but not limited to his  
4 right to remain silent.

5 That any statement could be used against him in a  
6 court of law. The right to have an attorney present; that  
7 he could not afford -- that if he could not afford a  
8 lawyer a lawyer would be appointed to him; and that he  
9 could stop making a statement at any time. You must  
10 carefully consider all of the surrounding circumstances  
11 before you give any weight to an alleged statement.

12 The State has the burden of proving beyond a  
13 reasonable doubt that the alleged statement was voluntary.  
14 If you determine it was you may give the statement any  
15 further consideration you deem proper. You must decide  
16 what weight, if any, should be given to the alleged  
17 statement. If you determine that the alleged statement  
18 was not the free and voluntary statement of the defendant  
19 you should not consider the statement at all.

20 An issue in this case is the identification of the  
21 defendant as the person who committed the crime charged.  
22 The State has the burden of proving identity beyond a  
23 reasonable doubt. You must be satisfied beyond a  
24 reasonable doubt of the accuracy of the identification of  
25 the defendant before you could convict the defendant.



## Charge of the Court

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1 Identification testimony is an expression of belief  
2 or impression by a witness. You must determine the  
3 accuracy of the identification of the defendant. You must  
4 consider the believability of each identification witness  
5 in the same way as any other witness. You must consider  
6 whether the witness had an adequate opportunity to observe  
7 the offender at the time of the offense. This will be  
8 affected by things like how long or short a time was  
9 available, how far or close the witness was, lighting  
10 conditions and whether the witness had the chance to see  
11 or know the person in the past.

12 Once again, I instruct you that the burden of proof  
13 is on the State, and extends to every element of the crime  
14 charged. And this specifically includes prove beyond a  
15 reasonable doubt the identify of the person who committed  
16 the crime. If after examining the testimony you have a  
17 reasonable doubt as to the accuracy of the identification  
18 you must find the defendant not guilty.

19 The defendant is charged with first degree burglary.  
20 I'm going to charge you the substantive law as to what  
21 first degree burglary is. The State must first prove  
22 beyond a reasonable doubt that the defendant entered a  
23 dwelling without consent. A dwelling is any building or  
24 portion of a building in which a person ordinarily sleeps.  
25 A building constructed as a dwelling that has never been

1 occupied cannot be considered a dwelling for purposes of  
2 burglary.

3 But a dwelling is a building even if the residents  
4 are temporarily absent from the building. In order to  
5 prove that the defendant entered the dwelling the State  
6 does not have to show that the defendant's entire body  
7 entered the dwelling. The smallest entry is sufficient.  
8 It may be any part of the body such as a hand, a foot or  
9 an instrument such as a hook or other instrument.

10 In addition, the State does not have to prove that  
11 force was used to gain entry. If a person enters a  
12 building by using deception, artifice, trickery,  
13 misrepresentation to get consent to enter this is an entry  
14 without consent.

15 Next, the State must prove beyond a reasonable doubt  
16 that the defendant intended to commit a crime, either a  
17 felony or a misdemeanor at the time of the entry. The  
18 mere entry into a dwelling without consent is not  
19 burglary. If the intent to commit a crime is formed after  
20 the entry it is not burglary.

21 On the other hand, if the defendant intended to  
22 commit a crime at the time of the entry it is burglary  
23 even if the intent was abandoned after the entry. It does  
24 not matter that the intended crime was not completed.  
25 Intent may be shown by acts and conduct of the defendant

1 and other circumstances from which you may naturally and  
2 reasonably infer intent.

3 Finally, the State must prove beyond a reasonable  
4 doubt, one, when entering while in the dwelling or when  
5 fleeing the defendant or accomplice was armed with a  
6 deadly weapon or explosive. A deadly weapon is any  
7 article, instrument or substance which is likely to cause  
8 death or great bodily harm. Whether an instrument has  
9 been used as a deadly weapon depends on the facts and  
10 circumstances of each case.

11 The following are examples of instruments which are  
12 deadly weapon: A pistol, a shotgun, a rifle, a dirk, a  
13 dagger, a knife, a slingshot, metal knuckles, a razor,  
14 gasoline, fire bomb or Molotov cocktail and lighter fluid.  
15 When entering while in the dwelling or fleeing the  
16 defendant or an accomplice used or threatened to use a  
17 dangerous object. When entering while in the dwelling or  
18 when fleeing the defendant or an accomplice displayed or  
19 what appeared to be a knife, pistol, revolver, rifle,  
20 shotgun, machine gun, or other firearm.

21 The defendant is charged with criminal sexual conduct  
22 in the first degree. The first element which must be  
23 proved beyond a reasonable doubt is that the defendant  
24 engaged in a sexual battery with the victim. Sexual  
25 battery is sexual intercourse, cunnilingus, fellatio, anal

1 intercourse or any intrusion however slight of any part of  
2 a person's body or of any object into the genital or anal  
3 openings of another person's body except when the  
4 intrusion is accomplished for medically recognized  
5 treatment or diagnostic purposes.

6 If you find that the State has not shown beyond a  
7 reasonable doubt that a sexual battery occurred you would  
8 stop deliberating, and your verdict would have to be not  
9 guilty. If you find that a sexual battery did occur you  
10 must then decide whether the State has proven beyond a  
11 reasonable doubt that the defendant used aggravated force  
12 to accomplish the sexual battery.

13 Aggravated force means the use of physical force or  
14 physical violence of a high and aggravated nature to  
15 overcome the victim. This includes the threat of using a  
16 deadly weapon. The victim submitted to sexual battery  
17 while the victim was also the victim of a forceable  
18 confinement, kidnapping, robbery, extortion, burglary,  
19 housebreaking or any other similar act or offense.

20 I charge you the substantive law with regard to the  
21 offense of kidnapping. The defendant is charged with  
22 kidnapping. The State must prove beyond a reasonable  
23 doubt that the defendant knowingly and unlawfully seized,  
24 confined, inveigle, decoyed, kidnapped, abducted or  
25 carried away another person without authority of law.

1           To do a thing unlawfully is to do it willfully  
2 against the law.

3           Knowingly means with knowledge consciously, not  
4 accidentally.

5           Seized means to take hold or suddenly or forcibly.

6           Confine means to limit or restrict or enclose within  
7 bounds, imprison or shut or keep in.

8           Inveigle means to lure, entice or lead astray by  
9 false representation, promises or deceitful means.

10          Decoy means to lure by as if by decoy. A decoy is  
11 something to entice a person into a trap.

12          Kidnap is to remove a person against his will by  
13 unlawful force or by fraud.

14          Abduct means to carry off secretly or by force or for  
15 an illegal purpose.

16          Carry away means to remove.

17          The State does not have to prove that the defendant  
18 did all these things. Instead if you find beyond a  
19 reasonable doubt that the defendant did any of these  
20 things you may find the defendant guilty of kidnapping.  
21 Something done without authority of law is something which  
22 the law does not sanction, permit, allow, condone or  
23 provide justification for.

24          Kidnapping does not have to be for any personal or  
25 monetary gain or for any illegal purpose, but may be for

1 any reason whatsoever.

2 The defendant is charged with possession of a weapon  
3 during the commission of a violent crime. The State must  
4 prove beyond a reasonable doubt that the defendant visibly  
5 displayed a knife during the commission of a violent  
6 crime. A knife means an instrument or tool with a sharp  
7 cutting blade, whether or not fastened to a handle which  
8 can be used to inflict a cut, slash or wound.

9 In order to find the defendant guilty of possession  
10 of a weapon during the commission of a violent crime you  
11 must first find the defendant guilty of either committing  
12 a violent crime or attempting to commit a violent crime.

13 For purposes of these deliberations burglary first  
14 degree, criminal sexual conduct first degree, kidnapping,  
15 all are violent crimes. The State must prove beyond a  
16 reasonable doubt that the weapon further advanced or  
17 helped in the commission of the crime.

18 There has been testimony concerning an alibi. I want  
19 to charge you the law with regard to that. The defendant  
20 has raised the defense of alibi. In order to establish an  
21 alibi it must be shown that the defendant was at another  
22 specified place at the time the crime was committed. And  
23 that it was, therefore, impossible for the defendant to  
24 have been at the scene of the crime.

25 Mere denial of presence at the scene of a crime does

## Charge of the Court

621

1 not constitute an alibi. There is no burden on the  
2 defendant to prove an alibi. The burden is on the State  
3 to prove beyond a reasonable doubt that the defendant was  
4 actually present at the scene of the crime, actually  
5 participated in it, and was not somewhere else. In other  
6 words, the State has the burden of disproving the  
7 defendant's alibi defense.

8 I want to come forward and share with you the verdict  
9 form. Madam Forelady, I'm going to ask if you would stand  
10 while I go over this form with you. This is a document  
11 entitled, 'Verdict Form. It's got numbers here. It says  
12 we're in General Sessions Court here in Marlboro County,  
13 the Fourth Circuit. And there are -- each one of the  
14 offenses, are set out in Roman numerals.

15 The first of which is burglary first degree. It  
16 says, "We the jury find by unanimous consent the  
17 Defendant, Derrick Dwayne Dupree, is," and there are two  
18 choices; not guilty or guilty. It's critical that you  
19 understand that these verdicts must be unanimous. It  
20 can't be 11 to one, six to six or eight to four. Everyone  
21 has to agree. It has to be unanimous.

22 Have the same thing with regard to kidnapping. "We  
23 the jury find by unanimous consent that the Defendant,  
24 Derrick Dwayne Dupree, is not guilty or guilty."

25 Criminal sexual conduct in the first degree. "We the

1 jury find by unanimous consent that the Defendant, Derrick  
2 Dwayne Dupree, is not guilty or guilty."

3 If you find that the defendant is not guilty of all  
4 of those violent crimes, the ones I've list, one through  
5 three, if you find him not guilty of all of those  
6 discontinue deliberations because you heard the law. In  
7 order for you to be convicted of possession of a weapon  
8 during the commission of a violent crime you have to be  
9 guilty of that or attempting to do that.

10 So, obviously, if you do find him not guilty of all  
11 those three offenses stop deliberations cause he can't be  
12 guilty of that one. However, if he guilty of one of these  
13 three in your deliberations, if you make that  
14 determination, then you could give that some  
15 consideration.

16 The verdict must be unanimous, and there is a place  
17 for the date and place for you to sign. Madam Forelady,  
18 you can have a seat. Madam Forelady, you are charged with  
19 the responsibility of making sure that everybody's voice  
20 is heard, preside over the deliberation process. I am  
21 confident that you will do a good job in that regard.

22 There might be an occasion where you have a question,  
23 and if there is a question I'm going to ask y'all to relay  
24 that question or concern to the Forelady. She will reduce  
25 it to writing, give it to the bailiff and if it's



1 something I can help you with I will. But there are  
2 certain things, you know, you've listened to the law, and  
3 I understand that y'all have certain jobs to do, and I  
4 have a certain job. Y'all have the difficult job of  
5 determining the truth in the case, what the truth is. And  
6 my job is to preside over the deliberation -- I mean  
7 preside over the trial, rule on the admissibility of  
8 evidence and charge you the law. That's my job.

9 If you have a question with regard to a legal issue,  
10 obviously, I can answer that. If it's a factual issue  
11 that's your call. You've got to make it. If there is a  
12 question in your mind whether it's a legal question or a  
13 factual question write it down. If it's something I can  
14 help you with I will. I don't anticipate y'all having any  
15 questions. Y'all have listened to the evidence. Y'all  
16 paid very close attention as I charged you the law. I'm  
17 certain that y'all have the tools with which to resolve  
18 this matter.

19 I'm going to ask the alternates if y'all will stay  
20 with us here in the courtroom. When I release the jury I  
21 want y'all to stay here with us. And, Madam Forelady, I'm  
22 going to ask if you could to return to the jury room.  
23 Once again, do not begin your deliberations yet cause I'm  
24 going to have to ask these very fine lawyers and Mr.  
25 Dupree if they have an objection to the manner in which is

1 charged the jury. If I inadvertently left something out,  
2 misstated something or haven't charged something that you  
3 should hear. I'm going to have an opportunity to talk  
4 with them about that.

5 If I don't have to bring you back in here then we  
6 will gather up all the documentary evidence. Bailiff will  
7 present the documents to you along with pads and paper to  
8 assist you in your deliberation process and tell you to  
9 begin deliberations.

10 Once again, do not begin deliberations. Don't talk  
11 about this case until you receive instructions to do so.  
12 Bear with us, and Madam Forelady, I'm going to ask that  
13 you take the jury back to the jury room. Thank you.

14 (WHEREUPON, the jury panel was excused from the  
15 courtroom at 3:45 p.m.)

16 COLLOQUY

17 THE COURT: All right. Let me speak with the  
18 alternates at this time if I could. I want to thank y'all  
19 for being here. I know that y'all sort of feel like y'all  
20 got invited to the dance and didn't get to dance. At any  
21 rate, y'all are here. I think probably, maybe, 20 or 30  
22 percent of the time we have exercise the alternate and put  
23 them in with the regular jury.

24 A lot of times people get sick. Sometimes people  
25 oversleep. Sometimes people discover throughout the trial

1     that they know someone. They knew them as Bubba and their  
2     name is Theodore. The didn't know until they show up and  
3     conflicts develop in that regard. There are a number of  
4     reasons why jurors can't complete their service. And if  
5     that were to happen, particularly in criminal cases, then  
6     we would have to start this all over cause the  
7     Constitution affords them to be tried by a jury of 12.  
8     And if there is less than 12 then we would just have to do  
9     this all over again. So y'all have been a very important  
10    part in that.

11         Thank you so much for your service. You're going to  
12    be paid handsomely for your service. It's -- how much is  
13    it, Madam Clerk?

14         CLERK OF COURT: It's \$10.

15         THE COURT: \$10 a day and what is it? Thirty-five  
16    cents a mile?

17         CLERK OF COURT: Thirty-five cents a mile.

18         THE COURT: That more than in Florence, but that's  
19    hardly enough to go and buy a new pair of britches or nice  
20    dinner. But it's better than a polk in the eye. It's a  
21    small token of our appreciation on behalf of the State of  
22    South Carolina. It's truly been a service.

23         Have any of you served on a jury before? Hopefully,  
24    it's been a learning experience for you. Very good. I  
25    hopefully, it has not been too much of a burden. The good

1 news is that you're going to get paid a small amount. If  
2 you are called to serve on a jury in this County within  
3 the next three years you can exercise an exemption.  
4 Doesn't apply to Municipal Court, Magistrate's Court or  
5 Federal Court.

6 But is you're subpoenaed to this court room you can  
7 tell them that you served this week and you will be free  
8 to leave. You're welcomed to stay if you like, but you  
9 can exercise that exemption. And the other good news is  
10 you have completed your service for the week. You're free  
11 to go, and thank y'all so much.

12 Y'all have any questions? All right. Y'all are free  
13 to go. This is a public forum. If you've like to hang  
14 around y'all can do that as well. Good luck to you.  
15 Thank you. And the Clerk has some excuses for you.

16 (WHEREUPON, the jury alternates was excused from the  
17 courtroom at 3:47 p.m.)

18 THE COURT: All right. Is there any objections to  
19 the jury charge from the State?

20 MR. REDMOND: No objection, Your Honor, and I  
21 apologize. Ms. Johnson Lee and I were conferring. We  
22 didn't know whether or not the Court had actually  
23 instructed on voluntary intoxication or had decided not  
24 to. And we just wanted to inquire on that.

25 THE COURT: You know, you had asked me that, and do

1     you want a charge on voluntary intoxication?

2           MR. DUPREE:  Sir, if I'm found guilty, sir, if that's  
3     what they -- yes, sir.

4           THE COURT:  You want a charge on involuntary  
5     intoxication?  Speak with your assistance there and see if  
6     that is what you want.

7           MR. DUPREE:  Oh, no, sir.

8           THE COURT:  You do not want a charge on ---

9           MR. DUPREE:  No, I misunderstood what you said, sir.  
10    I apologize.

11          THE COURT:  Given the fact that really wasn't an  
12    issue in this case and the fact -- and I asked you to  
13    remind me before I did that.  And maybe did and maybe you  
14    didn't, but I don't really think it's a relevant issue in  
15    this case.  And you're protected on the record.  I'm not  
16    going to charge it.

17          MR. REDMOND:  Yes, sir.

18          THE COURT:  All right.  Very good.

19          MR. REDMOND:  And that would be all the matters the  
20    State has.

21          THE COURT:  Do you have any objection to the jury  
22    charge?

23          MR. DUPREE:  No, sir, Your Honor.  At the end when  
24    you explained to them about that unanimous agreement as  
25    far as to the guilty or not guilty, sir, when you

1 explained that to them they may not understand that it's  
2 still -- that one of them or two of them could still stick  
3 with not guilty or guilty verdict. Whereas, the hung  
4 jury, I was basically trying to get that understood that  
5 it could be the formally of a hung jury, Your Honor.

6 THE COURT: Well, that's what the whole essence of a  
7 unanimous verdict is. If it's not unanimous then you --  
8 it doesn't resolve the case.

9 MR. DUPREE: And I understand that, but like I said  
10 you explained to them as far as I interpret you said that  
11 they have to come up with an unanimous meaning that  
12 everybody have to come up with the same ---

13 THE COURT: That is correct.

14 MR. DUPREE: --- verdict.

15 THE COURT: Or it would be mistrial or a hung jury.

16 MR. DUPREE: That's what I'm saying. I wanted them  
17 to know that if they didn't then it would be a mistrial or  
18 a hung jury, if it's okay.

19 THE COURT: All right. Well, you might not have  
20 understood it that way, but I think they did. And I do.  
21 So your motion the noted, but I think it's clear to them  
22 that in order for there to be a victim it has to be  
23 unanimous. Anything further?

24 MR. DUPREE: No, sir.

25 THE COURT: All right. Very good. Let's come

1 forward, and I'm going to ask everybody if you could take  
2 a look and let's put all of the -- tell you what. Let's  
3 clear off this table over here and put everything on that  
4 table if we could.

5 Mr. Redmond, do you and your co-counsel agree that  
6 everything that's in that pile is in evidence?

7 MR. REDMOND: That is correct. Yes, sir.

8 THE COURT: Is there anything in this pile that not  
9 in evidence?

10 MR. REDMOND: No, sir.

11 THE COURT: All right. Mr. Dupree, do you agree that  
12 everything in that's in this pile is in evidence?

13 MR. DUPREE: Yes, sir.

14 THE COURT: Is anything in that pile not in evidence?

15 MR. DUPREE: No, sir.

16 THE COURT: All right. Very good. I'm going to ask  
17 the bailiff to take the documentary evidence to the jury  
18 room along with some paper and maybe a couple of pens and  
19 tell them to begin deliberations. Very good.

20 (WHEREUPON, the jury panel began deliberations at  
21 2:58 p.m.)

22 THE COURT: All right. We'll stand at ease. It's  
23 three o'clock.

24 (WHEREUPON, Court was in recess at 2:58 p.m. and  
25 reconvened at 3:10 p.m.)

QUESTION FROM THE JURY

THE COURT: I received a note from the Forelady of the jury, and it says, "We need the definition of burglary which is simple. I'll charge them the law concerning burglary." I'll make that a part of the record and ask that the jury be brought in.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification and received into evidence.)

(WHEREUPON, the jury panel enters the courtroom at 3:12 p.m.)

THE COURT: Thank you. Madam Forelady, ladies and gentlemen of the jury, pay very close attention as I define the law with regard to first degree burglary.

The defendant is charged with first degree burglary. The State must first prove beyond a reasonable doubt that the defendant entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for purposes of burglary.

But a dwelling is a building even if the residents are temporarily absent from the building. In order to prove that the defendant entered the dwelling the State does not have to show that the defendant's entire body entered the dwelling. The smallest entry is sufficient.



1 It may be any part of the body such as a hand, a foot or  
2 an instrument such as a hook or other instrument.

3 In addition, the State does not have to prove that  
4 force was used to gain entry. If a person enters a  
5 building by using deception, artifice, trickery,  
6 misrepresentation to get consent to enter this is an entry  
7 without consent.

8 Next, the State must prove beyond a reasonable doubt  
9 that the defendant intended to commit a crime, either a  
10 felony or a misdemeanor, at the time of the entry. The  
11 mere entry into a dwelling without consent is not  
12 burglary. If the intent to commit a crime is formed after  
13 the entry it is not burglary.

14 On the other hand, if the defendant intended to  
15 commit a crime at the time of the entry it is burglary  
16 even if the intent was abandoned after the entry. It does  
17 not matter that the intended crime was not completed.  
18 Intent may be shown by acts and conduct of the defendant  
19 and other circumstances from which you may naturally and  
20 reasonably infer intent.

21 Finally, the State must prove beyond a reasonable  
22 doubt, one, when entering while in the dwelling or when  
23 fleeing the defendant or accomplice was armed with a  
24 deadly weapon or explosive. A deadly weapon is any  
25 article, instrument or substance which is likely to cause

1 death or great bodily harm. Whether an instrument has  
2 been used as a deadly weapon depends on the facts and  
3 circumstances of each case.

4 The following are examples of instruments which may  
5 be deadly weapon: A pistol, a shotgun, a rifle, a dirk, a  
6 dagger, a knife, a slingshot, metal knuckles, a razor,  
7 gasoline, fire bomb or Molotov cocktail.

8 You may return to the jury room.

9 (WHEREUPON, the jury panel was excused from the  
10 courtroom to continue deliberations at 3:16 p.m.)

11 THE COURT: Any objections from the State?

12 MR. REDMOND: None from the State, Your Honor.

13 THE COURT: Any from Defense?

14 MR. DUPREE: No, sir, Your Honor.

15 THE COURT: All right. Very good. We'll stand at  
16 ease.

17 (WHEREUPON, Court was in recess at 3:16 p.m. and  
18 reconvenes at 4:10 p.m.)

19 VERDICT OF THE JURY

20 THE COURT: Anything from the State before I bring  
21 the jury out?

22 MR. REDMOND: Nothing from the State.

23 THE COURT: Anything from Defense, Mr. Dupree?

24 MR. DUPREE: No, sir, Your Honor.

25 THE COURT: All right, sir. I understand that they

## Verdict of the Jury

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1 have reached a verdict. It is ten minutes after 4:00.

2 We're ready for the jury.

3 (WHEREUPON, the jury panel enters the courtroom at  
4 4:10 p.m.)

5 THE COURT: Everybody in the courtroom has exhibited  
6 perfect decorum, but these things can be emotional and can  
7 cause reactions. But there is no place for that in the  
8 courtroom. And if there is anybody who has any kind of  
9 outburst in any way, shape or form the deputy is going to  
10 take you into custody. That's my responsibility to  
11 maintain order in the Court and that what we're going to  
12 do.

13 Madam Forelady, have you reached a verdict?

14 JURY FOREPERSON: Yes, sir.

15 THE COURT: Is it indeed unanimous.

16 JURY FOREPERSON: Yes, sir.

17 THE COURT: I'm going to ask if you would to give the  
18 verdict form to the Clerk. All right. The verdict form  
19 appears to be in order. I'm going to ask the Clerk if she  
20 will publish it.

21 MR. JONES: Your Honor, there appears to be one  
22 missing.

23 MR. REDMOND: Oh, we've got one juror in the  
24 restroom, Your Honor.

25 THE COURT: Okay. I apologize. I'm sorry. Very

1 good. I'm going to ask that you to publish the verdict.

2 CLERK OF COURT: State of South Carolina, County of  
3 Marlboro, State of South Carolina v. Derrick Dwayne  
4 Dupree, defendant. Indictment Numbers 2014-GS-34-0159,  
5 2014-GS-34-0304, 2014-GS-34-0303, 2014-GS-34-0305.

6 Burglary first degree, we the jury find by unanimous  
7 consent that Defendant, Derrick Dwayne Dupree, is guilty.

8 Kidnapping, we the jury find by unanimous consent  
9 that Defendant, Derrick Dwayne Dupree, is guilty.

10 Criminal sexual conduct first degree, we the jury  
11 find by unanimous consent that Defendant, Derrick Dwayne  
12 Dupree, is guilty.

13 For possession of a weapon during the commission of  
14 or attempting to commit a violent crime, we the jury find  
15 by unanimous consent that Defendant, Derrick Dwayne  
16 Dupree, is guilty.

17 Foreperson, Jessica King McDuffie. October 15, 2014.

18 THE COURT: Any request for poling?pole.

19 MR. REDMOND: None from the State, Your Honor.

20 THE COURT: Mr. Dupree, any requests for poling?

21 MR. DUPREE: Say that again, sir.

22 THE COURT: There is procedure that you can request  
23 where the roll -- where the jury roll is called and each  
24 one will be required to respond and confirm this is indeed  
25 their verdict. Do you wish that or do you waive that?

## Verdict of the Jury

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1 MR. DUPREE: No, I wish that, but I would like to  
2 converse with my assistant in reference to that, sir.

3 THE COURT: Certainly you can.

4 MR. DUPREE: No, Your Honor. I wish not.

5 THE COURT: Okay. So you waive the polling?

6 MR. DUPREE: Yes, sir.

7 THE COURT: All right. I'm going to ask the  
8 Solicitor if they could bring forward the sentencing  
9 sheets.

10 MR. REDMOND: Yes, sir, Your Honor.

11 THE COURT: All right. Madam Forelady, ladies and  
12 gentlemen of the jury, you have discharged your duty and  
13 for that I'm grateful. Clearly, y'all have paid close  
14 attention and taking your responsibility very seriously.  
15 You will be paid handsomely for your services here today.  
16 The Clerk will reimburse you at least a small token of  
17 appreciate on behalf of the State of South Carolina.

18 You have earned a three year exemption for the next  
19 three years. If you're subpoenaed to participate in this  
20 courtroom over the next three years you can exercise an  
21 exemption and elect not to serve. It does not apply to  
22 municipal, magistrate and federal court, but in this  
23 courtroom you have earned a three year exemption.

24 And I always ask the jurors are there any questions.  
25 I'll be happy to answer them. Y'all have any questions?

1 All right. This is, indeed, a public forum, and I'm going  
2 to give y'all an opportunity to leave the courtroom if  
3 your would like. Of course, this is a public forum. And  
4 we're going to take a short break, and as part of my  
5 responsibility as the trier of law I'm going to be  
6 required to sentence him. That's my job.

7 And those of you who would like to witness that  
8 procedure, it's a public forum. You can, While we take a  
9 break, have a seat in the courtroom and witness that  
10 procedure. You don't have to. You have discharged your  
11 duty. And y'all are free to leave, and thank you so much  
12 for your services.

13 And we're going to take about a five minute recess  
14 and be back in here momentarily. Thank you very much.  
15 Everyone remain seated as the jury exits the courtroom.

16 (WHEREUPON, the jury panel was excused from the  
17 courtroom at 4:17 p.m.)

18 SENTENCE OF THE COURT

19 THE COURT: Your Honor, I have not handed up to the  
20 defendant to sign, but they are filled out completely, all  
21 four of them.

22 THE COURT: All right. You can allow him to sign  
23 those if he wishes to do so.

24 MR. REDMOND: He's signed them.

25 THE COURT: Very good.

1 MR. DUPREE: And he had asked me for a copy of  
2 Defense Eight, which I think is his copy of the sheet from  
3 the Department of Probation and Parole. He just asked at  
4 some point if he can get a copy of that. I did tell him I  
5 would make the Court aware of his request.

6 THE COURT: All right. We'll stand at ease for just  
7 one moment.

8 (WHEREUPON, Court was in recess at 4:22 p.m. and  
9 reconvenes at 4:35 p.m.)

10 THE COURT: Please be seated. I'll be happy to hear  
11 from the State with regard to sentencing.

12 MR. REDMOND: Thank you, Your Honor. If it please  
13 the Court I'm going to first yield to Ms. Johnson-Lee and,  
14 then, of course, I think we all are really keen on  
15 allowing Miss [REDACTED] and her family. I think it is most  
16 appropriate that the Court hear from her -- from them, and  
17 so the only thing that I would say and I'll yield to Miss  
18 Thomas, is I think this one of those situations that speak  
19 for itself.

20 And I think they are in a better position and would  
21 actually convey more eloquently than what I think we are  
22 all thinking, but since they are the victims and they as a  
23 family have lived through this, I think it's more  
24 appropriate that we yield to them and allow the Court to  
25 hear from them.

1 THE COURT: Very good. I'll be glad to hear from  
2 whoever would like to speak.

3 MS. JOHNSON LEE: Your Honor, this is the victim,  
4 LT [REDACTED]

5 THE COURT: Miss LT [REDACTED] I'll be glad to hear  
6 anything that you've got to say. Thank you for being  
7 here. I know it's a very difficult situation. I'm going  
8 to ask you to direct your comments directly to me and not  
9 to the defendant. I'm going to do the same with regard to  
10 him. I think it just works out better that way so just  
11 tell me what's on your mind.

12 MISS LT [REDACTED] Well, first I'd like to say I thank  
13 everyone that was involved in this from the Sheriff's  
14 Department on up to the Columbia and all. Did a wonderful  
15 job. I didn't know it took so much work to end a case,  
16 and to the defendant, as he calls himself, Mr. Dupree, he  
17 called me, 'Miss LT [REDACTED] and all this like he knew me. He  
18 didn't know me, and he acted like I invited him in to rape  
19 me. I didn't invite him in.

20 I invite people in my house all the time. Out of the  
21 kindness of my heart I don't expect them to do anything  
22 like that. And I think it was just deplorable that he was  
23 on a Sunday afternoon up to no good like that. And I just  
24 don't understand people that way, but I appreciate  
25 everything that everyone did from the Sheriff and up.



## Sentence of the Court

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1 THE COURT: Thank you.

2 MR. K. THOMAS: Your Honor.

3 THE COURT: You name, sir.

4 MR. K. THOMAS: Keith Thomas. I'm the son of the  
5 victim. I'm also the chief of police in Cheraw.

6 THE COURT: Take your time. I know these are very  
7 difficult circumstances. Take your time. We've got all  
8 day.

9 MR. K. THOMAS: I want to first thank Miss Mary  
10 Thomas and Kernard for the job they did. I've been  
11 knowing them my whole career. To everybody at the  
12 Sheriff's Office that worked around the clock to finally  
13 get this case resolved. You know our jobs are difficult,  
14 and sometimes we make mistakes. There was some mistakes  
15 made in this case. What I took away from this is if you  
16 continue to do your job the way it's supposed to be done  
17 that it reveals the truth.

18 And I respect that. The officers that were involved  
19 for continuing cause it could have been easily arrest this  
20 person and not seek the truth. And we would be here today  
21 accusing the wrong man, but I think after listening to his  
22 testimony and all the evidence in this case that justice  
23 has prevailed.

24 I made a statement to the defendant during the bond  
25 hearing that that the devil walked on my mother's door,

1     knocked and she let him in. And her life and my life and  
2     all of our lives have changed because we were brought up  
3     in a home to trust people for the value of being a man.  
4     He's changed that forever, but I want Mr. Dupree to know  
5     this. The devil knocked on our door, but he didn't win.

6             And, Mr. Dupree, justice is knocking on your door  
7     today and righteousness and you will pay the price for  
8     what you did to my mother. Thank you, Your Honor.

9             THE COURT: Anybody else would like to speak?

10            MR. C. THOMAS: Hello. My name is Charles Edward  
11     Thomas, Jr. That is my mother also, and like my brother  
12     said our lives have changed forever, and I hope you change  
13     the rest of his. I hope he never sees the outside of a  
14     jail again.

15            THE COURT: All right. Anything further,  
16     Mr. Redmond?

17            MS. JOHNSON LEE: One more, Your Honor.

18            THE COURT: Yes, ma'am, your full name.

19            MS. BOSWORTH: Debra Bosworth.

20            THE COURT: Yes, ma'am.

21            MS. BOSWORTH: I'm Miss LT daughter.

22            THE COURT: Yes, ma'am. Be glad to hear from you.

23            MS. BOSWORTH: And I just like to thank everyone that  
24     was involved in this case. And to the defendant that has  
25     stood up here and made a mockery of the Court system

1 today and Monday and Tuesday, dressed in his suit trying  
2 to pretend he was something that he wasn't. I'd just like  
3 to say that, you know, we all make decisions in our lives,  
4 and we have to pay for those decisions that we make. And  
5 you made a very bad decision the day that chose to come in  
6 uninvited and take the decency away from my mom who had  
7 never been with anyone else in her entire life except for  
8 my dad while my dad, who was an invalid, sat in the next  
9 room not knowing anything about it.

10 And he had to live with that and will have to live  
11 with that knowing that his wife was being raped and didn't  
12 even know it. You're despicable, and you deserve  
13 everything that you get and more.

14 MS. JOHNSON LEE: Your Honor, the family could not  
15 have said it any better themselves, and we couldn't have  
16 said anything better than they have. We obviously would  
17 request significant prison time for this defendant for  
18 this heinous act.

19 MR. REDMOND: And, Your Honor, if I could say one  
20 more thing. This is about the people of Wallace. At  
21 first I want to echo about law enforcement and the job  
22 that everybody did. It's one thing to make a mistake or  
23 if you can even construe it as a mistake. The key is to  
24 get the right person which diligently happened, but it  
25 also happened because of people in the community of

1 Wallace.

2 And I told Chief Thomas this, but in talking with  
3 people, and I think it's important the Court knows this  
4 because as you can see the defendant mentioned it, and I  
5 think it was first eluded to something along in his tape,  
6 but Chief said it better. It doesn't matter who you are  
7 up there. Up until this time you could knock on  
8 somebody's door and let you in. It didn't matter what  
9 your color was or your race, any of that.

10 And I can say that the people in Wallace that I've  
11 had the chance to talk, black and white, have expressed  
12 horror at this incident. That have expressed nothing but  
13 love for the family. It's amazing how many people, black  
14 and white, in that community know these folks and how much  
15 the people in that community hurt for Miss LT and her  
16 family. I think it's important that the Court is aware of  
17 that and that it is a part of the record.

18 My wife is actually from Wallace, so I had a chance  
19 to get to know a lot of people in that area. And so I  
20 just think on behalf of the people of Wallace that it's  
21 important to put that out there; that that community was  
22 unified by what this defendant did to Miss LT and  
23 fully behind the family.

24 And I think with that, Your Honor, that will be all  
25 the State would have to say in this regard.

1           THE COURT: Mr. Dupree, be glad to hear from you.  
2 I'm going to ask that you direct your comments directly to  
3 me.

4           MR. DUPREE: Your Honor, sir, I heard some, you know,  
5 statements, whatever, made from the victim and their  
6 family, and I'm not going to comment on those statements,  
7 but I will say that I will respect they statement and they  
8 wishes. However, I don't have much to say on anything,  
9 but, you know, I extend my apology to anybody here that's  
10 offended, however, the victim's family and whoever else.

11           But I'm not asking for them to have leniency on me or  
12 anything like that. I'm not stating that -- I'm not  
13 asking for that cause I will be lying. I'm not asking for  
14 that cause I am, but at the same time whatever they wishes  
15 are, Your Honor, I have to accept that. I'm a man, and I  
16 will accept that. Whatever the sentence is, sir, I'm  
17 going to accept that as well.

18           THE COURT: All right. Mr. Dupree, I've practiced  
19 law for a little in excess of 20 years. I've been on the  
20 bench for almost ten years, and I've seen a lot of cases  
21 and I've been involved in death penalty cases as a lawyer  
22 and as a judge.

23           And I've seen a lot of things, and throughout all of  
24 that I've always adopted the philosophy of people that  
25 appear in criminal court are good people who do bad

1 things. And I try to -- I believe in redemption. I  
2 believe people can do better. But your conduct reveals a  
3 fundamental flaw in your character.

4 And my job as a judge I think the most difficult  
5 thing I do as a judge is sentence people because when I  
6 sentence someone it's not just a number. Somebody has to  
7 end up serving that sentence. And they're not just  
8 numbers. They're years. I understand that, and I realize  
9 that and it's a huge responsibility. And in doing that  
10 typically what I'm called upon to do is to try to  
11 distinguish the wayward from the wicked, and believe that  
12 you fall squarely within the latter. I think that you are  
13 a wicked person. Anybody who would do something like that  
14 is fundamentally flawed.

15 The role of the law is to protect those in the  
16 shadows of society. The feeble, the children, the  
17 elderly.

18 And for that your sentence, Mr. Dupree, on Indictment  
19 2014-GS-34 0159, burglary first degree, the sentence of  
20 the Court is that you be committed to the State Department  
21 of Corrections for a period of 30 years. The sentence is  
22 to run concurrent with other sentences, but consecutive  
23 with the possession of a weapon during the commission of a  
24 violent crime.

25 With regard Indictment 2014-GS-34-0303, criminal

## Sentence of the Court

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1 sexual conduct first degree, the sentence of the Court is  
2 you be committed to the State Department of Corrections  
3 for a period of 30 years. Sentence is to run concurrent  
4 with other sentences today, however, consecutive with  
5 possession of a weapon during the commission of a violent  
6 crime.

7 With regard to Indictment 2011-GS-34-0304,  
8 kidnapping, the sentence of the Court is that you be  
9 committed to the State Department of Corrections for a  
10 period of 30 years. Sentence is to run concurrent with  
11 other sentences, but consecutive with the possession of a  
12 weapon during the commission of a violent crime.

13 We regard the Indictment 2014-GS-34-0305, possession  
14 of weapon during the commission of a violent crime, the  
15 sentence of the Court is that you be committed to the  
16 State Department of Corrections for a period of five  
17 years. This sentence is to run consecutive to all other  
18 sentences.

19 And how much time is he entitled to credit for,  
20 Mr. Redmond?

21 MR. REDMOND: He was incarcerated since the 11th of  
22 September 2013.

23 THE COURT: How many days is that?

24 MR. REDMOND: I have not calculated the number of  
25 days. I apologize, Your Honor.

1           THE COURT: I'm going to be ask the Clerk or my law  
2 clerk to do that so we can put it on the sentencing sheet.  
3 How much?

4           MR. REDMOND: Yes, sir. 397, Your Honor.

5           THE COURT: Good luck to you, Mr. Dupree. Thank you.  
6 Y'all, we'll stand adjourned.

7           MR. DUPREE: Your Honor, may I say something, sir?

8           THE COURT: You may.

9           MR. DUPREE: I was asking about the appeal on record.  
10 If I can put in for an appeal at the time I file my  
11 appeal.

12          THE COURT: Okay. Well, you have elected to  
13 represent yourself, and of course, I've appointed Mr.  
14 Jones to assist you in that regard, and those questions  
15 are best be posed to him. Good luck to you.

16          MR. REDMOND: Your Honor, I didn't know what the  
17 Warden and his intentions were as it relates to the  
18 defendant being transported to S.C.D.C. He did have a  
19 prior escape attempt that, of course, we didn't get into  
20 during the trial, from the mail here in Bennettsville.

21          So I guess the question that was asked to me, and  
22 I'll just pose it to the Court as it relates to him  
23 being -- and I see the Warden there. He may be able to  
24 address that issue as it relates to him being transported  
25 directly to S.C.D.C.



## Sentence of the Court

647

1 MR. HOOD: They told us they would not accept him  
2 after four o'clock.

3 THE COURT: Okay. Well, he's in good -- they're in  
4 good hands. They will make sure that he makes it to  
5 Columbia.

6 MR. REDMOND: Thank you, Your Honor.

7 MS. JOHNSON LEE: Thank you, Your Honor.

8 THE COURT: We will stand adjourned.

9 END OF TRANSCRIPT OF RECORD

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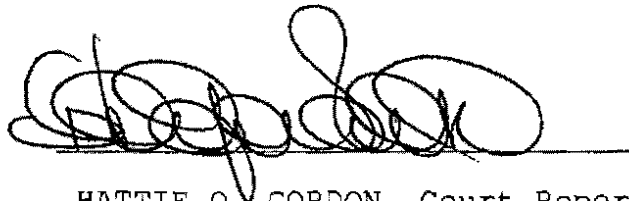
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA       )  
                                          )  
COUNTY OF CHESTERFIELD       )

I, HATTIE O. GORDON, Official Court Reporter for the  
4th Judicial Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate and  
complete Transcript of Record of the proceedings had and  
evidence introduced in the trial of the captioned case,  
relative to appeal, in the Court of General Sessions for  
Chesterfield County, South Carolina, on the 15th day of  
October, 2014.

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

March 18, 2015

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

## WITNESSES

Susan Alderman

Marlboro County Sheriff

Law Enforcement Case #: 2013-004852

583

## WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER  
2013A3410100408

ARRESTED ON: 2013-09-12

## ACTION OF GRAND JURY

Grand Jury Foreperson

Date

## VERDICT

Petit Jury Foreperson

Date

Amended

DOCKET NUMBER:

2014-GS-34-0304

The State of South Carolina

County of Marlboro

## COURT OF GENERAL SESSIONS

Term:  
April 2014

THE STATE

vs.

Derrick Dewayne Dupree

## INDICTMENT FOR

Kidnapping / Kidnapping

§16-03-0910

CDR Code: 0095

A CERTIFIED  
TRUE COPY

William B. Zunderbush  
CLERK OF COURT  
MARLBORO COUNTY

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF MARLBORO         )

INDICTMENT FOR  
  
Kidnapping / Kidnapping

§16-03-0910

At a Court of General Sessions, convened on April 29, 2014, the Grand Jurors of Marlboro County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Derrick Dewayne Dupree did in Marlboro County on or about September 8, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one **LT** 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.

  
WILLIAM B. ROGERS, JR.  
SOLICITOR

## WITNESSES

Susan Alderman

Marlboro County Sheriff

Law Enforcement Case #: 2013-004852

583

**WAIVER OF PRESENTMENT**

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

Defendant

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

Defendant

**ARREST WARRANT NUMBER**  
2013A3410100408

ARRESTED ON: 2013-09-12

**ACTION OF GRAND JURY**

True Bill

Kelly Gashins

Grand Jury Foreperson

Date

04/29/14

**VERDICT**

Petit Jury Foreperson

Date

**DOCKET NUMBER:**

2014-GS-34-0304

**The State of South Carolina**

County of Marlboro

**COURT OF GENERAL SESSIONS**

Term:

April 2014

**THE STATE**

vs.

**Derrick Dewayne Dupree****INDICTMENT FOR**

Kidnapping / Kidnapping

§16-03-0910

CDR Code: 0095

A CERTIFIED  
TRUE COPY

William B. Sunderbuck  
CLERK OF COURT  
MARLBORO COUNTY

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF MARLBORO         )

INDICTMENT FOR  
  
Kidnapping / Kidnapping

§16-03-0910

At a Court of General Sessions, convened on April 29, 2014, the Grand Jurors of Marlboro County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Derrick Dewayne Dupree did in Marlboro County on or about September 8, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one , 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.

  
WILLIAM B. ROGERS, JR.  
SOLICITOR



## WITNESSES

Susan Alderman

Marlboro County Sheriff

Law Enforcement Case #: 2013-004852



583

## WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

**ARREST WARRANT NUMBER**  
2013A3410100409

ARRESTED ON: 2013-09-12

## ACTION OF GRAND JURY

Tree Bill

Kelly Dashing

Grand Jury Foreperson

Date

6/4/29/14

## VERDICT

MARLBORO COUNTY, S.C.  
CLERK OF COURT  
WILLIAM B. FUNDENBURK

Petit Jury Foreperson

Date

**DOCKET NUMBER:**  
2014-GS-34-0305

The State of South Carolina

County of Marlboro

## COURT OF GENERAL SESSIONS

**Term:**  
2014 April

THE STATE

vs.

Derrick Dewayne Dupree

## INDICTMENT FOR

Weapons / Poss. weapon during violent crime, if  
not also sentenced to life without parole or  
death

§16-23-0490

CDR Code: 0549

A CERTIFIED  
TRUE COPY

William B. Fundenburg

CLERK OF COURT  
MARLBORO COUNTY

2014 APR 29 PM 1:03

FILED

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA        )  
                                              )  
COUNTY OF MARLBORO        ) Weapons / Poss. weapon during violent crime, if not  
                                              also sentenced to life without parole or death

§16-23-0490

At a Court of General Sessions, convened on 2014 29, April, the **Grand Jurors** of Marlboro County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION  
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Derrick Dewayne Dupree did in Marlboro County, on or about September 8, 2013, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, 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.

  
WILLIAM B. ROGERS, JR.  
SOLICITOR



## WITNESSES

Susan Alderman

Marlboro County Sheriff

Law Enforcement Case #: 2013 004852

583

## WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER  
2013A3410100407

ARRESTED ON: 2013-09-12

## ACTION OF GRAND JURY

Truer Bill  
Kelly Jastine  
Grand Jury Foreperson  
04/29/14  
Date

## VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2014-GS-34-0303

The State of South Carolina

County of Marlboro

## COURT OF GENERAL SESSIONS

Term:  
April 2014

THE STATE

vs.

Derrick Dewayne Dupree

## INDICTMENT FOR

Sex / Criminal sexual conduct - First degree

§16-03-0652

CDR Code: 0160

William B. Rogers, Jr., Solicitor

WILLIAM B. FUNDERSBURK  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

2014 APR 29 PM 1 03

FILED

STATE OF SOUTH CAROLINA )

INDICTMENT FOR

COUNTY OF MARLBORO )

Sex / Criminal sexual conduct - First degree

§16-03-0652

At a Court of General Sessions, convened on April 29, 2014, the Grand Jurors of Marlboro County present upon their oath:

CRIMINAL SEXUAL CONDUCT, FIRST DEGREE

CDR: 0160 16-03-0652

That Derrick Dewayne Dupree did in Marlboro on or about September 8, 2013, engage in sexual battery with , using aggravated force, in violation of Section 16-03-0652, S. C. Code of Laws, 1976, as amended.

A CERTIFIED  
TRUE COPY

*William B. Zunderburg*  
CLERK OF COURT  
MARLBORO COUNTY

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

*William B. Rogers, Jr.*  
WILLIAM B. ROGERS, JR.  
SOLICITOR

## WITNESSES

Susan Alderman

Marlboro County Sheriff

Law Enforcement Case #: 2013-004852



583

## WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER  
2013A3410100406

ARRESTED ON: 2013-09-12

## ACTION OF GRAND JURY

True Bill

Kelly Dushin

Grand Jury Foreperson

Date

04/29/14

## VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2014-GS-34-0159

The State of South Carolina

County of Marlboro

## COURT OF GENERAL SESSIONS

Term:  
April 2014

THE STATE

vs.

Derrick Dewayne Dupree

## INDICTMENT FOR

Burglary / Burglary (After June 20, 1985) -  
First degree

§16-11-0311

CDR Code: 0079

A CERTIFIED  
TRUE COPY

William B. Zunderbush

CLERK OF COURT  
MARLBORO COUNTY

William B. Rogers, Jr., Solicitor

MARLBORO COUNTY, S.C.  
CLERK OF COURT  
WILLIAM B. ZUNDERBUSH

2014 APR 29 PM 1:03

FILED

STATE OF SOUTH CAROLINA )

INDICTMENT FOR

COUNTY OF MARLBORO )

Burglary / Burglary (After June 20, 1985) - First  
degree

§16-11-0311

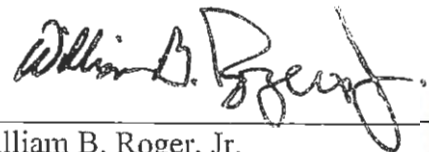
At a Court of General Sessions, convened on April 29, 2014, the Grand Jurors of Marlboro County present upon their oath:

BURGLARY, 1<sup>ST</sup> DEGREE

CDR: 0079 16-11-0311

That Derrick Dewayne Dupree did in Marlboro County on or about September 8, 2013 enter the dwelling of LT [REDACTED] located at [REDACTED], Wallace, SC without consent and with the intent to commit a crime therein and the defendant did so while armed with a deadly weapon (Knife) and causing physical injury to the victim, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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



William B. Roger, Jr.  
Solicitor



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

VS  
Derrick P. DupreeAKA  
Race Black Sex Male Age  
DOB [REDACTED] SS# [REDACTED]  
Address [REDACTED] Plum Lane  
City, State, Zip [REDACTED] Marlboro, SC 29512DL# [REDACTED] SID# [REDACTED]  
\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

INDICTMENT/CASE# 2014-GS-34-0159

AW#: 2013A3410100406

Date of Offense: 9/8/2013

S.C. Code § 16-11-311

CDR Code #: 0079

## SENTENCE SHEET

TO Burglary First Degree ☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1<sup>st</sup> or Lewd Act)The charge is ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (Def.'s initials)  
The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST  
Solicitor SC Bar # 066583 Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,  
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years  
and/or to pay a fine of \$ , provided that upon the service of days/months/years and or payment  
of \$ , plus costs and assessments as applicable\*, the balance is suspended with probation for  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are  
incorporated by reference☒ CONCURRENT or ☐ CONSECUTIVE to sentence on Consecutives with possession of weapon  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections 397 days  
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135  
Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ 400.00 plus 20% fee \$

Payment Terms

☐ Set by SCPPS

Recipient

\*Fine

\$14-1-206 (Assessments 10% fee)

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

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

\$56-5-2995 (DUI Assessment) \$12

\$56-1-286 (DUI Breath Test) \$25

Proviso 47-9 (Public Def/Prob) \$500

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

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

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

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

Proviso 90-5 (SCCJA Surcharge) \$5

\$44-53-450(C) (Conditional Discharge) \$350

3% to County (if paid in installments)

TOTAL \$

Clerk of Court/Deputy Clerk Anna M. Williams

Court Reporter Hattie Gordon

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing

Fine may be pd in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2140

Sentence Date 10-15-14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

VS  
Derrick D. Dupree

AKA

Race Black Sex Male Age

DOB [REDACTED] SS# [REDACTED]

Address Plum LaneCity, State, Zip Wallace, SC 29512

DL# SID#

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

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

INDICTMENT/CASE# 2014-GS-34-0303AW# 2013A3410100407Date of Offense: 9/8/2013S.C. Code § 16-03-0652CDR Code # 0160

## SENTENCE SHEET

TO Sex Criminal Sexual Conduct - First Degree ☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)The charge is ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (def.'s initials)  
The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST [Signature] 066583 [Signature]  
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #WILFREDFORF, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,  
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are  
incorporated by reference☒ CONCURRENT or ☐ CONSECUTIVE to sentence on Consecutive w/ possession of weapon due to commission of violent crime.  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections 397 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Def. Waives Hearing ☐ Ordered

Total \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_

Payment Terms \_\_\_\_\_

☐ Settlement \_\_\_\_\_

Recipient \_\_\_\_\_

\*Fine \$ \_\_\_\_\_

\$14-1-206 (Assessments 107%) \$ \_\_\_\_\_

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

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

\$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

\$56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47-9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

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

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

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

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

Proviso 90-5 (SCJA Surcharge) \$5 \$ \_\_\_\_\_

\$44-53-450(C) (Conditional Discharge) \$350 \$ \_\_\_\_\_

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

TOTAL \$ \_\_\_\_\_

Clerk of Court/Deputy Clerk Quita M. WilliamsCourt Reporter Hallie Gordon

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. ☐

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Conditional Discharge, §44-53-450(C) requires  
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,  
\$47.12 requires \$500 be paid to Clerk  
during probation.Presiding Judge [Signature]Judge Code: 2140Sentence Date 10-15-14



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

INDICTMENT/CASE# 2014-GS-34 0304

AW#: 2013A3410100408

Date of Offense: 9/18/2013

S.C. Code § 16-03-0910

CDR Code # 0095

## SENTENCE SHEET

VS  
Derrick D. Dupree

AKA

Race Black Sex Male Age

DOB [REDACTED] SS# [REDACTED]

Address [REDACTED] Plum Lane

City, State, Zip Wallace, SC 29512

DL# [REDACTED] SID# [REDACTED]

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

In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1<sup>st</sup> or Lewd Act)The charge is ☒ As indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury (def's initials)The plea is ☐ Without Negotiations or Recommendation.☐ Negotiated Sentence.☐ Recommendation by the StateATTORNEY *[Signature]* 066583 *[Signature]*

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ , provided that upon the service of days/months/years and or payment  
of \$ , plus costs and assessments as applicable\*, the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are  
incorporated by reference☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State.

Department of Corrections 397 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

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

PTUP

Total \$ [REDACTED] plus 20% fee \$ [REDACTED]

days/hours Public Service Employment

Payment Terms

Obtain GED ☐☐ Set by ST/PPPS

Attend Voc. Rehab. or Job Corp.

Recipient

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ [REDACTED] Beginning

\$ [REDACTED] Paid to Public Defender Fund

Other:

☐ Conditional Discharge, §44-53 450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code: 3148

Sentence Date 10-15-14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Marlboro

STATE

VS

Derrick D. Dupree

AKA

Race Black Sex Male Age

DOB [REDACTED] SS# [REDACTED]

Address Plum StreetCity, State, Zip Wallace, SC 29512

DL# [REDACTED] SID# [REDACTED]

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

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

TO Pass. Of weapon during a violent crime, if not also sentenced to life without parole or deathIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1<sup>st</sup> or Lewd Act)The charge is ☒ As indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury

(def's initials)

The plea is ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

ATTEST

[Signature] 066583 [Signature]

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

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

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on 10-15-14☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the StateDepartment of Corrections 397 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

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

## SPECIAL CONDITIONS:

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

PTUP \_\_\_\_\_

Total \$ \_\_\_\_\_ plus 20% fee. \$ \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms \_\_\_\_\_

Obtain GED ☐☐ Set by \_\_\_\_\_

Attend Voc./Kenau or Geo Corp \_\_\_\_\_

Recipient \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing ☐

Fine may be paid in equal consecutive weekly/monthly

pmts. of \$ William B. Zundwurm\$ \_\_\_\_\_ 1<sup>st</sup> paid to Public Defender FundOther: MARLBORO COUNTY☐ Conditional Discharge, §44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]Judge Code: 2140Sentence Date 10-15-14

|                                                      |         |
|------------------------------------------------------|---------|
| *Fine                                                | \$      |
| §14-1-206 (Assessments 107.5%)                       | \$      |
| §14-1-211 (A)(1)(Conv. Surcharge)                    | \$100   |
| §14-1-211 (A)(2)(DUI Surcharge)                      | \$100   |
| §56-5-2995 (DUI Assessment)                          | \$12    |
| §56-1-286 (DUI Breath Test)                          | \$25    |
| Proviso 47-9 (Public Def/Prob)                       | \$500   |
| §14-1-212 (Law Enforce. Funding)                     | \$25    |
| §14-1-213 (Drug Court Surcharge)                     | \$150   |
| §50-21-114 (BUI Breath Test Fee)                     | \$50    |
| §56-5-2942(J) (Vehicle Assessment)                   | \$40/ea |
| Proviso 90-5 (SCJA Surcharge)                        | \$5     |
| §44-53-450(C) (Conditional Discharge)                | \$350   |
| 3% to County (if paid in installments)               | \$      |
| TOTAL                                                | \$      |
| Clerk of Court/Deputy Clerk <u>Quida M. Williams</u> |         |
| Court Reporter <u>Katie Gordon</u>                   |         |



## FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF Lee )Derrick Durree #272316 )  
Full name and prison number (if any) of Applicant. )

2017-CP-34-00222

v. )

APPLICATION FOR

State of South Carolina )

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 clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Correction Institution
2. Name and location of Court which imposed sentence Marlboro County
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014-GS-34-00159, 14-GS-34-303;
  - (b) 14-GS-34-304
  - (c) 14-GS-34-305
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_

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ANGELA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

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

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ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

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(a) Violation Of Constitutional Rights

(b) Judge sentence violates Right to Jury

(c) Request For DNA Testing

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

(a) The evidence Presented at trial violated my Constitutional

(b) The Jury was required to impose sentence and not Judge

(c) Request For new DNA testing

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. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

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ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

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iv. \_\_\_\_\_  
 (d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_ N/A

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_ N/A

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_ N/A

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_ N/A

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) \_\_\_\_\_

(b) \_\_\_\_\_ N/A

(c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

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 MARLBORO COUNTY, S.C.

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- (a) your arraignment and plea? No
- (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? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Pro Se
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Pro Se
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:
- New trial
20. Are you now under sentence from any other court that you have not challenged?
- No

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2017 AUG 3 PM 4 13

ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

Revised 3/2003

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, DERRICK DUPREE, 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.

Dupree Derrick

SWORN to and subscribed before me this 21  
day of July, 2017.

Debra Eastman (L.S.)  
Notary Public

My Commission Expires: 3/3/2020

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2017 AUG 3 PM 4 13

ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.  
Revised 3/2003

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

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

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

Dupree, Derrick  
Applicant

SWORN or affirmed to and subscribed before me this

21 day of July, 2017.

Debra Eastwood  
Notary Public

My Commission Expires: 3/3/2026

**FILED**  
2017 AUG 3 PM 4 13  
ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS        |
|                          | ) | FOR THE FIFTEENTH JUDICIAL CIRCUIT  |
| COUNTY OF MARLBORO       | ) |                                     |
| Derrick D. Dupree,       | ) | Case No.: 2017-CP-34-00222          |
| S.C.D.C. No. 272316,     | ) |                                     |
|                          | ) |                                     |
| Applicant,               | ) |                                     |
|                          | ) | <b>RETURN AND MOTION TO DISMISS</b> |
| v.                       | ) |                                     |
|                          | ) |                                     |
| State of South Carolina, | ) |                                     |
|                          | ) |                                     |
| Respondent.              | ) |                                     |
|                          | ) |                                     |

In response to the application for post-conviction relief filed by Derrick D. Dupree (Applicant) on August 3, 2017, Respondent would show this Court:

**I.**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted at the April 2014 term of the Marlboro County Grand Jury for burglary, first degree (2014-GS-34-00159), criminal sexual conduct, first degree (2014-GS-34-00303), kidnapping (2014-GS-34-00304), and possession of a weapon during the commission of a violent crime (2014-GS-34-00305).

On September 8, 2013, the seventy-six-year-old Victim was watching television in the den with her eighty-one-year-old husband when the doorbell rang. Tr. 132, 136. When she answered the door, a man asked her if the house was for sale and whether he could come in and look around. Tr. 147, ll. 3-16. She let the man in and showed him around, and before he left she asked him for his contact information in case they decided to sell the house. Tr. 147-48. The man grabbed her around the neck from behind, pushed her over on the couch, and raped her. Tr. 148, ll. 22-25. During the attack, Victim was able to push her alert button, which answered in



the den. Tr. 149-50. Victim was not sure whether the attacker heard the alert call being answered from the den, but he left and she answered the emergency call and told them what happened. Tr. 150, ll. 2-9. Police first arrested Kadeem Hooks for the crime but later released him. Tr. 265, 318. After receiving information from SLED that Applicant's fingerprint was on the note Victim gave to the man to write down his contact information, the Marlboro County Sheriff's Office arrested Applicant and charged him with first-degree criminal sexual conduct, first-degree burglary, kidnapping, and possession of a weapon during the commission of a violent crime. Tr. 266-270.

J. Richard Jones, Esq. represented Applicant at the start of trial. Kernard E. Redmond and Mary Thomas Johnson-Lee, both of the Fourth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial on October 13, 2014, before the Honorable Michael J. Nettles and a jury. At the outset of trial, Applicant expressed dissatisfaction to the court with Jones' representation and "very lack interest in this case[.]" Tr. 34-35. Jones informed the Court that he was Applicant's fourth attorney and that Applicant had not been cooperative in the preparation of his defense:

[Applicant] has not cooperated when I have requested information, just conversation, concerning the case. Very uncooperative. At some point in time I made the decision that I had to prepare for the case with or without his assistance. I did not need – I would very much have liked to have had his cooperation. As far as preparation in the case I have prepared very hard for this case very diligently.

I have reviewed all the evidence. Mr. Dupree is totally convinced that the State is hiding evidence from him. I have reviewed all the evidence with the Solicitor's Office and the Sheriff's Office. I do not share the same concerns that he has concerning the fact that the law enforcement in Marlboro County has not turned over all the evidence.

I have worked closely with Mr. Redmond and Ms. Johnson-Lee. I'm prepared, Your Honor. I have been prepared. I told him on numerous occasions that I'm preparing whether or not he's helping me.

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Tr. 35-37. Applicant affirmed he wished to represent himself and, after a colloquy in which the Court apprised Applicant of the severity of the mistake he was making in proceeding without counsel, the Court granted Applicant's request and relieved Jones of his representation, but instructed him to remain in the courtroom. Tr. 37-43. Applicant again confirmed his desire to proceed *pro se* after the Court launched a second colloquy after the disposition of a number of pre-trial motions. Tr. 121-22. Applicant conducted his own examination of each witness presented<sup>1</sup> and delivered his own opening and closing statements. The jury found Applicant guilty as indicted on October 15, 2014. Judge Nettles sentenced Applicant to imprisonment for concurrent terms of 30 years for the burglary, the CSC, and the kidnapping, and an additional consecutive term of 5 years for the weapon charge.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Susan B. Hackett, Esq. Applicant raised the following issue to the appellate court:

Did the trial judge err in permitting [Applicant] to proceed *pro se* where the judge failed to ensure [Applicant] understood the dangers and disadvantages of self-representation and the record does not disclose that [Applicant] had sufficient background to intelligently waive his right to counsel or was apprised of his rights by some other source?

By unpublished opinion decided October 26, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Dupree, Op. No. 2016-UP-442 (S.C. Ct. App. filed Oct. 26, 2016). The Remittitur was issued on November 14, 2016.

## II.

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

1. "Violation of Constitutional Rights"
  - a. "The evidence Presented at trial violated my Constitutional"

<sup>1</sup> Notwithstanding those witnesses for whom he had no questions.

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S.C.

2. "Judge sentence violates Right to Jury"
  - a. "The Jury was required to impose sentence and not Judge"
3. "Request for DNA Testing"
  - a. "Request for new DNA testing"

Attached to and incorporated herein are the records of the Marlboro County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

### III.

The application should be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. First, Applicant alleges the evidence introduced at trial somehow violated his constitutional rights. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Any issues with the admissibility of the evidence could have been raised at trial and thereafter on appeal.

Second, Applicant alleges error insofar as the trial judge imposed a sentence after the jury returned a verdict of guilty, rather than the jury. Sentencing, within statutory limits, is a matter within the discretion of the trial judge. Brooks v. State, 325 S.C. 269, 271-72, 481 S.E.2d 712, 713 (1997). Furthermore, any error in sentencing would be an instance of trial court error not cognizable in a post-conviction relief action, as explained above.

2017 NOV 1  
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 MARLBORO COUNTY  
 S.C.

Third, Applicant demands new post-conviction DNA testing. The proper avenue for requesting post-conviction DNA testing is through the Access to Justice Post-Conviction DNA Testing Act. S.C. Code Ann. §§ 17-28-10 to -120. The plain demand for late DNA testing, absent some other associated claim for relief, does not constitute an allegation cognizable under the Uniform Post-Conviction Procedure Act.

For all of these reasons, none of the allegations set forth in the application constitute claims cognizable under the PCR act and, accordingly, the application should be summarily dismissed.

#### IV.

Respondent denies each allegation not expressly admitted, qualified, or explained.

#### V.

WHEREFORE, Respondent moves to summarily dismiss the application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

Respectfully submitted,

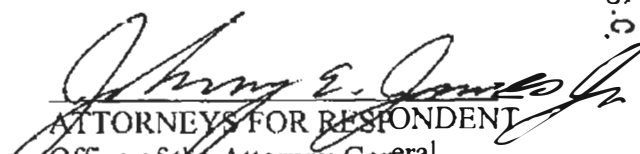
ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.  
Assistant Attorney General

By:

  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

31 Oct., 2017

407 NOV 1 AM 10 19  
MARLBOROUGH, S.C.

|                          |   |                                 |
|--------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS    |
|                          | ) | FOURTH JUDICIAL CIRCUIT         |
| COUNTY OF MARLBORO       | ) | C/A NO: 2017-CP-34-222          |
|                          | ) |                                 |
| Derrick Dupree, #272316, | ) |                                 |
|                          | ) |                                 |
| Applicant,               | ) |                                 |
|                          | ) | <b>FIRST AMENDMENT TO PRIOR</b> |
| v.                       | ) | <b>APPLICATION FOR PCR</b>      |
|                          | ) |                                 |
| State of South Carolina, | ) |                                 |
|                          | ) |                                 |
| Respondent.              | ) |                                 |

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
  - (i) Prior to trial, counsel(s) failed to make a request for change of venue.
  - (ii) At any time prior to trial, counsel(s) failed to request that Applicant undergo a mental health evaluation and/or make an independent investigation into Applicant's mental health history.
  - (iii) Applicant, in clarification of his previous allegation that his constitutional rights were violated, alleges the State withheld evidence from him until commencement of the actual trial.

  
 Lance S. Boozer  
 Attorney for Applicant  
 THE BOOZER LAW FIRM, LLC  
 1400 Laurel Street, Suite 4A  
 Columbia, SC 29201  
 Phone: (803) 608-5543  
 Fax: (803) 926-3463

Columbia, South Carolina  
 November 8, 2017

2017 NOV 13 AM 11 43  
 ANITA M. WILLIAMS  
 CLERK OF COURT  
 MARLBORO COUNTY, S.C.

FILED

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS       |
|                          | ) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF MARLBORO       | ) |                                    |
| Derrick D. Dupree,       | ) | Case No.: 2017-CP-34-00222         |
| S.C.D.C. No. 272316,     | ) |                                    |
|                          | ) |                                    |
| Applicant,               | ) |                                    |
|                          | ) | <b>AMENDED RETURN</b>              |
| v.                       | ) |                                    |
|                          | ) |                                    |
| State of South Carolina, | ) |                                    |
|                          | ) |                                    |
| Respondent.              | ) |                                    |
|                          | ) |                                    |

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 CLERK OF COURT  
 JAMES WILLIAMS

the den. Tr. 149-50. Victim was not sure whether the attacker heard the alert call being answered from the den, but he left and she answered the emergency call and told them what happened. Tr. 150, ll. 2-9. Police first arrested Kadeem Hooks for the crime but later released him. Tr. 265, 318. After receiving information from SLED that Applicant's fingerprint was on the note Victim gave to the man to write down his contact information, the Marlboro County Sheriff's Office arrested Applicant and charged him with first-degree criminal sexual conduct, first-degree burglary, kidnapping, and possession of a weapon during the commission of a violent crime. Tr. 266-270.

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I have reviewed all the evidence. Mr. Dupree is totally convinced that the State is hiding evidence from him. I have reviewed all the evidence with the Solicitor's Office and the Sheriff's Office. I do not share the same concerns that he has concerning the fact that the law enforcement in Marlboro County has not turned over all the evidence.

I have worked closely with Mr. Redmond and Ms. Johnson-Lee. I'm prepared, Your Honor. I have been prepared. I told him on numerous occasions that I'm preparing whether or not he's helping me.

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MARLBORO COUNTY, S.C.

Tr. 35-37. Applicant affirmed he wished to represent himself and, after a colloquy in which the Court apprised Applicant of the severity of the mistake he was making in proceeding without counsel, the Court granted Applicant's request and relieved Jones of his representation, but instructed him to remain in the courtroom. Tr. 37-43. Applicant again confirmed his desire to proceed *pro se* after the Court launched a second colloquy after the disposition of a number of pre-trial motions. Tr. 121-22. Applicant conducted his own examination of each witness presented<sup>1</sup> and delivered his own opening and closing statements. The jury found Applicant guilty as indicted on October 15, 2014. Judge Nettles sentenced Applicant to imprisonment for concurrent terms of 30 years for the burglary, the CSC, and the kidnapping, and an additional consecutive term of 5 years for the weapon charge.

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## II.

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1. "Violation of Constitutional Rights"
  - a. "The evidence Presented at trial violated my Constitutional"

<sup>1</sup> Notwithstanding those witnesses for whom he had no questions.

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 ANTHONY WILLIAMS  
 CLERK OF COURT  
 HARTLEIGH COUNTY, S.C.



2. "Judge sentence violates Right to Jury"
  - a. "The Jury was required to impose sentence and not Judge"
3. "Request for DNA Testing"
  - a. "Request for new DNA testing"

Applicant thereafter amended his application, by and through counsel, on November 13, 2017, alleging the following additional grounds for relief:

1. Ineffective assistance of counsel, in that:
  - a. "Prior to trial, counsel(s) failed to make a request for change of venue."
  - b. "At any time prior to trial, counsel(s) failed to request that Applicant undergo a mental health evaluation and/or make an independent investigation into Applicant's mental health history."
2. Prosecutorial misconduct, in that:
  - a. "Applicant, in clarification of his previous allegation that his constitutional rights were violated, alleges the State withheld evidence from him until commencement of the actual trial."

Previously attached and incorporated herein by reference are the records of the Marlboro County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

### III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Applicant alleges that the State failed to disclose evidence in its possession in violation of Brady v. Maryland, 373 U.S. 83 (1963). "Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). "A Brady claim is based upon the requirement

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of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Applicant's allegation of a Brady violation is without merit. However, the allegation probably raises questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### v.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

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Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

# VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

# VII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and prosecutorial misconduct.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.  
Assistant Attorney General

By:

*Johnny E. James Jr.*  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

*14 Dec.*, 2017

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SOUTH CAROLINA  
COUNTY, S.C.

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|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF MARLBORO      | ) |                              |
|                         | ) | 2017-CP-34-222               |
| DERRICK DUPREE,         | ) |                              |
| SCDC # 272316,          | ) |                              |
| Applicant,              | ) |                              |
|                         | ) | AMENDED APPLICATION FOR      |
| v.                      | ) | POST-CONVICTION RELIEF       |
|                         | ) |                              |
| STATE OF SOUTH CAROLINA | ) |                              |
| Respondent.             | ) |                              |

---

1. Place of Detention: Broad River Correctional Institution.
2. Name and location of Court which imposed sentence: Marlboro County Court of General Sessions, Marlboro County Courthouse.
3. Name(s) of co-defendant(s): n/a.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
  - a. 2014-GS-34-159 – Burglary 1<sup>st</sup> Degree
  - b. 2014-GS-34-303 – Criminal Sexual Conduct 1<sup>st</sup> Degree
  - c. 2014-GS-34-304 - Kidnapping
  - d. 2014-GS-34-305 – Poss. Firearm during a Violent Crime
5. The date upon which sentence was imposed and the terms of the sentence:
  - a. October 14, 2014
    - i. 2014-GS-34-159 – Burglary 1<sup>st</sup> Degree – 30 years
    - ii. 2014-GS-34-303 – Criminal Sexual Conduct 1<sup>st</sup> Degree – 30 years concurrent
    - iii. 2014-GS-34-304 - Kidnapping – 30 years concurrent
    - iv. 2014-GS-34-305 – Poss. Firearm during a Violent Crime – 5 years consecutive to other sentences
6. A finding of guilty was made by a jury after a plea of not guilty.
7. Did you appeal the judgment of conviction or the imposition of sentence? Yes.
8. If you answered “yes” to (6), list
  - a. The name of each Court to which you appealed:

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MARLBORO COUNTY, S.C.

- i. South Carolina Court of Appeals
  - b. The result in each such Court to which you appealed:
    - i. Affirmed
  - c. The date of each such result:
    - i. October 26, 2016
  - d. If known, the citations of any written opinion or orders entered pursuant to such results:
    - i. 2016-UP-442
9. If you answered "no" to (7), state your reasons for not so appealing: N/A.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- a. Prior to trial, counsel failed to request that the Fourth Circuit Solicitor's Office be prohibited from prosecuting this case due to a conflict of interest and that the matter be sent to a different prosecution agency;
  - b. At any time prior to trial, counsel(s) failed to request that Applicant undergo a evaluation investigating the Applicant's mental health history and intellectual ability;
  - c. The Trial Court improperly ordered that the Applicant proceed pro se;
  - d. The State withheld evidence from him until commencement of the actual trial, effectively causing the Applicant to be limited in his ability to defend himself;
  - e. The State withheld other evidence completely which was not received by the Applicant until after the trial concluded;
  - f. Pre-trial counsel and shadow counsel failed to disclose/reveal all evidence received from the State in a timely manner so that the Applicant could review evidence and prepare for trial;
  - g. The State violated the Rules of Evidence, taking advantage of the Applicant's pro se status;
  - h. The Solicitor's office misled the Applicant regarding the evidence admitted in trial and the witnesses that would be called during the trial
11. State concisely and in the same order the facts which support each of the grounds set out in (10).
- a. As stated above, due to the relationship the 4<sup>th</sup> Circuit Solicitor's office had with the victim's son;
  - b. As stated above;
  - c. As stated above;

- d. As stated above (the Applicant will provide the State with specific references to evidence prior to any evidentiary hearing);
- e. As stated above (the Applicant will provide the State with specific references to evidence prior to any evidentiary hearing);
- f. As stated above (the Applicant will provide the State with specific references to evidence prior to any evidentiary hearing);
- g. As stated above (the Applicant craves reference to the trial transcript);
- h. As stated above (the Applicant craves reference to the trial transcript).

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 petitions in State or Federal Courts for habeas corpus or post-conviction 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.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- a. The specific nature thereof: n/a.
- b. The name and location of the Court in which each was filed: n/a.
- c. The disposition thereof: n/a.
- d. The date of each such disposition: n/a.
- e. If known, citations of any written opinions or orders entered pursuant to each such disposition: n/a.

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: N/A.
- b. The proceedings in which each ground was raised: N/A.

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. Issues are appropriate for Post-Conviction Relief.

17. Were you previously represented by an attorney at any time during the course of:

- a. Your arraignment and plea? N/A.
- b. Your trial, if any? Shadow counsel only.

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CLERK OF COURT  
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- c. Your sentencing? No.
- d. Your appeal, if any, from the judgment of conviction or imposition of sentence? Yes.
- e. Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? Yes.

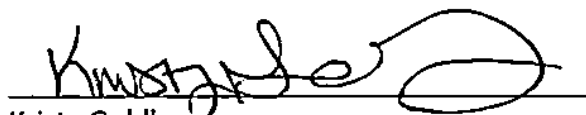
18. If you answered "yes" to one or more parts of (17), list:

- a. The name and address of each attorney who represented you:
  - i. Brandon Steen (pre-trial counsel), Sixth Circuit Public Defender's Office;
  - ii. J. Richard Jones (shadow counsel), Twelfth Circuit Public Defender's Office;
  - iii. Julie Wooten (shadow counsel),
  - iv. Susan Barber Hackett, Appellate Defense, Columbia, South Carolina
- b. The proceedings at which each such attorney represented you:
  - i. Pre-trial counsel
  - ii. Trial
  - iii. Trial
  - iv. Appeal

19. State clearly the relief you seek in filing this application: Conviction reversed with remand for new trial.

20. Are you now under sentence from any other court that you have challenged? No.

Respectfully submitted,



Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 25 th day of June, 2019

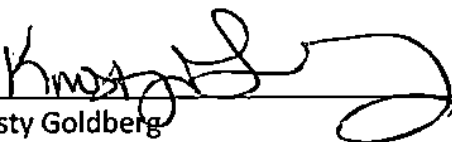
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|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF MARLBORO      | ) |                              |
|                         | ) | 2017-CP-34-222               |
| DERRICK DUPREE,         | ) |                              |
| SCDC # 272316,          | ) |                              |
| Applicant,              | ) |                              |
|                         | ) | CERTIFICATE OF SERVICE       |
| v.                      | ) |                              |
|                         | ) |                              |
| STATE OF SOUTH CAROLINA | ) |                              |
| Respondent.             | ) |                              |

---

I certify that on this date I served the Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this Notice to the State Attorney General's Office, by delivering a copy of this motion via U.S. Mail said copy to the Office of the Attorney General, Post Office Box 11549, Columbia South Carolina 29211.

  
 Kristy Goldberg  
 Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
 1720 Main Street, Suite 303  
 Columbia, SC 29201  
 Phone (803) 667-6633  
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 25th day of June, 2019

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 ANITA M. WILKINS  
 CLERK OF COURT  
 MARLBORO COUNTY, S.C.

|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | In Court of General Sessions |
|                         | ) | Fourth Judicial Circuit      |
| COUNTY OF DARLINGTON    | ) | 2017-GS-34-00222             |

|                 |   |                      |
|-----------------|---|----------------------|
| DERRICK DUPREE, | ) |                      |
|                 | ) |                      |
| Plaintiff,      | ) |                      |
|                 | ) |                      |
| vs.             | ) |                      |
|                 | ) | Transcript of Record |
| THE STATE,      | ) |                      |
|                 | ) |                      |
| Defendant.      | ) |                      |
|                 | ) |                      |
| _____           | ) |                      |

Darlington South Carolina  
March 15, 2022

B E F O R E:

The Honorable Michael S. Holt

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

Mr. Steven Fowler, Esquire  
Attorney for the Plaintiff

Ms. Chelsey F. Marto, Esquire  
Attorney for the Defendant

Lisa Carter  
Circuit Court Reporter

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| <u>NO.</u> | <u>DESCRIPTION</u> | <u>EV.</u> |
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1                                    P-R-O-C-E-E-D-I-N-G-S

2                    THE COURT: All right. Court will come to order.  
3                    This is 2017-CP-34-0222. This is Derrick Dupree, as  
4                    petitioner. He is present and represented by Mr.  
5                    Steve Fowler. The respondent is represented by Ms.  
6                    Chelsey Marto. This matter is before the Court on a  
7                    PCR action and Ms. Marto, is the State ready to go  
8                    forward at this time?

9                    MS. MARTO: Yes, Your Honor.

10                  THE COURT: And Mr. Fowler, is Mr. Dupree ready to  
11                  go forward at this time?

12                  MR. FOWLER: May I speak with my client briefly?  
13                  Your Honor, after speaking with my client, we're  
14                  ready to go forward.

15                  THE COURT: All right. This is a Marlboro County  
16                  General Sessions matter that we're hearing in  
17                  Darlington County. We've consolidated all those  
18                  matters before this Court. If there's no, no  
19                  objections we'll go forward at this time. Ms. Marto,  
20                  you wish to provide a case history?

21                  MS. MARTO: Yes, Your Honor.

22                  MR. FOWLER: If I may? I've spoken with my client  
23                  and he has no objections to having it heard in  
24                  Darlington County.

1 THE COURT: All right. So noted. Yes, ma'am?

2 MS. MARTO: Yes. Thank you, Your Honor. May it  
3 please, the Court? Applicant was indicted April,  
4 2014 for first degree burglary, first degree criminal  
5 sexual conduct, kidnapping, and possession of a  
6 weapon during the commission of a violent crime.  
7 He was represented by J. Richard Jones at the start  
8 of the trial. And Kernard and Mary Thomas Johnson-  
9 Lee prosecuted the case. Applicant proceeded forward  
10 to trial on October 13, 2014 before the Honorable  
11 Michael J. Nettles and a jury. At the outset of  
12 trial, applicant expressed his dissatisfaction with  
13 counsel's representation and, essentially, what  
14 happened was applicant proceeded pro se at trial with  
15 Mr. Jones being standby counsel. The jury found  
16 applicant guilty as indicted on October 15, 2014 and  
17 Judge Nettles sentenced applicant to imprisonment for  
18 30 years for the burglary charge, from the CSC, and  
19 the kidnapping. And an additional 5 years  
20 consecutive for the weapons charge, with all other  
21 charges running concurrently.

22 He timely filed a notice of appeal which was  
23 perfected by Susan B. Hackett. And by an unpublished  
24 opinion October, 26, 2016, the South Carolina  
25 applicants conviction was affirmed and the remittitur

1           was issued November 14, 2016.

2           Mr. Dupree filed his PCR application August 3,  
3           2017 and the State made the return October 31, 2017.  
4           And with that I'll turn it over to Mr. Fowler to  
5           state the allegations.

6           THE COURT: All right. Mr. Fowler?

7           MR. FOWLER: Your Honor, I'd like to call Mr.  
8           Dupree to the, to the stand please.

9           THE COURT: Mr. Dupree, can I get you to come  
10          forward, sir?

11          MR. DUPREE: Yes, sir.

12          THE COURT: Yeah. Whatever you want to bring up  
13          here, bring up here and if you need something you  
14          can, you can -- if your lawyer can't find it for you,  
15          I'll let you step down and get it. We're gonna have  
16          you go around here 'cause there are no steps and I  
17          don't want to trip and fall. So there's a little  
18          hallway behind, if you'll walk that way and come out  
19          on the other side. Madam Clerk?

20          THE CLERK: If I can get you to raise your right  
21          hand and put your left in the Bible. You swear or  
22          affirm the testimony you give this court will be the  
23          truth and nothing but the person of God?

24          MR. DUPREE: Yes, I do.

25          THE CLERK: You can have a seat.

1           THE COURT: And Mr. Dupree, make yourself  
2 comfortable, sir. And you -- I want you be  
3 comfortable. If you need to pull your mask down to  
4 speak more clearly, you're welcome to. What we're  
5 gonna do is I'mma have you state your name for the  
6 record. After that Mr. Fowler will have some  
7 questions for you. Just try to keep your voice  
8 elevated for the court reporter. She's gonna keep a  
9 record. Ms. Marto, the State, she'll have some  
10 questions for you and then I may have some questions  
11 for you.

12           MR. DUPREE: All right.

13           THE COURT: If you hear an objection from one of  
14 the lawyers if you'd stop with your testimony and let  
15 me talk to them and then I'll come back to you, okay?

16           MR. DUPREE: Yes, sir.

17           THE COURT: All right. Would you tell me your full  
18 name, sir?

19           MR. DUPREE: Derrick Dewayne Dupree.

20           THE COURT: Thank you, Mr. Dupree. Your witness,  
21 Mr. Fowler.

22                           DERRICK DUPREE, first being  
23 duly sworn, testified as follows:

24           **Direct Examination by Mr. Fowler:**

25           Q. Mr. Dupree, you and I spoke previously about this



D. Dupree- Direct Examination by Mr. Fowler

8

1 matter, is that correct?

2 A. Yes, sir.

3 Q. Okay. And you and I have met this morning about  
4 this, is that correct?

5 A. Yes, sir.

6 Q. And you had a couple of prior PCR counsels, at  
7 least, on this matter, is that correct?

8 A. Yes, sir.

9 Q. Okay. And one of them was Kristy Goldberg, is  
10 that correct?

11 A. Yes, sir.

12 Q. And you -- she filed an amended application for  
13 post conviction relief on your behalf, is that  
14 correct?

15 A. Say that again.

16 Q. She filed an amended application ---

17 A. Oh, yes, sir. Yes, sir.

18 Q. And so you're familiar with that, correct?

19 A. Yes, sir.

20 Q. Okay. And you also had another attorney, Lance  
21 Boozer, is that correct?

22 A. Correct.

23 Q. And he filed a First Amendment to prior  
24 application for PCR for you, is that correct?

25 A. Correct.

D. Dupree- Direct Examination by Mr. Fowler

9

1 Q. Okay. And you also filed your PCR application,  
2 you filed on August 3 2017, is that correct?

3 A. Yes, sir. My next move.

4 Q. So we have at least three applications for  
5 variants thereof that's been on this case, correct?

6 A. Yes, sir.

7 Q. And you filed the PCR application in 2017,  
8 correct?

9 A. Yes, sir.

10 Q. All right.

11 MR. FOWLER: Your Honor, at this time I'd like to  
12 make a, to move that all exhibits in the file  
13 including chain of custody, transcripts, everything  
14 be entered in and accepted under judicial  
15 notice, Your Honor.

16 THE COURT: All right. Any objections?

17 MS. MARTO: No, Your Honor.

18 THE COURT: All right. The Court will take  
19 judicial notice.

20 Q. All right Mr. Dupree, basically, one of the  
21 things that we've talked about and we've spoke with  
22 recently is the amended application for post  
23 conviction relief filed by Ms. Goldberg in June of  
24 2019, is that correct?

25 A. Yes, sir.

D. Dupree- Direct Examination by Mr. Fowler

10

1 Q. One of the things she mentioned she said, in  
2 10(a) of her and your application it says, "prior to  
3 trial, counsel failed to request that the Fourth  
4 Circuit Solicitor's Office be prohibited from  
5 prosecuting this case due to a conflict of interest  
6 and the matter be sent to a different prosecution  
7 agency." You're familiar with that, correct?

8 A. Yes, sir.

9 Q. Tell me -- I'll ask you you questions about it  
10 but, obviously, if would expand on that that would be  
11 great. So can -- when it says, counsel failed to  
12 request the Fourth Circuit Solicitor's Office be  
13 prohibited from prosecuting, what counsel are they  
14 talking, are you talking about at that time?

15 A. Well, I guess, every counselor that I had at the  
16 time because I request all counsels that I had at the  
17 time which was Mr. Jones, Julie Wooten and Brandon  
18 Steen, I ask that all them request for a change of  
19 venue, sir.

20 Q. Okay. So let's be clear on that, how many  
21 attorneys did you have on the trial and documents or  
22 the case that's in question now, how many previous  
23 attorneys have you had?

24 A. Three.

25 Q. Okay. And who -- state their names one at a

1 time for the court, again, please?

2 A. My first attorney, public defender, Brandon  
3 Steen. My second attorney, public defender, Kristy,  
4 ah, Julie Wooten. And my third public defender  
5 attorney, Richard Jones.

6 Q. Okay. So when you refer to counsel in this  
7 10(a) statement, are you -- just to be clear I want  
8 -- because it's somewhat unusual to have three  
9 different counsels and just counsel being stated in  
10 general here, so are you referring to Mr. Jones or  
11 are you referring to some other or are you referring  
12 to all three that they should have changed the venue?

13 A. As I stated, sir, I presented the matter to all  
14 three.

15 Q. And so you feel that all three should have asked  
16 for change of the area because of conflict,  
17 jurisdiction because of conflict of interest,  
18 correct?

19 A. Correct.

20 Q. And what, what was that conflict of interest that  
21 you feel was so important that needed to be, the  
22 jurisdiction needed to be changed or the circuit?

23 A. So I had documents from my first attorney,  
24 Brandon Steen, stating due to a conflict, due to the  
25 closest association of law enforcement has to the

D. Dupree- Direct Examination by Mr. Fowler

12

1 case, he would be presenting a private investigator  
2 to make sure that the law enforcement don't be  
3 detrimental to my case. With that being said the  
4 victim's son then, Chief of Police of the Fourth  
5 Circuit Chesterfield, Keith Thomas.

6 Q. Okay. Well, I mean, they say that there's  
7 conflict but what exactly was that conflict as you  
8 understand it?

9 A. I think that they were stating that, at the time,  
10 that he would have some type of influence over the, I  
11 guess, the jury or the ruling of the judges and stuff  
12 like that. I guess, officers and stuff like that.  
13 The evidence and stuff that would be presented during  
14 the case that, basically, some type of influence over  
15 the whole trial, sir.

16 Q. Okay. And once again just for clarification,  
17 you're saying that there was some relation between  
18 the solicitor's office and the law enforcement or the  
19 victim, apparently, and law enforcement?

20 A. Repeat the question.

21 Q. Yeah. What -- just to be clear and, you know, I  
22 want to make sure that we are clear on this and I'll  
23 be as brief as possible, who had a conflict with the  
24 solicitor's office?

25 A. Well, I think this is a different question that

1       you maybe be asking relevant to the, relevant to the  
2       first question you asked me before, the change of  
3       venue. I mean, you're asking me about a conflict of  
4       interest with the solicitor's office now?

5       Q. No.

6               MR. FOWLER: May I approach the witness, Your  
7       Honor?

8               THE COURT: Yes, sir.

9       Q. Okay. Okay. I'mma show you, this is the  
10      amended application for post conviction relief, is  
11      that correct?

12      A. Yes, sir.

13      Q. Filed by Ms. Goldberg, right? That's your  
14      signature, right?

15      A. Yes, sir.

16      Q. Okay. You see 10(a), right, "prior to trial,  
17      counsel failed to request that the Fourth Circuit  
18      Solicitor's Office be prohibited from prosecuting  
19      this case due to a conflict of interest." What  
20      conflict of interest was there, apparently, as to  
21      this?

22      A. Oh, as I stated I think that the victim's son  
23      being the chief of police you would have some type of  
24      influence over the case, the trial. I mean,  
25      everybody that was presented or the witnesses there

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1 or whoever was supposed to be heard in that trial.

2 And, I guess, they were stating that he probably had  
3 some type of influence over the solicitor's office as  
4 well.

5 Q. Okay. And you asked that it be sent to a  
6 different prosecution agency. Now, are you referring  
7 to the State Attorney General's Office or are you  
8 saying it should have been changed to a different  
9 judicial circuit? What, specifically, are you asking  
10 for there?

11 A. At that time, I don't want to lie, because at  
12 that time I wasn't too much familiar with, with  
13 exactly what agency it would have probably went to.  
14 My counsel never prefer to me about that situation.  
15 As a matter of fact, they was stating that it was  
16 impossible so I don't want to lie and state that I  
17 really knew at that time really what agency it was  
18 being presented to because I didn't.

19 Q. Okay. All right. But you do feel like it  
20 should have been switch out from the local prosecutor  
21 ---

22 A. Correct.

23 Q. --- correct?

24 A. Correct.

25 Q. Do you have any documentation that you wish to

1 address on that or....

2 A. Correct. Yes, sir.

3 Q. Okay. What -- what kind of documentation do you  
4 feel like you have?

5 A. I have a SLED direct call log on 1 through 13  
6 which I had like, a few papers I wanted to show where  
7 the solicitor's office and the SLED agent prefer the  
8 falsified documents, the fingerprints. And I also  
9 have the documents 1 through 37 changing custody to  
10 where it showed that where the fingerprints was, um,  
11 falsified. Never presented. Never turn over to me.  
12 And they only -- and during the trial they stated  
13 that the change of custody was one of 1 of 33 pages.  
14 I have that transcript showing that the solicitor  
15 stated that it was 1 of 33, but all actuality it was  
16 1 of 37 stating that, showing that they retook my  
17 fingerprints a year later after my arrest. The  
18 fingerprints that led to my arrest was retaken a  
19 year and a month later, like three days before the  
20 trial and stating that the fingerprints came from  
21 Marion, South Carolina when my choice was in Marlboro  
22 County and the solicitor's office told her to process  
23 with, um, during his questions because he didn't know  
24 anyone in Marion, South Carolina and over there.

25 MR. FOWLER: Your Honor, I've believe we've taken,



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1       ah, the Court has taken judicial notice of the change  
2       of custody, pages 1 through 37. And also I believe  
3       you referenced some narratives. So may I approach the  
4       witness, Your Honor.

5               THE COURT: Yes, sir.

6               MR. FOWLER: And, Your Honor, I may approach him  
7       several times during this and ---

8               THE COURT: You don't have to ask just go ahead.

9               MR. FOWLER: Very good.

10       Q. This is the chain of custody documentation pages  
11       1 through 37, are you familiar with that?

12       A. Yes, sir.

13       Q. Okay. And this is just to identify and it's in  
14       the record for judicial notice, it states -- what  
15       does it state? The South Carolina Law Enforcement  
16       Division prepared for release ---  
17       -- okay, what time and date?

18       A. At 11:24 a.m., January 31, 2019.

19       Q. Okay. And this is -- go ahead, sir, I'm sorry.

20       A. It was -- that document was later, which was what  
21       I was getting around to, was later established after  
22       trial due to the fact that, I guess, you know, it  
23       wasn't mentioned or presented during the trial,  
24       right. But my PCR lawyer actually wrote SLED for all  
25       the evidence that was presented in my case and SLED

1 sent that. That's why I said 11:24 a.m., January 31,  
2 2019.

3 Q. Okay. What significance is this 37 page  
4 document have to your PCR hearing today?

5 A. It shows that, um, that they took my prints,  
6 retook my prints, the prints that was supposed to  
7 have led to my arrest on September 11, 2013. They  
8 retook them on October 7, 2014 stating that they had  
9 a identification problem and they wasn't sure who  
10 took the prints, where the prints came from ---

11 Q. So let me -- let me ---

12 A. So it, basically, shows ---

13 Q. Go ahead, I'm sorry.

14 A. It shows, basically, that they retook my prints  
15 and, and, basically, showed they retook my prints ---

16 Q. So you're saying the, the significance of this 37  
17 page document is that they retook your prints,  
18 correct?

19 A. Yeah. Like I said earlier, it was 1 of 33 that  
20 was presented during trial which the solicitor's  
21 office stated at trial that it was 1 of 33 pages.  
22 But it, actually, was 1 of 37 because they retook my  
23 prints but that wasn't presented during trial that  
24 they had took my prints over again and I guess, was  
25 supposedly had used them. They still didn't use

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1       them.

2       Q.   Okay.    So the final question on this, why do you  
3       feel like take, retaking prints rises to the level of  
4       some kind of deficiency or problem?

5       A.   They never had no prints.   I never was received -  
6       - I never received no prints in my motion.   I  
7       received some prints at trial.   But I never received  
8       any prints my motion until the day of trial.

9       Q.   So just to repeat that, you never received prints  
10      in your discovery, is that correct? Or....

11      A.   Yes, sir.   I never received any.   And the prints  
12      that I did receive don't add up with the documents  
13      stating that it came from Marion 'cause the SLED  
14      agent said it came from Marion, South Carolina.   I  
15      don't know if -- that document -- the prints that I  
16      have do not show that.   And the officer that would've  
17      presented, who had took them prints was Abby Smith  
18      (sic) from Marlboro County so it's still two  
19      different....

20      Q.   You've also provided me some information that,  
21      that are narrative, is that correct?

22      A.   Yes, sir.

23      Q.   All right.   The chain of custody, the 37 pages, I  
24      believe is in the documentation so there is a chain  
25      of custody in there.   Can you -- let's take it one

1 piece at a time, okay. There's four documents here,  
2 starting with page three. Can you read this header?

3 A. Yes, sir. South Carolina Law Enforcement  
4 Division.

5 Q. What does it say?

6 A. SLED Lab Case #L13-11600 Narrative.

7 Q. Okay. And in your understanding what is this  
8 document?

9 A. Yes, sir.

10 Q. What is it?

11 A. A call log.

12 Q. It's a call log?

13 A. Yes, sir.

14 Q. Okay. And it is, what does it say?

15 A. Repeat that again, sir.

16 Q. Okay. What's the significance of this document,  
17 page three?

18 A. It shows -- it show the communication between --  
19 on this page, the communication between the detective  
20 and fingerprint analysis Kimberly Mears and the  
21 detective and the Lieutenant DNA, SLED Lieutenant DNA  
22 analysis Rhonda Fields.

23 COURT REPORTER: I'm sorry, what's that name?

24 A. Rhonda Fields.

25 Q. And final question on this page, what's the

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1 significance -- well, so you're saying that this  
2 relates to the fingerprints, is that correct?

3 A. Yes, sir. And the CODIS, the CODIS here.

4 Q. Okay. All right. I'm showing you at this point  
5 number, page number 9, can you the headed of this of  
6 this from me please?

7 A. South Carolina Law Enforcement Division. SLED  
8 Lab# L13-11600 Narrative.

9 Q. Okay. And what is this ---

10 COURT REPORTER: What is he saying, 116, what?  
11 Where's the number?

12 A. 11600.

13 MR. FOWLER: I'll read it.

14 COURT REPORTER: Okay.

15 Q. I'm showing the South Carolina Law Enforcement  
16 Division Sled lab #L, as in Larry, 13-11600  
17 Narrative, correct?

18 A. Correct.

19 Q. And it relates to the Marlboro County Sheriff's  
20 case number 2013-004852, is that correct? And all  
21 documents that I'm showing you relate to that case  
22 number number 2013004852, is that correct?

23 A. Yes, sir.

24 Q. And all the documents that I'm showing you relate  
25 to that case number, number 2013004852, is that

1 correct?

2 A. Yes, sir.

3 Q. Okay. And I've -- I think I've lost my train of  
4 thought but on this page 9, what's the significance  
5 of this document?

6 A. The fingerprints.

7 Q. And what about the fingerprints as it relates to  
8 this page? What does this page express ---

9 A. It shows that the solicitor's office speaking  
10 with the SLED analysis requesting that he have the  
11 following -- he -- well, as it, as it read on  
12 10/2/2014 at 3:10 p.m. the solicitor's office -- SLED  
13 agent Kimberly D. Mears says, "she received a call  
14 from Kernard Redmond. He anticipates needing my  
15 testimony on 10/14 and will be touching base next  
16 week 10/6-10/10 with a list of expected questions.  
17 He also wanted to give a heads up that they were  
18 going to have to authenticate the card from AFIS used  
19 to make the identification. He said they were  
20 planning" ---

21 Q. Okay. And if you don't mind just, just ---

22 COURT REPORTER: You're good. You're good.

23 A. --- "he said they were planning to get the card  
24 on file at the jail and the note (Item 1) to bring to  
25 the lab for me to compare with the original card that

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1 I used, then issue another report. After looking on  
2 AFIS, I was able to locate the card from this arrest.  
3 I asked Kernard if it would be easier for me to issue  
4 a report comparing this new card to the original, as  
5 there was no need to re-examine Item 1. He said he  
6 would check with the investigator and call me back."

7 Q. Okay. So you're saying there was an issue there  
8 with the solicitor's office, right?

9 A. Yes, sir.

10 Q. Okay. Very good. Now, I'm showing you page  
11 number 10 and this is the same header, basically ---

12 A. It's number 11 and 10 ---

13 Q. It's what page?

14 A. Eleven and 10 pages.

15 Q. Excuse me. All right. Well, instead of page  
16 number 10, I'm showing you page number 11. Explain  
17 to me what page number 11 is about in your opinion?

18 A. Okay. Same South Carolina Law Enforcement  
19 Division ---

20 Q. Right. And we've, we've entered that this is the  
21 same case and same header. What does this is page  
22 number 11 mean to you in your opinion?

23 A. Okay. It shows that the solicitor's office once  
24 again and Kimberly D. Mears, the SLED agent speaking  
25 now on October 6, 2014 at 12:30 p.m., Kimberly Mears

1 wrote to Kernard, "do you still want another report  
2 issued? This one will be the original card  
3 identified to the card from 11/13.... Will there be  
4 an issue discussing a prior arrest card? I wasn't  
5 sure how I should log in the new card to  
6 differentiate, differentiate ---

7 Q. Differentiate.

8 A. --- differentiate it from the original. I can  
9 use date/incident#/etc. The new one lists Dupree's  
10 middle name, so I could leave it at that. Please let  
11 me know what you want me to do." So Mr. Kernard  
12 responded back on October 6, 2014 at 2:01 p.m.  
13 stating that, "No need for new report. If it comes  
14 up, the 9-11-13 card was used to authenticate your  
15 initial findings." On October 6, 2014 at 3:42 p.m.  
16 Ms. Mears wrote back stating, "In order to  
17 authenticate the original card, I'll need to issue a  
18 report, because it will involve a comparison that  
19 needs to be verified."

20 Q. In your opinion what's the significance of this  
21 document?

22 A. It shows that the prints ---

23 Q. Right.

24 A. --- was my -- the prints was not -- for one, I  
25 never received no prints so I can't state too much



1 about the document because even though they did take  
2 the prints I still haven't received no prints. But  
3 it shows to me -- the significance of it shows to me  
4 that they never had the prints from the beginning to  
5 arrest me with. And now that, you know, they, I  
6 guess, you know what I'm saying, they got some type  
7 of help that I don't know. They found a way to try,  
8 I guess, try to authenticate some prints which they  
9 still never authenticated.

10 Q. Okay. And we've got one final page here that  
11 you brought to my attention earlier in the day. This  
12 page and I'm gonna hand it to the court reporter  
13 quickly and we'll then talk about it. This is page  
14 number 10, okay, and you said that there was a, that  
15 11 needed to come before 10, so this is our, I guess,  
16 our final page of this set. You indicated that --  
17 what -- what is this document mean to you? I mean,  
18 you can read it if you want to it's fairly small.  
19 But what does it say? What portions of this do you  
20 want to read to the Court's attention?

21 A. I would like to read all of it.

22 Q. Sure. That's fine. Starting at -- starting  
23 within the box where there's some dialogue, correct?

24 A. Correct.

25 Q. Okay.

1       A.   October 6, 2014, 10:00 p.m., um, 10:08 p.m., I'm  
2       sorry, Kernard Redmond wrote to Kimberly Mears, the  
3       SLED agent, print out this, he said, "I just had a  
4       thought. Can you tell me who is on the fingerprint  
5       card that you examined initially. If that card is for  
6       Marlboro County and the officer is still available,  
7       that may solve the authentication problem." So on  
8       October 7, 2014, Ms. Kimberly Mears wrote back to  
9       Kernard at 8:48 a.m. stating, "heard back, she heard  
10      back from records, excuse me, records - the initial  
11      card came from Probation, Pardon, and Parole in  
12      Marion County." She said, "would you want me to  
13      proceed with another, on the new card?" Mr. Kernard  
14      Redmond wrote back Tuesday, October 7, 2014 at 8:50  
15      stating that, "Yeah. Don't know anyone in Marion  
16      County lol." She wrote back stating, Mr. Kimberly  
17      Mears wrote back Tuesday, October 7, 2014 at 9:03  
18      a.m. stating, "Ok- will do!"

19      Q.   Okay. And so ---

20      A.   And that, basically, shows me that, that for him  
21      to disregard the fingerprints are, you know what I'm  
22      saying, find or just contact Marion, South Carolina  
23      to see if Marion, South Carolina took my print, for  
24      him to totally disregard that, that matter is stating  
25      to me that you never had no prints from the

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1 beginning.

2 Q. So you feel like that's a large issue that needs  
3 to be addressed and looked at it your PCR, correct?

4 A. Exactly. Because I still doesn't have those  
5 prints as well. Q. Okay.

6 MR. FOWLER: Well, Your Honor, we've gone over  
7 four pages, that's all that I think we'll be going  
8 over with this narrative. I showed it to the  
9 Attorney General's Office and I'd like to enter these  
10 four pages into evidence. This is the only copy that  
11 I have, I believe. So I would probably need one copy  
12 of this.

13 THE COURT: All right, sir. Any objection, Ms.  
14 Marto?

15 MS. MARTO: No objection, Your Honor.

16 THE COURT: All right. Without objection that  
17 will be Petitioner's Number 1.

18 COURT REPORTER: You want them separate or just  
19 one.

20 MR. FOWLER: Just one.

21 THE COURT: We've got a copy up here.

22 MR. FOWLER: Yes, sir.

23 A. Excuse me.

24 MR. FOWLER: Hold on just a second, sir. This is  
25 the four page set enter as 1.

1 COURT REPORTER: Petitioner's Number 1.

2 MR. FOWLER: Yes. Okay. Just a moment please.

3 (Whereupon, the SLED Documents has been marked and  
4 entered into evidence as Petitioner's Exhibit No. 1)

5 Q. So we've gone over 10(a) of Ms. Goldberg's  
6 application for you. In terms of 10(b) "at anytime  
7 prior to the trial, counsel failed to request that  
8 applicant undergo an evaluation investigating the  
9 applicant's mental health history and intellectual  
10 ability." Are you familiar with that?

11 A. Yes, sir.

12 Q. Okay. Tell me a little bit about what that  
13 relates to this case?

14 A. Well, I think that it should've had be looked  
15 into because at the time I was picked and locked up  
16 for the charge. I did undergo a mental health  
17 treatment on, I can't remember the exact date that I  
18 went to the Tri-County in Bennettsville, Marlboro  
19 County. That I'm sure it was around, around the time  
20 of my arrest which means September and October of  
21 2013. Like I said I don't have the record. I wasn't  
22 able to get my record due to, I guess, the lack of  
23 interest of my, my attorneys not looking into the  
24 matters deeper. So I think that matter should have  
25 been looked into because I was undergoing mental

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1 health treatment before I went to trial.

2 Q. So you were undergoing mental health around this  
3 time, is that correct?

4 A. Before I went to trial. Correct.

5 Q. And none of your attorneys asked for you to have  
6 any kind of mental health evaluations, is that  
7 correct?

8 A. No.

9 Q. Okay. Is there anything else about 10(b) that  
10 you feel is relevant to this in terms of  
11 investigating the applicant's mental health history?

12 A. No, sir. That would be all.

13 Q. Okay. In 10(c), "the trial court improperly  
14 ordered that the applicant proceed pro se." Tell me  
15 a little bit, in your own words, tell me a little bit  
16 about how the Court ordered that you, the applicant,  
17 to proceed pro se?

18 A. I would based that on the statement that, um, the  
19 part of the filing that my attorney did on, on direct  
20 -- when she stated that the judge did let it be known  
21 that he was sure that I wasn't aware of the, um, the,  
22 um, substantial laws, the procedures of law at that  
23 time and that it would be a real bad idea for me to  
24 proceed pro se. But he stated that due to the fact  
25 that I stated that I was studying a little bit of law

1 and stuff like that, he would let me proceed pro se  
2 on my own. That's basically it.

3 Q. Did you ask the court to proceed pro se?

4 A. Well, I stated, um, I can't remember exactly  
5 which page 'cause it's in my transcript, I stated to  
6 the judge that if he wouldn't allow me to me to get a  
7 paid attorney or another attorney then, yes, I would  
8 proceed pro se. Yes, sir.

9 Q. Okay. So you were okay with proceeding pro se,  
10 were you?

11 A. At that time and he stated that it's either Mr.  
12 Jones or no one else, I was, I was okay proceeding  
13 pro se. Yes, sir.

14 Q. But you're also saying that even though you were  
15 okay with it, you feel like the Court should've had,  
16 should have gotten you to put a lawyer for you,  
17 correct?

18 A. Correct. Because the lawyer that I had I felt  
19 that was ineffective and I'm sure his documents,  
20 evidence, the transcript which show that he was  
21 ineffective. And I felt like, well, if, if I was  
22 gonna go to trial then if my life was in somebody's  
23 hand that I rather it be in my own hand than somebody  
24 hand that has not interest in the case so....

25 Q. Is there anything else about 10(c) that you feel

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1 needs to be, needs to be brought to the Court's  
2 attention?

3 A. Yes, sir. Because at that time the attorney that  
4 I did have -- the judge did state that he felt that  
5 Mr. Jones was a great attorney and that it would, you  
6 know, he think that I should, you know, let me Mr.  
7 Jones represent the case. Mr. Jones did state, I  
8 can't remember the exact page I think, we supposed to  
9 bring it up later about the transcript, Mr. Jones  
10 stated that he spoke with the solicitor's office and  
11 the sheriff's office and he wasn't, being that the  
12 matter of issue was concerning about the missing  
13 evidence and evidence not being turned over, he said  
14 that he, he did have the same assumption that as his  
15 defendant had, at that time which was me, that the  
16 State would be looking over the evidence from him and  
17 that was the whole purpose of me asking him to be  
18 removed from the case. So he, basically, he was  
19 stating that, you know, he would be willing to  
20 represent the case but, um, due to that matter -- I  
21 guess me having a problem with him not requesting the  
22 missing documents he had an issue so, um....

23 Q. Okay.

24 A. I just wanted to, you know ---

25 COURT REPORTER: Somebody coughed. I didn't hear

1       what you, what he said.

2       Q.   Could you repeat the last thing that you said  
3       please.   And also speak into the microphone so that  
4       the court reporter ---

5       A.   All right.   I'm sorry.   I'll start over.

6           COURT REPORTER: Does somebody need some ---

7           MR. FOWLER: That's the bailiff or the sheriff's  
8       deputy.

9           COURT REPORTER: Do you need a piece of candy?

10          THE DEPUTY:   I'm good.

11          COURT REPORTER: Okay.   Go ahead.   You don't have  
12       to say the whole thing.   It's fine.

13       A.   Okay.   So basically, I was just stating that,  
14       um, my attorney was, he was very ineffective by not,  
15       you know, requesting the missing documents and motion  
16       the solicitor's office to turn over -- looking into  
17       the matter of missing documents.   And I don't agree  
18       with the judge by stating that he thought that my  
19       solicitor, I mean, my attorney was a good lawyer at  
20       that time and that I should let Mr. Jones represent  
21       my case when it was clearly shown that he had no  
22       interest in the case, sir.

23       Q.   If nothing else on foreseeing, the next few  
24       questions for the most part relate, start off with  
25       the words, "the State" in your application for post



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1 conviction relief as filed by Ms. Goldberg in 2019, I  
2 believe. The question -- the statement reads, "the  
3 State withheld evidence from him", meaning you, I  
4 believe, "until the commencement or the beginning of  
5 the actual trial effectively causing the applicant to  
6 be limited in his ability to defend himself." So  
7 once again, 4(d), excuse me, 10(d) in dog. Okay.  
8 Tell me a little bit about that question or the  
9 statement rather. "The State withheld evidence from  
10 him until the commencement of the actual trial  
11 effectively causing the applicant to be limited in  
12 his ability". So what evidence are you stating at  
13 this time was withheld from you in regards to your,  
14 your case?

15 A. Well, at that time I did a motion stating that  
16 the evidence that I was missing, the motion on, on,  
17 on file as far as defending it in the transcript, um,  
18 at that time the evidence that I was missing was  
19 missing documents from the Lab, the South Carolina  
20 Law Enforcement Division sexual assault examination  
21 protocol and I was missing page 5 of 5 and 6 of 6.  
22 It was actually 1 of 6 pages and I only received only  
23 1 of 4 pages. At the time they turned in -- they  
24 turn over 1 of -- they turn over the missing pages  
25 during trial. And I think that's, um, record where

1       it shows the solicitor and my lawyer, at that time,  
2       before the trial started, it started before Mr. Jones  
3       was actually off the case, um, he stated that he just  
4       received from the solicitor's office maybe a week ago  
5       and the solicitor's office was like, well, they just  
6       received it. However, but, um, they was a document  
7       that was supposedly had been attached to the sexual  
8       assault kit that was supposed to have been sent to  
9       SLED and the documents somehow, as of 1 to 6 pages,  
10      was missing two pages. The two pages that it was  
11      missing states that the medical examiner never took  
12      any DNA or swab or nothing from the victim at that  
13      time. So when I did receive the documents during  
14      trial, um, and realizing that she didn't swab the  
15      victim, that she didn't, that she didn't take DNA  
16      from the victim, I was a little confused with what  
17      was going on because I thought that all the documents  
18      was, came in a box and all the document was  
19      supposedly have went to SLED. So the documents that  
20      my PCR attorney received that from SLED, um, states  
21      and shows that the submission of that document is  
22      only 1 of 4 pages. It was never even 1 of 6 pages.  
23      So I'm not sure that evidence was tampered with  
24      before you went to SLED or not. But the documents I  
25      have are right here stating that it was only 1 of 6

1 pages and the medical examiner at that time was Marie  
2 Todd (sic), Maria Todd, and she stated that it was 1  
3 of 6 pages which is on the transcript, she stated  
4 that it was 1 of 6 pages and she made sure all pages  
5 were entitled for and all pages were put in the file,  
6 sealed and handed to the detective at the, the  
7 investigator, the detective at that time which was  
8 Susan Alderman and was signed over to her at 7  
9 o'clock, I think, 7 o'clock on September 8, 2013 and  
10 supposedly had been handled into Marlboro County  
11 Sheriff's Department.

12 Q. And -- and you brought these issues up the  
13 transcript ---

14 A. That I was missing these documents, correct.  
15 Also, I brought up the fact that I was missing, um,  
16 the, um, the evidence that led to my arrest. I was  
17 missing that. And I don't have the document in front  
18 of me at this time ---

19 Q. Okay. That's -- that's fine. That's fine. So  
20 you're, basically, saying that you did not receive  
21 everything and that was prejudicial to you, is that  
22 correct?

23 A. Correct. And that was the evidence that I was  
24 aware of at that time. Some of that evidence I  
25 wasn't aware of until after the fact, years after the

1 fact which was maybe three or four years after the  
2 trial. Correct.

3 Q. Now, was this -- was -- were there any issues  
4 with your previous counsel on this or not?

5 A. Yes, sir. That was the issue with all my  
6 counsels. I would state to them that I was missing  
7 evidence. And as a matter of fact, I think that as  
8 well, I'm missing the documents as well, um, on March  
9 6, 2014, pretrial transcript that was supposed to  
10 have been sent to SLED by my PCR attorney stating  
11 that, um, we had an issue with the motion, um, of  
12 missing documents. And Judge Paul Burch, at that  
13 time, stated to Kernard Redmond, Solicitor for the  
14 Fourth Circuit, stating to him, um, March 6, 2014 in  
15 that pretrial transcript, to turn over all the  
16 evidence to the defendant before trial, sustain.

17 (sic) However, all the evidence wasn't turned over  
18 and somehow another, that document now is misplaced  
19 and that order, court order was not in that  
20 transcript so I have an issue with that. At the time  
21 -- the whole time, um, my lawyer did bring up the --  
22 Brandon Steen, at that time, I do got a document  
23 showing that Brandon Steen stated that he will bring  
24 up the issue during the March 6, 2014 pretrial  
25 transcript, I mean, 2014, um, pretrial hearing based

1 on the fact that we was missing evidence, um, even  
2 though I had all of the evidence. Like I said I can  
3 pull out documents stating that the State hadn't  
4 turned over no fingerprints.

5 Q. Okay.

6 A. As a matter of fact, no evidence at that time.

7 Q. Okay. Well, as far as that goes and you may  
8 have mentioned this in my last question, but I think  
9 this number (e) or letter (e) is kind of a catch all.  
10 And if you've raised it before in my prior question  
11 you don't necessarily have to raise it again, but if  
12 there's something that we've missed then please bring  
13 it up. Ten(e), as in every, "the State withheld other  
14 evidence completely which was not received by the  
15 applicant until the after the trial concluded." Did  
16 you bring that up in my prior question or is there  
17 other evidence that you feel needs to be brought up  
18 at this time?

19 A. Yes, sir. As I stated I still haven't received  
20 the fingerprints. Um, the officer that -- also  
21 because of prints -- I think a print was found on the  
22 evidence that was supposed to have been that led to  
23 my arrest. I haven't received the evidence, the  
24 fingerprints, um, I forgot his name at the time, the  
25 officer that they were stating that his fingerprints

1 was found also on the evidence. I haven't receive no  
2 fingerprints. I haven't received the fingerprints  
3 which they took again in 2014. Also, they said that  
4 it was two fingerprints cards presented on 2000,  
5 September 11, 2013. I had -- I had only received one  
6 fingerprint as far as bearing the name Derrick  
7 Dupree. Also, referring to that same issue, I  
8 haven't yet received the fingerprints, um, Rhonda  
9 Fields. The CODIS analysis, um, analysis with SLED  
10 stating that, um, in order for her to turn in CODIS  
11 letter that she would first have to get the  
12 fingerprints confirmed or confirmation before she  
13 could present the letter to the, um, issue for them  
14 to come and do any type of, um, I guess,  
15 investigation on me being, having something to do  
16 with the crime. I still haven't received no evidence  
17 to show forth that, that letter was sufficient.  
18 However, they use the letter to get my, um, my  
19 biological DNA but it's no -- and they stated to the  
20 judge, Paul Burch - I think that document is over  
21 there - on October 9, 2013 at my first pretrial  
22 hearing they stated to Paul Burch that they had  
23 sufficient evidence, a CODIS match, and they would  
24 like to give my biological DNA. At that time, I -- I  
25 really didn't refuse the DNA because I felt like

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1       there was no need to because I didn't commit the  
2       crime. However, the judge said anyway that it was  
3       court ordered, regardless. However, they didn't  
4       present no evidence at that time to get my biological  
5       DNA. I think it was before, Mr. Kernard Redmond, if  
6       I'm not mistaken, one of the solicitor's at that  
7       time, told the judge that they had the evidence but  
8       they think that they left it, the detective had left  
9       it and they did have it and the judge was like well,  
10      you know, that violates the defendant on the Fourth  
11      Amendment Rights and we get his DNA with no evidence  
12      to do so.

13      Q. Okay.

14      A. I think that, I too as well, that the -- I don't  
15      know if the fingerprints would've been sufficient  
16      enough to get the DNA or not. However, they didn't  
17      use the fingerprints because like I said I don't  
18      think that they had no fingerprints but....

19      Q. Okay. The questions (d) (e) and (f) which I'm  
20      gonna ask you now, are somewhat similar. They all  
21      relate to evidence. But let me ask you this  
22      question, it's in your application or the application  
23      filed with the Court, (f) "pretrial counsel and  
24      shadow counsel failed to disclose, reveal all  
25      evidence received from the State in a timely manner

1       so that the application review evidence and prepare  
2       for trial." Now, it sounds like that's somewhat  
3       similar to the prior so don't, you know, if you want  
4       to touch on it you can. But what, in my opinion, but  
5       they failed to disclose in a timely manner so that  
6       the applicant could review evidence and prepare for  
7       trial, other than what you've already said, is there  
8       anything else about, you know, this question or this  
9       statement that you feel is relevant?

10      A. No, sir. I think that I somewhat touched base on  
11      the missing evidence that I was missing and still  
12      does missing and the evidence that was turn over  
13      late. I don't think there's nothing else considering  
14      that. No, sir.

15      Q. Okay. Well, then let's go to question (g) as in  
16      good. "The State violated the rules of evidence  
17      taking advantage of the applicants pro se status."  
18      What -- what does that relate to in terms of ---

19      A. I would relate that to the fact, the judge,  
20      Michael Nettles, did state at the time, he did ask  
21      the Fourth Circuit Solicitor, Mr. Redmond, was there  
22      any inculpatory evidence or any evidence, part of  
23      Chief Justice Rule 5, that he intend to present that  
24      the defendant did not have or wasn't aware of, I'm  
25      not sure which part of the transcript that is, it's



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1 in, but it is ---

2 Q. It is in the transcript?

3 A. Right. That's correct.

4 Q. Okay.

5 A. The solicitor did state that, no, sir, the  
6 defendant has everything, absolutely everything, and  
7 he even stated that he turned over some of his head  
8 notes that wasn't part of the Chief Justice Rule 5  
9 with discovery. Um, and he also stated that,  
10 according to that, that he wanted me to stop stating  
11 that in front of the jury that they turned over  
12 evidence late or it wasn't turned over, turned over  
13 evidence. I was making him look bad at the time I  
14 was proceeding pro se. So the judge told me to stop  
15 stating that I couldn't question the witness because  
16 I was missing evidence. With all actuality, I  
17 couldn't question the witness because of missing  
18 evidence.

19 Q. Okay. All right. So -- and that's reflected in  
20 the transcript?

21 A. Yes, sir.

22 Q. Okay. All right. The final question on this  
23 section is question or statement number (h), "the  
24 solicitor's office misled the applicant regarding the  
25 evidence submitted in the trial and the witnesses

1       that would be called into trial." So, basically, in  
2       that statement according to this document filed with  
3       the court and an amended application, it says, "that  
4       the State misled." Do you still feel that's the  
5       case?

6       A. Yes, sir.

7       Q. How so?

8       A. Now, the first document -- I would like to speak  
9       on is Rhonda Fields again. The State ---

10      Q. Now, who -- who is Rhonda Fields again?

11      A. The SLED Lieutenant DNA data base analysis.

12      Q. Okay.

13      A. The State stated that, and this is in the trial  
14      transcript, stated that they did not intend to use  
15      her, but based on the fact that I mentioned her name,  
16      they would present her. But I felt like that they  
17      used her to get my biological DNA and they used the  
18      letter, the CODIS match to do that. I thought that,  
19      you know, it was evidence that was supposed to had  
20      been submitted and given to me. Anyway, also, just  
21      to move on, also Ms., excuse me a second, the  
22      handwriting analysis, Ms. ---

23      Q. What are you looking for, sir?

24      A. I had the documents from the hand, handwriting  
25      analysis, Ms., SLED ---

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1 Q. Okay. Well, let's just -- just tell us about  
2 those, if you don't mind. What -- what documents?

3 A. Okay. Ms. Gail Heath, she stated that, um, I  
4 wanted -- the date was 2013, she stated based on the  
5 evidence examined there are no indication that  
6 Derrick Dupree did not write the question, answers on  
7 Item 1, Item 12, 5, and Item 2, 6 or an additional  
8 writer were not used in the examination of the case.  
9 Basically, that was the evidence that, I guess, the  
10 person who wrote to the victim that the fingerprints  
11 was found on. But Ms. Susan, um, Ms. Gail Heath  
12 stated that, and that's a South Carolina Law  
13 Enforcement Division ---

14 COURT REPORTER: And what was that name again?

15 Ms. Gail, who?

16 A. Gail Heath -- Forensic Service Laboratory Report  
17 on -- and this was on September 3, 2013. However, my  
18 case was pushed back on and I got the transcripts for  
19 that ---

20 Q. Well, ---

21 A. My case was pushed back -- my case was pushed  
22 back, back, and I think on September, around  
23 September asking that, um, they -- Ms. Gail Heath  
24 stated that she needed to take my prints in person  
25 which didn't sound right because if she had prints

1 from, taken from other places that -- I mean, I'm  
2 sorry, not prints, my handwriting from other places,  
3 um, then why would she need them in person. So my  
4 case was pushed back and Mr., the, um, Fourth Circuit  
5 Solicitor's Office asked for my case to be pushed  
6 back around September of 2013 stating that Ms. Gail  
7 Heath said that she needed to get my handwriting in  
8 person. However, I went and gave her my handwriting  
9 in person and the results came back September 15,  
10 2014, she stated, um, that the "Item 1717, 1-17-29  
11 Derrick Dupree request samples are inconsistent with  
12 the normal course of the business like on Item 12,  
13 121-12, that, previous, 116, previous submitted as  
14 known writing of Derrick Dupree for the requested  
15 examples of Item 17, 17-1, 1729 is not equipped to  
16 have been freely and natural written and contained  
17 feature inconsistent with her attempt to describe.  
18 Therefore, no further determination could be made  
19 from that which were recorded on laboratory report  
20 dated September 30, 2013." (ph) However, um, that was  
21 evidence stating, I mean, my innocence and the State  
22 did not present this witness and as far as the  
23 documents I have stating that she was under subpoena.  
24 I have document showing that she was subpoenaed. (ph)  
25 Q. All right.

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1       A. And I -- I -- I brought that up during trial  
2       after the State said they rested their case that all  
3       witnesses -- all their witnesses are done. I asked  
4       about Ms. Gail Heath and Mr. Redmond stated that if I  
5       wanted to present the witness that I could but  
6       thought that it was they witness and it was evidence  
7       excluding me from the case, sir.

8       Q. Okay. Very good. We've gone over question,  
9       statement 10 in your application, your amended  
10      application by Attorney Goldberg. Is there anything  
11      -- is there anything else in regards to those  
12      questions, particularly, about the State either  
13      withholding evidence or possibly improperly  
14      misleading you or other issues that you feel like  
15      need to be addressed at this time? And the  
16      transcript is into the evidence and the other  
17      documents at this time. Anything else about the  
18      State's case against you that you feel was  
19      prejudicial from the State prosecutor?

20     A. No, sir.

21     Q. Okay. We've also spoke this morning about  
22     several pages and these are all, it's my  
23     understanding, reflected in the transcript -- these  
24     are -- these are pages from the transcript that is,  
25     my understanding, in evidence based on judicial

1 notice. The -- and I'm not going to ask you to read  
2 these, but I am gonna go over them briefly with you  
3 and if you can just describe what this is, just  
4 briefly. But, you know, explain it fairly well  
5 enough so that it can be able to look back at it,  
6 looked and reviewed if needed. On page 449 you said  
7 lines 18 through 24.

8 A. Yes, sir.

9 Q. What is that about? What are those issues?

10 A. That's Ms. Rhonda Fields directed by Mr. Redmond,  
11 um, stating that, she stated that she did not  
12 maintain the documentation in the narrative section  
13 of our system, but I did not the narrative section of  
14 our computer program.

15 Q. So you feel that Page 449 of the transcript lines  
16 18 through 24 are particularly relevant, correct?

17 A. Correct.

18 Q. And I'm showing you now page 445 lines 1 through  
19 9, and once again I'm not asking you to read it  
20 verbatim, but what are those, in general, what are  
21 those lines and statements about? Who's -- who's  
22 talking and how is it relevant to this matter?

23 A. Mr. Redmond is, um, questioning Ms. Rhonda  
24 Fields. That's basically stating that, um, well, Mr.  
25 Redmond states, "and, Your Honor, just as so the

1 record is clear based on the question that the  
2 defendant ask in cross-examination and also in light  
3 of the exhibit, the exhibit, the CODIS hit, Ms.  
4 Fields was not originally on the State's witness  
5 list. But since he did introduce this document and  
6 ask questions regarding it, she was added to our list  
7 and she had already been under subpoena. So we would  
8 just make the Court aware of that." But, that was  
9 based on the CODIS hit letter that was supposed to  
10 have been sent out on September 13, 2013 which was  
11 stating this at that time, and I don't have it with  
12 me ---

13 Q. And that's -- and that's fine. Just in your own  
14 words number 1 through 9 on 445 as you said that's  
15 just irrelevant. You feel like the Court should pay  
16 attention to that, correct.

17 A. Yes, sir.

18 COURT REPORTER: And did he say Dakota? Is he  
19 saying Dakota?

20 Q. What name are you saying?

21 A. No, ma'am. CODIS.

22 COURT REPORTER: CODIS.

23 Q. How do you spell that?

24 A. C-O-D-I-S.

25 Q. Okay. And last name or the full name? Okay.

1 Very good. And then the finally point of the  
2 transcript and I'm certainly not asking you to read  
3 this line by line, but you say I think pretty much 1  
4 through 25, the page on total, is relevant. Correct.  
5 Can you, and once again this is I believe brought in  
6 by judicial notice, what is this page about,  
7 basically and can you summarize it for the Court?

8 A. Basically, this page is about, um, Ms. Fields,  
9 Rhonda Fields, again stating that she can't turn over  
10 the letter which is the CODIS hit without comparing  
11 the fingerprints that led to the CODIS. She stated  
12 that she would have first call to the print analysis  
13 of that department, fingerprint analysis of that  
14 department to get a verification of the print that  
15 she received an order to, um, generate letter to be  
16 sent out. She would first need to verify the print  
17 and make sure that it was the right person, um, which  
18 was Derrick Dupree before she was able to generate  
19 and sent a the letter which was the CODIS hit.

20 Q. Okay. And when you, you talk about CODIS,  
21 that's an acronym C, as in cat, O-D-I-S, what is that  
22 acronym for? What is -- what is that department or  
23 agency that you're referring to?

24 A. The DNA, um, the DNA, um ---

25 Q. Now, you don't have -- I mean, to the best of



1 your knowledge. Just the DNA ---

2 A. Data base ---

3 Q. Data base?

4 A. Yes, sir.

5 Q. Okay. Very good.

6 A. It holds the defendant, um, DNA in the record.

7 Q. Okay. Very good. All right. We've gone  
8 through that application, I just have a couple more  
9 brief questions and then we will probably wind up.  
10 And I just want to make sure all of this is  
11 reflected. You also had a pre, a previous PCR  
12 attorney, is that correct, called Lance Bozer?

13 A. That was the first one. Yes, sir.

14 Q. Okay. And he also filed an amendment for  
15 application of PCR, is that correct?

16 A. Yes, sir.

17 Q. Okay. And you and I went over his first  
18 amendment prior application for PCR dated November  
19 8, 2017, correct?

20 A. Yes, sir.

21 Q. Okay. And, basically, it says and, you know, I  
22 don't know if this is, this is relevant in terms of  
23 venue versus change of prosecutor, you know,  
24 prosecutor or what have you. But one of his, in 10-1  
25 of his amendment, it says, "prior to trial, counsel

1 failed to request for a change of venue." Now, does  
2 that relate to the potential conflict of interest  
3 that we saw in question (a) or that a different, in  
4 terms of change -- is change of venue different than  
5 a change because of conflict of interest? You  
6 understand what I'm saying? I mean, does this relate  
7 to the conflict of interest that you were referring  
8 to?

9 A. Yes, sir.

10 Q. Okay. So and you've addressed the Court on that,  
11 correct?

12 A. Yes, sir.

13 Q. Okay. And in your original application from,  
14 filed I believe on August 3, 2017, you state there  
15 was a violation of constitutional rights. Has that  
16 been addressed by you on the stand today?

17 A. Um, yes, sir. I -- I still would like to address  
18 the fact, um, that, um, I don't know if you brought -  
19 - I was intending to bring that up on the exhibit  
20 with the, them putting the Marlboro County Parole,  
21 Pardon Service Officer on the stand stating that he  
22 took my print where there was no record showing that  
23 he took my prints, um, nothing indicating that.

24 Also, I wrote the, um, Parole, Pardon Services in  
25 Marlboro County three years after the trial and that

1 document is over there, I would like to make sure  
2 it's entered as an exhibit, asking what days was my  
3 prints taken on because the officer stated he took  
4 my prints on February 1, 2012. The probation officer  
5 wrote that statement that they did not see me on  
6 February 1, 2012, that my first initial appearance  
7 was on February 3, 2012. I would just like to note  
8 that. But, um, ---

9 Q. For the record?

10 A. Yes, sir.

11 Q. All right. And there's two other matters here  
12 and it says, the "judge sentence violates right to  
13 jury", what did you mean by that?

14 A. I'm not sure. I was stating, um, if that dealing  
15 with the directed verdict, I'm not -- I'm not sure.

16 Q. Well, let me -- let me show it to you just so  
17 there's no -- and these are the final two questions  
18 that I have other than maybe a concluding. And I  
19 don't want to put them together, necessarily. But,  
20 "judge sentence violates right to jury", what did  
21 that mean?

22 A. "Judge sentence violates right to jury".

23 Q. And if you don't know, that's fine.

24 A. Yeah. I'm not sure. I don't want to -- I'm not  
25 sure if it was based on a directed verdict and that I

1 ask that the judge, hear the case on directed  
2 verdict, because of the missing evidence that was  
3 missing during trial and he asked has the State  
4 presented they argument to that and the State felt  
5 like -- they stated that they felt like they turned  
6 over all the evidence and there was enough evidence  
7 to hold a conviction of, I mean, the ---

8 Q. Do you feel like that's relevant?

9 A. No, sir, I don't. No, sir.

10 Q. Okay. All right. And then the final matter  
11 here is request for DNA testing, testing ---

12 A. You saying do I feel the ---

13 Q. Well -- and let me rephrase that. In terms of,  
14 judge, apparently, sentencing without right to jury,  
15 you feel like that is irrelevant, correct?

16 A. Correct. Correct.

17 Q. And you've explained it. Okay. The final  
18 question here is, and you said, you say, requests for  
19 DNA testing, and I believe you've already gone over  
20 that in your testimony, is that correct? A. Yes,  
21 sir.

22 Q. Okay. Very good. You know, we've gone --  
23 there's several items that are -- there's several  
24 items that are in evidence, the chain of custody that  
25 we discussed earlier today. The transcript, you

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1 know, I think we've touched on pretty much everything  
2 that we've brought and we've discussed. Is there  
3 anything else that you'd like to bring to the Court's  
4 attention on that?

5 A. Yes, sir. I have some documents right here ---

6 Q. And we'll refer to them.

7 A. --- that I would like to -- and to be honest,  
8 that really not that important.

9 Q. Okay.

10 A. I think you have that document that I sent about  
11 the, um, the Marlboro County Probation, Pardon and  
12 Parole Service.

13 Q. And I believe you mentioned that on the stand but  
14 just for, just briefly in a final matter ---

15 A. Okay. I was just saying do it need to be entered  
16 into an exhibit or not? I'm not sure.

17 Q. Well, I don't think it -- well, just tell me  
18 about it, if you don't mind?

19 A. Oh, I done spoke about it so that'll -- that'll  
20 be it.

21 Q. And you brought it to the Court's attention ---

22 A. Yes, sir.

23 Q. --- right?

24 A. Yes, sir. Yes, sir.

25 Q. Okay. And once again, specifically, what were we

1 talking about here?

2 A. The fact that the, um, three years after trial I  
3 contacted the Marlboro County Probation, Pardon  
4 Service just for the record and they stated that, um,  
5 was it impossible for my prints to have been taken on  
6 February 1<sup>st</sup> anyway because I didn't see them until  
7 February 3<sup>rd</sup>.

8 Q. Okay. Very good. And so as we've asked, you  
9 know, if there's nothing else, that's all the  
10 questions that I ---

11 A. Yes, sir.

12 Q. Okay. You stay on the stand because you're been  
13 cross-examined. Do you have anything else?

14 A. No, sir.

15 MR. FOWLER: Your Honor, that's all the questions  
16 I have at this time.

17 THE COURT: All right. Ms. Marto?

18 MS. MARTO: Yes, Your Honor.

19 **Cross-Examination by Ms. Marto:**

20 Q. Good afternoon, sir.

21 A. Good afternoon.

22 Q. Now, is it your contention that there was a  
23 conflict of interest between the solicitor's office  
24 in this case and that it should have been sent to  
25 another prosecution agency because of a close

1 relationship the police had with the victim?

2 A. Yes, ma'am. The police -- the victim's son being  
3 the Chief of Police of Chesterfield County which was  
4 the same judicial of the Fourth Circuit. Yes, ma'am.

5 Q. There was no familiar relationship with anybody  
6 at the prosecution agency, correct, just the police?

7 A. I can't say for sure. Other than that, I know  
8 Mr. Redmond, he's the solicitor out of Chesterfield  
9 County as well, other than that I can't just.... no,  
10 ma'am. (ph)

11 Q. Now, you've handled the entire trial yourself,  
12 correct?

13 A. Correct.

14 Q. You handled closing and openings and cross-  
15 examinations of all witnesses?

16 A. All the witnesses that, yes, ma'am, that was  
17 there. Yes, ma'am.

18 Q. Okay. And so you were competent enough to  
19 conduct an entire trial by yourself, correct?

20 A. I mean, I can't say that I was competent  
21 personally. But I was ---

22 Q. I mean, I understand ---

23 A. Yes, ma'am. I guess, I was -- I mean, if the  
24 record speak or it show, I guess -- I don't knoww I  
25 can't say. That's a ---

1 Q. I understand you didn't get the result you  
2 wanted.

3 A. Yes, ma'am.

4 Q. But you were able to handle that. Okay. Now,  
5 the Court questioned you concerning your decision to  
6 go pro se, correct?

7 A. Yes, ma'am.

8 Q. And they determine that you were able to proceed  
9 pro se?

10 A. Correct.

11 Q. Okay. And you had -- did Matthew Swilley also  
12 work on this case as well?

13 A. Yes, ma'am.

14 Q. And so you had four attorneys before proceeding  
15 pro se, correct?

16 A. Yes, ma'am.

17 Q. Okay. Now, is it your contention that evidence  
18 wasn't disclosed by the State until either after  
19 trial or right before trial?

20 A. Yes, ma'am. Some was disclosed the day of trial  
21 and others was disclosed years, two, three, four  
22 years, after trial and other evidence I still do not  
23 have. Yes, ma'am.

24 Q. And then the State did state on the record that  
25 they turned everything over that was exculpatory,



1 correct, and everything that they intended to admit  
2 at trial?

3 A. Yes, ma'am.

4 Q. So is it your position that they were lying at  
5 trial?

6 A. Yes, ma'am. As I just stated and provided the  
7 evidence, there's proof showing that in the trial  
8 transcript along with the  
9 evidence that will speak for itself.

10 Q. Now, they had an original suspect, correct? That  
11 wasn't you?

12 A. Yes. Yes, ma'am. There was an original suspect  
13 that confessed to the charge that was locked up  
14 before me. He was however, released three day after  
15 his arrest with nothing excluding him from the crime.  
16 Nothing from SLED or anyway else excluding him from  
17 the crime. However, like I said, he did confess to  
18 the crime saying that he, he, yes, ma'am, he  
19 committed the crimes.

20 Q. And did you voluntarily go to the police  
21 department and talk to the police several times?

22 A. Yes, ma'am. When my name was brought, I went to  
23 the police department to clear my name on the -- at  
24 that time, they didn't have any evidence. I think  
25 that was on the 10<sup>th</sup> of October, um, September, 2013.

1 Me and my, well, girlfriend at the time. And like I  
2 said they didn't have any evidence so I was able to  
3 leave. However, the next day the first defendant,  
4 who was arrested, confessed. His grandmother went to  
5 the police department after seeing me, stating that,  
6 why wasn't I arrested when her grandson was still,  
7 was arrested. And I was the one who committed the  
8 crime. On that same day, I was arrested stating that  
9 they had fingerprints. Yes, ma'am.

10 Q. And they also got DNA evidence from you, correct?

11 A. Yes, ma'am. They, um -- yes, ma'am, they -- it  
12 was the CODIS hit letter which like I said they  
13 didn't have sufficient evidence to do that. But they  
14 used the letter, I guess. I guess, the judge allowed  
15 them to do it without presenting no evidence. And  
16 allow them to do that to get my biological DNA and  
17 they did get my biological DNA. Yes, ma'am.

18 Q. And they found that it matched the swabs, the  
19 vaginal swab as well the underwear and night gale?

20 A. I mean, that's what the, um, the DNA analysis,  
21 Ms. Lily, stated on which it took six months for that  
22 test to come back. Also, due to the fact that  
23 there's so much, um, wrong evidence coming from the  
24 State I, I can't based that evidence to be true.

25 Q. Did they state that the chances of an unrelated

1 individual being a match would be 1 and 130  
2 quadrillion, do you recall?

3 A. Yes. Some where around that. Yes, ma'am.

4 Q. Yeah. Do you recall the victim testifying at  
5 trial?

6 A. Yes, ma'am.

7 Q. And did she sound pretty confident that you were  
8 the person that had raped her?

9 A. I -- I think that she sounded more coerced. I  
10 did ask for a photo lineup and the witness stated --  
11 the victim stated that she wasn't sure, it could have  
12 been two people or she wasn't sure how many people it  
13 was. I asked for a photo lineup, you know, to be --  
14 and the witness, the victim, saw me several times  
15 before trial and she never at once pointed me out or  
16 stated that I was the defend, I mean, the suspect at  
17 the time. So I think from her statement during trial  
18 it was pretty much coerced to, you know, pointing me  
19 out during the trial stating, yeah, that's him.  
20 That's the guy.

21 Q. And you cross-examined, correct?

22 A. Yes, ma'am.

23 Q. Do you recall, I'm looking at Page 157 at the  
24 trial transcript, "at any time you didn't recognize  
25 the defendant at that time?" And she said, "Yes. I

1        did. I do. It's you." Do you recall that?

2        A. Yes, ma'am.

3        Q. Okay.

4                MS. MARTO: One moment, Your Honor.

5        Q. So they had DNA evidence. They also had  
6        fingerprint evidence. You gave a statement and they  
7        had a confident victim that they were presented at  
8        trial, correct?

9        A. They didn't have DNA evidence, neither  
10       fingerprint evidence. No. That is incorrect.

11       Q. So -- are you stating that the DNA evidence was  
12       fabricated?

13       A. I just -- I just showed that, ma'am. There was  
14       no sufficient evidence to state that the DNA evidence  
15       was true.

16       Q. Oh, okay. But you acknowledge that the DNA  
17       evidence they presented at trial matched you as being  
18       the suspect, correct?

19       A. I'm not -- I'm not -- no, ma'am. I miss  
20       understanding what you're saying. Are you stating  
21       that the letter, the report that came from Ms. Lily  
22       Godwin (sic), there's no such sufficient evidence  
23       that state that that evidence was true because the  
24       evidence that came from the CODIS hit states there  
25       was no evidence which was a fingerprint. My DNA was

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1 in the database system. So the CODIS hit came before  
2 the, um, the -- they call on the report ---

3 COURT REPORTER: The what report?

4 A. The, um, forensic ---

5 COURT REPORTER: Forensic ---

6 A. --- the South Carolina Law Division Forensic  
7 Service Laboratory report which was, at that time,  
8 DNA analysis they had called again the CODIS hit was  
9 the first to report stating that they had sufficient  
10 evidence to get my biological DNA. There was no  
11 sufficient evidence to get my biological DNA. So I  
12 can't say that they had DNA and I stated and showed,  
13 I'm quite sure, precisely, I'm correct that they  
14 didn't have fingerprints. And I still don't have  
15 fingerprints.

16 Q. Okay. But you acknowledge that your DNA sample  
17 matched the vaginal swab, the nightgown and the  
18 underwear, correct?

19 A. I -- I -- no, ma'am, I don't. I would attest  
20 that they did take my biological DNA, I will to that.  
21 But I can't contest or whatever that it matched. No,  
22 I can't do that. I can't say that.

23 Q. Okay. So, essentially, what you're saying is  
24 that virtually all evidence presented at trial was  
25 fabricated? The victim was coerced into testifying?

1 The DNA evidence was fabricated? The fingerprints  
2 that are in evidence ---

3 A. I think -- correct. I think I just pretty much  
4 showed that and proved that on record, ma'am. So, I  
5 mean, that question would be some what frivolous to  
6 be ---

7 Q. And that all happened and went under the radar of  
8 everybody involved beyond you, correct?

9 A. Repeat that again.

10 Q. Nobody seemed to recognize that all of that was  
11 fabricated besides you, correct?

12 A. I can't say that because I don't know who else  
13 seemed that to be fabricated because if I was to  
14 state that, base that on any of my people saying  
15 that, that would say, oh, yeah, they, yeah -- yeah --  
16 yeah, they fabricated or falsified those documents.  
17 Yes, ma'am.

18 Q. Okay.

19 MS. MARTO: No further questions, Your Honor.

20 THE COURT: All right. Mr. Fowler?

21 MR. FOWLER: Just following up on the questions  
22 that she raised.

23 **Redirect Examination by Mr. Fowler:**

24 Q. You're not a licensed member of the South  
25 Carolina Bar, are you?

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1 A. No. No, sir.

2 Q. You're not a lawyer?

3 A. No, sir.

4 Q. Okay. And you've never been to law school?

5 A. No, sir.

6 Q. Okay. And in terms of competency, she mentioned  
7 the competency in terms of you defending yourself,  
8 what standard of competency do you feel like is  
9 relevant here in terms of you representing yourself  
10 at trial? How -- why do you feel like you were  
11 competent to represent yourself?

12 A. I feel that I was competent because I was  
13 acknowledging the fact that I was missing documents.  
14 I was missing evidence that led to my arrest. I was  
15 missing all of them of the evidence that was supposed  
16 to have been presented at trial. And based on the  
17 fact that my attorney, which again, the trial  
18 transcript will show that my attorney refused to  
19 acknowledge that I was missing evidence. I feel that  
20 I was more competent and to, you know, proceed with  
21 the case pro se then they would be. And that, again,  
22 they refused to acknowledge that I was missing  
23 evidence, sir.

24 Q. Okay. Did -- you mentioned that you had four  
25 attorneys on this matter, is that correct?

1 A. Yes. Correct.

2 Q. Okay. In general, not -- generally, why did you  
3 go from one attorney to the other?

4 A. Well, I never -- what -- Mr. Brandon Steen took  
5 on another job. Julie Wooten, I asked to be removed  
6 from the case because she refused to acknowledge the  
7 -- well, um, -- motion report to turn over, the  
8 solicitor's office, to turn over missing evidence and  
9 whatever other evidence that I wasn't aware of. She  
10 refused to acknowledge that. And I guess, Matt  
11 Swilley was somewhat her, um, I guess, at that time,  
12 he was helping her at the time. That would made him,  
13 I guess, the third attorney. And I think that she  
14 was removed in 2014, June. I do have that transcript  
15 and it should be entered. I would like to enter that  
16 transcript as well into the, um ---

17 Q. Well, let's -- let's -- let's just respond to the  
18 questions that I have. Part of these attorneys  
19 leaving your representation was based on them not  
20 getting the proper evidence, is that correct?

21 A. Yes, sir.

22 Q. Okay. So you felt dissatisfied because the  
23 evidence, they did not bring you the evidence that  
24 you feel was appropriate, right?

25 A. Not so much was appropriate. I -- I -- the



1 evidence that led to my, led to my arrest, the  
2 evidence that was supposedly, I guess, you know, be  
3 against me. I don't have no evidence ---

4 Q. Okay. But ---

5 A. --- right now that would convict me of any crime.

6 Q. Okay.

7 A. I state it in the file transcript. And the  
8 evidence that I just presented will sure quote that.

9 Q. Okay. It was mentioned that the State did say  
10 that they turned over everything, discovery wise, I  
11 believe, at trial. And you're saying that's  
12 incorrect, right?

13 A. Correct.

14 Q. Okay. She mentioned that the, that the  
15 witness/victim, what have you, on page 57. She said  
16 the witness referenced to you as the perpetrator?

17 A. Correct.

18 Q. Do you feel like -- what's your opinion on why  
19 she said that if you said that that's incorrect?

20 A. I ---

21 Q. In your personal -- in your own words?

22 A. Again, and based on, you know, the things that I  
23 guess was just presented I still find this question  
24 frivolous. I think that she was coerced. I know that  
25 she was coerced. Again, you know, I ---

1 Q. Okay. But -- just -- well, okay, you've  
2 answered the question. Who do you feel coerced her,  
3 in your opinion?

4 A. The victim....

5 Q. Yeah -- well ---

6 A. I mean, if -- I mean, the SLED's agent was  
7 coerced. And, I mean, you know, why not the victim.

8 Q. Okay. She mentioned the issue on DNA and  
9 fingerprints, it's your contention that -- you're  
10 saying that there is no sufficient evidence to prove  
11 any DNA or fingerprints in that matter, correct, in  
12 your trial?

13 A. I don't have it, I mean....yes, sir.

14 MR. FOWLER: I have no further questions.

15 MS. MARTO: No other questions, Your Honor.

16 THE COURT: All right, sir. Thank you for your  
17 testimony. You can step down now.

18 MR. FOWLER: Do we need to approach?

19 THE COURT: Yes.

20 (Whereupon, a bench conference was held off the  
21 record)

22 MR. FOWLER: Your Honor, may I speak with my  
23 client briefly?

24 THE COURT: Yes, sir.

25 MR. FOWLER: Your Honor, after speaking with my

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1 client, we have no further evidence to present at  
2 this time.

3 THE COURT: All right. Thank you, sir.

4 MS. MARTO: Your Honor, the State would call Mr.  
5 Kernard Redmond to the stand please.

6 THE COURT: All right. Mr. Redmond? Madam Clerk?

7 THE CLERK: Do you swear or confirm the testimony  
8 you give this Court would be the truth and nothing  
9 but the truth so help you God?

10 MR. REDMOND: I do.

11 THE COURT: All right. Mr. Redmond, state your  
12 name for the record.

13 MR. REDMOND: Kernard Redmond.

14 THE COURT: All right. Your witness.

15 KERNARD REDMOND, first being  
16 duly sworn, testified as follows:

17 **Direct Examination by Ms. Marto:**

18 Q. Good afternoon, sir.

19 A. Good afternoon.

20 Q. Thank you for being here. I appreciate it.

21 A. No worries.

22 Q. So you prosecuted this case, correct?

23 A. Yes. I along with Mary Thomas Johnson-Lee.

24 Q. Did you have the case from the very beginning?

25 A. That's a good question. I think we did. I think

1 I was involved in it from the very beginning.

2 Q. Okay. Do you recall any conflict of interest that  
3 may have existed?

4 A. No. And just, real quickly, it's protocol if we  
5 felt that there was a conflict of interest. We  
6 would've reached out to the Attorney General's Office  
7 for another solicitor. But there was no conflict  
8 that existed within our office.

9 Q. Do you recall seeing anything indicating that  
10 applicant's mental health or competency was an issue?

11 A. I do not. I do not.q

12 Q. Did you think that he handled the trial  
13 adequately enough for somebody without a legal  
14 education?

15 A. Actually, I do. I think for someone without a  
16 legal education, he was able to state his positions  
17 and his reasons for, you know, I guess, not going  
18 with counsel. He was able to state that. He was  
19 able to, to get himself through the trial.  
20 Obviously, it did go all the way to the end so tere  
21 weren't any concerns of competency in the legal sense  
22 from my point, from my point of view.

23 Q. And did the judge engage him in a complete  
24 colloquy concerning his decision to go pro se?

25 A. Absolutely. And he seemed to understand that.

1 He responded accordingly.

2 Q. Do you think the judge -- did you think the judge  
3 was thorough in that  
4 colloquy?

5 A. Absolutely. Yes.

6 Q. What evidence do you recall in the case?

7 A. From looking at my notes and I'm probably gonna  
8 miss a lot because this was, I think, eight years  
9 ago, almost eight years ago. But -- and some of the  
10 things he didn't mentioned and hopefully, the  
11 transcripts will bear it out if I'm correct and if my  
12 notes correct. But we talked about the DNA. We  
13 talked about the fingerprints. And just to address  
14 something if I could real quickly, the context of  
15 what he presented were, is the 901 Rule, 901 and the  
16 rule of evidence, authentication, that's the context  
17 as it relates to authenticate. The reason Albert  
18 Smith came into play is because he was the one that,  
19 ultimately, took the fingerprints and I think that  
20 was presented at trial. So I think the transcript  
21 would bear out what I'm saying. But -- but get back  
22 on point, so we had, obviously, the victim's  
23 testimony, the fingerprint from the note. There was  
24 a note that was left. It was a fingerprint. There  
25 was -- the DNA, of course. That's the main thing.

1 The DNA that was taken. And he didn't really get  
2 much into his own statement because he actually, and  
3 again, the transcript will bear this out, but he  
4 actually -- he comes in voluntarily because his name  
5 had been floating around even though it was Akeem  
6 Hicks, I think that was his name, had been, Kreem or  
7 Akeem Hicks, had been incarcerated. So he comes in  
8 to try to clear his name. But, ultimately, he ends  
9 up being arrested. There was a CODIS hit and  
10 everything, he gets arrested. Then he asked to speak  
11 to law enforcement. He reached out to law  
12 enforcement, is my recollection, and then gave a  
13 statement. And one of the things I remember, Jamie  
14 Seal, I don't know if it's in the transcript, but  
15 it's definitely in my notes, is that there were items  
16 and evidence that he was aware of it that only the  
17 perpetrator would have known. Such as the note. And  
18 I think it was a shirt, maybe, or something else,  
19 that was not public knowledge. And that's something  
20 that we oftentimes use to determine whether or not  
21 someone is a credible witness or a credible  
22 confessor, for lack of a better term. And so those  
23 are the things that I recall. And I'm probably  
24 missing some things, but those are the highlights.  
25 Q. Okay. So it's your position you have to confess

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1 of the crime in a police statement?

2 A. Exactly. Yes.

3 Q. Okay. And was all the evidence, as far as you  
4 remember, turned over to the applicant?

5 A. Yes. I don't recall anything -- and the  
6 transcript will bear this out because like I said it  
7 has been eight years and, of course, His Honor, knows  
8 that the Court is a gatekeeper. So that as evidence  
9 and things come up, if there -- and these issues have  
10 been brought out. These issues they've been brought  
11 out as it relates to evidence being turned over. And  
12 so if something was improper and not done properly, I  
13 think the transcript would bear out as being  
14 admonished about it and possibly evidence being  
15 withheld. Withheld from being -- well, I say  
16 withheld, not admitted into evidence.

17 Q. Do you have any indication that any of that  
18 evidence was fabricated?

19 A. No. Not at all. Not in the least. I have no  
20 concerns about that at all.

21 Q. Do you have any concerns about the victim being  
22 coerced and implicate applicant?

23 A. I can assure this Court and anyone within earshot  
24 of me at this point in time, absolutely not. That's  
25 not how any of us -- I know Mary Thomas Johnson-Lee

1       for what twenty some odd years and I can tell you  
2       that's not the way she practices law. And it's dang  
3       sure not the way I practice law. That isn't how I do  
4       business. So I -- unfortunately, I'm sorry the  
5       defendant feels that way, but I can assure this Court  
6       and anybody within an earshot that no, no evidence  
7       was fabricated. No witness was coerced period.

8       Q. Okay. And would you consider it a strong case  
9       for the State?

10      A. Absolutely. Yes, it was. We got the right  
11      person.

12      Q. Okay. Do you recall violating the rules of  
13      evidence in any way by taking advantage of applicants  
14      pro se status?

15      A. No. As a matter of fact, one of the things that I  
16      remember us talking about, there's always a concern  
17      when you have a pro se litigant because you don't  
18      want for one, want to appear like you're taking  
19      advantage for one practical reason and this is  
20      something that Ms. Johnson-Lee and I discussed. And  
21      just real quickly, I remember a long time ago those  
22      of us who may remember Billy Mouckton, and he's not  
23      going to be happy that his name is going to show up  
24      in a transcript, he actually had to try a case with a  
25      pro se defendant. It was a drug case. He lost that



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1 case. And one of the lessons that came out of that,  
2 and this is early in my career, is that juries often  
3 sympathize with a pro se defendant. You actually have  
4 to be careful not to take advantage of them because  
5 juries will sometimes sympathize with them. So from  
6 a strategic standpoint that's not something that we  
7 do because it could actually come back to haunt you.

8 Q. When you argue that he was given more leeway than  
9 an attorney would?

10 A. Absolutely. Yes.

11 Q. Okay. Do you recall the solicitor's office  
12 misleading the applicant concerning evidence admitted  
13 and witnesses that would be called to trial?

14 A. No. Not at all.

15 Q. And the witness that was called last minute that  
16 was cleared up on the record?

17 A. It was. That was dealt with on the record. And  
18 again, the judge's gatekeeper has the opportunity to  
19 hear everything and make a determination.

20 Q. And once you explained that to the judge, he  
21 stated you may proceed?

22 A. That is correct. Yes.

23 Q. Okay.

24 MS. MARTO: No further questions, Your Honor.

25 THE COURT: All right. Mr. Fowler?

1       **Cross-Examination by Mr. Fowler:**

2       Q.   You were at court the entire time today that Mr.  
3       Dupree was on the stand, correct?

4       A.   Yes, I was.

5       Q.   And you heard every word of his testimony,  
6       correct?

7       A.   Yes, I did.

8       Q.   And he indicated that you, that your office  
9       failed to request, failed to be -- fail to not  
10      prosecute the case because of conflict of interest.  
11      And he stated that there was something between the  
12      police officer involved or the Chief of Police and  
13      the victim. Did you hear that?

14      A.   I did hear that.

15      Q.   Okay.

16      A.   And that is -- I cannot address -- I know he had  
17      mentioned my name in the context of that and I can  
18      assure you, Keith Thomas, now the Chief of Police,  
19      former Chief of Police of Cheraw, are not related.  
20      Hence, his mom and I are not related. That was Keith  
21      Thomas's mother that was the victim. That is the  
22      victim in this case. But I am not aware of any  
23      issues of conflicts that he, that he addressed.  
24      Q.   But you have a close, had a close working  
25      relationship with that officer, correct?

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1       A. Well, we're -- with all law enforcement in the  
2       circuit, we often times work with, with them and work  
3       very closely with them and prosecute the cases, that  
4       much is true. I'd be a fool to state, otherwise.  
5       But in the context of whether it rose to a level of  
6       con, of a conflict in the handling of this case, it  
7       absolutely did not.

8       Q. Did your office make any kind of statement to the  
9       Court or to the Attorney General's Office or anybody  
10      saying that there's clearly -- did you have any kind  
11      of memorandum or any kind of written documentation  
12      stating that there was not a conflict of interest in  
13      this case?

14     A. I'm not -- I don't recall whether there was  
15     anything written on either side. If there was, I  
16     would defer anything that the record would have. But  
17     I'm not personally aware of any, or I don't  
18     personally recall. I'll put it that way.

19     Q. Okay. Earlier today, Mr. Dupree indicated that  
20     he was going under, he was having mental health  
21     treatments around this time. Were you familiar with  
22     that?

23     A. I was not aware of that.

24     Q. And did you ask him about it or did you do any  
25     kind of research on it?

1       A. I did not. Personally, I don't recall asking him  
2       about it. The only that I can defer to is, the  
3       colloquy with the judge, with the Court at the outset  
4       of the trial as relates to him understanding and the  
5       reasons why he wanted to go forward with pro se. so  
6       I had to yield to whatever is in the transcript.

7       Q. But you didn't -- your office didn't do any  
8       independent research on his mental health at that  
9       time, correct?

10      A. No. We did not.

11      Q. Okay.

12      A. Not that I'm aware of. I'll put it that way.

13      Q. In terms of him proceeding pro se, what would --  
14      did your office have a statement on it in terms of  
15      the transcripts in terms of whether he should go  
16      forward pro se or not?

17      A. Honestly, I don't remember. I'd to defer to the  
18      transcript. Like I stated earlier, personally, I'm  
19      always concerned when a person goes pro se for the  
20      reasons I stated earlier. But I don't -- I have to  
21      yield to the transcript. I don't have any independent  
22      recollection of that on my own. But again, I -- I --  
23      I defer to the transcript.

24      Q. He indicated that he had four prior attorneys.  
25      Was there any miscommunication with your office in

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1 terms of, you know, with him being the final trial  
2 counsel that you've sent something, say to attorney  
3 number two, and it didn't get to him? Or was there  
4 any -- did you resend to him anything that was sent  
5 to a prior attorney just to make sure that he had it  
6 as a final attorney, so to speak? Or do you know if  
7 any miscommunication?

8 A. I personally don't know of any. Now, I will say  
9 during that time I think Mary Thomas might have been  
10 the resident prosecutor in Marlboro County. I was in  
11 Chesterfield County during that time. But the Deputy  
12 Solicitor handling the whole circuit, but I would  
13 have to defer to her knowledge because she is way  
14 more, she would have a much better recollection than  
15 I do. I don't recall anything like that having taken  
16 place. Now, during the course of, of any case there  
17 are always questions and queries back and forth  
18 between defense and prosecution about discovery and  
19 I'm sure those, those discussions took place in this  
20 case. But as it relates to anything specific, to  
21 your question, I'm not aware of any personally or I  
22 don't recall any. But again, I would defer to Ms.  
23 Johnson-Lee's memory on that issues. And I'm sorry,  
24 Mary Thomas. But since she was resident there at the  
25 time, she would've, actually, had more of a role in

1       that than I would have.

2       Q.   In the testimony earlier, it says, the State  
3       withheld evidence from him, Mr. Dupree, until the  
4       beginning of the actual trial.  So there was a  
5       withholding of evidence from him until the beginning  
6       of the actual trial, is that correct?

7       A.   If there was, I don't -- and I remember that  
8       exchange.  I can't recall exactly what it was, if  
9       anything.  The transcript, I would have to yield to  
10      the transcript.  I know the issue may have come up  
11      about fingerprint card.  That's the only thing that's  
12      kind of resonating in my mind.  But that's, um,  
13      because with what we had shown up until the time of  
14      trial, we were trying to get the authentication  
15      issues resolved.

16      Q.   Well, let's talk about that.  There's a 37 page  
17      chain of custody and he's indicated and you've heard  
18      his witness testimony ---

19      A.   Yes.

20      Q.   --- earlier, that there was some issue between  
21      Marion County and this, you know, the Marlboro County  
22      or what have you.  What's your understanding of that  
23      chain of custody?

24      A.   I don't -- and -- and -- and when it comes to  
25      Marion County or Marlboro, I don't know if that was -

1       - if that was some how -I haven't seen the whole  
2       context of that because I don't remember,  
3       specifically. But as it relates to the chain of  
4       custody on, on, on that, I would have to yield to  
5       whatever was testified to in court. Regarding  
6       authentication, and again, this is based on my  
7       recollection, the transcript will bear this out, but  
8       Albert Smith was the person that actually took it.  
9       And I think there's some recent case law about the  
10      fingerprint cards that have come out and  
11      authenticating and the need for authentication. So  
12      this falls in line of what we were trying to do as it  
13      relates to authenticating the fingerprint card that  
14      was used to identify, you know, to, to, to identify  
15      the defendant as being a person that it touched that  
16      particular note. But I'm sorry, I didn't answer your  
17      question. But specifically on the chain of custody,  
18      I have to defer to what's in the record in all  
19      honesty. I don't have an independent recollection.

20      Q. Well, do you agree with what's in the record if  
21      there is some kind of violation shown?

22      A. I mean, let's put it like this, whatever is in  
23      the transcript, that would be the record of the case.  
24      And so I would, you know, whatever the transcript  
25      would bear, I would not contest.

1 Q. He alleges in his testimony and application  
2 amendment that the State violated the rules of  
3 evidence taking advantage of the pro se status.  
4 You've heard his testimony in here earlier?

5 A. Yes.

6 Q. You heard his statement about violation, your  
7 office's violation of rules of evidence. What's your  
8 take on that?

9 A. Wishful thinking on his part. That would --  
10 that's the first thing that comes to mind. That did  
11 not occur. And, you know, I get it. Because, you  
12 know, who else is he going to, to point the finger  
13 at. And - and that's fine. But we know ethically  
14 that we did what we were supposed to do to the best  
15 of our abilities to make sure that he got a fair  
16 trial. And I stand by that. I'm absolutely sure of  
17 that particularly fact.

18 Q. But if there is something that was enter today by  
19 judicial notice or otherwise, you would defer to  
20 that?

21 A. To what point?

22 Q. Well, the chain of custody, anything shown in the  
23 transcript of the trial. And you've mentioned  
24 several times today that you refer to the transcript  
25 ---



1       A. Transcript ---

2       Q. --- to what's entered into evidence. You would  
3       agree with -- if there is shown something in the  
4       transcript or chain of custody that is problematic,  
5       you would not disagree with that, would you?

6       A. I guess, I'd have to actually see what it is in  
7       the transcript. And the reason I say that is this,  
8       there may have been issues that come, came out that  
9       we might have disagreed with and they may have had a  
10      ruling that we may disagreed with. So I don't want  
11      to go as far as saying that, yes, we would absolutely  
12      adopt what's in the transcript, without seeing this  
13      specific passage that you're talking about, if that  
14      makes sense. Because it very well may be an issue  
15      that was contested and that was ruled against despite  
16      our objection to that particular issue. So I don't  
17      want to blatantly say that, oh, yes, we agree with  
18      it. The transcript may bear out an issue but I would  
19      need to see what our response and position was on  
20      that particular issue before I would make that  
21      blatantly statement.

22      Q. In regards to the final matter in Ms. Goldberg's  
23      amended, amended documentation it says, "the  
24      solicitor's office misled the applicant regarding the  
25      evidence submitted at trial and the witnesses that

1 would be called during trial." You heard that.

2 Isn't it true that you guys, that your office had  
3 some discretionary or maybe miscommunication or  
4 something with Mr. Dupree in terms of him  
5 representing himself as opposed to the other  
6 attorneys? I mean, isn't there a possibility for  
7 some miscommunication or problem in that regard?

8 A. Could you restate that question? I'm trying to  
9 follow the, the rationale.

10 Q. You heard his testimony about your office  
11 allegedly misleading him, correct?

12 A. Yes.

13 Q. Do you agree with that?

14 A. When you say misleading him, at what -- I don't  
15 agree that we misled him at all. But specifically,  
16 when he's saying misleading, what did we mislead him  
17 about?

18 Q. In terms of providing documentation later than  
19 you should have, those types of things.

20 A. Nah, I don't agree with that.

21 Q. In regards to witnesses, anything there that you  
22 feel like your office misled him on?

23 A. I can assure to this day, I do not agree that we  
24 misled on a thing. I would state that categorically  
25 and unequivocally.

1 Q. You feel like your office did everything correct  
2 in terms of the SLED reports that were provided?

3 That you provide him -- did you provide him all the  
4 information necessary on the SLED report?

5 A. I don't have any reason to think that we didn't.

6 Q. Okay. In regards to Albert Smith, what was his  
7 relation to this trial? What was his -- you  
8 mentioned him, I believe.

9 Q. He was -- he was he worked with probation in  
10 Marlboro county. And you have to forgive me, I'm sure  
11 it's in the transcript, I can't remember how he was  
12 directly tied. Mary Thomas may remember better than  
13 I do, how he was directly tied to the defendant. But  
14 I know he was the one that, the fingerprint card was  
15 -- he was -- he was the one that took the  
16 fingerprints from the defendant that was, that was  
17 used. I remember that much.

18 Q. Is that the first time or second time that prints  
19 were taken?

20 A. That I don't remember. I'd have to yield to the  
21 transcript. I don't remember that.

22 Q. Okay. Did you order or did your office requests  
23 that his prints be taken a second time?

24 A. The only thing I remember, specifically, is the  
25 fact that there was an issue about authentication for

1       -- because with it being AFIS, you know, there's an  
2       issue about authentication and I could be wrong. And  
3       again, I'd yield to the transcript on this. But by  
4       finding out that Albert was the one that took the,  
5       the, that took his prints, that, even with AFIS,  
6       being involved that stands as authentication because  
7       that's what was used to identify him. That's my  
8       recollection. Obviously, my recollection is wrong on  
9       that then the transcript would air that out.

10       MR. FOWLER: Your Honor, may I have just a moment?

11       THE COURT: Yes, sir.

12       COURT REPORTER: What are you replying to when you  
13       say xxx, what is it?

14       MR. REDMOND: AFIS. A-F-I-S. I forget what that  
15       acronym stands for.

16       COURT REPORTER: Okay.

17       THE COURT: I always forget what that stands for.

18       MR. FOWLER: Your Honor, I've spoken with my  
19       client and discussed with him our questioning. I've  
20       gone over what we've presented in court so I have no  
21       other -- just a moment please, judge. Your Honor, may  
22       I see our evidence that was put in earlier.

23       THE COURT: It's right here, sir.

24       MR. FOWLER: Just a moment, Your Honor, please.  
25       Your Honor, I've taken, present the four pages that

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1 is provided to evidence earlier and I'd like to ask  
2 the witness questions about number 10 and 11.

3 THE COURT: All right, sir.

4 MR. FOWLER: And that should wrap up our  
5 questioning.

6 Q. I'm showing you pages 11 and 10 ---

7 A. Okay.

8 Q. --- of the narrative that was entered in. Can  
9 you take a quick look at it? And I believe you're  
10 quoted in it.

11 A. Yes. I've -- I've had a chance to look at this  
12 previously.

13 Q. Okay. Give me just a moment.

14 A. Okay. Sure. Okay. I'm ready.

15 Q. Is it -- is it true that's, that's you being  
16 reflected in those documents?

17 A. Yes. That's email communications and I think they  
18 may be -- I think this is the email communications  
19 that I'm reflected.

20 Q. So do you agree with everything that's presented  
21 in these two pages of the documentation?

22 A. Yeah. I mean, this is accurate as it relates to  
23 what was typed from what my recollection was. And I  
24 think the Marion County thing that he sees, I think  
25 she had sent something back to back saying Marion

1 County and I think I responded, I don't know if it's  
2 on this page or not about -- yeah, I say, I don't  
3 know anyone in Marion County. And so, obviously,  
4 this is a Marlboro County situation so....

5 Q. So would you agree that there was an issue with  
6 the fingerprints in terms of their accuracy?

7 A. No, I would not agree with that at all. And I  
8 think the transcript would bear that out. So no, I  
9 definitely don't agree with that. I understand the  
10 context he's trying to place it and that's why I say  
11 I put this in the category of wishful thinking. Q.  
12 All right. So if my understanding is how did Mr.  
13 Smith come about if the prints were from Marion  
14 County?

15 A. Well, that's what I'm saying it was -- she said  
16 Marion -- she made the comment of Marion County.  
17 Again. and that's why I say, I don't know anybody in  
18 Marion County. It was a Marlboro County case. I  
19 don't know how much clearer I can say that. So she  
20 said Marion County. It's not unusual for people to  
21 take Marion, Marlboro to maybe get things mixed up.  
22 But again, in his category I would say is wishful  
23 thinking on his part. But that's easily explained  
24 and I think the transcript and the evidence clearly  
25 explains that this was, basically, a miss print on

1 her part and that this is a Marlboro County matter.  
2 Everything -- and he can laugh all he wants to, but  
3 that's the truth of matter. This was a misprint on  
4 her part.

5 Q. Do you know ---

6 A. End of story.

7 Q. Do you know of any evidence that shows Albert  
8 Smith took the prints?

9 A. Yeah. He testified to that if I recall  
10 correctly. But I think -- it's in the record that he  
11 was the one that actually took the prints.

12 MR. FOWLER: Your Honor, I've discussed it with my  
13 client, I've returned the four pages of  
14 documentation. I believe I gave it to, to the  
15 witness. The court reporter should have all four  
16 pages back now. And I would like to get a copy that  
17 before lunch if at all possible so I can provide it  
18 to my client. But after discussion with my client no  
19 further questions.

20 THE COURT: All right. Ms. Marto, anything else?

21 MS. MARTO: Just briefly, Your Honor.

22 **Redirect Examination by Ms. Marto:**

23 Q. If the applicant had a mental health issue that  
24 would have been spotted probably by counsel as  
25 opposed to the solicitor's office, correct?

1 A. Exactly. And I was gonna say that. Usually,  
2 that's something that's standard. As I understand it  
3 is, is that something that would be brought up by his  
4 defense counsel.

5 Q. And brought to your attention?

6 A. And brought to our attention. And obviously, we  
7 would govern ourselves accordingly.

8 Q. And counsel members, as well ---

9 A. No -- nobody ever approached that, broach that  
10 with us. No.

11 Q. Now, the defendant made allegations concerning  
12 failure to disclose evidence throughout the trial,  
13 correct?

14 A. Yes.

15 Q. And all of those were resolved on the record?

16 A. On the record, yes.

17 Q. And you prosecute solely cases in the fourth  
18 circuit, right, not Marion?

19 A. That is correct. The fourth circuit is comprised  
20 of Darlingtona, Dillon, Marlboro and Chesterfield  
21 Counties. Not Marion.

22 Q. Okay.

23 MS. MARTO: Thank you. No further questions, Your  
24 Honor.

25 THE COURT: All right. Thank you. All right.



1 Mr. Redmond, you can step down. You're free to.

2 MR. REDMOND: Thank you, Your Honor. And let me  
3 just say, I think everybody for accommodating me. I'm  
4 having to leave. So I appreciate it. Thank you.

5 THE COURT: All right. It's 1:20 right now. I've  
6 got to give the folks that work here a break. I know  
7 -- so let's take an hour, hour break and come back at  
8 2:20, all right. We're in recess.

9 MR. FOWLER: Thank you, Your Honor.

10 MS. MARTO: Thank you, Your Honor.

11 (Whereupon, the Court takes a lunch break)

12 THE COURT: All right. Court will come to order.  
13 We're back on the record. We took a break for lunch.  
14 And Ms. Marto, I believe you had finished with your  
15 first witness. You ready to your next?

16 MS. MARTO: Yeah. I'm ready for my next witness.

17 THE COURT: All right.

18 MS. MARTO: I'm ready to call Ms. Mary Thomas  
19 Johnson-Lee to the stand please.

20 THE COURT: Ms. Johnson-Lee, if you'd come  
21 forward. Madam Clerk?

22 THE CLERK: Do you swear or affirm the testimony  
23 you give this Court will be the truth and nothing but  
24 the truth so help you God?

25 MS. JOHNSON-LEE: I affirm.

1 THE COURT: All right. Just state your name for  
2 the record.

3 MS. JOHNSON-LEE: Mary Thomas Johnson-Lee.

4 THE COURT: Your witness.

5 MARY JOHNSON-LEE, first being  
6 duly sworn, testified as follows:

7 **Direct Examination by Ms. Marto:**

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Thank you for being so patient. I do appreciate  
11 it.

12 A. No problem.

13 Q. So you prosecuted this case, correct?

14 A. I assisted with Deputy Solicitor, Kernard  
15 Redmond.

16 Q. And did you start prosecuting this case or was it  
17 an exception, do you recall?

18 A. From the beginning.

19 Q. Okay. Now, what evidence generally existed in  
20 the case, do you recall?

21 A. The primary evidence was the DNA evidence. The  
22 defendant's DNA was on the -- well, first of all, the  
23 Serology Department at SLED found semen detected in  
24 the vaginal swabs and anal swabs from the rape kit  
25 from the cutting of the victim's nightgown and from

1 the cutting from her panties. Then went to DNA the  
2 DNA came back for the defendant on the vaginal swabs,  
3 the nightgown cutting, and the underwear cutting.  
4 Also, the note that the perpetrator had gave a false  
5 name and wrote down in the house on a piece of paper,  
6 the defendant's, I believe his print came back on  
7 that note. So those things tied him directly to the  
8 case. And that was the most compelling evidence.

9 Q. Okay. And all evidence you had was turnover to  
10 the defense, correct?

11 A. Yes.

12 Q. Do you recall anyone withholding evidence?

13 A. No. I do not recall withholding anything.

14 Q. Do you recall the applicant alleging that  
15 evidence was withheld from him on the record?

16 A. There were various points, I think during the  
17 trial he may have mentioned something about evidence,  
18 but he was given everything. I know at one time  
19 there was something about medical records and I think  
20 Deputy Solicitor told the court we, it's in my  
21 notes, but there was not reason for us to get his  
22 medical records. I mean, we had no reason to get  
23 medical records on him or introduce them.

24 Q. Do you recall any conflict of interest existing  
25 with the Fourth Circuit Solicitor's Office?

1 A. No.

2 Q. If a conflict of interest that exists, would you  
3 have removed, I guess, to recuse and have a different  
4 prosecutorial  
5 agency handle it?

6 A. Yes. It's common when we have a conflict of  
7 interest. The case will either go to the State  
8 Attorney General or it will go to the solicitor in  
9 another circuit for prosecution.

10 Q. And there was no reason to do that in this case?

11 A. No.

12 Q. Okay. Do you recall any issues concerning the  
13 applicant's mental health or competency?

14 A. I do not recall that ever being an issue. And  
15 I'm actually one who sometimes has brought to the  
16 Court's attention I think this person made need a  
17 competency evaluation. And they'll say why? And  
18 then the Court will ask the defense attorney. I'm  
19 actually going to be doing that this term in  
20 Chesterfield because there's somebody I feel really  
21 needs it, the attorney won't ask for if. And I think  
22 -- I need, out of an abundance of caution, to do  
23 that. But I saw nothing from this defendant to, that  
24 raised that along with me.

25 Q. And he represented himself throughout the entire

1 trial, correct?

2 A. Yes. Rick Jones sat with him and I think and  
3 Rick can shed more light on this, but I think I  
4 recall Rick being there in case he had any questions  
5 about legalities on how to proceed and I think I  
6 recall the defendant asking him a question here or  
7 there, just when I looked over. But again, Rick  
8 Jones would have to shed light on that.

9 Q. But throughout the trial, you didn't see any  
10 indication that he struggled with competency or  
11 mental health?

12 A. No.

13 Q. And the judge engaged him in a colloquy  
14 concerning his decision to go pro se?

15 A. He did. And the defendant actually, at one  
16 point, made a comment to the judge about how he had  
17 been studying law or studying law at the  
18 penitentiary.

19 Q. All -- and again, all evidence was turned over to  
20 counsel for the trial, correct?

21 A. Yes.

22 Q. Do you recall the State violating any rules of  
23 evidence and taking advantage of applicant's pro se  
24 status?

25 A. No.

1 Q. Do you think that the applicant was it was given  
2 greater leeway when it came to the rules of evidence  
3 that a trial attorney would be given in this  
4 position?

5 A. Clarify what you mean as to the rules of  
6 evidence. I do know that we, we have to be overly  
7 careful with the pro se issue. You heard deputy  
8 solicitor, that is an issue and we discussed that.  
9 We do not like having to have pro se litigants in a  
10 trial because it actually becomes tougher on us  
11 because we have to walk that really fine line with  
12 jury because the jury is to be sympathetic that this  
13 poor guy is without counsel. So I do know we go out  
14 of our way to make sure we've don't do anything that  
15 would make it look like we're trying to harm this  
16 person during trial.

17 Q. Okay. Do you recall any misleading of the  
18 applicant concerning evidence admitted at trial?

19 A. No.

20 Q. Or witnesses that the State called?

21 A. No.

22 MS. MARTO: I have no further questions, Your  
23 Honor.

24 THE COURT: All right. Mr. Fowler?

25 **Cross-Examination by Mr. Fowler:**

1 Q. Yes. In terms of conflict of interest -- well,  
2 first of all let me say this, you have been in the  
3 courtroom all today, correct?

4 A. I did have to leave for about 30 minutes to do a  
5 WebEx plea with Judge Nettles on a Chesterfield case.

6 Q. But what I'm asking you, is when Mr. Dupree was  
7 testifying were you here for all of his testimony?

8 A. It was during his testimony. I walked out at  
9 12:02 and came back in at around 12:29, 12:30.

10 Q. Okay. But you did hear some of his testimony,  
11 correct?

12 A. Yes.

13 Q. In terms of the conflict of interest alleged in  
14 his packet of information, now, wasn't there a -- the  
15 victim was related to the police officer, is that  
16 correct?

17 A. This was a Marlboro County case. The victim was  
18 a 76-year-old woman who resided in Wallace, South  
19 Carolina. And her, one of her son's, Keith Thomas,  
20 was the police chief of the Town of Cheraw in  
21 Chesterfield County.

22 Q. So now does your office work closely with him or  
23 did at the time of, because of relationship -- the  
24 relationship of him being a law enforcement and you  
25 being from the solicitor's office?

1       A. I mean, work closely. But as far as with like  
2       his staff because by then he was a police chief and  
3       we didn't have as much one on one with him as we did  
4       with this staff. Was because we didn't, he didn't  
5       testify much at trials or so forth and so on at that  
6       time because he was chief. But previous as being  
7       chief, yes, we had more of one on one.

8       Q. But he was overseeing -- so the victim was  
9       related to the Chief of Police?

10      A. Yes. She was his mother.

11      Q. Were -- are you familiar with Mr. Dupree  
12      attempting to move it out circuit or get the Attorney  
13      General's Office to prosecute the case or any kind of  
14      attempt on his part to as a conflict of interest?

15      A. Honestly, I don't recall that being brought up.  
16      I would have to defer to the transcript. I just  
17      don't recall that.

18      Q. Okay. Are you involved in any transferring of  
19      the prosecution from your office to some other  
20      office?

21      A. I have -- I usually, if I think there's an issue,  
22      I will ask the solicitor or the deputy solicitor.  
23      And Solicitor Rogers, multiple times if I've brought  
24      something to his attention where I thought it was a  
25      clear conflict of interest, would have me do the



1 letter and send it to the Attorney General. If it's  
2 something to go to another solicitor then he usually  
3 would handle that himself.

4 Q. Was there any kind of documentation in your  
5 office that you were aware of regarding this conflict  
6 of interest or potential conflict?

7 A. I don't recall any documentation about that being  
8 an issue, no.

9 Q. Were you familiar with Mr. Dupree having some  
10 potential mental health issues?

11 A. No, I was not.

12 Q. Did you inquire as to potential mental health  
13 issue with Mr. Dupree?

14  
15 A. No. There was nothing that he gave me cause for  
16 alarm. Normally, if -- normally, there's something  
17 that will stand out about a defendant. The way he  
18 acts. Something he says that will -- and I don't know  
19 the right word, it just gives me -- my gut tells me  
20 something's there, you need to at least let their  
21 counsel know that, hey, you're not asking for this.  
22 You might want to consider asking for competence  
23 eval. But nothing in this case that I recall led me  
24 to even think that was an issue.

25 Q. Do you remember if he mentioned it to the Court

1 at any point?

2 A. I don't recall that. Again, I would have to  
3 defer to the transcript.

4 Q. Okay. Un terms of proceeding pro se, does your  
5 office have any kind of procedure to go through in  
6 terms of anybody -- if a defendant is representing  
7 himself or herself pro se, is there any kind of  
8 checklist of precautions that you guys have in terms  
9 of documentation?

10 A. I don't know if there's actually a checklist or  
11 anything. And he was only representing himself at  
12 trial, itself, if I recall. There was a note I saw  
13 and, my notes because I take copious notes, that it  
14 says, I gave the defendant a copy of Item 1, whatever  
15 Item 1 was, two pages and a copy of the drawing which  
16 I think it maybe a drawing that the victim did, I'm  
17 not sure. But I don't know if that was directly to  
18 the defendant or to defense counsel, but my notes  
19 says to the defendant.

20 Q. In terms of -- did you hear Mr. Dupree talking  
21 about the State withholding evidence earlier? Were  
22 you -- were you in the courtroom when Mr. Dupree  
23 talked about the prosecution withholding evidence?

24 A. I think I heard him mentioning that a couple  
25 times.

1 Q. Wasn't there some items that were provided to him  
2 just immediately at trial, trial or just prior to  
3 trial?

4 A. I don't recall.

5 Q. In terms of -- in terms of any other evidence,  
6 did you provide that to him after the trial  
7 concluded? Was there anything else ---

8 A. I've never turned over anything to the defendant  
9 after a trial is concluded. There would be no reason  
10 to do that because everything would've already been  
11 turned over.

12 Now, of course, if something came to our knowledge  
13 that was exculpatory we, obviously, would've dealt  
14 with that immediately.

15 Q. Were you familiar that the solicitor's office  
16 apparently took the defendant's fingerprints again  
17 six days before trial?

18 A. I was not aware of that. I didn't deal with  
19 that. That was not my witness. That was not mine.  
20 Deputy Solicitor Redmond and I had we worked together  
21 but we also had our own witnesses that we met with  
22 and I just don't recall that. I mean, it may be the  
23 box, there's actually a bankers box plus some file.  
24 And that's on top of some of things that got lost  
25 when our, there was the flood at our office at 110

1 Liberty Street.

2 Q. Okay. And that flood was after the trial,  
3 correct?

4 A. Yes.

5 Q. Okay.

6 A. And the majority of stuff was recovered. They  
7 were able to keep it. I've gone through and it looks  
8 like the vast majority of everything is there.

9 Q. You said earlier that you dealt with the DNA  
10 evidence, is that correct, primarily DNA ---

11 A. I don't recall ---

12 Q. --- in this case?

13 A. --- saying I dealt primarily with DNA. I was  
14 saying I think that was most compelling evidence in  
15 this case, was the fact that the defendant's DNA was  
16 on the 76-year-old victim's vaginal swabs ---

17 Q. Okay.

18 A. --- panties, cuttings and nightgown cuttings.  
19 And also there was some things he knew that were not  
20 public. He knew the color for nightgown. That was  
21 something that had never been made public. I think  
22 he knew the name of the note. It may have been a  
23 Duane Stanton. And that was something that had not  
24 been made public. And there was one other thing that  
25 I can't recall right off it.

1 Q. In reference -- in relation to the CODIS hit, C-  
2 O-D-I-S hit, do you recall insufficient evidence or  
3 presenting evidence to confirm the CODIS hit?

4 A. Well, if there's a CODIS hit, that just means  
5 hey, this person's DNA matches up. So we then have  
6 to do what you call is a Schmerber order, and we have  
7 a hearing to request the DNA provide a sample which  
8 is swap of the mouth which is minimally invasive.  
9 And then that is then sent to SLED to, basically,  
10 confirm the CODIS hit because we can't use a CODIS  
11 hit at trial. The only purpose for that was just  
12 the, if there was a question about how we identify  
13 that suspect to begin with.

14 Q. Were you involved in any of that process regards  
15 to the CODIS hit?

16 A. I remember being told about all of that. I  
17 didn't -- and there was nothing for me to do about  
18 the CODIS hit. I was involved with the Schmerber.  
19 I'm not sure if I typed that up for the deputy  
20 solicitor or if he typed it himself. I don't recall  
21 but I know I was part of that. And again, I would to  
22 refer to transcripts to be certain.

23 Q. Okay. Just a moment please.

24 A. 'Cause honestly, I don't recall if you consented  
25 or if we had to have a full blown hearing.

1 Q. Okay. So what did your office presented to get  
2 his biological evidence?

3 A. Again, I don't recall if we have full blown  
4 hearing or if he consented. But normally, what we  
5 present normally is there is affidavit signed by law  
6 enforcement. I think the chief investigator in this  
7 case may have been Jamie Seals who was the lieutenant  
8 over investigations at that time. At the sheriff's  
9 office, Susan Alderman, was also an investigator on  
10 this case. The CODIS hit certainly was probably  
11 mentioned because it would be going to the background  
12 of what happened and then it would have gone into the  
13 fact that there was a CODIS hit and requested the  
14 sample from him.

15 Q. We referred to this earlier, we, both on direct  
16 testimony and the solicitor's testimony. Who is --  
17 who is Albert Smith in relation to this?

18 A. Albert Smith, if I recall, is actually an agent  
19 or was an agent with the Marlboro County Department  
20 of Probation, Parole and Pardon Services.

21 Q. Okay. But did you put him on the stand in this  
22 case?

23 A. I do not recall.

24 Q. Okay.

25 A. I would defer to the transcript.

1 Q. Right. Did he state that he took fingerprints  
2 prints?

3 A. Again, I do not recall. I think Kimberly --  
4 Kimberly Mears may have been the SLED agent on the  
5 prints and I think and Deputy Solicitor Redmond  
6 handled anything in relation to the prints.

7 Q. When did your office find out that Albert Smith  
8 took Mr. Dupree's prints?

9 A. I can't -- I don't recall.

10 Q. So what part of the evidence did you handle?

11 A. If you want me to get the case file I can defer  
12 to notes.

13 Q. Well, I mean, I'm not trying to ---

14 A. I do know I met with Rick Jones the day, maybe  
15 the day or a few days before trial to go over  
16 everything at the sheriff's office to make sure to  
17 everything was there. I think is what's in my notes.  
18 I went through the list of all the evidence. The  
19 physical items that they had. Helped prepare for  
20 trial. The evidence list which items -- we only put  
21 in a small, I think maybe 10 of 40 items. I'll have  
22 to refer to the transcript on that. But there was a  
23 lot of evidence. We didn't need everything. We only  
24 put in what we actually needed.

25 Q. So just to be clear, you did not have a lot of

1 involvement in this case, did you?

2 A. I don't understand what you mean.

3 Q. Well, you said -- I asked you what you did in  
4 this case and you said you met with some persons a  
5 day or two before?

6 A. Perhaps I misunderstood your question. But yeah,  
7 I had involvement. I had witnesses on the stand that  
8 I interviewed. I met with the victim. She was my  
9 witness. I met with her multiple times both in her  
10 home and there was a period of time where for health  
11 had decline. She has issues and she was actually in  
12 a rehab center. That's when we had a, took a  
13 deposition done on her. That was -- we motioned the  
14 Court to have done and that was granted. I met with  
15 her at least twice at the rehab center.

16 Q. So you're -- so you're involved with the actual  
17 evidence, itself, was very limited, is that correct?  
18 Like fingerprints and DNA?

19 A. Fingerprints, no. I don't -- I didn't have much  
20 to do with the fingerprints. And I don't recall if I  
21 had the DNA expert on the stand or if it was Deputy  
22 Solicitor Redmond. I would refer to the transcript.  
23 But I do know I went to SLED with the deputy  
24 solicitor and we met with the DNA expert together.  
25 And I think that was my witness because if I recall



1 correctly some of the things we delved into about how  
2 semen was detected on the anal area and it got into  
3 seepage and whatnot. And I think my deputy  
4 solicitor, as a male, was like I think, you better  
5 handled this as a female and so I think I actually  
6 dealt with the DNA witness on the stand.

7 Q. Okay. So just to be clear as a final question,  
8 did you have a lot to do with the DNA in this or did  
9 you have limited, you know, limited involvement with  
10 getting DNA in this case?

11 A. I did not swab the defendant for his DNA. I'm  
12 not sure what you mean by involvement with DNA. I  
13 met with the analyst at SLED, the scientist. I  
14 believe she was witness on the stand. And I remember  
15 her reading the report and preparing all my witness  
16 questions and being fully ready to go over what DNA  
17 is. How the defendant's DNA matched up to the  
18 panties, the nightgown, and the vaginal swabs.

19 MR. FOWLER: No further questions, Your Honor.

20 THE COURT: Ms. Marto?

21 MS. MARTO: Just briefly, Your Honor.

22 THE COURT: Yes, ma'am.

23 **Redirect Examination by Ms. Marto:**

24 Q. Now, you and Kernard both approached the case  
25 with a divide and conquer strategy, correct?

1       A. Yes. We're -- we're a team. We will divide up  
2       witnesses and there's some things that I dealt with  
3       such as meeting, all those meetings with victim. He  
4       did, maybe, once but those were -- she was my  
5       witness. And there were certain things that was his.  
6       And otherwise, we worked in concert together.

7       Q. And it's your -- from your memory Kernard handled  
8       Albert Smith's direct examination?

9       A. Yes. And he testified that was -- I don't recall  
10      doing anything with Mr. Smith.

11      Q. But you were aware of the evidence in this case,  
12      correct?

13      A. Yes.

14      Q. It's just you did not handle that particular  
15      witness?

16      A. That's correct.

17      Q. And it's not a situation where you only became  
18      involved in a very limited way like the week before -  
19      --

20      A. Oh, absolutely not. I was with this from the  
21      beginning.

22      Q. Okay.

23             MR. FOWLER: Thank you. No further questions.

24             THE COURT: Nothing further? Thank you.

25             MR. FOWLER: Nothing further.

R. Jones- Direct Examination by Ms. Marto

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1 THE COURT: Ma'am, you can step down. Ms. Marto?

2 MS. MARTO: Yes, Your Honor. The State would call  
3 J. Richard Jones to the stand please.

4 THE COURT: Madam Clerk?

5 THE CLERK: You swear from the testimony you give  
6 this Court is the truth and nothing but the truth so  
7 help you God?

8 MR. JONES: I do.

9 THE COURT: Mr. Jones, if you'd state your name  
10 for the record?

11 MR. JONES: My name is J. Richard Jones, go by  
12 Rick.

13 J. RICHARD JONES, first being  
14 duly sworn, testified as follows:

15 **Direct Examination by Ms. Marto:**

16 Q. Thank you for being here today.

17 A. Certainly.

18 Q. Especially with your patience. So you were Mr.  
19 Dupree's fourth trial attorney, correct?

20 A. Correct.

21 Q. Okay. And he represented himself at trial,  
22 correct?

23 A. He did.

24 Q. Okay. What was your involvement of the case  
25 prior to trial?

1 A. I prepared for the trial. I prepared to try it.  
2 I don't recall exactly when I got the case. But as  
3 you said I was the fourth public defender to receive  
4 the case and it was very obvious that we were going  
5 to trial so I prepared for the trial.

6 Q. Okay. How long did you practice criminal law?

7 A. Forty-two years.

8 Q. Okay. So you were well experienced?

9 A. Like I said I was prepared.

10 Q. Okay. Now, what -- prior to trial, what were  
11 y'all's discussions about the evidence and discovery,  
12 what did that, typically, consist of?

13 A. Numerous conversations. I had, myself and at  
14 least one or two other public defenders in the  
15 Darlington office, and a lot of times I would go, a  
16 lot of times I would go with another public defender.  
17 There were a number of CD's of witness interviews  
18 that we had to go through with Mr. Dupree. At of  
19 times I would set, set the computer up and get it  
20 started and maybe have one of the other public  
21 defender's sit with him. But I talked numerous times  
22 with Mr. Dupree at the, at the detention center. He  
23 was in Darlington for most of this time so very easy  
24 so I visited him quite frequently.

25 Q. Okay. Did he seem to have a pretty good

1 understanding of the evidence against him in the  
2 case?

3 A. Depending on the definition. He, Mr. Dupree was  
4 very, he was very frustrating to deal with because  
5 he, he would not admit that there was a lot of  
6 evidence against him. He seemed to want to  
7 concentrate on claims that -- he concentrated on  
8 today about this date was wrong and this date was  
9 wrong. There was -- there was sufficient evidence  
10 for the prosecution to present a pretty strong case  
11 at trial with the fingerprint, DNA, handwriting, and  
12 he's, he's confession. He actually confessed.

13 Q. Okay. So do you recall any evidence coming out  
14 at trial that wasn't disclosed to you or your client  
15 beforehand?

16 A. No. And as I remember there was several  
17 discussion about the evidence between the four public  
18 defenders representing Mr. Dupree. We -- I think we  
19 received everything very timely. And it may have  
20 been my fault, I don't know if Mr. Dupree, we went  
21 over all the evidence with him that we had received.  
22 I don't know if he had a separate copy of every  
23 single page that we received. But I -- as I recall  
24 we had most everything well prior to trial.

25 Q. So you don't know if you provided him with a copy

1 to go into his dorm but he was showing it all over,  
2 is that what you're saying?

3 A. We went over -- I think we went over everything  
4 that, that not only I received with the evidence --  
5 and in speaking of that, we all -- we had -- I don't  
6 know how they do it now, but we, we all have our  
7 discovery on a defender data file that when I  
8 received the case, I received access to that defender  
9 data information. So all of the discovery was, it  
10 wasn't a matter of Mr. Steen having some and not  
11 giving to the next one, or to the next one, we all  
12 had everything that everybody had.

13 Q. Okay. Do you recall any issues concerning a  
14 conflict of interest with the solicitor's office?

15 A. I don't even remember, we may have, but I don't  
16 even remember discussing a change of venue conflict  
17 of interest. As, as the solicitor said the victim's  
18 law enforcement kin was in, in another county.

19 Q. Okay. Did you see anything objectionable about  
20 their decision to prosecute the case themselves?

21 A. I did not.

22 Q. Did you see any issues concerning applicant's  
23 mental health issue or history or a competency?

24 A. I -- I did not. And remember I was the fourth  
25 attorney who dealt with him. And -- and in addition

1 to the four assigned attorneys, I think the chief  
2 public defender had also been working with Mr. Dupree  
3 along with Mr. Steen. So there was five of us who  
4 actually had a pretty good time to be with Mr. Dupree  
5 and that was never raise ---

6 Q. Okay.

7 A. --- by anyone.

8 Q. And you sat through the entire trial, correct?

9 A. I sat through along with Ms., Ms. Wooten. She  
10 was there also.

11 Q. Okay. And you didn't observe anything throughout  
12 the trial that would give you like cause for alarm or  
13 concern concerning his mental state?

14 A. Not is mental state. He ha -- several things  
15 that I would've have done at trial with him -- but,  
16 yes, I thought he was perfectly fine.

17 Q. Okay. So beyond his lack of legal expertise ---

18 A. Yes, ma'am.

19 Q. --- there was no issues?

20 A. Yes, ma'am.

21 Q. Okay. The judge engage a complete colloquy  
22 concerning the pro se status?

23 A. He did and warn him not to do it.

24 Q. Okay. And he decided to do it?

25 A. He did.

1 Q. And that was his decision?

2 A. It was.

3 Q. Okay. Do you recall the State ever violating  
4 the rules of evidence ---

5 A. I did not.

6 Q. --- counsel?

7 A. No.

8 Q. Do you observe anything that would have given you  
9 cause for concern concerning taking advantage of his  
10 pro se status?

11 A. No. And we -- we all sat at a table. It wasn't  
12 a matter of sitting behind him. We were all at the  
13 table, defense together. Sometimes I was sitting  
14 next to him. Sometimes Ms. Wooten was sitting next  
15 to him.

16 Q. Do you recall anything about the State trying to  
17 mislead applicant concerning the evidence in the  
18 case?

19 A. I do not. Mr. Dupree, in my opinion, had a very  
20 confused attitude concerning a lot of the dates,  
21 particularly, with the SLED people who were talking  
22 about fingerprints and DNA. And as I recall, it  
23 seemed like he thought that each one of the witnesses  
24 who had touched the evidence as the person that took  
25 it in at SLED and signed for it, he thought that that



R. Jones- Cross-Examination by Mr. Fowler

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1 person should have been there, should have testified.

2 And he had some concerns about chain of custody.

3 Q. Did you have any concerns about the evidence  
4 being fabricated?

5 A. Did not.

6 Q. And you would have brought that up if you had?

7 A. Oh, absolutely.

8 Q. Yeah. Do you recall the State trying to mislead  
9 applicant about any of the witnesses at trial?

10 A. I do not.

11 MS. MARTO: I have no further questions, Your  
12 Honor,

13 THE COURT: All right. Mr. Fowler?

14 **Cross-Examination by Mr. Fowler:**

15 Q. In terms of you being the fourth attorney, we're  
16 all the attorneys in the public defender's office or  
17 was there outside counsel?

18 A. I don't think there was ever outside counsel.

19 Mr. Steen was the assigned Marlboro County and he was  
20 young so I think Mr. Stephens assisted him. Matt  
21 Swilley was in Chesterfield. Ms. Wooten was even in  
22 Chesterfield or Marlboro at that time. And then I  
23 was in Darlington.

24 Q. So from the first attorney to you, all that  
25 information was in the same office, correct?

1 A. Correct.

2 Q. So it wasn't like there was an outside counsel  
3 that could have to transfer files?

4 A. No. No. And as I said, at that time every piece  
5 of paper we had was scanned into, I don't know what  
6 they call it now, but it was defender data at the  
7 time. And so we all -- we all had, as we were  
8 assigned, we had access to that information.

9 Q. Okay. In terms of, you stated that he, that you  
10 felt he was confused or what have you, how did you  
11 make it clear to him what was going on with this to  
12 alleviate some confusion?

13 A. I don't think I ever made it clear to him because  
14 he had, he had his opinion and I had mine and a lot  
15 of times we just agree to disagree. Because he -- he  
16 would not take what I was saying as the truth and I  
17 would not take what he was saying as the truth.

18 Q. Did ever put anything in writing to him?

19 A. I don't recall doing that. No.

20 Q. Okay. In terms of the conflict of interest  
21 raised -- well, let me say this, you've been here all  
22 day during Mr. Dupree's testimony, correct?

23 A. Yes.

24 Q. And you heard what he said on the stand, correct?

25 A. I did.

1 Q. In terms of the conflict of interest, didn't he  
2 raise that issue to, at least, one of the attorneys  
3 who had worked on this case in terms of the apparent  
4 close relation between the victim and law  
5 enforcement?

6 A. In -- in review for this, I went back and looked  
7 at my notes. I do not have access to the files  
8 anymore so I didn't look at all of the, the Rule 5  
9 information of that. But I looked at notes and I had  
10 Mr. Steen's notes, I do not recall that.

11 Q. But you can't confirm it?

12 A. I cannot.

13 Q. Okay. In terms of the mental health issues, you  
14 heard him testify earlier that he's going through  
15 some mental health issues, correct?

16 A. I did.

17 Q. Okay. Did any -- and you said he was confused  
18 apparently about some issues and what have you. At  
19 any point, did you say it's best for us to do some  
20 kind of mental health evaluation on him?

21 A. I never got that impression that he had, he had  
22 any mental health issues. He was very hard headed.  
23 He was very opinionated. And if we ever clash it was  
24 about evidence. It -- and it was not any irrational  
25 kind of clash. It was a he had been his opinion and

1 I had my opinion.

2 Q. What kind of clashes did you have about evidence?

3 A. Oh, we talked about evidence. He, as I said, my,  
4 my -- in remembering his main thrust was the fact  
5 that all of these, particularly SLED people, did not  
6 have all of the evidence in their possession all the  
7 time. And if, say the clerk with SLED who took in  
8 information coming from the sheriff's office signed,  
9 then he thought that person was the expert who should  
10 have been there. And we had -- we had a lot of  
11 discussions about that.

12 Q. But it is a 37 page chain of custody, correct?

13 A. It was over -- there was a bunch of it. Yes,  
14 sir.

15 Q. So did you recommend to him any issues that might  
16 have come to his defense in terms of the chain of  
17 custody?

18 A. I did not that I recall. No.

19 Q. No. But 37 pages is kind of a lot for a chain --  
20 -

21 A. Awful lot. There was -- there was -- there was a  
22 lot of information that was sent to SLED. Yes.

23 Q. So did you ever look at any possible Swiss cheese  
24 holes, type things, in this, in this 37 pages?

25 A. I went -- I went through whatever we had pretty

1       carefully. I don't know if Mr. Steen, who turned out  
2       to be one of the most detailed person, or any other  
3       person that I've ever dealt with in the public  
4       defender's office, I don't -- I don't remember. He  
5       had all of that. But none of us who had the case saw  
6       any holes, any major holes throughout the trial with  
7       any of that stuff.

8       Q. You indicated that the judge warned him not to  
9       proceed pro se, is that correct?

10      A. My -- I recall that he was very thorough and  
11      told him that he didn't think that that was a good  
12      idea.

13      Q. Okay. Did your office have any kind of position  
14      on that with him? Did you indicate that he should  
15      not go pro se or not?

16      A. He -- he sprung that on us right as I -- I don't  
17      remember I did not look at the transcript but he  
18      sprung that on us either right as we begin the jury,  
19      either right before or right after. It was during the  
20      jury picking process. Because I -- in reviewing my  
21      notes I had my standard notes that I took when we  
22      pick juries about who, what, when and why we were  
23      excluding. And it appeared to me that I picked the  
24      jury. But I don't recall exactly when he said he  
25      wanted to do it himself.

1 Q. Well, based on your, the best of your  
2 recollection, did he pick the jury or did you pick  
3 the jury?

4 A. We picked the jury.

5 Q. You and he?

6 A. Yes. I think it was his decision as always. We  
7 used all ten of our strikes. And I made notes, very  
8 detailed notes about why we were doing it. And in  
9 most of those -- it seems to me that about three or  
10 four of the ten it was because he didn't like them  
11 and that was -- I thought we were gonna have a little  
12 trouble if we were challenged on it.

13 Q. Was there any designation on lead counsel in this  
14 trial at any point? I mean, did you acknowledge to  
15 the Court that you were no lead counsel, apparently?

16 A. And I don't fully understand. After I was  
17 relieved I was supposed to sit with him and assist.  
18 And actually Ms. Wooten having to do that also. But  
19 during the trial he referred to me as his assist and  
20 Ms. Wooten as his secretary.

21 Q. In terms of the State withholding evidence,  
22 earlier it was stated that the State may have  
23 withheld evidence from him until the beginning of the  
24 actual trial. What's your -- what's your knowledge  
25 about that?

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1 A. As I said earlier, I think if I remember right, I  
2 think I had it all.

3 Q. Okay.

4 A. And whether or not he actually had a separate  
5 copy of it, I don't know.

6 Q. Well, let's talk about that.

7 A. Sure.

8 Q. What -- did he have a copy of all the discovery  
9 or not?

10 A. I think he had a copy of most everything I had.  
11 Maybe that thirty something pages, I don't, I don't  
12 specifically recall that to tell you the truth.

13 Q. When somebody is pro se and they're not an  
14 attorney, what kind of typical issues come before the  
15 Court -- well, let me rephrase that. What issues  
16 came before the Court in this case that make you  
17 think that he, because of this pro se status, he was  
18 handicapped by that, on your recollection?

19 A. Again, having not read through the transcript,  
20 again, he, he questioned the SLED analyst people in a  
21 way that I would not have. Mostly concerning dates  
22 and the fact that he thought that they should have  
23 had all the information at their fingertips at all  
24 times.

25 MR. FOWLER: Can I have just a moment please.

1 THE COURT: Yes, sir.

2 Q. There's been a lot of talk about increasing Mr.  
3 Dupree's prints. And were you familiar with that  
4 some enforcement agency took Mr. Dupree's prints  
5 again after they were initially taken?

6 A. If -- if I remember I don't remember it being an  
7 issue. As Mr. Redmond said earlier it was all about  
8 authentication. I think Mr. Dupree thought that  
9 because they had to do all of this again after CODIS  
10 and AFIS that, that those prints and that DNA was not  
11 really his for some reason. And I didn't understand  
12 exactly what he was talking about there.

13 Q. Did you address that to the Court in any way?

14 A. Not to my recollection.

15 MR. FOWLER: Just a moment. Your Honor, after  
16 consulting with my client I have no further  
17 questions.

18 THE COURT: All right. Ms. Marto, anything else?

19 MS. MARTO: Nothing further, Your Honor.

20 THE COURT: All right. Thank you, Mr. Jones.

21 MR. JONES: Thank you.

22 THE COURT: All right. Anything further?

23 MS. MARTO: No further witnesses, Your Honor.

24 THE COURT: No further witnesses. Okay. Anything  
25 further, either counsel?



1           MR. FOWLER: Your Honor, I just feel like we've  
2 met the standard. You've heard all the evidence.  
3 It's a large file. Thirty-seven pages of chain of  
4 custody. Mr. Dupree, in my opinion, spelled out  
5 every issue that could be raised in this matter. He  
6 had the opportunity to do so. So we just ask for a  
7 favorable verdict in our favor, Your Honor.

8           THE COURT: Thank you, sir. Mr. Marto?

9           MS. MARTO: Your Honor, we would just argue that  
10 applicant hasn't met his burden of proof in  
11 establishing prosecutorial misconduct or ineffective  
12 assistance of counsel. He hasn't shown or met his  
13 burden of proof as to how counsel was deficient or  
14 how that prejudiced him or how the impact at trial or  
15 the trial would have come out differently had these  
16 allegations, um, any deficiency he demonstrated. So  
17 even if this Court would find counsel deficient we  
18 would still argue that there is no prejudiced. And  
19 that he also hasn't met his burden of proof in  
20 establishing a Brady violation or some other type of  
21 prosecutorial misconduct or vindictiveness as  
22 required under law. And so we would argue that you  
23 should deny relief in this case.

24           Thank you.

25           THE COURT: All right. Okay. If there's nothing

1 further let me take the matter under advisement and  
2 I'll communicate with counsel the Court's  
3 instructions for an order, okay. Mr. Dupree, good  
4 luck to you, sir. You've been well represented. All  
5 right. Nothing further?

6 (Whereupon, no response)

7 All right. We're adjourned.

8 (CONCLUSION OF HEARING HELD ON MARCH 15, 2022)

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CERTIFICATE

I, the undersigned, Lisa S. Carter, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit for Darlington County, South Carolina, on the 15th day of March, 2022.

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

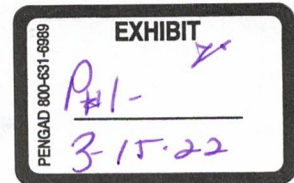
s/ Lisa Carter

Lisa Carter

Circuit Court Reporter

December 10, 2023

# 810 SOUTH CAROLINA LAW ENFORCEMENT DIVISION



## SLED Lab # L13-11600 Narrative

Marlboro County Sheriff's Department Case #2013004852

Date :09/11/2013 Time:11:54 am Conv With:  
 Type :Phone Log Phone:  
 Analyst :Brianne Holmes Affiliations:

Written note to Lilly to call Susan Alderman with the Marlboro County Sheriff's office concerning L13-11600. Her number is [REDACTED]

Date :09/11/2013 Time:10:54 am Conv With:  
 Type :Phone Log Phone:  
 Analyst :Kimberly D. Mears Affiliations:

Spoke with Inv Alderman- told her of the 3 prints entered into AFIS, there was a hit on one that was then compared by me and verified by S/A Hezel. She was aware of the individual the print hit on and requested my report asap- I told her I hadn't compared the other 2 prints and had not located a card on the officer, but that I could issue those on a supplemental report if she couldn't wait. She said to go ahead with issuing two reports. KDM 09/11/13

Date :09/13/2013 Time: 2:35 pm Conv With:  
 Type :Phone Log Phone:  
 Analyst :Lt. Rhonda R. Fields Affiliations:

I spoke with Inv. Alderman regarding the CODIS hit to the DNA profile developed from the semen found on item 2.1. She informed me that Derrick Dupree was being charged with this crime based on a latents match to evidence left at the crime scene. I told her unofficially that the CODIS hit was also to Derrick Dupree. I explained that the hit has to be confirmed by performing a latents comparison and reanalyzing the sample that was submitted to the DNA Database Department. I expressed that I would be happy to expedite this for her if she needed the CODIS hit report to hold him on the charges. She stated that the latents were sufficient and that she could wait until next week to receive the CODIS hit letter. She stated that she was going to mention the CODIS hit to her Sheriff. As a result of this conversation, I have not started the hit confirmation process and will include this in the routine weekly confirmations for the week of September 16th. I also called Emily Reinhart and informed her of the above conversation. She was also satisfied with the hit letter being sent out next week as long as the submitting agency was aware and approved.

Date :10/07/2013 Time: 2:39 pm Conv With:  
 Type :Case Event Phone:  
 Analyst :Catherine Leisy Affiliations:

Routed DNA case file to LSG for corrections.

Date :12/26/2013 Time: 1:17 pm Conv With:  
 Type :FOI Request Phone:  
 Analyst :Lorri M. Johnson Affiliations:

FOIA 2013-922 received. Case still open therefore request denied. A copy of the FOIA and related notes are archived at [REDACTED]

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 CLERK OF COURT  
 MARLBORO COUNTY, S.C.

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION<sup>811</sup>



## SLED Lab # L13-11600 Narrative

*Marlboro County Sheriff's Department Case #2013004852*

Date :10/01/2014      Time: 2:52 pm  
Type :Email  
Analyst :Kimberly D. Mears

Conv With:  
Phone:  
Affiliations:

From: Mears, Kimberly  
Sent: Wednesday, October 01, 2014 2:52 PM  
To: 'kernardredmond' [REDACTED]  
Subject: SLED lab# L13-11600

Kernard~

Just wanted to touch base with you on this case (Dupree trial)- is it still scheduled for the week of October 13th? I had a note that you might be coming back to SLED and wasn't sure if that was still the plan.

It may be too early for this, but do you have any idea when I would be needed? Also, would it be possible to get a copy of the questions you plan to ask me, so I can prepare? Per your request, I do have a court chart prepared on one of the identifications to Dupree.

Thank you!  
Kimberly Mears, CLPE  
Latent Print Department  
South Carolina Law Enforcement Division  
[REDACTED]

Date :10/02/2014      Time: 3:10 pm  
Type :Phone Log  
Analyst :Kimberly D. Mears

Conv With:  
Phone:  
Affiliations:

Received a call from Kernard Redmond- he anticipates needing my testimony on 10/14 and will be touching base next week (10/6-10/10) with a list of expected questions.

He also wanted to give a heads up that they were going to have to authenticate the card from AFIS used to make the identification. He said they were planning to get the card on file at the jail and the note (Item 1) to bring to the lab for me to compare with the original card that I used, then issue another report.

After looking on AFIS, I was able to locate the card from this arrest- I asked Kernard if it would be easier for me to issue a report comparing this new card to the original, as there was no need to re-examine Item 1. He said he would check with his investigator and call me back.

KDM 10/02/14

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MARLBORO COUNTY, SC



# 812 SOUTH CAROLINA LAW ENFORCEMENT DIVISION



## SLED Lab # L13-11600 Narrative

Marlboro County Sheriff's Department Case #2013004852

Date :10/07/2014 Time: 9:24 am

Type :Email

Analyst :Kimberly D. Mears

Conv With:

Phone:

Affiliations:

From: Mears, Kimberly  
Sent: Tuesday, October 07, 2014 9:03 AM  
To: 'Kernard Redmond'  
Subject: RE: SLED lab# L13-11600

Ok- will do!

Kimberly Mears, CLPE  
Latent Print Department  
South Carolina Law Enforcement Division

From: Kernard Redmond [mailto:KernardRedmond@  
Sent: Tuesday, October 07, 2014 8:50 AM  
To: Mears, Kimberly  
Subject: Re: SLED lab# L13-11600

Yeah. Don't know anyone in Marion County lol

Sent from my iPhone

On Oct 7, 2014, at 8:48 AM, Mears, Kimberly <[REDACTED]> wrote:

Heard back from Records- the initial card came from Probation, Pardon, & Parole in Marion County. Want me to proceed with a report on the new card?

~Kimmie

Kimberly Mears, CLPE  
Latent Print Department  
South Carolina Law Enforcement Division

From: Kernard Redmond [mailto:KernardRedmond@  
Sent: Monday, October 06, 2014 10:08 PM  
To: Mears, Kimberly  
Subject: Re: SLED lab# L13-11600

I just had a thought. Can you tell me who is on the fingerprint card that you examined initially. If that card is from Marlboro County and the officer is still available, that may solve the authentication problem.

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MARLBORO COUNTY, S.C.



## SLED Lab # L13-11600 Narrative

Marlboro County Sheriff's Department Case #2013004852

Sent from my iPhone

On Oct 6, 2014, at 3:42 PM, Mears, Kimberly <[REDACTED]> wrote:  
In order to authenticate the original card, I'll need to issue a report, because it will involve a comparison that needs to be verified.

Kimberly Mears, CLPE  
Latent Print Department  
South Carolina Law Enforcement Division  
[REDACTED]

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From: Kernard Redmond [mailto:KernardRedmond@solicitor4.com]  
Sent: Monday, October 06, 2014 2:01 PM  
To: Mears, Kimberly  
Subject: Re: SLED lab# L13-11600

No need for new report. If it comes up, the 9-11-13 card was used to authenticate your initial findings.

Sent from my iPhone

On Oct 6, 2014, at 12:33 PM, Mears, Kimberly <[REDACTED]> wrote:  
Kernard~

Do you still want another report issued? This one will be the original card identified to the card from 09/11/13... Will there be an issue discussing a prior arrest card? I wasn't sure how I should log in the new card to differentiate it from the original. I can use date/incident #/etc. The new one lists Dupree's middle name, so I could leave it at that- please let me know what you want me to do.

Thanks!! Kimmie

Kimberly Mears, CLPE  
Latent Print Department  
South Carolina Law Enforcement Division  
[REDACTED]

---

From: Kernard Redmond [mailto:KernardRedmond@[REDACTED]]  
Sent: Monday, October 06, 2014 9:40 AM  
To: Mears, Kimberly  
Subject: Re: SLED lab# L13-11600

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CLERK OF COURT  
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF MARLBORO )  
)

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTH JUDICIAL CIRCUIT

Derrick Dupree, #272316,  
Applicant, )  
)

Case No.: 2017-CP-34-0222

**RECEIVED**

v. )  
)

**ORDER OF DISMISSAL**

SEP 29 2023

State of South Carolina,  
Respondent. )  
)

S.C. SUPREME COURT

This matter comes before this Court by way of Applicant's post-conviction relief application filed August 3, 2017. Respondent made its return on October 27, 2017, and amended on December 14, 2017, requesting an evidentiary hearing be convened. An evidentiary hearing was held on March 15, 2022, at Darlington County Courthouse. Steve Fowler, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Standby Trial Counsel J. Richard Jones, Deputy Solicitor Kernard Redmond, and Assistant Solicitor Mary Thomas Johnson-Lee, Esquires, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

#### Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. In April 2014, the Marlboro County Grand Jury indicted Applicant for first degree burglary (2014-GS-34-00159), first degree criminal sexual conduct (2014-GS-34-00303), kidnapping (2014-GS-34-00304), and possession of a weapon during a violent crime (2014-GS-34-00305). Applicant proceeded forward *pro se* at

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MARLBORO COUNTY, SC



trial, with J. Richard Jones, Esquire, serving as standby counsel. Deputy Solicitors Kernard Redmond and Mary Thomas Johnson-Lee, Esquires, prosecuted the case. On October 13-15, 2014, Applicant proceeded to trial before the Honorable Michael J. Nettles, circuit court judge, and a jury. Applicant was found guilty as indicted of all charges. Judge Nettles sentenced Applicant to imprisonment for concurrent terms of thirty years for the burglary, the CSC, and the kidnapping, and an additional consecutive term of five years for the weapon charge.

Applicant filed a timely notice of appeal on October 23, 2014, that was perfected by Susan B. Hackett, Esquire, through filing a brief raising the following issue:

Did the trial judge err in permitting Appellant to proceed *pro se* where the judge failed to ensure Appellant understood the dangers and disadvantages of self-representation and the record does not disclose that Appellant had sufficient background to intelligently waive his right to counsel or was apprised of his rights by some other source?

Briefing completed on March 18, 2016. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Dupree*, 2016-UP-442 (S.C. Ct. App. filed Oct. 26, 2016). The remittitur was issued on November 14, 2016.

#### Summary of Relevant Facts

On September 8, 2013, the seventy-six-year-old Victim was watching television in the den with her eighty-one-year-old husband when the doorbell rang. (Tr. 132-146). When she answered the door, Applicant asked her if the house was for sale and whether she could come in and look around. (Tr. 147). She let Applicant in and showed him around, and before Applicant left, she asked him for his contact information in case they decided to sell the house. (Tr. 147-48). Applicant grabbed her around the neck from behind, pushed her over on the couch, and raped her. (Tr. 148). During the attack, Victim was able to push her alert button, which answered in the den. (Tr. 149-50). Victim was not sure whether Applicant heard the alert call being

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answered from the den, but he left and she answered the emergency call and told them what happened. (Tr. 150). Police first arrested Kadeem Hooks for the crime but later released him. (Tr. 265, 318). After receiving information from SLED that Applicant's fingerprint was on the note Victim gave to the man to write down his contact information, the Marlboro County Sheriff's Office arrested Applicant. (Tr. 266-270).

Applicant gave a partial confession to the police, in which he admitted to entering the home under false pretenses. (Tr. 85, 93, 330-31, 540). Applicant's semen matched what was found in the victim's gown, vaginal area, and underwear. (Tr. 489, 500). The probability of a match of an unrelated person was one in one hundred thirty quadrillion. (Tr. 500). A writing sample was also obtained. (Tr. 273).

#### **Current Action Before this Court**

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Violation of Constitutional Rights."
  - a. "The evidence Presented at trial violated my Constitutional."
2. "Judge sentence violates Right to Jury."
  - a. "The Jury was required to impose sentence and not Judge."
3. "Request for DNA Testing."
  - a. "Request for new DNA testing."

On November 13, 2017, Applicant, through PCR Counsel Lance S. Boozer, filed his first amendment to the application, alleging:

1. Prior to trial, counsel(s) failed to make a request for change of venue.
2. At any time prior to trial, counsel(s) failed to request that Applicant undergo a mental health evaluation and/or make an independent investigation into Applicant's mental health history.
3. Applicant, in clarification of his previous allegation that his constitutional rights were violated, alleges the State withheld evidence from him until commencement of the actual trial.

On June 28, 2019, Applicant, through Counsel Kristy Goldberg, filed his second

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 CLERK OF SUPERIOR COURT  
 MARLBORO COUNTY, S.C.

amended application, alleging:

1. Prior to trial, Counsel failed to request that the Fourth Circuit Solicitor's Office be prohibited from prosecuting this case due to a conflict of interest and that the matter be sent to a different prosecution agency;
2. At any time prior to trial, counsel(s) failed to request that Applicant undergo a evaluation investigating the Applicant's mental health history and intellectual ability;
3. The Trial Court improperly ordered that the Applicant proceed forward *pro se*;
4. The State withheld evidence from him until the commencement of the actual trial, effectively causing the Applicant to be limited in his ability to defend himself;
5. The State withheld other evidence completely which was not received by the Applicant until after the trial concluded;
6. Pre-trial counsel and shadow counsel failed to disclose/reveal all evidence received from the State in a timely manner so that the Applicant could review evidence and prepare for trial;
7. The State violated the Rules of Evidence, taking advantage of the Applicant's *pro se* status;
8. The Solicitor's Office misled the Applicant regarding the evidence admitted in trial and the witnesses that would be called during trial.

At the PCR hearing, Applicant proceeded forward on the allegations raised in his second PCR application amendment, as well as:

1. Ineffective assistance of counsel for failing to investigate fabricated evidence.
2. Prosecutorial misconduct for falsifying evidence against Applicant.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

### Summary of the Testimony

#### *Applicant Testimony*

Applicant stated he has had three prior PCR attorneys. He stated he wanted one of his trial counsels to change venues for the case because of a close association with law enforcement in the case. Applicant testified that the victim's son and the chief of police may have known each other, which he thought may have an undue influence over the trial. Applicant claimed that some of the documents used at trial to secure the conviction were falsified, as were the fingerprints. He stated that his fingerprints were retaken in October 2015. He stated that part of

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 MARLBORO COUNTY, N.C.

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the chain of custody was printed and entered at trial, but another section was not. Applicant claimed he never received any fingerprints in his discovery. Applicant claims that the SLED labs report show communication between the detective, fingerprint analyst, the SLED Lieutenant, and the Solicitor's office. He claims that this is evidence of collusion between SLED and the Solicitor's Office. He also claims that these communications show the prints never existed or were not in the Solicitor's Office's possession.

Applicant claimed that his mental abilities were never investigated, even though he received prior treatment for his mental health in the fall of 2013. Applicant claimed he was ordered to proceed forward *pro se*. He stated that the Court informed him it was a bad idea to proceed forward *pro se* but stated that he had to proceed forward *pro se* since he was not afforded another attorney. He stated that he believes his attorneys, the documents, and the transcripts show that Counsel was ineffective.

Applicant stated that Counsel did not request missing documents. He stated that the State withheld motions and documents, including SLED sexual assault lab reports, until the commencement of trial. Applicant claimed that the prosecutors turned over a sexual assault document during the trial. He stated that the medical examiner may not have swabbed the victim. He stated that the medical examiner's report was handed over later. He stated that this evidence was not revealed until years later. He stated that one of his prior attorneys brought this up at a March 2016 hearing. He claimed other evidence was withheld until after trial. He stated that he did not receive the 2014 fingerprints or the SLED fingerprints. He testified that the State did not have enough information to obtain biological evidence.

Applicant testified that the State took advantage of Applicant's *pro se* status. He stated this was, in part, done when the State handed over evidence late. He also stated that they misled

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MARION COUNTY, S.C.

him at trial, particularly regarding the DNA issue and a handwriting analysis. He stated that the case was pushed back in September 2013 due to getting handwriting in person. He stated that the State did not present a witness they should have had.

Applicant claimed that Marlboro County never took his prints. He also stated that the prints were taken on February 1, 2012, but that he did not see them until February 12, 2012. Applicant claimed that the Court should not have handled the sentencing portion of the case without the jury.

On cross-examination, Applicant stated that he thought a conflict of interest existed because the victim's son was the chief of police. He stated he was unsure whether there was a conflict of interest in the Solicitor's office itself. He stated he conducted the entire trial himself but was unsure whether he was competent to stand trial. He stated he had four trial attorneys before proceeding *pro se* at trial. He acknowledged that the State stated that they turned over all exculpatory evidence before trial but stated that they were lying. Applicant stated that there was an original suspect for the crime and stated that he confessed to the crime. Applicant stated he went to the police department voluntarily to clear his name. He stated he received biological DNA evidence around this time and that his DNA matched the DNA found on the victim and her clothing. Applicant claimed that the victim seemed coerced in her testimony at trial. He stated that the victim recognized him as the perpetrator at trial. Applicant stated that the DNA evidence was seemingly fabricated and that his DNA could not have matched the DNA found on the victim and that there was not sufficient evidence in the case showing Applicant committed the crime.

On re-direct, Applicant testified he represented himself at trial because his attorney was missing evidence and his fourth and final attorney would not admit anything was missing. He stated that

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MARLBORO COUNTY, S.C.

another one of his trial attorneys took another job and another asked to be removed. Applicant stated that he did not think there was any evidence showing he committed the crime. He acknowledged that the victim recognized Applicant as the perpetrator of the crime but stated that she was coerced. He stated that there were no fingerprints or DNA proving he committed the crime.

***Prosecutor Redmond Testimony***

Prosecutor Redmond testified that he helped prosecute this case. He stated he was involved from the beginning. He testified that no conflict of interest existed in this case. He stated that Applicant's mental health was not at issue and stated he thought he did a good job overall representing himself *pro se*. He stated that he was competent to represent himself. He stated that included in the evidence in this case were fingerprints and DNA evidence, as well as the victim's testimony. He stated that Applicant went to speak to law enforcement voluntarily. In speaking to the police, Prosecutor Redmond testified that there were items in evidence that Applicant brought up, which only the perpetrator would know about. He stated that the transcript would show whether all evidence was turned over to the defense. He stated that the victim was not coerced in her testimony. He stated that no evidence was fabricated, and no witnesses coerced. He testified that he never took advantage of Applicant in his *pro se* status and stated that juries often sympathize with *pro se* defendants, so Applicant was granted more leeway as a result.

On cross-examination, Prosecutor Redmond testified that he had no knowledge of a conflict of interest and did not recall his office making any statement to the Court or Attorney General's Office about having no conflicts of interest but deferred to the record. He also deferred to the record concerning any mental health issues Applicant had, but stated he was not aware of

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MANASSAS COUNTY, S.C.

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any investigations into his mental health issues. He stated that Applicant proceeded forward *pro se* and did not recall why his previous four attorneys were relieved or if there was conflict associated with any of them. He stated he was not personally aware of any issues with any prior attorneys. He testified he did not recall any issues with the chain of custody report but deferred to the transcript. He testified that concerning authentication of the note, the State did everything they could to show Applicant touched it. He testified that the State worked to get a conviction ethically. He stated that there may have been contested issues in the case, but he would have to view them in context and see what the response was. He testified he did not recall an officer misleading him and stated that he had no reason to believe that the prosecutors did anything wrong with the witnesses or the SLED reports. He stated that the only issue he recalled was related to the authentication of the prints, but that this was resolved at trial. Emails were shown to Prosecutor Redmond, who stated that he was involved in the communications and that this was a Marlboro case and any reference to Marion County was a misinterpretation by one of the people involved and was resolved by the record.

On re-direct, Prosecutor Redmond testified that no one ever mentioned Applicant having a mental issue. He testified that he only handles Fourth Circuit cases, which do not include Marion County cases.

***Prosecutor Thomas-Lee Testimony***

Prosecutor Thomas-Lee stated that she helped prosecute this case since its inception. She stated that the strongest piece of evidence in the case was that Applicant's DNA matched the victim's underwear, vaginal swabs, and a print from a note. She stated she did not recall withholding any evidence. She stated there was no reason to obtain medical records in this case. She stated that there were no conflicts of interest in this case but that, if there were, the office

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would have recused themselves and the matter would have been assigned to another agency. She testified that Applicant proceeded forward *pro se* at trial, but that Counsel Rick Jones sat next to Applicant as standby counsel at trial. She stated that she did not see any issues with Applicant's competency at trial. She stated that Applicant seemingly studied the law at trial. She stated that Applicant was given a lot of leeway at trial. She stated that she would not do anything to actively harm or take advantage of Applicant at trial.

On cross-examination, she testified that she heard some of Applicant's testimony at the PCR hearing. She stated that the victim's son was related to the chief of police, but that the office only had normal procedural contact with him. She stated that no relationship with the chief of police rose to the level where recusal would be warranted. She stated that Applicant made mention of a potential conflict of interest at trial. She stated that she did not have any reason to believe mental issues were a problem with Applicant. She stated she did not recall Applicant testifying that the State withheld evidence at the PCR hearing. She testified that the fingerprint expert was not her witness and deferred to Prosecutor Redmond on that ground. She reiterated that the DNA evidence was the most compelling piece of evidence in this case. She stated she did not recall what steps the Solicitor's Office took to obtain Applicant's DNA evidence but stated that the normal procedure likely would have been followed. She stated that Mr. Albert Smith took Applicant's fingerprints. She stated she met with the sheriff's office to prepare for trial, the evidence list, met with the victim multiple times. She stated that she did not have much involvement with the fingerprints.

On re-direct, she reiterated that she and Prosecutor Redmond approached the case through a divide and conquer strategy, working in concert together. She stated that her responsibility was over only half the witnesses.

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### *Counsel Testimony*

Counsel testified that he was Applicant's fourth trial attorney and that he was prepared to proceed forward to trial on the day of the hearing. Counsel testified he practiced criminal law for forty-two years. He stated he had numerous discussions with Applicant about the discovery. He stated he was practicing in Darlington County at the time. He testified that Applicant was frustrating to work with and that there was sufficient evidence indicating his guilt, consisting of DNA evidence, fingerprint evidence, and a partial confession. Counsel testified that Applicant was fixated mostly on dates in the chain of custody report, not actual issues in question at trial. Counsel testified that he had all discovery prior to trial and that it was shared through an electronic file. He stated that there was no conflict-of-interest issue in the case. He testified that he did not see any indication that Applicant had a competency issue. Counsel testified that there was no cause for concern about Applicant's mental state. Counsel testified that the Court engaged Applicant in a colloquy about his decision to proceed forward *pro se* and warned him not to do it. Counsel testified that the prosecutors did not take advantage of Applicant's *pro se* status and that no one misled Applicant.

On cross-examination, Counsel testified that all of Applicant's counsels practiced in the Fourth Circuit Public Defender's Office. He stated that a digital copy of all discovery was sent to all of his counsels. Counsel testified that he was unaware if Applicant stated that he was concerned with a conflict of interest with any of his prior attorneys. Counsel testified that he was never given the impression that Applicant had mental health issues. Instead, he stated that Applicant was hard-headed and opinionated. Counsel testified that all SLED people did not always have all the evidence in the case. Counsel stated that this was one of the reasons why he and Applicant clashed. He stated that he did not see any major holes in the SLED chain of

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custody. Counsel testified that the Court engaged Applicant in a colloquy about proceeding *pro se*. He stated that this was happening while he and Applicant were picking a jury. He stated that they used all ten peremptory strikes. Counsel testified that Applicant referred to him as his assistant throughout the trial. Counsel testified that he had all the discovery but could not confirm whether Applicant had his own copies of everything. Counsel testified that Applicant's primary approach at trial was questioning SLED people primarily about dates and how they were always not personally in possession of all evidence. He stated that he did not recall whether the fingerprints were taken again.

### **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 and arguments presented at the PCR hearing. Before this Court are the Marlboro County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

### ***Ineffective Assistance of Counsel***

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show that counsel's conduct so undermined the proper functioning of the adversarial process that the applicant cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984);

*Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695.

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Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

#### ***Failure to Request Change of Venue***

Applicant claims Counsel was ineffective for failure to request a change of venue. However, both Prosecutors and Counsel all testified that there was no conflict of interest in this case, warranting a change of venue. Counsel is not deficient for failing to make a frivolous request for a change of venue and Applicant has made no showing that he was prejudiced by any alleged conflict. Accordingly, relief is denied on this ground.

#### ***Failure to Request Mental Health/Competency Evaluation***

Applicant claims Counsel was ineffective for failing to request a competency evaluation. “Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea.” *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). “In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea.” *Id.* at 458-59, 596 S.E.2d at 50. “In order to find that petitioner’s trial counsel was ineffective for refusing to request a *Blair* hearing on petitioner’s competency to

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stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings." *Id.* at 459, 596 S.E.2d 50-51. Prejudice is found when the petitioner shows a "'reasonable probability' that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

This Court finds both Prosecutors and Counsel credible in their assertions that there was never any indication that Applicant suffered from mental health or competency issues. This Court finds those assertions were substantiated by Applicant's performance at trial when he proceeded forward *pro se*. Counsel was not deficient for failing to seek out a frivolous competency evaluation and, because this Court finds no indication of insanity at the trial, no prejudice has been established. Relief is denied on this ground.

#### ***Failure to Show Evidence***

Applicant claims Counsel was ineffective for failing to show him all the evidence. However, Counsel credibly testified that discovery had already been provided by the State to the defense before he took over the case. Additionally, Counsel credibly testified that he had multiple discussions about the discovery with Applicant. Thus, this Court finds this claim is without merit and denies relief accordingly.

#### ***Failure to Investigate Fabricated Evidence***

Applicant alleges ineffective assistance of counsel for failure to investigate allegedly fabricated evidence. *Strickland* makes clear that Defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated

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for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* However, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Caloe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

This Court finds both Prosecutors credible in their statements that no evidence was fabricated. Thus, there was nothing for Counsel to investigate. This Court also finds Applicant failed to show what evidence was fabricated or how that would have affected the outcome at trial. Accordingly, relief is denied on this ground.

*Pro Se*

Applicant claims that the trial court improperly ordered him to proceed forward *pro se*. “It is well-established that an accused may waive the right to counsel and proceed *pro se*.” *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). This right must be honored even if it is to the defendant’s detriment and must be asserted prior to trial. *Id.* If asserted after trial has begun,

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the grant or denial to proceed *pro se* is within the judge's discretion, who is then required to weight the prejudice to the legitimate interests of the defendant against the potential disruption of proceedings in process. *State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010) (citing *United States v. Wesley*, 798 F.2d 1155, 1155-56 (8th Cir. 1986); *United States v. Stevens*, 83 F.3d 60, 66-67 (2d Cir. 1996)). The right to counsel must be waived knowingly and intelligently, with an understanding of the consequences. *Id.* The trial judge has the responsibility to guarantee the waiver of Counsel is done knowing and intelligently. *State v. Barnes*, 407 S.C. 27, 36, 753 S.E.2d 545, 550 (2014). Further, a defendant competent enough to stand trial is competent enough to waive the right to counsel. *Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). Additionally, a trial judge is not required to permit hybrid representation, a situation where applicant proceeds partially *pro se* and partially by counsel. *Id.* at 43, 503 S.E.2d at 751.

This Court finds that Applicant knowingly and intelligently waived his right to counsel. Applicant affirmed he wished to represent himself and, after a colloquy in which the Court apprised Applicant of the severity of the mistake he was making in proceeding without counsel, the Court granted Applicant's request and relieved Jones of his representation but instructed him to remain in the courtroom. (Tr. 37-43). The Court admonished Applicant that proceeding forward *pro se* instead of being represented by Counsel was an "extreme error" (Tr. 39-40). Applicant still elected to proceed forward *pro se*. (Tr. 41). Applicant again confirmed his desire to proceed *pro se* after the Court launched a second colloquy after the disposition of several pre-trial motions. (Tr. 121-22). The Court ensured Applicant that he would be held to the same standard as if he were a lawyer. (Tr. 121). The Court again advised that proceeding forward *pro se* was not in his best interest. (Tr. 121). The Court still directed Counsel to serve as standby counsel. (Tr. 122).

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This Court finds the trial court went to great lengths to ensure Applicant was advised of the dangers of self-representation and ensured that Applicant was waiving his right to counsel knowingly and intelligently. Accordingly, this Court finds Applicant's allegation to the contrary to be without merit and denies relief as a result.

**Prosecutorial Misconduct, Generally**

Prosecutorial misconduct is most commonly found within the confines of a *Brady*<sup>1</sup> violation. *Brady* violations occur if four conditions are met: "the evidence was favorable to the accused", "it was in the possession of or known to the prosecution", "it was suppressed by the prosecution", and "it was material to guilt or punishment." *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Whether a *Brady* violation is material and, thus, sufficient to warrant relief, is contingent on where there is a "reasonable probability that, but for the government's failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial." *Id.* at 325. Further, whether a mistrial is warranted remains contingent on "(1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court." *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011) (quoting *United States v. Anwar*, 428 F.3d 1102, 1112 (8th Cir. 2005)).

***Withholding Evidence Until Right Before and After Trial***

Applicant claims prosecutorial misconduct for failure to turn over evidence until right before and after trial. However, Prosecutor Redmond credibly stated at the trial that he turned everything exculpatory over to the defense, including an officer's personal note. (Tr. 66). This was backed by both prosecutors' testimonies at the PCR hearing, where they testified that they

<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

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did not recall any evidence being withheld from the defense and deferred to the trial transcript on this issue. This Court finds the prosecutors credible and Applicant not credible on this point. Accordingly, relief is denied on this ground.

***Taking Advantage of Pro Se Status***

Applicant alleges the State engaged in misconduct by taking advantage of Applicant's *pro se* status. Both prosecutors testified that they did not take advantage of Applicant's *pro se* status. This Court finds Prosecutor Redmond credible in his assertion that the State granted Applicant more leeway than they typically provide an attorney with, because juries tend to empathize more with *pro se* defendants. Applicant has failed to provide this Court with any specific evidence to the contrary of Mr. Redmond's assertion. Accordingly, relief is denied on this ground.

***Misleading Concerning Evidence/Witnesses Called***

Applicant claims the State engaged in misconduct for misleading Applicant concerning evidence and witnesses called. However, both Prosecutors credibly testified that no witnesses were coerced, Applicant was not intentionally misled, no evidence was fabricated, and that they did not take advantage of Applicant. Accordingly, this Court finds the Prosecutors credible and Applicant not credible. Accordingly, relief is denied on this ground.

***Fabricating Evidence***

Applicant claims prosecutorial misconduct because the State allegedly fabricated evidence. However, this Court finds Prosecutor Redmond credible in his assertion that no evidence was fabricated in this case. Additionally, Applicant's definition of fabrication seemingly stems from his recognition that the discovery in question is unfavorable. This Court

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declines to find this evidence fabricated on this basis. Accordingly, relief is denied on this ground.

### Conclusion

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

### **IT IS THEREFORE ORDERED:**

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 21<sup>st</sup> day of SEPT., 2022.

MICHAEL S. HOLT  
Presiding Judge  
Fourth Judicial Circuit

CHESTERFIELD, South Carolina.

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Court of General Sessions  
 Court of Common Pleas

Family Court

## RECEIPT FOR DOCUMENTS

The following Chesterfield County Documents were transmitted on September 21, 2023 by

Amanda Dixon of the Chesterfield County Clerk of Court's Office.

| Name           | Case Number     | Type of Document   |
|----------------|-----------------|--------------------|
| Derrick Dupree | 2017-CP-34-6222 | Order of Dismissal |
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Receipt of the Documents listed above is hereby acknowledged this 21<sup>st</sup> day of September,  
2023, by

April DeAngelo  
 Name and Title

of: Marlboro County Clerk of Court  
 Name of Agency

NOTE: Please sign and return to:  
 Chesterfield County Clerk of Court  
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 Chesterfield, SC 29709