

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Allendale County
Perry M. Buckner, Circuit Court Judge

Case No. 2007-CP-03-00361

RECEIVED

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S.C. SUPREME COURT

CAZARIO MARSHALL,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF GENERAL SESSIONS
3 COUNTY OF ALLENDALE)

4 THE STATE OF SOUTH CAROLINA,)
5) 04-GS-03-69,70,71, 125
6 -vs-) and 130
7)
8 CAZARIO MARSHALL,)
9) August 25, 2004
10) Allendale, S.C.
11 DEFENDANT.)

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23
24
25
B E F O R E:

HONORABLE PAUL M. BURCH, JUDGE, AND A JURY.

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

TAMAEKA LEGETTE, ESQUIRE
Assistant Solicitor
Attorney for the State

JOHN D. BRYAN, ESQUIRE
Assistant Public Defender
Attorney for the Defendant

ANNETTE T. MOLE
Court Reporter

I N D E XWITNESSESDIRECTCROSSRE-DRE-C

CROOKS, JEFFREY ALLEN

Solicitor

29

Mr. Bryan

38

SMART, TOBY, JR.,

Solicitor

39

Mr. Bryan

45

MANUEL, TRAMINE

Solicitor

46

Mr. Bryan

49

WILLIAMS, MARVIN J.

Solicitor

51

[REDACTED] SEAN

Solicitor

55

Mr. Bryan

61

59

DELOACH, QUINCH

Solicitor

63

Mr. Bryan

73

70

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State of South Carolina,)
County of Allendale.)

In the Court of General Sessions.

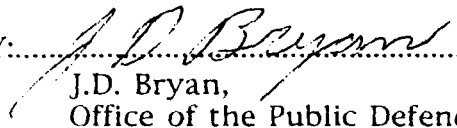
Indictments Numbered
04-GS-03-069, -070, -071, -125, & -130

The State of South Carolina)
)
versus)
)
Cazario Marshall.)
_____)

Defendant's Request to Charge No. 3.

If you have a reasonable doubt as to whether defendant is guilty, then you must resolve that doubt in favor of the defendant and find him not guilty

Authority: *Se, e.g., Brightman v. State*, 336 S.C. 348, 352, 520 S.E.2d 614, 616 (1999)("[M]odern general reasonable doubt charge . . . instructs the jury to resolve doubts in favor of the defendant . . ."); *State v. Robinson*, 307 S.C. 169, 414 S.E.2d 142 (1992). *State v. Clifton*, 396 S.E.2d 831, 833.

BY: 

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State of South Carolina,)
County of Allendale.)

In the Court of General Sessions.

Indictments Numbered
04-GS-03-069, -070, -071, -125, & -130

The State of South Carolina)
)
 versus)
)
Cazario Marshall.)

Defendant's Request to Charge No. 1.

1. The State must prove to you that the Defendant, in fact, committed each and every element of each offence beyond a reasonable doubt. A reasonable doubt is a doubt that would cause a reasonable person to hesitate to act.

Authority: State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991).

BY:.....*J.D. Bryan*.....

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Attorney for the Defendant.

State - Marshall (B-M)

04-69, 70, 71
04-125, 130

- #118 Perry Whitten (W-G)
- #26 Marion Coker (B-M)
- ~~#34~~ ~~Ida Grant (B-F)~~ 5-1
- ~~#87~~ ~~Harry M. Spencer (B-F)~~ D-1
- #55 Amanda Graham (B-F)
- ~~#116~~ ~~Willie Washington (B-M)~~ 5-2
- #20 Lonnie Calhoun (B-M)
- ~~#37~~ ~~Robert Austin (B-M)~~ D-2
- #83 Wendy Lewis (B-F)
- ~~#19~~ ~~Willie M. Bryant (B-F)~~ D-3
- #44 Bradford Harris (B-M)
- ~~#60~~ ~~Samuel Hawkins (B-M)~~ D-4
- #5 Shirley Banks (B-F)
- #28 Bernette Baker (B-F)
- ~~#43~~ ~~Christine Fields (B-F)~~ 5-3
- #63 Ebury Jones (B-F)
- #75 Leigh Wilson (W-G)
- ~~#109~~ ~~Leewood Thomas (W-M)~~ D-5
- ~~#107~~ ~~Martasha Thomas (B-F)~~ 5-4
- #29 Josephine Baker (did not show)
- ~~#50~~ ~~Carl Loetter (W-M)~~ D-6
- #89 Mary Riddle (B-F)
- ~~#1~~ ~~Willie B. Allen (W-M)~~ D-7
- #86 Phillip Price (B-M)

~~(B-M)~~

Alternate

... D. ... (B-M)

1 SOLICITOR: State calls Cazario, Marshall
2 charged in indictment #04-GS-03-70 for assault and
3 battery of a high and aggravated nature; Cazario
4 Marshall, #04-GS-03-130, possession of a firearm in
5 the commission of certain crimes; indictment #04-GS-
6 03-71, State versus Cazario Marshall for armed robbery;
7 indictment #04-GS-03-125, State versus Cazario Marshall
8 for kidnapping; in indictment #04-GS-03-69, State versus
9 Cazario Marshall for burglary in the first degree.

10 Your Honor, this is going to be a trial

11 THE COURT: Ladies and gentlemen of the jury,
12 as you have heard, the Solicitor has called for trial
13 one, two, three, four, five indictments, State versus
14 Cazario Antrone Marshall charged with those various
15 offenses as you heard called out by Madame Solicitor.

16 I have some questions to pose for you at
17 this time but first I need Mr. Marshall, who is represented
18 by Mr. Bryan of the Public Defender's Office, I need
19 Mr. Marshall to stand and face the jury so I can pose
20 a question about any blood or marital relationship.

21 Thank you, sir, you may be seated. The first
22 question I have, anybody related by blood or by marriage
23 to Cazario Marshall, if so, we need you to stand at
24 this time.

25 (NO RESPONSE.)

1 THE COURT: Anybody on the panel related
2 by blood or by marriage to any of the following witnesses.
3 Madame Solicitor, if you will call your potential witnesses
4 out.

5 SOLICITOR: Toby Smart, Tramine Manual of
6 the Fair Police Department, Marvin Williams, the Chief
7 of Police of the Fairfax Police Department, Sean Payne,
8 SLED Agent Jeffrey Crooks and SLED Agent Jimmy Freeman.
9 And Quincy DeLoach.

10 THE COURT: And from the defense?

11 MR. BRYAN: Harry Marshall and Cornithian
12 Roberts and Herbert Duncan.

13 THE COURT: All right, any relationship as
14 posed by the question, if so, I need you to stand at
15 this time.

16 (NO RESPONSE.)

17 THE COURT: Does anybody on the panel know
18 of any bias, prejudice or any reason why you cannot
19 be a fair and impartial juror for both the defense
20 and the State, if so, please stand.

21 (NO RESPONSE.)

22 THE COURT: Anybody on the panel have any
23 knowledge of opinion about this case or these cases,
24 if so, please stand.

25 (NO RESPONSE.)

1 THE COURT: Anybody on the panel presently
2 represented or represented in the past by the Solicitor's
3 Office or by the Public Defender's Office, including
4 Mr. Bryan, if so, please stand.

5 (NO RESPONSE.)

6 THE COURT: Anybody on the panel have any
7 reason whatsoever why you could not be a fair and impartial
8 juror on this particular case, if so, please stand
9 and don't make any comment.

10 (NO RESPONSE.)

11 THE COURT: Any further inquiry from the
12 State?

13 SOLICITOR: None from the State.

14 THE COURT: From the defense?

15 MR. BRYAN: Just a couple, Your Honor.

16 THE COURT: Any member of the venire which
17 is the panel or close personal friend or close relative
18 been a victim of a violent crime, if so, I need you
19 to stand at this time.

20 (NO RESPONSE.)

21 THE COURT: Any member of the jury panel
22 a member of any organization that promotes law enforce-
23 ment or the changing of any laws such as, for example,
24 Mothers Against Drunk Driving, CAVE, Citizens Against
25 Violence or like SADD, which is Students Against Drunk

1 Driving, any organization such as that, if so, please
2 stand.

3 (NO RESPONSE.)

4 THE COURT: Is that it?

5 SOLICITOR: Yes, sir.

6 MR. BRYAN: Yes, sir.

7 THE COURT: All right, it will be five strikes
8 for the State and ten for the defense and let's seat
9 an alternate. Give us a jury.

10 (WHEREUPON, Jury was duly impaneled.)

11 THE COURT: Any matters concerning the jury
12 selection?

13 SOLICITOR: Nothing from the State.

14 MR. BRYAN: None from the defense, Your Honor.

15 THE COURT: All right, the jury is seated.

16 Approach the bench, please.

17 (WHEREUPON, A bench conference was held
18 out of the hearing of the jury and the court reporter.)

19 THE COURT: All right, I need to take up
20 some matters, I understand, outside of ya'll's presence
21 so we are going to let ya'll go back to the jury room
22 for a minute or two, get the know each other and don't
23 discuss the case.

24 (WHEREUPON, Jury retired to the jury room
25 and the following proceedings were held in the absence
of the jury.)

1 SOLICITOR: Your Honor, first of all I would
2 ask that we use the other conference room to house
3 the jury. I believe that the jury can hear everything
4 we say out here in that room and in addition, I think
5 the defense is sitting closer to the jury room so there's
6 another room down the hallway here that they can be
7 put in. In addition, I would ask that all witnesses
8 be sequestered in this case who are not central to
9 the defense or the prosecution, including defense
10 witnesses like the city mayor and my witnesses as well,
11 except for my investigating officer and my victim.

12 THE COURT: What say the defense?

13 MR. BRYAN: I have no objection to relocating
14 the jury room, Your Honor, and I would join in the
15 request to sequester witnesses. Normally, and I would
16 just bring this up, normally the jury sits on the first
17 two or three rows over there on that side instead of
18 this curve right in front because this row is only
19 about three feet away from the tables and the alternate
20 chairs here. That might be a little too close, Your
21 Honor, but I'll leave it to your decision.

22 THE COURT: I'll discuss it with them, we
23 will let them --- they may want to step back. I can't
24 remember what I did the last time I was here. Let's
25 go ahead and move the jury then into the other room.

1 (WHEREUPON, The jury was relocated and the
2 following proceedings took place in their absence and
3 out of their hearing.)

4 SOLICITOR: Your Honor, I have some pictures
5 that Mr. Bryan may have an objection to that he has
6 not seen yet.

7 MR. BRYAN: Some of the pictures show a considerable
8 amount of blood, Your Honor, on the things like sidewalks
9 and all, there will be testimony as to blood, I don't
10 think it's going to be very relevant to have those
11 in and the potential for prejudice is going to vastly
12 outweigh the probative value.

13 THE COURT: All right, if you will check
14 those with Madam Solicitor, see those you can agree
15 to, hold those out that you can't agree to, and then
16 as the testimony develops, I'll just have to rule on
17 them as we come to them.

18 MR. BRYAN: Yes, sir.

19 THE COURT: The witnesses in the case have
20 to wait outside, outside the presence of the courtroom,
21 don't be discussing the case. And once you've testified,
22 don't go back and be talking to any other witness.

23 SOLICITOR: Your Honor, I have a matter that
24 I need to bring to the Court's attention. One of the
25 officers just informed me that he overheard a juror

1 talking to some defense attorneys ---

2 OFFICER: No, no, no, didn't speak to defense
3 attorneys but gave a smile and a wave to the defendant
4 after she was selected. It was stated that they knew
5 each other well.

6 SOLICITOR: She stated that?

7 OFFICER: No, she didn't state that.

8 SOLICITOR: Who stated that?

9 OFFICER: It came from the table.

10 SOLICITOR: Apparently one of the jurors
11 may actually know and like the defendant very well
12 as indicated to --- well, the officer overheard an
13 exchange at the table of the defense and as she went
14 by, she waved at the defendant. And I believe you did
15 ask your question on voir dire if any member of the
16 jury panel is a close personal friend or a relative
17 of the defendant or any member of defense counsel.
18 As it stands, I believe that the State would be prejudiced
19 if that juror were allowed to remain on the jury or
20 at least if she could be questioned as to whether or
21 not she has a close relationship or is a friend of
22 the defendant and in that manner if she is, if she
23 indicates yes, then we should remove her and put an
24 alternate on.

25 THE COURT: Do you have a name?

1 OFFICER: I don't know the name.

2 SOLICITOR: She is --- I wrote it down ---
3 let's see --- I know who she is, she's the woman with
4 the pink and black shirt on.

5 OFFICER: It's mostly gray with some black
6 and red on it.

7 SOLICITOR: I believe it's Wendy Owens, juror
8 #83.

9 OFFICER: And she was seated in the fifth
10 seat.

11 SOLICITOR: Yes, sir, she's Wendy Owens,
12 I believe that is her, Your Honor.

13 THE COURT: All right, anything else?

14 SOLICITOR: Not from the State, Your Honor.
15 Mr. Bryan is looking at the pictures and is going to
16 tell me as to whether or not he will object to which
17 ones.

18 THE COURT: While he's looking those over,
19 I need a bailiff to escort juror Owens in here for
20 me to inquire.

21 (WHEREUPON, Juror #83 was brought into the
22 courtroom.)

23 THE COURT: Come around here, Ms. Owens,
24 I just need to talk to you a little bit. Are you
25 comfortable serving on this jury?

1 JUROR: Yes, sir.

2 THE COURT: You were noticed by an officer
3 of the court as you came by the table that you waved
4 to the defendant.

5 JUROR: I did what?

6 THE COURT: Did you wave to the defendant?

7 JUROR: No, sir.

8 THE COURT: Do you know the defendant?

9 JUROR: No, sir.

10 THE COURT: Once again just for me to protect
11 the record, are you related by blood or marriage to
12 the defendant?

13 JUROR: No, sir.

14 THE COURT: And one last question. You are
15 under oath as a juror when you serve on a jury, can
16 you give both the State and the defendant a fair and
17 impartial trial?

18 JUROR: Yes, sir.

19 THE COURT: Thank you, you may return to
20 the jury room.

21 (WHEREUPON, The juror returned to the jury
22 room.)

23 SOLICITOR: Thank you, Your Honor.

24 THE COURT: Any other inquiry of her that
25 you want me to make?

1 SOLICITOR: No, Your Honor. Your Honor,
2 the State would have to ask the Court that the Court
3 allow in two of the photographs that don't contain
4 any blood on them. There is a picture of the disarray
5 of the home as it appeared on that evening. That picture
6 does not contain any blood evidence. I don't believe
7 it's prejudicial to the defense. The State would however
8 allow --- well, not object to the other pictures not
9 coming in as they do contain blood, but there are two
10 pictures here that do show the residence as it existed
11 after the struggle that night when the officers arrived.

12 THE COURT: All right, when it comes down
13 to pictures that may be gory to one side or the other
14 or both, if there's scientific testimony that is going
15 to have to be developed that it may be of some worthy
16 purpose, you know, then certainly they may come in
17 as far as my court is concerned. If you will hand
18 up in the ones then that you want in that the defense
19 has objected to.

20 MR. BRYAN: And I would bring the Court's
21 attention to the fact that the carpet has dark stains
22 on it in those photographs, Your Honor.

23 SOLICITOR: Well, Your Honor, the State was
24 note intending to bring out any dark stains that could
25 be coffee or any other liquid. The State intended to

1 show the scene as it existed with the table overturned,
2 there was a flower there and it was overturned, the
3 State had no intention of bringing that to the jury's
4 attention.

5 THE COURT: I see nothing wrong with them
6 that would be of a highly prejudicial effect that would
7 warrant me not letting them in. I'll allow those in.
8 Thank you for ya'll going through them.

9 SOLICITOR: Thank you, Your Honor.

10 MR. BRYAN: Thank you, Your Honor.

11 SOLICITOR: State is ready to proceed, Your
12 Honor.

13 THE COURT: Well, let me follow up on this
14 juror situation. I have a question, counsel. Mr.
15 Bryan, did you see that juror waving at your client?

16 MR. BRYAN: I didn't see her, Your Honor.

17 THE COURT: Do you know anything about this
18 situation that you can relate to the Court or would
19 like to relate to the Court?

20 MR. BRYAN: No, Your Honor. Mr. Plexico
21 was sitting by my client during the jury selection
22 process, so he was asking him most of the questions
23 and doing most of the talking with him. I, myself,
24 was mostly looking at the list and kind of looking
25 over my shoulder to see if the prospective jurors

1 were giving my client an ugly look while they were
2 standing up. I didn't notice anything out of the ordinary,
3 Your Honor.

4 THE COURT: All right, did any other officer
5 in this court see a wave or any signal from that
6 particular juror to the defendant?

7 OFFICER: I did.

8 THE COURT: You saw it, too?

9 OFFICER: Yes, sir. I didn't hear the comment
10 but I saw the little wave as she came around.

11 THE COURT: Was she looking at the defendant?

12 OFFICER: Yes, sir.

13 THE COURT: I watched several jurors come
14 around but I did not watch all of them and I did not
15 watch her. I'm not going to have a trial tainted by
16 a questionable act like that. We do have an alternate.
17 The Court will grant your motion, Solicitor, that juror
18 will be removed and the alternate will be put in her
19 place.

20 SOLICITOR: Thank you, Your Honor.

21 THE COURT: Now, since we've got contamination,
22 I've got to get the rest of the jury in here and find
23 out if she discussed anything with them. Captain,
24 if you will, inform Mr. Bailiff that I need Ms. Owens
25 back in.

1 (WHEREUPON, Juror #83 returned to the courtroom.)

2 THE COURT: Thank you, Ms. Owens. We have
3 concerns here that I have to address and since we do
4 have an alternate on the jury, just to alleviate concerns
5 by the potential witnesses, family members and all
6 in this case, it's not worth causing you any stress,
7 it's not worth causing me any stress since we do have
8 a alternate. I'm going to go ahead and let you go
9 but we do need you to call back in between 6 and 7
10 to this number. So you are excused for the day, thank
11 you.

12 (WHEREUPON, Jury was excused and left the
13 courtroom.)

14 THE COURT: Captain, if you will, I need
15 you to inform the bailiff to bring the jury back to
16 the courtroom at this time.

17 (WHEREUPON, The jury returned to the courtroom
18 and the following proceedings were heard in their presence
19 and hearing.)

20 THE COURT: I thank you for your patience,
21 ladies and gentlemen. Madam Clerk, I'm going to ask
22 you at this time to take the jury list and poll the
23 jury individually to this question: Did you or anyone
24 else on the jury discuss any issue of this case while
25 in the juryroom or anywhere else after being drawn

1 on this jury.

2 (WHEREUPON, the jury panel was individually
3 polled and all jurors answered in the negative.)

4 THE COURT: Thank you, Madam Clerk. Now,
5 I have a couple of additional questions. So far you
6 have not been sworn for this jury service, I'm going
7 to repeat this question that I've already asked one
8 time before. Does anybody on this jury have any reason
9 whatsoever why you cannot be a fair and impartial juror
10 on this case, if so, raise your right hand.

11 (NO RESPONSE.)

12 THE COURT: All right. Madam Forelady, I'm
13 going to give you just a minute or two, without sending
14 you back to the jury room, to just step down to each
15 juror and ask them whether they prefer to sit where
16 you are sitting now or whether you would rather be
17 back on the two first rows of that gallery back there.

18 (WHEREUPON, The Foreman confers with the
19 jury.)

20 FOREMAN: We would like to sit in the back.

21 THE COURT: All right, if ya'll will take
22 the first two rows back there then. At this time,
23 unless I have anything further from the State or the
24 defense, we will go ahead with the oath. Madam Clerk,
25 you may swear the jury.

1 (WHEREUPON, Jury was duly sworn.)

2 THE COURT: Madam Forelady and ladies and
3 gentlemen of the jury, we're going to go ahead with
4 opening statements at this time and I have a few remarks
5 to make to you, just to let you know how we're going
6 to proceed. First of all, before I get into talking
7 about the trial procedure, it's a little bit warm in
8 here this morning and those seats, I know, sometimes
9 can be uncomfortable and sometimes they can get a little
10 bit too comfortable and especially after lunch. If
11 you're like me, sometimes you might eat just a little
12 bit too much and then you want to take a nap. And
13 we can't do that. If I were to fall asleep up here,
14 I would have to answer to somebody and I would get in
15 trouble. And the same applies to you as jurors, not
16 necessarily that you would be in any kind of serious
17 legal trouble, but it would cause embarrassment to
18 you and the other jurors in that it could cause a problem
19 with the trial. In other words, it could cause a delay,
20 it could cause a what we call a mistrial, if there
21 was concern about, you know, that you missed some crucial
22 evidence or critical evidence on one side or the other,
23 and therefore we have received specific instructions
24 over the last few years about making sure that our
25 jurors are comfortable and are not put in a position

1 where it would be easy for you to go to sleep.

2 Now, the Town has been very gracious in allowing
3 us to use this facility so we are somewhat cramped
4 compared to what we would be under a normal courthouse
5 setting. But let me assure you now, the bailiff staff,
6 as well as this Court, is here to assist you in any
7 way that you need. Should you become sleepy or drowsy,
8 for goodness sakes, let me know and we will take a
9 break, okay. Don't fall asleep on us. If you feel
10 it coming on, let me know, we will take a break and
11 I'll even take a extra step to allow you to bring coffee
12 or a coca-cola in here to where you can, you know,
13 perk up a little bit because we do not want that to
14 happen and I can already see with this setting in this
15 courtroom with those theater type chairs that it could
16 be tempting, especially after lunch, to want to doze.
17 And I wanted to take a special effort to talk with
18 you about that.

19 Now, as far as the trial is concerned, I've
20 already told you what is going to happen first. Both
21 sides will be allowed to make opening statements, that's
22 where they outline their respective cases to you. After
23 that will come the evidentiary portion of the trial
24 where you will receive the evidence. Evidence may take
25 many different forms, ladies and gentlemen. It may

1 be testimony from the witness stand, it may be documents,
2 it may be photographs, it can be physical type items,
3 it can be demonstrative type items, such as a map or
4 a skeletal figure that a doctor may use to explain
5 bone injury or whatever, that's what we call demonstrative
6 evidence. The bottom line is evidence can take many
7 different forms but it is crucial that you listen and
8 observe the evidence because you are the finders of
9 facts in this case. You are the only ones in this
10 courtroom that are allowed under our state law to find
11 the facts. I don't even get into that. I have to
12 sit up here as a neutral referee in effect. I am the
13 judge of the law, you are the judge of the facts. I
14 will not even comment on any of the facts, okay.

15 Now, with that said, you being the finders
16 of the facts and I being the judge of the law, the
17 end result of any trial is to reach a verdict. The
18 word verdict is a Latin derivative word which means
19 a true saying. So simply it can be stated that a jury
20 sits in search of the truth. That's what a verdict
21 is all about. How do you do that? You find the facts
22 from the evidence, take the law that I will provide
23 to you in my judge's charge of the law to you, and
24 apply to those facts as you find them, and thus reach
25 a verdict. That is the end result of the trial, as

1 I said, is the verdict.

2 Now after the evidentiary portion of the
3 trial, we will have the closing arguments. That's where
4 both attorneys from each side will, in effect, argue
5 to you, try to persuade you to see the case as they
6 see it. After that will come the judge's charge of
7 the law that I've just talked about with you and only
8 after all those phases are completed will you be asked
9 to deliberate this case. And in saying that is, the
10 point that I've already made to you, you're not to
11 discuss this case until you're asked to do so. Do not
12 even discuss it amongst yourselves until the time to
13 deliberate comes.

14 Now, during a break, recess, or anytime you're
15 outside this courtroom, if anybody tries to approach
16 you and discuss this case with you, whether it be in
17 person, by telephone, by fax, by email, whatever, do
18 not discuss this case with them. It would b highly
19 improper for that to happen. Should someone attempt
20 to do that with you, immediately notify your local
21 law enforcement. If you live in town, notify the police
22 department. If you're out in the county, you notify
23 the Sheriff's Department, if it happens here in this
24 court facility, you notify me, okay, and we will deal
25 with it. It very seldom happens but sometimes it

1 does.

2 Now, this is a criminal case. The State in
3 a criminal case, it's provided under our law, has to
4 prove their case beyond a reasonable doubt. If this
5 were a civil case the burden of proof would be different.
6 So there is a strong burden of proof on the State in
7 a criminal case and therefore it is said that the State
8 must prove the guilt of a defendant beyond a reasonable
9 doubt. If the State fails to do so, then it would
10 be your duty to find the defendant not guilty. If
11 the State in trying its case proves to you the guilt
12 of the defendant beyond a reasonable doubt, then it
13 would be your duty to find the defendant guilty of
14 the particular charge that you may be deliberating.

15 I'll go into that fully in my closing charge
16 to you, we will cover all those aspects. I will give
17 you the actual laws, read to you, charge to you the
18 actual laws that have been entered in this case through
19 these indictments. An indictment is a simple form,
20 a document, that gets the case before the court and
21 it's not evidence, and later on you will probably have
22 these with you and I'll tell you once again, do not
23 consider these as evidence, they just contain the
24 allegations and used to process the case into the court
25 system.

1 The evidence will come forward in this trial,
2 I trust all of you will listen and observe. Give your
3 attention to the attorneys and to the witnesses. Once
4 again, if you have any problem, you let us know.

5 Now in closing my statement to you, I will
6 tell you this one last thing. When you are asked to
7 deliberate these verdicts, you're going to have several
8 indictments to consider, your verdict will have to
9 be a unanimous verdict, all twelve of you will have
10 to be in agreement on whatever that verdict is. And,
11 of course, each indictment will have to be taken up
12 and considered separately.

13 All right, Solicitor.

14 SOLICITOR: May it please the Court, Mr.
15 Bryan, ladies and gentlemen, good afternoon. My name
16 is Tameake Legette. I'm here to tell you today about
17 a case and this case is about safety of the home, safety
18 of the home, remember that. This is a case about how
19 a man, Toby Smart, should have been safe in his home
20 on February 6, 2004.

21 MR. BRYAN: Your Honor, this is an appeal
22 to emotion. If she could just stick to the evidence
23 instead of trying to inflame the jury.

24 SOLICITOR: Your Honor, this is not inflammatory.

25 THE COURT: No harm yet but don't get too

1 far out on a tangent with that, okay?

2 SOLICITOR: Thank you, Your Honor. On February
3 6, 2004 around 11 o'clock at night, 78 year old Toby
4 Smart was in his home preparing for bed. And Toby Smart
5 heard a knock at the door. He went to the door. Someone
6 wanted to buy a cigar. Well, he went to get the cigar
7 and by the time he gets back to the door, he opens
8 the door and in rushed two young men. One is named
9 Cazario Marshall and one is named Quincy DeLoach. And
10 what these two young me do to 78 year old Toby Smart?
11 They burglarized his home. Then they ABHANed him, which
12 is assault and battery of a high and aggravated nature
13 by beating him. Not only that, they robbed him at
14 gunpoint in his own home. They also have a gun n their
15 hand which is the possession of a firearm during the
16 commission of a violent crime. And not only that, they
17 take him into his bathroom and they tie him in so that
18 he cannot get out and they kidnap him.

19 Now, let me tell you what happened. As I
20 said, on February 6, 2004, Toby Smart was getting ready
21 for bed in his home. Around 11 o'clock or either 11:30,
22 somewhere thereabouts, knocking on the door, he goes
23 to the door. They want to buy a cigar. He goes and
24 gets the cigar, comes back to the door and in they
25 rush. One of them has a gun and not only do they have

1 a gun in his hand, but he hits Toby Smart up side the
2 head and then they proceed to hit him again and again,
3 untul Toby Smart falls down.

4 Not only do they hit him with a gun, after
5 he staggers backward on the floor, they rummage through
6 his pockets looking for his money, going through his
7 pockets. What was Toby Smart thinking? Toby Smart
8 is going to tell you that.

9 Then they got Toby's money. They pick Toby
10 up, carry Toby into his bedroom. Mr. Toby is told
11 to look around for more stuff. After they get him to
12 his bedroom, they take him into his bath. They shove
13 him in, one of them get s telephone cord and ties him
14 into the bathroom so that he cannot get out. And then
15 they leave.

16 Now, Mr. Toby is locked in, he starts to
17 shake the door trying to get out. He finally breaks
18 the cord and he's free. He calls someone to get the
19 police. The police come out, Mr. Toby is taken to the
20 hospital.

21 Now, you're going to learn that the police
22 came out, they collected evidence and through their
23 investigation they found two young men. Two young
24 men, and one of those men was so remorseful for his
25 crime that he confessed. He will be here today, too,

1 to tell you what he did. And at the end of all of
2 this, I'm going to ask you, I'm going to come back
3 before you and ask you to find Cazario Marshall guilty
4 of these crimes. His friend and co-defendant, Quincy
5 DeLoach, will be here to tell you what they both did.

6 I ask you to find him guilty of burglary
7 first, ABHAN, possession of a firearm in the commission
8 of a violent crime, and the other crime that he committed
9 in this case, kidnapping. Thank you.

10 THE COURT: Mr. Bryan.

11 MR. BRYAN: May it please the Court, Solicitor,
12 members of the jury, my name is J. D. Bryan, I'm Assistant
13 Public Defender and I've been appointed to represent
14 Mr. Marshall. I'm going to ask you to do something
15 that might sound unusual because I know ya'll watch
16 TV, lawyers on TV. I'm going to ask ya'll to pay very
17 close attention to this case. Pay attention to the
18 details, the testimony, the evidence, what is there
19 and what's not there. The reason for that is that
20 the State has to prove this crime was committed by
21 Mr. Marshall beyond a reasonable doubt and a reasonable
22 doubt is the kind of doubt that would cause a reasonable
23 person to hesitate to act. This isn't a civil case.
24 In a civil case it's just which side do you believe
25 more. That's different. A civil case is one person

1 against another person, a corporation against another
2 corporation. And when a civil case is over, you just
3 write a check.

4 In a criminal case, it's different. It's
5 the manpower, the tax money of the State of South
6 Carolina against one young man. Furthermore when this
7 is over, it's not going to be writing a check.

8 Now, I would just ask ya'll to pay very close
9 attention to the details of the testimony and the evidence
10 in this case and I thank you for your time.

11 THE COURT: All right, Solicitor, it is now
12 12:30, do you have any witness that we could free up
13 for the rest of the day or do you want to go ahead
14 and break for lunch?

15 SOLICITOR: After lunch is fine, Your Honor.

16 THE COURT: Okay, ladies and gentlemen of
17 the jury, we will break for lunch at this time. We
18 will resume this trial at 2. That gives you almost
19 an hour and a half, I know that eating establishments
20 are fairly limited in the area but we do need you back
21 in the jury room, let's say at 5 minutes to 2.

22 Now, ya'll are dismissed for lunch.

23 (WHEREUPON, The luncheon break was taken
24 and then the proceedings resumed at 2 o'clock.)

25 THE COURT: All right, is the State ready

1 for the jury?

2 SOLICITOR: Yes, Your Honor.

3 THE COURT: Defense?

4 MR. BRYAN: Yes, Your Honor.

5 THE COURT: Bring us the jury, please.

6 (WHEREUPON, The jury returned to the courtroom
7 and the following proceedings were heard in their presence
8 and hearing.)

9 THE COURT: Call your first witness.

10 SOLICITOR: Your Honor, the State calls SLED
11 Agent Jeffrey Crooks.

12

13

14

15 JEFFREY ALLAN CROOKS,
16 AFTER FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY SOLICITOR:

18 Q. Agent Crooks, state your full name for the
19 record.

20 A. Jeffrey Allan Crooks.

21 Q. And where are you employed?

22 A. I'm employed with the South Carolina Law
23 Enforcement Division, commonly referred to by the
24 acronym SLED.

25 Q. Where are your current duties?

A. I'm currently a field agent in the Piedmont

1 region with Investigative Services.

2 Q. How long have you worked with SLED?

3 A. Been with SLED approximately seven and a
4 half years.

5 Q. Have you ever been assigned to the Lowcountry
6 area?

7 A. No, ma'am, I was assigned previously to the
8 SLED Crime Scene Unit.

9 Q. Turning your attention to the night of February
10 6, 2004, do you remember that evening?

11 A. Yes, ma'am, I do.

12 Q. Did you come to the crime scene in Fairfax,
13 South Carolina that evening?

14 A. Yes, ma'am, I did.

15 Q. And what did you find when you arrived at
16 the scene?

17 A. Upon arrival at the scene I was met by Special
18 Agent Freeman, Jimmy Freeman, as well as members of
19 the Fairfax Police Department, and they advised me
20 of the crime scene that they needed assistance with.

21 Q. What was the address of that crime scene?

22 A. Union Avenue Apartments, Apartment 419.

23 Q. What did you find when you arrived at the
24 scene?

25 A. Upon arrival of the scene, we did a walk

1 through of the actual crime scene which is typically
2 the first thing we do. During the walk through I observed
3 blood in various locations throughout the apartment.

4 It was a one bedroom apartment with a living room and
5 a kitchen, as well as a bathroom. Upon going through
6 the bedroom into the bathroom, I observed more blood
7 as well as a phone cord tied around the bathroom door,
8 the door knob, and also a phone cord tied around a
9 closet door knob that was adjacent to the bathroom.

10 Q. Were any pictures taken?

11 A. Yes, ma'am, the entire room was photographed.
12 We took what we call general photographs, it documents
13 the entire scene, not just items of evidence, but the
14 entire apartment, inside and out. Upon taking the
15 general photographs, we then determine what items of
16 evidence were probative to the incident. We photograph
17 them with close up photographs, the blood, the phone
18 cord, all those items we then photograph with close
19 ups.

20 Q. Did you take any evidence with you?

21 A. Yes, ma'am, I did.

22 Q. What did you take with you?

23 A. I collected the door knob with the phone
24 cord attached on the bathroom door. I disassembled
25 the door knob and collected intact with the phone

1 cord still around the door knob. Did the same thing
2 with the door knob of the closet door adjacent to the
3 bathroom, Disassembled the door knob with the phone
4 cord still attached. I also swabbed the location where
5 blood was found. I collected a telephone, a Toby brand
6 telephone, which was found in the apartment, as well
7 as a Philly Blunt brand cigar box which I was told
8 contained money that the victim kept in his residence.

9 Q. I hand you now what has been marked previously
10 as State's exhibit #1, could you take a moment and
11 tell me if you recognize that.

12 A. Yes, I do.

13 Q. What do you recognize it to be?

14 A. These are the door knobs, one from the bathroom
15 and one from the closet door.

16 Q. Now how are you able to recognize that?

17 A. They bear my initials.

18 Q. How did this come in your possession?

19 A. I collected them from the scene after I photo-
20 graphed them.

21 Q. Now, what did you do after you obtained it
22 and took it with you?

23 A. I took it to the lab in Columbia where at
24 the time I was working on the Crime Scene Unit. I
25 processed the door knobs for fingerprint evidence

1 and once I was done I sealed it up in this bag and
2 packaged it up for return to Fairfax.

3 Q. Did you find fingerprints?

4 A. No, ma'am, I did not.

5 Q. Is that unusual?

6 A. No, ma'am, unlike television, you don't always
7 leave fingerprints. There are a lot of factors that
8 can influence whether you leave a fingerprint, the
9 condition of an individual's fingers, the environment,
10 if it's a real dry environment you may not sweat as
11 much. A fingerprint is 98 percent moisture, it comes
12 from sweat, it comes through pores from your fingers.
13 A fingerprint is nothing but a outline of the ridges
14 on your skin, much like a rubber stamp with ink. If
15 there's no sweat on the fingers, there's a very good
16 chance you won't leave fingerprints. If you have very
17 heavy calluses it's a possibility that you wouldn't
18 leave fingerprints. If you sweat profusely you may
19 not leave fingerprints. You may leave sweat smudges
20 but you won't leave actual outlines of the ridges.

21 So there's many reasons why you might not
22 get fingerprints and in my experience, more often than
23 not, I don't get fingerprints.

24 Q. Now, is the telephone cord and door knob
25 in essentially the same condition now as it was when

1 you first saw it?

2 A. With the exception of the fingerprint powder,
3 yes, m'am, that's exactly the way it was. I took the
4 door knob straight off of both doors without handling
5 the phone cord.

6 SOLICITOR: Your Honor, I think we have a
7 matter of law.

8 THE COURT: Ya'll want to step up here to
9 the bench.

10 (WHEREUPON, A bench conference was held
11 out of the hearing of the jury and the court reporter.)

12 SOLICITOR: Your Honor, regarding the door
13 knob, the State would move to have State's exhibit
14 #1 admitted into evidence.

15 THE COURT: And there's no objection to that?

16 MR. BRYAN: No objection to that, Your Honor.

17 THE COURT: Okay, it's in without objection.

18 (WHEREUPON, door knobs were entered and
19 marked as State's exhibit #1.)

20 Q. Agent Crooks, I hand you now what has been
21 marked as State's exhibit #2 through 45. Please take
22 a moment and tell me if you recognize these.

23 A. Yes, ma'am, I do.

24 Q. What do you recognize these State's exhibits
25 as?

1 A. Exhibit #3 is a photograph of the Philly's
2 Blunt brand cigarette box that we collected that was
3 located on the bed in the bedroom.

4 Q. What do you recognize State's exhibit #7
5 to be?

6 A. It's a photograph from the hallway pointing
7 toward the bathroom of the apartment. The door of the
8 bathroom is on the left side of the picture and also
9 hanging off the door knob of that door is the white
10 telephone cord.

11 Q. Does State's exhibit #7 fairly and accurately
12 represent the scene the night you processed it at 419
13 Union Avenue?

14 A. Yes, ma'am, that is a photograph of the door
15 as it was when we arrived at the scene.

16 Q. Please take a moment and look at State's
17 exhibit #8 and tell us if you recognize that one.

18 A. Yes, ma'am, I do.

19 Q. What is that?

20 A. This is a photograph from the bathroom pointed
21 toward the hallway of the apartment, pointing down
22 the hallway toward the bedroom. In the photograph
23 in the center is the door to the hallway closet and
24 on the door knob of that door is a telephone cord wrapped
25 around it.

1 Q. Does State's exhibit #8 fairly and accurately
2 represent the scene the way it looked at 419 Union
3 Avenue on February 6, 2004?

4 A. Yes, ma'am, it does.

5 Q. And I hand you State's exhibit #35, take
6 a moment if you will and tell me if you recognize that.

7 A. Yes, ma'am, I do.

8 Q. What do you recognize that to be?

9 A. This is the same closet, closet door, it
10 is a close up photograph of the door knob with the
11 phone cord wrapped around the door knob. This picture
12 would have been taken as you were standing in the hall
13 looking back towards the bathroom, it would have been
14 in that direction. The closet door was on the right
15 hand side.

16 Q. Agent Crooks, does State's exhibit #35 fairly
17 and accurately represent the way the scene looked at
18 419 Union Avenue on February 6, 2004?

19 A. Yes, ma'am, it does.

20 Q. Take a moment and tell us if you recognize
21 state's exhibit #38.

22 A. Yes, ma'am, I do.

23 Q. And what is that a scene of?

24 A. This is a close up photograph of the door
25 knob on the bathroom door. And you can also see

1 the phone cord wrapped around the door.

2 Q. Does State's exhibit #38 fairly and accurately
3 represent the way the scene looked at 419 Union Avenue
4 on February 6, 2004?

5 A. Yes, ma'am, it does.

6 Q. Agent Crooks, take a moment and tell me if
7 you recognize State's exhibit #40.

8 A. Yes, ma'am, I do.

9 Q. And what do you recognize that to be?

10 A. This is the living room area of the apartment.
11 The photograph would have been taken if you were standing
12 around where the kitchen entrance would be, shooting
13 back towards the front of the apartment and in the
14 photograph, the coffee table of the apartment is laying
15 over on its side.

16 Q. Does that, State's exhibit #40, fairly and
17 accurately represent the scene looked at 419 Union
18 Avenue on February 6, 2004?

19 A. Ma'am, that's the way it looked when we got
20 there.

21 Q. Agents Crooks, take a moment and tell me
22 if you recognize State's exhibit #42.

23 A. Yes, am'am, this is a more close up photograph
24 of the same area from the same angle. You can see
25 the coffee table laying over on it s side in the

1 living room and also just to the side of the coffee
2 table is another table with a telephone laying on it.

3 Q. Okay. Does State's exhibit #42 fairly and
4 accurately represent the way the scene looked at 419
5 Union Avenue on February 6, 2004?

6 A. Yes, ma'am, it does.

7 SOLICITOR: Your Honor, I would move to have
8 State's exhibits #3,7,8,35,38,40 and 42 entered into
9 evidence.

10 THE COURT: All right, all of them are in
11 without objection except for #42 and note the objection
12 on that one.

13 (WHEREUPON, Photographs were entered and
14 marked as State's exhibits #3,7,8,35,38,40 and 42.)

15 SOLICITOR: Agent Crooks, I have no further
16 question. Please answer any questions Mr. Bryan may
17 have.

18 THE COURT: Your witness, Mr. Bryan.

19

20 CROSS-EXAMINATION

21 BY MR. BRYAN:

22 Q. Mr. Crooks, you were called to the scene
23 after this crime was occurred, weren't you?

24 A. Yes, sir.

25 Q. So you didn't actually see what happened

1 that day, did you?

2 A. No, sir, I did not.

3 Q. And you said you found no fingerprints?

4 A. That is correct.

5 Q. And there are no fingerprints linking Mr.
6 Marshall with this crime, are they?

7 A. That's correct.

8 MR. BRYAN: No further questions.

9 THE COURT: You may step down. Call your
10 next witness.

11 SOLICITOR: State calls Toby Smart.

12

13

TOBY SMART, JR.,

14 AFTER FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY SOLICITOR:

16 Q. Mr. Smart, please state your full name for
17 the record.

18 A. Toby Smart, Jr.

19 Q. Speak up a little bit.

20 A. Toby Smart, Jr.

21 Q. Thank you. Where do you live?

22 A. [REDACTED]

23 Q. Is that in Allendale, South Carolina?

24 A. Fairfax.

25 Q. Fairfax?

1 A. Yeah.

2 Q. Is that in Allendale County?

3 A. I think so, that's Allendale County, yeah.

4 Q. Do you live alone?

5 A. Right.

6 Q. How old are you?

7 A. March coming I'll be 79.

8 Q. Are you married?

9 A. No.

10 Q. Do you have any children?

11 A. Yeah.

12 Q. How many children do you have?

13 A. I got two.

14 Q. Do you have any grandchildren?

15 A. Oh, a lot of them, I couldn't name them.

16 Q. Mr. Toby, did you run --- did you sell things
17 in your apartment?

18 A. Yeah, I was, yeah.

19 Q. What did you sell?

20 A. Like little sodas, chewing gun, candy and
21 stuff like that, chips.

22 Q. Now, do you remember February 6, 2004?

23 A. Yeah, I remember, yeah, I remember.

24 Q. Could you tell us what happened that night?

25 A. Well, a lad came in and said he wanted to

1 get a soda or something and I got open that wooden
2 door, that's got two doors, I was opening the wooden
3 door and I see who he was and then he opened the screen
4 and come on in. And I didn't get to see what he want,
5 that the time he haul off and bam, he keep bamming,
6 the other guy he run in behind him and they chained
7 me right there in that living room, right there in
8 that chair, the telephone back on that table and got
9 all the money I had in my pocket and then they panhandle
10 me and carried me in the bathroom, shoved me in the
11 bathroom and that's when they take that thing and tied
12 the bathroom door and then pull it to the closet door,
13 tie it to where I couldn't get out right then. So
14 they got away.

15 Q. Okay. Now, you said he came in, he opened
16 the door himself and came in.

17 A. Yep.

18 Q. What did he hit you with?

19 A. Looked like a pistol to me, now.

20 Q. Where were you hit?

21 A. Well, I was hit back here to start with and
22 I turn around and they bust me right here and knock
23 my teeth out.

24 Q. How many of them was there?

25 A. Two.

1 Q. Now you said they rummaged through your pockets,
2 what did they take from your pockets?

3 A. They take all the money I had in there, I
4 tell them to go ahead don't kill me, just get the money
5 and go on about their business.

6 Q. How much money did you have in your pockets?

7 A. I know I had \$400 in cash.

8 Q. Now, where were you hit, were you hit in
9 the head or ---

10 A. Yeah, head and my lips, you know. Lip.

11 Q. Were you injured?

12 A. Yeah. Sore, couldn't hardly eat, yep.

13 Q. I'm sorry.

14 A. Yeah, I went to the hospital.

15 Q. Did you get any --- was there anything done
16 to you at the hospital?

17 A. Yeah, stitches.

18 Q. Did you have any permanent injuries?

19 A. No, no more than my mouth all messed up,
20 you know, where I was hit in my head, they were sort
21 of beating me in the head, you know.

22 Q. Did you lose a tooth?

23 A. Huh?

24 A. Was a tooth missing?

25 A. Yeah.

1 Q. Did they knock it out?

2 A. Yeah.

3 SOLICITOR: Your Honor, could I ask that
4 the witness to step down.

5 THE COURT: Yes.

6 A. Huh?

7 Q. Can you step down.

8 A. Step down?

9 Q. Yes, sir. Could you open the mouth for the
10 jury to see?

11 A. (Witness complies.)

12 Q. Okay, you can have a seat. Did they take
13 anything else from you?

14 A. That's all, that's all they took they said,
15 that was it. I would have give them that, you know,
16 besides beating me, they beat me and then take it,
17 that what made it bad.

18 Q. Did you say anything to them?

19 A. I told them to go on and take the money,
20 don't beat me up, that's all. And they was study hitting
21 him and trying to knock me out so I wouldn't know them,
22 I reckon.

23 Q. Now what part of the house did this happen
24 in?

25 A. Started right time they come in the door,

1 right there by the --- just about 4 foot from the front
2 door.

3 Q. Now, were you ever moved to another part
4 of the house?

5 A. Yeah, when they manhandled me after they
6 got my money and come in the bathroom and that was
7 it.

8 Q. Okay, now what happened when you got to the
9 bathroom?

10 A. Well, they open the door --- see, the bathroom
11 door like right here and the closet door right here,
12 so they pulled the bathroom door and shit me in there
13 and take the cord and tied it to the closet door, see.

14 Q. Now, could you get out at first?

15 A. For a while I couldn't get out because I
16 was kinda dazed but I finally just yanking the door
17 and the cord come loose.

18 Q. Okay, how long did it take you to get out?

19 A. At last maybe about five minutes I believe
20 I was in there.

21 Q. Now, about what time did all this happen?

22 A. Well, close as I can say about --- about
23 10 minutes after 11 or something like that.

24 Q. Was it nighttime?

25 A. Right, nighttime.

1 Q. Now, what happened when you got out of the
2 bathroom?

3 A. Well, I call LaFrey, I knew to call her,
4 and I told them to call my daughter and let them know
5 because I couldn't hardly, you know, couldn't find
6 the numbers to call, you know, I was just so dizzy,
7 you know. Couldn't even call for help.

8 Q. Okay, when help arrived, what did they do?

9 A. He told me to sit down on the chair, you
10 know, got the paramedic and I sat down then.

11 Q. Did you go to the hospital?

12 A. Went to the hospital? Yes.

13 Q. Mr. Toby, did you recognize one of the guys?

14 A. Yep.

15 Q. You did?

16 SOLICITOR: Mr. Smart, I have no further
17 questions, answer any questions from the defense.

18 THE COURT: Mr. Bryan.

19
20 CROSS-EXAMINATION

21 BY MR. BRYAN:

22 Q. Mr. Smart, how's your vision?

23 A. (No response.)

24 Q. How's your vision?

25 A. You mean my eyes?

1 Q. Yes, sir.

2 A. I had to go to the eye doctor.

3 Q. Can you see alright?

4 A. Fair vision, out of one eye, yeah.

5 Q. And how is your hearing?

6 A. Pretty good so far.

7 MR. BRYAN: No further questions.

8 THE COURT: Mr. Smart, you may step down,
9 thank you. Call your next witness.

10 SOLICITOR: State calls Tramine Manuel.

11

12 TRAMINE MANUEL,

13 AFTER FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY SOLICITOR:

15 Q. Officer Manuel, state your full name for
16 the record?

17 A. Tramine Lakia Manuel.

18 Q. And where do you work?

19 A. Fairfax Police Department.

20 Q. And what are your duties?

21 A. I'm a patrol officer for the Fairfax Police
22 Department, I serve and assist the citizens of Fairfax.

23 Q. How long have you worked there?

24 A. Three years.

25 Q. Were you working for Fair Police Department

1 on the evening of February 6, 2004?

2 A. That's correct.

3 Q. What were your duties that evening?

4 A. To patrol the area of Fairfax and to serve
5 the citizens of Fairfax.

6 Q. Did you respond to a call at 419 Union Avenue?

7 A. Correct.

8 Q. Whose residence is that?

9 A. Mr. Toby Smart.

10 Q. Who did you find when you arrived at the
11 scene?

12 A. Found that Mr. Smart had been assaulted and
13 that he also --- some items had been taken from him.

14 Q. What condition was he in when you arrived?

15 A. He had --- I noticed that he had been struck
16 in the head with something and in the face area and
17 he was a little dizzy at the time so I asked him to
18 sit down at that point.

19 Q. What did you do next?

20 A. I called for EMS.

21 Q. What was the condition of the apartment?

22 A. There were signs of a struggle in the living
23 room area. That's as far as I went at that point.

24 So ---

25 Q. A struggle, what do you mean?

1 A. There were whatnots that were on a shelve
2 that were in several different places on the floor
3 of the apartment in the living room area, and there
4 was a coffee table in the living room area that had
5 been turned over.

6 Q. Did anyone else come to scene while you were
7 there?

8 A. Yes. First responders, EMS, my chief and
9 assistant chief, his daughter and son-in-law and we
10 were also assisted by the Hampton County Sheriff's
11 Department, as well as Allendale County Sheriff's
12 Department and then followed the forensic team of SLED.

13 Q. Now was anyone arrested in regard to this
14 incident?

15 A. On that night or later?

16 Q. That night.

17 A. Not on that night.

18 Q. Was anyone ever arrested?

19 A. Yes.

20 MR. BRYAN: Your Honor, I don't see the relevancy
21 of the question of whether somebody was arrested. I
22 don't even see the point in asking that, Your Honor.

23 SOLICITOR: Well, Your Honor, I was going
24 to ---

25 THE COURT: Overruled, go ahead.

1 Q. Who was arrested?

2 A. Cazario Marshall and Quincy DeLoach.

3 SOLICITOR: Thank you, I have no further
4 questions. Answer any questions Mr. Bryan may have.

5 THE COURT: Cross-examination.
6

7 CROSS-EXAMINATION

8 BY MR. BRYAN:

9 Q. Did you take a statement of Mr. Smart?

10 A. No, sir, I didn't. Well, excuse me, I did
11 take a verbal statement from Mr. Smart before he was
12 transported to Allendale County Hospital from his
13 apartment by EMS.

14 Q. Okay.

15 A. And later at his daughter's residence.

16 Q. Was this a ---

17 A. Should have been written by me, correct.

18 Q. --- written statement?

19 A. Uh-huh.

20 Q. Okay. Did you question him about what happened
21 that night?

22 A. Yes, sir, I did.

23 Q. Okay. You've been to the Criminal Justice
24 Academy, right?

25 A. Yes, sir, I have.

1 Q. And how long is that training?

2 A. Nine weeks.

3 Q. And they tell you about taking reports from
4 victims and witnesses and whatnot, don't they?

5 A. Correct.

6 Q. And they tell you it's important to get state-
7 ments, right?

8 A. Excuse me?

9 Q. They tell you it's important and why, don't
10 they?

11 A. To take statements from the victims?

12 Q. Yes.

13 A. Correct.

14 Q. Because sometimes it can be months or even
15 years before it goes to trial, right?

16 A. Right.

17 Q. And people's memories usually get worse over
18 time, don't they?

19 A. Right.

20 Q. And another thing, you probably investigate
21 a lot of crimes in your career, don't you?

22 A. Right.

23 Q. And it would be easier to follow up the details,
24 wouldn't it?

25 A. Right.

1 Q. And you took this statement from Mr. Smart,
2 right?

3 A. Right.

4 Q. Did he name, in this statement, did he name
5 anybody?

6 A. No, sir, he doesn't.

7 Q. Okay. If he had named anyone, you would
8 have put it in the statement, wouldn't you?

9 A. Correct.

10 MR. BRYAN: No further questions.

11 THE COURT: You may step down, ma'am.

12 SOLICITOR: State calls Chief Marvin Williams.

13

14

MARVIN J. WILLIAMS,
15 AFTER FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY SOLICITOR:

17 Q. Please state your full name for the record.

18 A. Marvin J. Williams.

19 Q. Where are you employed?

20 A. Fairfax Police Department.

21 Q. And what is your current position?

22 A. Assistant Chief.

23 Q. How long have you worked there?

24 A. A little over eleven years.

25 Q. What are your current duties?

1 A. To supervise six other officers and do
2 investigations.

3 Q. Have you ever worked at any other law enforce-
4 ment agency before?

5 A. Hampton County Sheriff's Department.

6 Q. Turning your attention to February 6, 2004,
7 did you investigate a burglary at Mr. Toby Smart's
8 house?

9 A. Yes.

10 Q. What did your investigation reveal?

11 A. Investigation revealed that --- I spoke with
12 Mr. Smart the next day of the incident and I asked
13 him who were the last person he seen that night because
14 he sells a little goodies for the kids out there to
15 the apartments. And he stated that Sean Payne ---

16 MR. BRYAN: Your Honor, this calls for hearsay.

17 SOLICITOR: Your Honor, I don't believe this
18 is hearsay, I believe he's telling what his investigation
19 revealed and Mr. Smart is present in the court room
20 and can be cross-examined as to what he did or did
21 not say.

22 THE COURT: All right, you are still in the
23 basics of the or the preliminary parts of the investigation.
24 I'll allow you to go forward but I don't want you to
25 get too carried away with hearsay, now.

1 Q. Who did your investigation lead you to?

2 A. Sean Payne.

3 Q. Did you talk with Sean Payne?

4 A. Yes, ma'am.

5 Q. What did Sean Payne tell you?

6 A. He ---

7 MR. BRYAN: Objection, Your Honor. Once again,
8 Your Honor, this is just hearsay.

9 SOLICITOR: I'll withdraw that question.

10 THE COURT: Her question is withdrawn, pose
11 another one, pose your question and see if he has an
12 objection to this one.

13 Q. What did you learn from Sean Payne?

14 MR. BRYAN: On the same grounds, Your Honor, ---

15 THE COURT: Sustained.

16 Q. Chief, who did you investigation lead you
17 to finally?

18 A. Quincy DeLoach and Cazario Marshall.

19 Q. Did you talk to Mr. DeLoach?

20 A. Yes, ma'am.

21 Q. What happened when you talked to Mr. DeLoach?

22 A. I ---

23 MR. BRYAN: Your Honor, once again, on the
24 grounds of hearsay and also the right of cross-
25 examination is guaranteed by the constitutions of

1 South Carolina and the United States. I have to object
2 to that.

3 THE COURT: Well, my previous ruling was
4 now based on Breland, the question here was of ---

5 SOLICITOR: Who did his investigation lead
6 him to?

7 THE COURT: What was the name of the person?

8 SOLICITOR: Quincy DeLoach, the first person
9 was Sean Payne, the answer was Sean Payne. and then
10 I asked who did his investigation lead him to and the
11 next question and the answer was Quincy DeLoach.

12 THE COURT: All right, now, what's the next
13 question?

14 SOLICITOR: I hadn't gotten that far yet.

15 THE COURT: All right, pose your next question.

16 Q. What did you learn from Quincy DeLoach?

17 THE COURT: Sustained.

18 Q. Did you make an arrest in this case?

19 A. Yes, ma'am.

20 Q. Who did you arrest?

21 A. Cazario Marshall and Quincy DeLoach.

22 Q. Why did you arrest Quincy DeLoach?

23 A. After speaking with Mr. DeLoach, we took
24 a written report from him, from Mr. DeLoach, and he
25 stated that him, and along with him was ---

1 MR. BRYAN: Your Honor, that would be hearsay.

2 A. --- Cazario Marshall ---

3 THE COURT: Hold on. Your objection is sustained,
4 we're getting all over the Brunton rule now.

5 SOLICITOR: Your Honor, I have no further
6 questions of this witness.

7 MR. BRYAN: No questions, Your Honor.

8 THE COURT: You may step down.

9 SOLICITOR: State calls Sean Payne.

10
11
12 SEAN [REDACTED], AFTER
13 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY SOLICITOR:

15 Q. State your full name for the record, please.

16 A. Sean [REDACTED].

17 Q. Please speak up for the jury, please.

18 A. Sean Payne.

19 Q. How old are you?

20 A. Thirteen.

21 Q. What is your current address?

22 A. Fairfax, South Carolina, [REDACTED]

23 Q. What grade are you in?

24 A. Eighth.

25 Q. What school do you attend?

A. Allendale/Fairfax Middle School.

1 Q. Please speak up so we can hear you. Do you
2 remember the night Mr. Toby got robbed?

3 A. Yeah.

4 Q. Where were you before it happened?

5 A. My grandma house.

6 Q. Who were you with?

7 A. My cousin, Quincy and Zario.

8 Q. Quincy and who?

9 A. Cazario.

10 Q. What were ya'll doing?

11 A. Going to the projects.

12 Q. Did you go to Mr. Toby's house?

13 A. Yes.

14 Q. Why did you go there?

15 A. To get me a soda.

16 Q. Did anybody send you there?

17 A. No.

18 Q. Do you remember giving a statement?

19 A. Yes.

20 Q. Okay, do you want to read the statement so
21 you can know what the statement says? What does that
22 statement say?

23 A. Went to the projects and got a soda.

24 Q. And who sent you to get the soda?

25 A. I went myself.

1 Q. Okay. Now, when you went and got the soda,
2 what did you do after that?

3 A. Went outside.

4 Q. Okay, did you see your two cousins again?

5 A. Yes.

6 Q. Okay, did you talk to them?

7 A. No.

8 Q. Well, do you know what your statement says?

9 A. (No response.)

10 Q. Do you want to read it so you can refresh
11 your memory?

12 A. (Witness complies.)

13 Q. Can you tell us what it says?

14 A. (No response.)

15 Q. Can you tell us?

16 A. (No response.)

17 Q. Is this your statement?

18 A. Yes.

19 Q. Can you start right here?

20 A. Quincy.

21 Q. I need you to read it.

22 A. Read for what?

23 Q. We need you to read it for the jury.

24 A. I don't want to read it.

25 Q. Well, you're under oath and I'm asking you

1 to read it. Could you please start from here?

2 MR. BRYAN: Your Honor, he's allowed to use
3 that to refresh his memory but I think his testimony
4 has to come from his memory and not from what he reads
5 off a piece of paper.

6 THE COURT: All right, before I step in,
7 let's try it that way.

8 Q. Okay, Sean, can you remember what you told
9 whoever you gave this statement to what you did, do
10 you remember?

11 A. Yeah.

12 Q. Can you tell us what you told the people
13 you gave this statement to that night?

14 A. Yes.

15 Q. Please tell us.

16 A. We went to the projects and to a soda and
17 then went back outside, he walked me to the ditch and
18 then tell me to go home.

19 Q. And why did they tell you to go home?

20 A. Because they make me go 'round the corner.

21 Q. Is that what your statement says?

22 A. Huh-uh.

23 Q. Say yes or no.

24 A. No.

25 Q. Okay, what does your statement say?

1 A. They walk me to the daycare and then they
2 tell me to go home.

3 Q. Why did they tell you to go home?

4 A. 'Cuz.

5 Q. Because?

6 A. They go go to somebody house.

7 Q. And what does your statement say?

8 THE COURT: You are going to have to speak
9 up now, the jurors can't hear.

10 Q. Sean do you remember what you told the police.
11 Can you tell the jury exactly what you told them?

12 A. Uh-huh.

13 Q. Please tell us.

14 A. They tell me to go home 'cause they getting
15 ready to do something.

16 Q. Say it a little louder.

17 A. They tell me to go home 'cause they meant
18 they was going to do something.

19 Q. Okay. What did you do after that?

20 A. Went home.

21 SOLICITOR: Thank you, I have no further
22 questions. Answer any questions Mr. Bryan may have.

23

24 CROSS-EXAMINATION BY

25 MR. BRYAN:

1 Q. Mr. ██████, how old are you?

2 A. Thirteen.

3 Q. Where are you in school?

4 A. What?

5 Q. What grade are you in?

6 A. Eighth.

7 Q. When the police talked to you was it daytime
8 or nighttime?

9 A. Day.

10 Q. How long did they talk to you?

11 A. About a hour.

12 Q. About an hour? During that time, did they
13 threaten you in any way?

14 A. (Shakes head negatively.)

15 Q. Did they make you any promises?

16 A. (No response.)

17 THE COURT: You are going to have to answer,
18 the jurors can't tell what you mean when you are shaking
19 your head and this lady has to hear your answer, okay.

20 Q. When they did the statement, did they write
21 it out or did you write it out?

22 A. I wrote it.

23 MR. BRYAN: No further questions.

24 THE COURT: You can come down.

25 SOLICITOR: I have one more question, Your

1 RE-DIRECT EXAMINATION BY SOLICITOR:

2 Q. Sean, was your grandmother with you when
3 you gave this statement?

4 A. Yeah.

5 SOLICITOR: No further questions.

6 THE COURT: You can come down.

7 SOLICITOR: State calls Quincy DeLoach.

8 THE COURT: Sheriff, bring back Mr. ██████.

9 Stop right there, Mr. ██████, you are still under oath,
10 okay. In fact, you can turn and look that way if you
11 want to. I'll tell you what, let the jury go to their
12 jury room.

13 (WHEREUPON, Jury retired to the jury room
14 and the following proceedings were held in the absence
15 of the jury.)

16 THE COURT: Mr. ██████, I'm a little concerned
17 about your testimony from the Bench point of view.
18 Some-times a six sense of mine kicks in. Have you
19 been threatened in any way about this case? Has anybody
20 threatened you or made any comments to you to get you
21 upset?

22 A. No, sir.

23 THE COURT: You're absolutely sure?

24 A. Yes, sir.

25 THE COURT: Now if they have, now is the

1 time to tell me. Any of his family members here?

2 SHERIFF: I'll look out in the hall. Yes,
3 sir, here's one.

4 THE COURT: Would you come on up. I appreciate
5 you being here. Sheriff, if you would arrange an office
6 for them to use, and let them go back and talk. If
7 you don't mind, talk to him and make sure he's okay,
8 and if there's some problem, I need to know about it.
9 I'm not from here and I don't know anybody. If he's
10 been threatened in any way I want to know about it.

11 LADY: Yes, sir.

12 SOLICITOR: If I could shed some light, Your
13 Honor. This young man is actually kin to both of these
14 young men and as far as I know there's that kind of
15 relationship and that may be the reason for his demeanor
16 but that's all I can say about the case.

17 THE COURT: I was just wanting to double
18 check. It's bad enough when you've got an adult, when
19 you've got a child that's obviously under that kind
20 of strain, something just didn't feel right to me.

21 Let's go ahead and take a five minutes break.

22 (WHEREUPON, A short break was taken and
23 then the proceedings resumed.)

24 THE COURT: Is the State ready for the jury?

25 SOLICITOR: Yes, Your Honor.

1 THE COURT: Is the defense ready for the
2 jury?

3 MR. BRYAN: Yes, Your Honor.

4 THE COURT: Bring us the jury.

5 (WHEREUPON, Jury returned to the courtroom
6 and the following proceedings were heard in their presence
7 and hearing.)

8 SOLICITOR: State calls Quincy DeLoach.

9
10 QUINCY DELOACH, AFTER
11 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY THE SOLICITOR:

13 Q. Please state your full name for the record.

14 A. Quincy LaNotch DeLoach.

15 Q. How old are you, Quincy?

16 A. Twenty-three.

17 Q. Have you ever worked?

18 A. Yes.

19 Q. Where do you work?

20 A. Corbett Plywood.

21 Q. Where do you live?

22 A. Fairfax.

23 Q. How long have you lived in Fairfax?

24 A. All my life.

25 Q. Do you know Cazario Marshall?

- 1 A. Yes.
- 2 Q. How long have you known Cazario Marshall?
- 3 A. Ever since we was kids.
- 4 Q. And is he in the courtroom today?
- 5 A. (Witness nods affirmatively.)
- 6 Q. Please point him out for the jury.
- 7 A. (Points to the defendant.)
- 8 Q. I turn your attention to February 6, 2004,
- 9 do you remember that night?
- 10 A. Yes.
- 11 Q. Please tell us what happened that night.
- 12 A. All us was at a barbecue ---
- 13 Q. Who's all of us?
- 14 A. Me. Cazario, Corinthin, Cedrick and Mark
- 15 and four girls.
- 16 Q. Now, you had barbecue, what happened while
- 17 you were there?
- 18 A. We was drinking, smoking.
- 19 Q. Did you talk about anything that night while
- 20 you were drinking and smoking?
- 21 A. Yes.
- 22 Q. What did you talk about?
- 23 A. Robbing Mr. Toby.
- 24 Q. Who did you talk about that with?
- 25 A. Cazario.

1 Q. So did you and Cazario go to Mr. Toby's house?

2 A. Yes.

3 Q. Was Sean Payne with you?

4 A. He was out there when we walked --- when
5 we walked out there.

6 Q. So did he go with you to the house?

7 A. Huh-uh.

8 Q. Please say yes or no.

9 A. No.

10 Q. Where did Sean go?

11 A. I sent him back home.

12 Q. Why did you send him back home?

13 A. Because I didn't want him involved with it.

14 Q. Now, what happened when you got to Mr. Toby's
15 house?

16 A. I knock on the door and he came to the door
17 and I asked for a blunt and ---

18 Q. What is a blunt?

19 A. Cigar.

20 Q. Okay.

21 A. And when he said he --- he asked me did I
22 know what time it was and I told him yeah, so he turned
23 back around, he must have went and got the cigar, and
24 when he came to the door and open both and that when
25 we went inside.

- 1 Q. Okay, what happened when you went inside?
- 2 A. Cazario hit him in the face with the gun
- 3 twice.
- 4 Q. Did you push your way in?
- 5 A. No, ma'am.
- 6 Q. Did you see the gun?
- 7 A. I seen it, it was a black gun.
- 8 Q. Where did you hit Mr. Toby?
- 9 A. I guess in the mouth.
- 10 Q. Did you hit him in the head, too?
- 11 A. Think so.
- 12 Q. And what did you do when Cazario was doing
- 13 this?
- 14 A. I stand to the front door, make sure nobody
- 15 come in.
- 16 Q. Did you close the door?
- 17 A. Yes, I did.
- 18 Q. What else did you do?
- 19 A. I locked it.
- 20 Q. Was Mr. Toby struggling?
- 21 A. Yes.
- 22 Q. Was he screaming?
- 23 A. The only thing he said, please don't kill
- 24 him.
- 25 Q. All right. How many times was Mr. Toby hit?

1 A. Twice, I think.

2 Q. Now was anything taken from him, his pockets?

3 A. His money.

4 Q. Do you know how much money it was?

5 A. I don't know how much it was.

6 Q. Did you take the money?

7 A. (Witness nods negatively.)

8 Q. Who took the money?

9 A. Cazario.

10 Q. Now when he was taking the money, where was
11 the gun?

12 A. Still in his hand.

13 Q. Was he doing anything with the gun?

14 A. Waving it around.

15 Q. And where did all this happen?

16 A. In Mr. Toby's living room.

17 Q. Was Mr. Toby ever in any other part of the
18 house?

19 A. 'Cept for the --- Cazario took him to the
20 bathroom.

21 Q. Now, did you see what Cazario did with him
22 in the bathroom?

23 A. No.

24 Q. Why didn't you see it?

25 A. I left out.

1 Q. And where did you go?

2 A. Out the back door.

3 Q. Did you see Cazario again, did you wait for
4 him?

5 A. Well, we met up when we jumped across the
6 ditch and head through the field.

7 Q. What did ya'll do when ya'll met up again?

8 A. Went to the pool hall.

9 Q. Did you get anything from Cazario?

10 A. Some money.

11 Q. What did he tell you happened to Mr. Toby?

12 A. Say he tie him up in the bathroom.

13 Q. How much money did he give you?

14 A. \$60.

15 Q. Now what did you do after that?

16 A. I left the pool hall when I seen my other
17 little cousin came up there, left and went back to
18 his house.

19 Q. Anything else happen that evening?

20 A. No.

21 Q. Have you been promised anything to testify
22 today?

23 A. No, ma'am.

24 Q. Quincy, what time did ya'll go to the pool
25 hall?

1 A. That had to be 'round about 12.

2 Q. About 12?

3 A. Uh-huh.

4 Q. Did you and Cazario go together?

5 A. (Witness nods head.)

6 Q. Please say yes or no.

7 A. Yes.

8 Q. How long did you stay at the pool hall?

9 A. I stayed there for about thirty minutes.

10 Q. Was Cazario there the whole time?

11 A. I think so.

12 Q. And when you left, did you see him still
13 there?

14 A. When I left?

15 Q. Uh-huh.

16 A. I seen him standing right there on the side
17 when I walked to the front.

18 Q. Quincy, did you give a statement in this
19 case?

20 A. Yes.

21 Q. And is what you've told us today is what's
22 in your statement?

23 A. Yes.

24 SOLICITOR: No further questions. Answer
25 any questions Mr. Bryan may have.

1 THE COURT: Cross-examination, Mr. Bryan.

2
3 CROSS-EXAMINATION

4 BY MR. BRYAN:

5 Q. Mr. DeLoach, how old are you?

6 A. Twenty-three.

7 Q. And have you discussed this case with your
8 lawyer?

9 A. Yes.

10 Q. So you discussed the penalties here. Were
11 you charged with any of these offenses?

12 A. Yes.

13 Q. Were you charged with assault and battery
14 of a high and aggravated nature?

15 A. Yes.

16 Q. Did your lawyer tell you the possible penalty
17 for that?

18 A. Yes.

19 Q. And what is that?

20 A. Uhm --- 15 to life?

21 Q. Up to 10 years. Burglary first, do you know
22 what the penalty for that is?

23 A. Should be life, right?

24 Q. Right.

25 SOLICITOR: Your Honor, I would object.

1 THE COURT: Sustained.

2 MR. BRYAN: Your Honor, I have a constitutional
3 right to confront witnesses against my client and I
4 have case law if you would like to see it.

5 THE COURT: Penalties are the business of
6 the Court, and sentencing is the business of the Court,
7 I'll be glad to see any case law you have.

8 MR. BRYAN: I bring the Court's attention
9 to State -vs- Mizzell, 349 S.C.

10 SOLICITOR: Your Honor please, I don't have
11 a copy of that.

12 MR. BRYAN: Oh, let me see if I've got an
13 extra one. I don't have an extra copy of that on me
14 but it was a Colleton County case.

15 THE COURT: Madam Court Reporter, what was
16 the answer to the second question right before I ruled
17 on the objection? About the penalty for whatever the
18 second offense was Mr. Brayn brought up.

19 (WHEREUPON, Question and answer was re-
20 read for the Court.)

21 THE COURT: Mr. Bryan, the problem that I've
22 got is I can't allow you to go through the back door
23 on sentencing, do you know what I'm referring to, however,
24 based on the response to your first question, before
25 I could rule, I'm going to let you go into it a little

1 bit further based on his response.

2 MR. BRYAN: Thank you, Your Honor.

3 THE COURT: So I lift my sustaining at this
4 point, but please be aware of what the Court's duty
5 is in regard to comments or testimony about sentencing.

6 MR. BRYAN: Yes, sir.

7 THE COURT: Go ahead.

8 Q. So, Mr. DeLoach, you've got a lot of potential
9 time ahead of you, don't you?

10 A. Yes.

11 Q. And did anyone make any --- you said that
12 no one made any specific promises about any deals you
13 might have made, right?

14 A. Yes, I did.

15 Q. Did they make any general assertions to you
16 about what might happen if you testify today?

17 A. No.

18 Q. Did anyone drop any hints that things might
19 go easier?

20 A. No.

21 Q. What is your bail set at right now?

22 A. \$150,000.

23 Q. Did anyone make any assertions that it's
24 going to get lower if you ---

25 A. Nope.

1 Q. Did anyone tell you whether or not your testimony
2 today could be used against you if you went to trial?

3 A. No.

4 Q. But you do know that you've got an awful
5 lot of time ahead of you, don't you?

6 A. Yes.

7 Q. And it might be better if you cooperated,
8 right?

9 A. Yes.

10 Q. And tell them what they want to hear, right?

11 A. Yes.

12 MR. BRYAN: No further questions.

13 THE COURT: Any re-direct?

14 SOLICITOR: Yes, sir.

15

16 RE-DIRECT EXAMINATION BY SOLICITOR:

17 Q. Quincy, are you telling the truth today?

18 A. Yes.

19 Q. As it happened on February 6, 2004?

20 A. Yes.

21 Q. And you're not just telling us what we want
22 to hear, are you?

23 A. I'm telling ya'll the truth.

24 Q. You're telling us what you did ---

25 A. Yes.

1 Q. --- and you're telling us what Cazario did?

2 A. Yes.

3 SOLICITOR: No further questions.

4 THE COURT: Anything else?

5 MR. BRYAN: No, sir.

6 THE COURT: You may step down.

7 SOLICITOR: Your Honor, the State rests.

8 THE COURT: Ladies and gentlemen of the jury,

9 I apologize for this quick break but this is a point
10 in the trial where I have to take up possible matters
11 of law so I'm going to ask ya'll to step back to your
12 room and let me take care of that.

13 (WHEREUPON, Jury retired to the jury room
14 and the following proceedings were held in the absence
15 of the jury.)

16 THE COURT: Mr. Bryan, any matters of law,
17 any motions at this time or any change in plea or whatever
18 I might help you with.

19 MR. BRYAN: Your Honor, we would move for
20 a directed verdict on each of the charges because the
21 State has never proved each and every element of the
22 crimes charged.

23 THE COURT: All right, let me go through
24 each one. All right, I've reviewed the indictments
25 and taking into consideration all the evidence that

1 the Court has heard, I'll have to deny your motions.
2 That will be on all five indictments.

3 MR. BRYAN: If I could have a couple of minutes
4 to talk to my client.

5 THE COURT: Sure.

6 (WHEREUPON, A short was taken and then the
7 proceedings resumed.)

8 THE COURT: Mr. Bryan, while you were on
9 a break I went into this case on Mizzell a little bit
10 further. My concern was in a case where you had the
11 witness charged with the exact thing thing that the
12 defendant was charged with, I did not remember that
13 it went that far but you are exactly right, and it
14 does. So even my concerns about getting into sentencing,
15 or getting into the possible sentencing is overridden
16 by that case. I did turn around and lift my ruling,
17 reverse my ruling on it, but I want to make sure that
18 you are satisfied with the cross and the way it went
19 because Mr. DeLoach is still here where I can bring
20 him back if you need him for any purpose.

21 MR. BRYAN: I'm satisfied, Your Honor, thank
22 you.

23 THE COURT: I appreciate you handing that
24 up, because that does present an instant where you
25 can go into that, which is an exception to the normal

1 rule. So whoever did your research did a good job
2 on that.

3 MR. BRYAN: Thank you, Your Honor.

4 THE COURT: I appreciate it. All right,
5 before I bring the jury in, do you need me to talk
6 to the defendant about testifying?

7 MR. BRYAN: I think that might be a good
8 idea, Your Honor.

9 THE COURT: Okay. Mr. Marshall, I need for
10 you to pay close attention to what I am saying.

11 MR. MARSHALL: Yes, sir.

12 THE COURT: Because we're getting into an
13 area of constitutional rights, it's very important,
14 some of your Fifth Amendment of the United States
15 Constitution, as well as a similar counterpart division
16 of our State Constitution that concerns your right
17 not to testify and, in effect, your right to testify.

18 If you choose to testify in this case, you
19 fully understand that the State can then cross-examine
20 you on any relevant issue in this case, it can impeach
21 you to the same degree they could any other witness.
22 And do you understand that under the Constitution you
23 have a right not to testify, it cannot be held against
24 you, the State can't even comment upon that, because
25 it is a strong Constitutional right that you have

1 that the courts have preserved over these years.

2 Now, as I said, you have a right to testify
3 but you also have that right not to testify. Have
4 you discussed your Fifth Amendment Rights with your
5 attorney?

6 MR. MARSHALL: Yes, sir.

7 THE COURT: Okay. This is a personal decision
8 that you have to make on your own, and it has to be
9 freely, voluntarily and intelligently made. Now, have
10 you had sufficient time to think about this?

11 MR. MARSHALL: Yes, sir.

12 THE COURT: Have you got any questions about
13 your Fifth Amendment Rights?

14 MR. MARSHALL: No, sir.

15 THE COURT: Can you think of any question
16 that you need to pose to your attorney before you make
17 a final decision or any question that you may have
18 of the Court about what I have just told you?

19 MR. MARSHALL: No, sir.

20 THE COURT: Do you wish to testify or not?

21 MR. MARSHALL: No, sir.

22 THE COURT: You do not?

23 MR. MARSHALL: No, sir.

24 THE COURT: Okay. Anything else I need to
25 cover, Mr. Bryan, that you can think of?

1 MR. BRYAN: I don't believe so, Your Honor.

2 THE COURT: Okay, you have thoroughly discussed
3 that with him?

4 MR. BRYAN: Yes, Your Honor.

5 THE COURT: Okay. Have you explained to
6 him the fact that he does not --- that if he does not
7 testify, that it cannot be held against him?

8 MR. BRYAN: Yes, sir.

9 THE COURT: That I will now even allow any
10 comment on that from the State?

11 MR. BRYAN: Yes, sir, I informed him of that.

12 THE COURT: And that I also will instruct
13 the jury on that?

14 MR. BRYAN: Yes, sir.

15 THE COURT: Have I overlooked anything as
16 far as the State is concerned? As far as Fifth Amendment
17 Rights?

18 SOLICITOR: No, Your Honor.

19 THE COURT: All right, I think I've covered
20 everything I wanted to with him. Will you be calling
21 any witnesses?

22 MR. BRYAN: No, Your Honor. We will argue
23 last.

24 THE COURT: All right. All right, let's
25 come over here and pow-wow.

1 (WHEREUPON, A bench conference was held
2 out of the hearing of the jury and the court reporter.)

3 THE COURT: And I had rather not split up
4 the arguments and the charge so let's do that. If
5 you will bring the jury in, Sheriff.

6 (WHEREUPON, Jury returned to the courtroom
7 and the following proceedings were heard in their presence
8 and hearing.)

9 THE COURT: Ladies and gentlemen of the jury,
10 it is now 4 o'clock. The State has rested and the defense,
11 I understand rests at this time. So therefore the
12 testimony comes to an end and that will bring us to
13 the closing arguments. Because of the time of the afternoon,
14 counsel and I are in agreement that we will stop for
15 the evening because as a practice I do not like splitting
16 the argument with the charge. I had rather do it all
17 together.

18 So, rather than risk going into the evening,
19 because we realize that some of ya'll may have family
20 matters you need to tend to, business matters that
21 need to be tended to. What we will do, rather than
22 take the risk of carrying you over into the evening
23 hour, we are going to stop at this point and come back
24 in the morning and do the argument and charge and then
25 we will give it to you for deliberation in the morning.

1 We should have the case to you to deliberate
2 well before lunch time. So with that said, thinking
3 about other matters that we've already scheduled in
4 the morning, does anybody on the jury have any problem
5 with being here at 9 o'clock?

6 (WHEREUPON, One hand was raised.)

7 THE COURT: Okay, we will say 10 o'clock.
8 Now, keep in mind, no contact, if anybody tries to
9 approach you, contact the Sheriff's Department and
10 they will get ahold of me and we will deal with it,
11 okay. Ya'll have a good night.

12 (WHEREUPON, Court was adjourned for the
13 evening and the jury was dismissed.)

14 (WHEREUPON, The following proceedings were
15 held the next morning in the absence and out of the
16 hearing of the jury.)

17 THE COURT: Are you ready to argue?

18 SOLICITOR: There is a matter of the request
19 to charge. The State is objecting to the defendant's
20 charges #1, 2 and 3. I would respectfully request
21 that the request to charge be from whatever you have,
22 whatever Your Honor has, as far as the charges are
23 concerned.

24 MR. BRYAN: Your Honor, it would be nice
25 if the State stated a ground for its objection. I

1 believe these are accurate statements of law, Your
2 Honor.

3 SOLICITOR: As far as request to charge No.
4 1, each offense has different elements and it may have
5 an and/or provision within that particular statute
6 and the State is not required to prove all the elements
7 in the offense if that is not charged in the indictment.
8 Therefore, the State would object to No. 1.

9 In regard to charge No. 2, the State would
10 object that that is not what the statute says. The
11 statute does not say that you need an intent to enter,
12 the statute says enter a dwelling without consent with
13 the intent to commit a crime therein, and I would ask
14 the Judge to charge the law as such.

15 In addition, I would ask the Judge to charge
16 on request to charge No. 3 that a reasonable doubt
17 is the kind of doubt that a reasonable man --- to cause
18 a reasonable man to hesitate to act, rather than the
19 one he has in request to charge No. 3.

20 THE COURT: The only things I have to say
21 about the charges is I'm going to go by my normal charges,
22 and most all of my charges include what you have proposed
23 here except for No. 1 I charge Victor v. Nebraska instead
24 of the hesitate to act request that you have given
25 me.

1 As far as the others, as far No. 2, I will
2 do my standard charge out of Erwin's book. And burglary
3 and the rest of them are contained within what I already
4 have and if not, I will take care of it. I'll include
5 yours.

6 And if it doesn't suit everybody when we
7 finish, then we will hear from you then and we will
8 straighten it out from there.

9 MR. BRYAN: Yes, sir.

10 SOLICITOR: Thank you, Your Honor.

11 THE COURT: All right, I believe we're ready
12 for the jury, if ya'll are all tuned up and ready.

13 (WHEREUPON, Jury returned to the courtroom
14 and the following proceedings were heard in their presence
15 and hearing.)

16 THE COURT: Good morning ladies and gentlemen
17 of the jury. Thank you for coming back this morning
18 and continuing to help us with the case. We are going
19 to move on to the argument portion of the trial. Solicitor,
20 the floor is yours.

21 SOLICITOR: Thank you, Your Honor, may it
22 please the Court, Mr. Bryan, ladies and gentlemen.

23 On a cold dark night in early February of
24 2004, 78 year old Toby Smart was in his home. He was
25 preparing for bed, it was about 11 o'clock and as he

1 prepared for bed someone knocked on the door. And what
2 happened after that? Mr. Toby Smart, Mr. Toby, was
3 robbed, he was beaten, his home was burglarized, he
4 was kidnapped and those people robbed him, robbed him.
5 There was two young men, Cazario Marshall, he's here,
6 and Quincy DeLoach, you saw him yesterday.

7 Now, Cazario is on trial here and Quincy
8 is not. Quincy came before you yesterday as a witness
9 and told you his crime against Mr. Roby Smart. He
10 told you that he was promised nothing, that his future
11 was uncertain He didn't have to come here but he came
12 here and told you the things that he did in this case.

13 Now, ladies and gentlemen, Cazario Marshall
14 is on trial today for the following crimes. Burglary
15 first degree, ABHAN, which is assault and battery of
16 a high and aggravated nature, armed robbery, kidnapping
17 and the possession of a firearm in the commission of
18 a violent crime. That's five crimes he's on trial
19 here today for.

20 Now, the Judge is going to tell you exactly
21 what the crimes are but just so you can understand
22 what to look for, so that you can try my case and prove
23 this case I'm going to let you know what you need to
24 look for.

25 Now, I told you that Cazario Marshall is

1 charged with burglary in the first degree. Now, burglary
2 first degree says the entering the dwelling of another
3 without consent and with the intent to commit a crime
4 therein, and the defendant was armed with a deadly
5 weapon or explosion and that the entering did occur
6 in the night. That's what he's charged with.

7 Now let's see how we proved to you did he
8 commit that. Well, you heard from Mr. Toby. Mr. Toby
9 told you that they came a knocking at his door (knocks
10 on the table) at 11 o'clock at night. He goes to the
11 door and asks them what they want. We want to buy something.
12 He finds out what they want and he goes and gets it.
13 He comes back, opens up his wooden door. And he stands
14 there prepared to pass it out, the two young men open
15 the screen door and come on in. Now, Mr. Toby told
16 you they opened the door themselves. He didn't give
17 him any consent. So they came on in. Did they enter?
18 Yes. Quincy DeLoach told you they ran inside.

19 So then, whose dwelling was it? It was 419
20 Union Avenue in Fairfax, South Carolina. It was Toby
21 Smart's residence, that's where he lives. He sold
22 little items out of his house, it was somebody else's
23 house. He told you he didn't open the door, they opened
24 it themselves and they came on in. So that's without
25 his permission or his consent.

1 Now, let's see, did they have the intent
2 to commit a crime? Let's think about this. What crime
3 did they intend to commit? Well, they beat him with
4 a gun a couple of times. He told you he saw a gun.
5 They stole money out of his pocket, he told you that
6 it was about \$400. Then they put him in a bathroom
7 and tied it so that it took him five minutes to get
8 out. So they intended to rob him, they intended to
9 beat him, and they intended to kidnap him so they could
10 make their getaway without him being able to see them
11 get away. They had the intent to commit burglary crime.

12 Now, how about the defendant intended to
13 commit a crime while armed with a deadly weapon. Who
14 brought this deadly weapon? They had a gun. Toby ---
15 I'm sorry, Mr. Toby told us that he saw the gun, he
16 was hit with the gun and they had the intent to commit
17 a crime. Quincy DeLoach told you yes, Cazario hit Mr.
18 Toby two times. What did he do with the gun, Quincy?
19 Well, he waved it at Mr. Toby, too. I'm sorry, so
20 Quincy and Mr. Toby saw the gun.

21 So somebody was armed with a gun. Cazario
22 from what Quincy said.

23 Now was this at night? 11 o'clock at night,
24 it's night, it's dark outside. You heard MR. Toby
25 say that he was getting ready for bed, it was 11

1 o'clock, you heard Quincy say it was about 11 o'clock.
2 You heard Officer Tramine Manuel tell you it was about
3 11 o'clock. So it was nighttime.

4 Now, that's burglary first degree. Assault
5 and battery of a high and aggravated nature. Now,
6 this implies an unlawful act. Unlawful means against
7 the law, not lawful. So do we have an unlawful act?
8 Is it unlawful to beat a man in the head with a gun?
9 Is it unlawful to break into his house? Is it unlawful
10 to put him in the bathroom and to lock him in there
11 with a rope and tie it so that he can't get out. I
12 would submit to you all of those are unlawful acts.
13 A violent act, was there violence? He was hit in the
14 head with a gun. He was hit in the mouth with a gun.
15 He struggled, a coffee table was overturned. Was there
16 a injury? Mr. Toby told you that he had to go to the
17 hospital, he had to be stitched up, he came over here
18 and he showed you his missing tooth that he has had
19 for 70 years that he no longer has and won't ever have
20 again because of the violent injury, that is violent
21 injury. To another person, Toby Smart, Mr. Toby is
22 that person.

23 What were the circumstances of aggravation?
24 The infliction of serious bodily injury. Is it serious
25 when you're hit in the head with a gun and you're

1 bleeding from the head? Is it serious when you're
2 hit in the mouth with a gun and you have to go to the
3 hospital and get stitched up? I say it's serious when
4 you loose a tooth that you had for 70 years. I say
5 it's serious if ---

6 MR. BRYAN: Your Honor, the Solicitor is
7 not supposed to testify during a trial. She needs to
8 be sworn in if she does, Your Honor.

9 SOLICITOR: Your Honor, these aren't ---
10 I'm arguing the facts here, Your Honor.

11 THE COURT: Overruled, go ahead.

12 SOLICITOR: It is serious when you loose
13 it, it is serious injury to be stitched up. It is
14 serious injury to beg a man, take the money, please
15 don't kill me. It's serious, serious physical injury.

16 The use of a deadly weapon. Quincy DeLoach
17 told you in his orange jump suit that Cazario Marshall
18 had a gun, that he waved the gun at Mr. Toby, that
19 he hit Mr. Toby with the gun. Mr. Toby told you he
20 hit him in the head with this gun. Mr. Toby told you
21 he hit him in the mouth with this gun. You saw Mr.
22 Toby's tooth missing, you saw. Use of a deadly weapon.

23 Now, great disparity in age between the victim
24 and the defendant. Mr. Toby is sitting right there,
25 he's 78 years old, he will be 79 in March, he was born
in 1926. He said he had so many grandkids he can't

1 name them. Mr. Marshall, Mr. DeLoach, you've seen them
2 both, they're 20 years old, they are in their early
3 20's. Mr. Toby told you that he's got grandkids, he's
4 a grandfather. Quincy and Cazario are somebody's grandkids.
5 That's a great difference in age, folks.

6 ~~So now we come to armed robbery, what can~~
7 we say about armed robbery? First, armed robbery is
8 the taking and carrying away the property of another
9 with the intent to deprive him of possession by either
10 force, threat or intimidation while armed with a deadly
11 weapon. Well, let's look and see what we have for
12 evidence. Mr. Toby told you he took \$400 out of his
13 pocket, he had the money on him, \$400. They took it
14 with them, he didn't get it back. It was taken and
15 it was carried away. Now, the property of another.
16 That \$400 belonged to Mr. Toby. So that was Mr. Toby's
17 pocket. We have that. With the intent to deprive him
18 of possession. That means they don't intend to give
19 it back, you intend to use it for yourself. Well,
20 we heard Quincy tell us me and Cazario met back up
21 and we split the money, I got \$60, I don't know how
22 much was Cazario's take. That means that you intended
23 to deprive Mr. Toby of his money. Mr. Toby hasn't
24 seen that money again. By use of force, threat or
25 intimidation. Force when they use a gun on you. They

1 used a gun. While armed with a deadly weapon. What
2 is a deadly weapon? A deadly weapon, as I told you,
3 can be a gun. They had a gun, they had a gun. Quincy
4 told you that Cazario had a gun. Mr. Toby told you
5 that he saw the gun, he was hit with the gun, he lost
6 a tooth by being hit with a gun. We didn't bring a
7 gun in here today or yesterday to show it to you. We
8 don't have the gun, we don't have it. Quincy said
9 that Cazario had a gun, well, we don't have the gun.
10 But Mr. Toby told you that he saw it. Quincy told you
11 that he saw Cazario with the gun. Folks, he's armed
12 with a deadly weapon.

13 Now, kidnapping. I know, I know, I know.
14 TV says that kidnapping is when you ask for ransom.
15 Not in South Carolina. This ain't TV. Kidnapping is
16 to unlawfully seize, confine, entice, decoy, kidnap,
17 abduct or carry away any person by any means without
18 authority of law. Now, unlawfully, that means against
19 the law, and if you don't have a badge, if you don't
20 have handcuffs you can't come and arrest me, you don't
21 have no authority to do it. So you seize me or you
22 confine me, any of these will satisfy what we are looking
23 for. Seize, keep from moving or confine, to keep from
24 moving. Was Mr. Toby confined? Yes, he was. Where
25 was Mr. Toby confined? In the bathroom. Who put him

1 there? Cazario Marshall. Who confined him, he was
2 confined for five minutes, five minutes, after they
3 broke into his house, beat him with a gun, robbed him
4 of \$400, then they put him in the bathroom and confined
5 him in there. They didn't just close the door and
6 tell him not to leave. He tied him in the bathroom
7 with a telephone cord. Take a good long look, a good
8 long look at this. You take a good long look. You
9 heard the SLED agent, he came in here and he took this
10 from the scene. They confined him in the bathroom.
11 Any person, Mr. Toby. By any means, any means is when
12 they tied a telephone cord from one door knob to the
13 other and not let that person get out. He was in there
14 for five minutes after he had been broken in on at
15 11 o'clock at night while he was getting ready for
16 bed. After he had been beaten with a gun up side his
17 head and was bleeding and lost a tooth, after he had
18 been robbed of his \$400, he was then locked in a bathroom
19 for five minutes. How long is five minutes? How long
20 is five minutes when you've been beaten and robbed?
21 How long is five minutes? Let's see how long five
22 minutes is while you stand there shaking the door.
23 You shake and you shake, and you are still shaking
24 (Solicitor pretends she's shaking a door knob for one
25 minute.) That's only a minute, and he had to do that

1 for four more minutes. Just imagine four more minutes
2 shaking that door, cannot get out.

3 Ladies and gentlemen, the SKED agent came
4 in here and told you he took this with him when he
5 came to the scene. He took it to SLED and he analyzed
6 it trying to find fingerprints, but this isn't CSI
7 and we don't always get fingerprints. He told you
8 that 85 percent of the time you aren't going to get
9 any fingerprints. Because of the substance of this
10 cord he probably couldn't get fingerprints. It was
11 a cold dark night in February of February 6, 2004,
12 he didn't find any fingerprints.

13 Ladies and gentlemen, we have a victim to
14 show you where the cord was, Mr. Toby was confined
15 in there for over five minutes, he was kidnapped, it
16 was a long drawn out thing. He was beaten and robbed.

17 Cazario Marshall did all of this without
18 regard to the law and Quincy DeLoach did all these
19 things without any regard for the law.

20 Now we will go on to possession of a firearm
21 in the commission of a violent crime. Now, Quincy said
22 that Cazario was in the possession of a firearm or
23 physically displayed or what appeared to be a firearm
24 during the commission of a violent crime. And if convicted
25 of committing or attempting to commit a violent crime.

1 Quincy DeLoach told her that Cazario had that gun.
2 And he hit Mr. Toby twice and he waved that gun at
3 him. Mr. Toby told you that he was beaten with that
4 gun. He said he felt that gun, regardless of his eyes
5 at 78 years old, he didn't need to put his glasses
6 on, he could see that gun. Quincy DeLoach saw that
7 gun. That person is Cazario Marshall. They saw the
8 gun, both Quincy and Mr. Toby, they said that Cazario
9 was in possession of a firearm or what appeared to
10 be a firearm.

11 Now, during the commission of a violent crime.
12 Here's where it gets a little careful. Now, during
13 the commission of a violent crime, I don't have to
14 admit it, the State has to admit it that Cazario Msrhall
15 burglarized Mr. Toby Smart's home, he committed burglary
16 first degree, that he ABHANed Mr. Toby Smart, that
17 he armed robbed Mr. Toby Smart and that he kidnapped
18 Mr. Toby Smart. Well, a violent crime in this particular
19 instance could only be a burglary first and armed robbery
20 or a kidnapping. I submit to you that he has committed
21 all three.

22 Now, the verdict is up to ya'll. If you
23 feel like I haven't proven anything, then he's not
24 guilty of that and it if doesn't fit, you must acquit.
25 But I submit to you that he is guilty and the STate

1 of South Carolina are asking you to find Cazario Marshall
2 guilty ---

3 MR. BRYAN: Your Honor, I've got to bring
4 up a point of law. I hate to do it right now but I
5 believe I'm forced to.

6 THE COURT: What is it?

7 MR. BRYAN: A question of law. The Solicitor
8 is not supposed to basically state an opinion as to
9 an ultimate issue of fact, that's a due process right
10 and it's also guaranteed under the court rules, Your
11 Honor, and it appears that she did that.

12 THE COURT: Noted but I don't see a problem
13 so far, but I will note your objection. Go ahead, Solicitor.

14 SOLICITOR: I submit to you that he is guilty
15 and the State of South Carolina respectfully asks each
16 of you to find Cazario Marshall guilty of burglary
17 first degree, when he went into the home of Mr. Toby
18 Smart at 419 Union Avenue in Fairfax, South Carolina
19 without his consent and with the intent to beat him,
20 to rob him, to kidnap him with a gun. And I ask you
21 respectfully to find him guilty of assault and battery
22 of a high and aggravated nature when he went into Mr.
23 Toby Smart's house and he beat him with that gun and
24 caused serious bodily injury to him. Causing his head
25 to bleed, causing him to have stitches in his mouth,

1 causing him to lose his tooth, because there was a
2 great disparity between the ages because Cazario and
3 Quincy are only 20, because Mr. Toby is 78 years old,
4 he is a grandfather, they are grandchildren. I ask
5 you to find him guilty of armed robbery because he
6 had a weapon in his hand when he went in that house,
7 because he took \$400 out of his pocket when he had
8 a gun in his hand, he was confined and I ask you to
9 find him guilty of kidnapping because they locked an
10 old man in a bathroom for five minutes when he couldn't
11 get out. And I ask you to find him guilty of possession
12 of a firearm in the commission of a violent crime because
13 he had a gun during all of this, he had a gun in his
14 hand, and Quincy DeLoach told you that he had a gun
15 in his hand and Toby Smart told you that he had a gun
16 in his gun and I ask you to find him guilty on number
17 one, and guilty on number two, and guilty on number
18 three, and guilty on number four and guilty on number
19 five. Thank you very much.

20 THE COURT: Thank you, Solicitor.

21 MR. BRYAN: May it please the Court.

22 THE COURT: Counsel, yes, sir.

23 MR. BRYAN: Your Honor, Solicitor and members
24 of the jury, I will just kind of run through this.
25 I don't think that there's any dispute in this case

1 that this crime happened, it is a horrible thing to
2 have happened, but that don't let that influence you
3 into thinking Mr. Marshall perpetrated these crimes,
4 just keep that in mind.

5 We heard the testimony from Mr. Crooks from
6 SLED, he's a SLED agent and he investigates crimes
7 for a living and he does a thorough job. He works
8 for SLED. He took photographs, he took pictures all
9 through that house, he dusted for fingerprints, he
10 checked for evidence. He didn't find a single, single,
11 iota of any scientific or physical evidence linking
12 Mr. Marshall to this crime, not a thing, not a fingerprint,
13 nothing, no DNA, nothing, no evidence.

14 Then we heard from Mr. Smart, one thing he
15 didn't do was say that's the guy. There was no lineup,
16 there was no photographic lineup and at no point did
17 he say that's the man.

18 Well, how about Officer Manuel, she investigated,
19 too, did a thorough job. She interviewed a lot of people,
20 she interviewed Mr. Smart and he named no one.

21 So this case seems to hinge on the testimony
22 of Mr. Quincy DeLoach. And what do we know about Quincy
23 DeLoach? Well, we know something about him from his
24 statements. We know that he was involved with a kidnapping,
25 an armed robbery, a beating, we know that, he said

1 that. He said I helped plan it and I was there and
2 then he back pedaled some and said, but I was just
3 the lookout. He's a young man, he's facing up to life
4 in prison. Is he going to be a man of that character
5 facing that heavy penalty, is he going to be one hundred
6 percent honest and forthright? Did he look repentant
7 on the stand? Did he say, oh, I'm sorry, I wish I
8 hadn't done that? No, he was still trying to wiggle
9 out. You notice during this trial Mr. DeLoach was
10 not on trial here. He will say anything to get off.
11 And he can make up the name and identity of the co-
12 defendant. After all, how are the police going to
13 know any different and how are we going to know any
14 different?

15 One thing you can do during the trial and
16 in your deliberations is keep notice of how the witnesses
17 appear to be when they're on the stand. Do they appear
18 to be honest and forthright? Mr. DeLoach said I didn't
19 get any deal, I didn't any promises, I don't think
20 this is going to help me, yet he wasn't on trial. He
21 wasn't on trial and the things he was saying could
22 be used against him if he went on trial. He seemed
23 unconcerned about that. He said that he had spoken
24 to his lawyer, he said he knew what kind of trouble
25 he could be in. Was he honest about that?

1 A reasonable doubt is the kind of a doubt
2 that would cause a reasonable person to hesitate to
3 act. In this case, it's an awful crime, but there's
4 no evidence indicating that Mr. Marshall had anything
5 to do with it except the testimony of a guy we know
6 is a felon, he said so himself, we know he will say
7 anything to get off the hook. That's all the evidence
8 there is to connect him with this and I thank you for
9 your time.

10 THE COURT: Madam Forelady and ladies and
11 gentlemen of the jury, I need to have your attention
12 at this time because it's my duty to charge you the
13 law of the case. That is my duty under the Constitution
14 of this state, it is your duty as jurors to accept
15 and apply the law as I will now state it to you.

16 As jurors it's your exclusive duty to decide
17 all the issues of fact in this case and for that purpose
18 to determine the effect, the value, the weight and
19 the truth of the evidence. Both the State and the defendant
20 had a right to expect that you will conscientiously
21 consider and evaluate the evidence and apply the law
22 of the case thereto to the end that both the State
23 of South Carolina and the defendant will receive and
24 obtain a fair and impartial trial in this case.

25 Now when I use the word "defendant", I am

1 referring to Mr. Cazario Marshall. The State of South
2 Carolina, by the bills of indictment in this case,
3 charges the defendant, Mr. Marshall, with the offenses
4 known in the law as burglary first degree, kidnapping,
5 armed robbery, assault and battery of a high and aggravated
6 nature and the use of a deadly weapon during the commission
7 of a violent crime. I will give you a full charge
8 concerning those particular offenses in a few minutes.

9 Now to these charges and to the indictments
10 the defendant has entered pleas of not guilty. A plea
11 of not guilty by a defendant places the burden of proof
12 on the State to prove by evidence the guilt of the
13 defendant beyond a reasonable doubt before you, the
14 jury, can find the defendant guilty.

15 I charge you at this time you do not take
16 into account the fact that the accused has been charged
17 in more than one indictment. The reason for this is
18 that the accused is entitled to a fair and impartial
19 determination on each indictment based on your determination
20 of the evidence on each separate indictment. The accused
21 is not to be prejudiced by the fact that there is more
22 than one pending charge against him.

23 And following up on that charge, when you
24 are asked to deliberate, what that says in effect is
25 that you will have to take up each charge and deliberate

1 them separately and you will have to reach a separate
2 verdict on each and every indictment.

3 A defendant under our law is presumed in
4 law innocent of the charge contained in an indictment.
5 It is a cardinal and fundamental rule of the law of
6 evidence that a defendant irrespective of the enormity
7 of the charge against him will always be presumed innocent
8 for the crime for which he is indicted unless and until
9 the guilt of the defendant has been proved by evidence
10 that satisfies you, the jury, of his guilty beyond
11 a reasonable doubt. The presumption of innocence is
12 not a mere legal theory and it is not just a legal
13 phrase. The presumption of innocence is a substantial
14 right to which every defendant is entitled. Our Supreme
15 Court has declared that the presumption of innocence
16 is like a robe of righteousness placed about the shoulders
17 of the defendant and it remains with him and assigns
18 him to that class, the innocent, until that presumptive
19 robe of righteousness has been striped from his person
20 by evidence satisfying you, the jury, of the guilt
21 of the defendant beyond a reasonable doubt. The presumption
22 of innocence accompanies a defendant from the time
23 of his arraignment and appearance in the court and
24 continues with the defendant throughout every stage
25 of the trial and continues with the defendant after

1 you retire to the jury room to deliberate your verdict.

2 The presumption of innocence continues in
3 existence for the benefit of a defendant until you,
4 the jury, reach the conclusion that the State has proved
5 the guilt of the defendant beyond a reasonable doubt.

6 Ladies and gentlemen, the State is not required
7 to prove the guilt of a defendant beyond all doubt
8 or beyond every doubt, but beyond a reasonable doubt.

9 Some of you may have served as jurors in
10 civil cases where you were told that it is only necessary
11 to prove that a fact is more likely true than not true.
12 In criminal cases the Government's proof must be more
13 powerful than that. It must be beyond a reasonable
14 doubt. Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the defendant's guilt.
16 There are very few things in this world that we know
17 with absolutely certainty and in criminal cases the
18 law does not require proof that overcomes every possible
19 doubt. If, based on your consideration of the evidence,
20 you are firmly convinced that the defendant is guilty
21 of the crime charged, you must find him guilty. If
22 on the other hand, you think there's a real possibility
23 that he is not guilty, you must give him the benefit
24 of the doubt and find him not guilty.

25 Ladies and gentlemen, our law does not require

1 any defendant to prove his or her innocence of a crime.
2 On the contrary, as I told you, the law requires the
3 State to establish a defendant' guilt by legal evidence
4 beyond a reasonable doubt. The law presumes a defendant
5 to be innocent of the charge made against him in the
6 indictment until his guilt has been proved beyond a
7 reasonable doubt. The burden of overcoming this presumption
8 of innocence is placed upon the State and rests upon
9 the State throughout the trial until the State has
10 satisfied you, by the evidence, of the defendant's
11 guilt beyond a reasonable doubt.

12 A defendant is entitled to every reasonable
13 doubt arising in the case. If applying any issue of
14 fact central to conviction to a verdict of guilty you
15 have a reasonable doubt as to how that issue should
16 be resolved, it would be your duty to resolve the reasonable
17 doubt in favor of the defendant.

18 If then upon the whole case, you have a reasonable
19 doubt as to the guilt or the innocence of the defendant,
20 he is entitled to that reasonable doubt and would be
21 entitled to an acquittal and a verdict of not guilty.
22 But on the other hand, if upon the whole case you find
23 that the State has proved by evidence which satisfies
24 you, the jury, of the guilt of the defendant beyond
25 a reasonable doubt then in such circumstances it would

1 equally be your duty to convict the defendant and find
2 him guilty.

3 Now in a few minutes you will have these
4 indictments and I tell you at this time, as I told
5 you at the beginning of this case, an indictment is
6 simply the formal written instrument which contains
7 the charges against the defendant and it serves as
8 a document for which the case is processed into the
9 court. During the trial each of us, you and I, have
10 certain duties to perform and let me back up just a
11 minute. Once again, let me remind you, as I told you,
12 that indictment is not evidence, it's just exactly
13 what I told you it is.

14 Now, as the Trial Judge it was my responsibility
15 to preside over the trial of this case and I also had
16 the duty to rule upon and pass upon the admissibility
17 of evidence offered during the progress of the trial.
18 You are to consider only the competent evidence before
19 you and you are to disregard and disabuse from your
20 mind any testimony ordered stricken from the record
21 of the case during the progress of this trial if there
22 was any. And you are to consider only the testimony
23 which has been presented from the witness stand, together
24 with any exhibits admitted into the record of this
25 case and any stipulations of counsel made into the

1 record if there be any. In other words, you are to
2 determine this case on the evidence that's been presented
3 to you here in this courtroom, not on what somebody
4 outside this courtroom may have said to you, not on
5 what you have seen on TV or at a movie or at a theater.
6 You base your decision on the proper evidence that
7 ~~has been presented in this trial to you in this courtroom.~~

8 Now, I have the additional duty to charge
9 you the applicable law of the case. As the Presiding
10 Judge, I am the sole judge of the law of the case and
11 it is your duty to accept and apply the law as I state
12 it to you. If you have preconceived idea as to what
13 the law is or what the law ought to be in the case
14 and it should not agree with what I tell you the law
15 is, you are obligated under your oath to abandon this
16 preconception on your part because you are sworn to
17 accept the law precisely as I state it to you. In
18 every case tried in this court before a jury, the jury
19 becomes the sole and exclusive judge of the facts of
20 the case. You, the jury, are the judge of the facts
21 in this case and the Court is the judge of the law
22 of the case. The Constitution of this state has declared
23 that the Trial Judge should not intimate, state, comment
24 upon or make any statement to a trial jury about the
25 facts in the case. Since you are the sole judge of

1 the facts, you are not to infer from anything that
2 I've said during the progress of this trial in ruling
3 upon admissibility of evidence or otherwise or anything
4 that I say during the course of this charge to you
5 that I have any opinion about the facts in this case.
6 The law does not permit me to have an opinion about
7 the facts of the case and that is a matter solely for
8 you the jury to determine. As jurors then it is your
9 duty to determine as I have stated to you the effect,
10 the value, the weight and the truth of the evidence
11 presented during the course of this trial.

12 Necessarily then, you must assess the credibility
13 of the witnesses who have testified in this case.
14 Credibility is simply a legalistic term which means
15 believability. It becomes your duty then to analyze
16 and evaluate the evidence and determine that evidence
17 which convinces you of its truth. I charge you in
18 determining the question of the credibility or believability
19 of the witnesses, you may believe one witness as against
20 several witnesses, or several witnesses as against
21 one witness. You may believe a part of the testimony
22 of a witness and reject the remaining part of that
23 same testimony. You may believe the testimony of a
24 witness in its entirety or reject the testimony of
25 a witness in its entirety. You may consider whether

1 any witness has exhibited any interest, any bias or
2 any prejudice in the case and you may consider the
3 demeanor of a witness or the appearance of a witness
4 upon the witness stand. You may consider the opportunity
5 for knowledge concerning those things about which a
6 witness testified.

7 And in doing so, in exercising your mental
8 processes, and in determining what you consider to
9 be true, the law simply requires that you exercise
10 your good judgment, your common sense, your sense of
11 logic and reason and your experiences in life. You
12 then apply these attributes of ability to the evidence
13 and determine what you consider the truthful evidence
14 and these stated facts as determined by you the jury,
15 you take an apply the law as I will state to you in
16 a few minutes concerning these charges and thus arrive
17 at a true verdict in this case.

18 Now, the fact that a defendant in a criminal
19 trial did not testify in his own behalf is not a factor
20 to be considered by you in any way in your deliberations
21 and in your consideration on the question of guilt
22 or innocence of the accused. It must not be considered
23 by you in any manner whatsoever against the defendant
24 or mitigate against him in any respect whatsoever.
25 A defendant has a Constitutional right to remain silent

1 and the assertion of such constitutional right cannot
2 and must not be considered by you in your deliberations.

3 Under your oath then you are to reach no
4 inference and draw no conclusion whatsoever from the
5 fact that a defendant in this case did not testify.
6 The fact that a defendant did not testify should not
7 even be discussed in the jury room. The burden of proof,
8 as I stated to you, is upon the State. It is not incumbent
9 upon the accused to prove his innocence. The burden
10 of proof remains upon the State to prove guilt beyond
11 a reasonable doubt. The fact that the defendant exercised
12 his constitutional right to remain silent is not a
13 factor to be considered by you in determining the guilt
14 or the innocence of the defendant.

15 Now, I'm going to go into these specific
16 charges.

17 The first one I come to, armed robbery. I'm
18 going to charge you from 16-11-339 of our Code of Laws
19 for South Carolina:

20 " A person who commits robbery while armed
21 with a pistol, dirk, slingshot, metal knuckles,
22 razor or other deadly weapon or while alleging
23 either by acts or words he was armed by using
24 a representation of a deadly weapon or any
25 object which a person present during the
commission of the robbery reasonably believed
to be a deadly weapon is guilty of armed
robbery."

1 Now, for me to fully charge you and explain
2 to you the crime of armed robbery, I'm going to have
3 to explain to you some lesser included offenses of
4 armed robbery which have elements that are in armed
5 robbery to make it all mesh together to give you a
6 full charge of that law.

7 Larceny is contained within armed robbery
8 and I need to charge you larceny and then I'm going
9 to charge you to what we call common law robbery or
10 strong armed robbery as termed by some, and then armed
11 robbery.

12 Now, as to the crime of larceny, four elements
13 must be present and established beyond a reasonable
14 doubt. First, that there was a taking; second, that
15 the taking was the personal property of another; third,
16 that after being taken the property was carried away;
17 and fourth, that the taking and carrying away of the
18 property was done without the consent or against the
19 will of the owner and was done with the intent to steal.

20 To make out the offense of larceny it is
21 necessary to show that the personal property of another
22 has been taken and carried away. This element of the
23 offense is complete when the accused has assumed
24 control of the goods and has actually carried them
25 away, no matter how short the distance.

1 In addition, it must be shown that this taking
2 and carrying away was without the consent or against
3 the will of the owner of the property. Finally, the
4 State must prove that the one taking the property had,
5 at the time of the taking and carrying away, the intent
6 to steal. This intent to feloniously and permanently
7 deprive the owner of the property. There can be no
8 conviction for larceny if there is a bonafied claim
9 or right by the person taking the property.

10 Larceny is the felonious taking and carrying
11 away by any person of the personal good or things of
12 another with the intent to appropriate them to one's
13 own use and deprive the owner permanently of his property.

14 And I've already given you the elements of
15 larceny.

16 Now, robbery. The crime of robbery includes
17 each of those elements that constitute the crime of
18 larceny. In addition to those four elements, two other
19 elements are necessary to constitute the crime of robbery.
20 Those elements are that the property must be taken
21 from the person of another or in the presence and that
22 the taking and carrying away of the property must have
23 been accomplished by placing the other person in fear,
24 by violence or threats of violence, so as to make that
25 person surrender the property without his consent and

1 against his will. Robbery is larceny from the person
2 or the immediate presence of another by violence of
3 intimidation. As I said to constitute robbery in addition
4 to the elements of larceny must be added two additional
5 elements. These are that the property must be taken
6 from the person or another or in his presence and that
7 not only must the taking be without the consent of
8 the owner, it must be accomplished by violence or putting
9 the person in fear. This violence must be actual personal
10 violence or the threat of it. The degree of force
11 used is immaterial so long as it sets forth a threat
12 of force is actually sufficient to overcome the victim's
13 resistance. This violence or intimidation must either
14 precede or be contemporaneous with the taking.

15 Now, to the charge of armed robbery, which
16 we have in this indictment. The crime of armed robbery
17 includes all the elements of robbery. In order to
18 make out the crime of armed robbery, however, an additional
19 element must be proved. The robbery must have been
20 committed with a deadly weapon. The person committing
21 the robbery must have had and used a deadly weapon
22 with which he obtained possession of the property or
23 placed the one possessing the property in fear in order
24 to obtain the property.

25 I charge you that under our law a pistol

1 a gun or a rifle is a deadly weapon whether or not
2 it was actually loaded with ammunition at the time
3 of the robbery.

4 Okay. That covers armed robbery.

5 The next one I come to is burglary in the
6 first degree. Under section 16-11-311 of the South
7 Carolina Code of Laws:

8 "Burglary in the first degree is defined
9 as the entering of the dwelling house of
10 another without consent and with the intent
to commit a crime therein."

11 And I will define for you which is accompanied
12 by one of the following circumstances. One, when entering
13 or while in the house or fleeing the defendant or his
14 accomplice is armed with a deadly weapon or explosive
15 uses or threatens to use a dangerous object or displays
16 what is or appears to be a knife, pistol, revolver,
17 rifle, shotgun, machine gun or other firearm. Secondly,
18 the defendant entered or remained in the house at night.
19 I point out to you at common law the nighttime is that
20 period between sunset and sunrise during which the
21 face of a person cannot be discerned by the light of
22 the sun.

23 Now, there are four essential elements to
24 the requirement that the defendant entered into the
25 dwelling house of another without consent and with

1 the intent to commit a crime. They are that, one,
2 there must be an entering. The State must prove that
3 ther was an entering, that is, that the defendant actually
4 went inside the house or some part of it. It is not
5 necessary however that the entire body of the defendant
6 entered the house. The smallest entry is sufficient
7 and it may be of any part of the body, a hand, a foot
8 or even an implement such as a hook or other instrument.
9 No force need to be used to gain entry.

10 Two, the entry must be made --or must be,
11 excuse me, without consent. Aside form the normal
12 and usual understanding of the phrase "without consent",
13 the term "entry" also means to enter a building by
14 use of deception, artifice, trick or misrepresentation
15 to gain consent to enter from the person in lawful
16 possession.

17 Three, the place entered must be a dwelling
18 house. The term "dwelling house" means any building
19 inhabited by a person or persons in which they customarily
20 sleep. A building constructed as a dwelling and has
21 never been occupied cannot be considered as a dwelling
22 within the definition. But a temporary absence of the
23 inhabitants or inhabitant does not affect the building's
24 character as such. The term "dwelling" also means
25 the living quarters of a building used or normally
used for sleeping, living or lodging by a person.

1 All houses, outhouses, buildings, sheds and erections
2 that are within two hundred yards of a dwelling shall
3 be considered a part of it.

4 Four, the defendant must have the intent
5 to commit a crime. Mere entry into a dwelling house
6 without consent is not a violation of the burglary
7 statute. It is only where there is an intent to commit
8 a crime, whether it be a felony or a misdemeanor, that
9 the crime is complete. Proof of intent necessarily
10 rests on inference from conduct. It is essential that
11 the felonious intent exist at the time of the entry.
12 It is not sufficient that the felonious intent is formed
13 afterwards. On the other hand, where the intent exists
14 at the time of entry, it is no defense that the intent
15 was abandoned after the entry. It does not matter
16 that the intended crime was not completed.

17 Next indictment, kidnapping. Under section
18 16-3-910 of the South Carolina Code:

19 " Whoever shall unlawfully seize, confine,
20 enviegle, decoy, kidnap, abduct or carry
21 away any person by any means whatsoever
without authority of law shall be guilty
of kidnapping."

22 Kidnapping is the intentional taking of a
23 person and compelling him to be detained against his
24 will. It is the willful and unlawful seizing of a
25 person against his will with an intent to cause him

1 to be confined, imprisoned or detained. The essence
2 of the offense of kidnapping is the unlawful secret
3 holding or imprisonment of a person. Kidnapping means
4 the carrying away of a person by unlawful force or
5 by fault and against his will or seizing and detaining
6 him for the purpose of so carrying him away.

7 The elements of kidnapping are, one, unlawfully
8 seize, confined, inveigle,, decoy, kidnap, abduct of
9 carry away any other person by any means whatsoever,
10 without authority of law. Confine means to shut in
11 or to imprison. Inveigle means to lure, entice or
12 lead astray by false representations or promises or
13 other deceitful means. The graviment of the offense
14 of kidnapping is some form of compulsion but the law
15 says that the requisite force or compulsion need not
16 consist of the use of actual physical force or violence
17 or of expressed threats.

18 And essential element of the offense of kidnapping
19 is that the taking or detention of the person kidnapped
20 is without lawful authority.

21 To support an allegation of unlawful taking
22 or detention of the person, the State must prove beyond
23 a reasonable doubt that the accused had the requisite
24 intent to commit the alleged acts.

25 Intent means to act knowingly. The law says

1 that it is ordinary reasonable to infer that the person
2 intends the natural, necessary and probable consequences
3 of acts knowingly done. The law infers the intent from
4 the doing of the unlawful act.

5 Next indictment, assault and battery of a
6 high and aggravated nature. Assault and battery of
7 a high and aggravated nature is defined as the unlawful
8 and intentional infliction of a violent injury on the
9 person of another, accompanied by circumstances of
10 aggravation, such as the use of a deadly weapon, the
11 infliction of serious bodily injury, the intent to
12 commit a felony, a great disparity between the ages
13 or physical condition of the parties, a difference
14 of the sexes, indecent liberties or familiarities with
15 a female accomplished by force, or the purposeful infliction
16 of shame and disgrace, resistant of lawful authority
17 and others.

18 This is an assault accomplanied by circumstances
19 of aggravation. For example, an assault committed with
20 a deadly weapon in the spirit of wantonness and with
21 a reckless disregard for the safety of others would
22 be an assault of a high and aggravated nature.

23 Neither serious bodily harm nor the use of
24 deadly weapon is an essential element of assault and
25 battery of a high and aggravated nature, but they

1 are circumstances of aggravation.

2 Malice is not a required element of assault
3 and battery of a high and aggravated nature, however,
4 the presence of malice does not prevent an assault
5 and battery from becoming or being classified as
6 aggravated because the circumstances that make an assault
7 and battery aggravated can also give rise to an inference
8 of malice. In other words, the presence or absence
9 of malice alone will not determine whether the defendant
10 is guilty of assault and battery of a high and
11 aggravated nature.

12 The last indictment, possession of a firearm
13 during the commission of certain crimes. Section 16-
14 23-490 of our Code of Laws makes it illegal to possess
15 a firearm or visibly display what appears to be a firearm
16 during the commission of a violent crime. Section
17 16-1-60 provides:

18 "That a violent crime includes the offenses
19 of kidnapping, armed robbery, burglary in
the first degree."

20 For you to find the defendant guilty of this
21 separate statutory offense of possessing a firearm
22 during a violent crime, you must first find the defendant
23 guilty of a violent crime. If you find the defendant
24 guilty of a violent crime, then you must determine
25 whether the State has proved beyond a reasonable doubt

1 that the defendant was in possession of a firearm or
2 visibly displayed what appeared to be a firearm during
3 the commission of the violent crime.

4 As used in section 16-23-490 of the South Carolina
5 Code of Laws, a firearm is defined as any machine gun,
6 automatic rifle, revolver, pistol or any weapon which
7 will or is designed to or may be readily converted
8 to expel a projectile.

9 Ladies and gentlemen, you are not partisans
10 or advocates for the State of South Carolina or the
11 defendant. You do not serve as jurors to reward friends
12 or punish enemies. Obviously such a perverted system
13 of justice would be intolerable in our society.

14 You have been selected by both the State
15 of South Carolina and the defendant as fair and impartial
16 jurors. It is your duty then by your joint deliberations
17 to determine the truth in this case, giving to the
18 defendant the benefit of every reasonable doubt on
19 each and every issue. Then to the facts as you determine
20 to be true, you then take and apply the law which has
21 been given to you by this Court and thus arrive at
22 verdicts which do speak the truth of the case. For
23 the word "verdict" has a Latin derivative and it means
24 a true saying.

25 And when you have accomplished these

1 responsibilities, you will have satisfied your oath
2 as jurors and you will have discharged your duty to
3 the Court.

4 Madam Forelady and ladies and gentlemen of
5 the jury, on each of these indictments on the back
6 there's an area down at the bottom that says verdict.
7 You will deliberate on each and every one of these
8 charges and on the indictment, Madam Forelady, once
9 the jury reaches a verdict, it will be your responsibility
10 to write that verdict in, place today's date or the
11 date that the verdict is reached beside the date line
12 and sign your name as foreperson.

13 There are two possible forms of verdict on
14 each of these indictments. It's either guilty or not
15 guilty and of course you've got to keep in mind the
16 special instructions I gave you as to that last indictment
17 about the use of the firearm. Of course, as I told
18 you, you cannot find the defendant guilty of that offense
19 unless you have already found the defendant guilty
20 of committing a violent crime.

21 Now on each and every one of these indictments
22 your verdict must be a unanimous verdict, all twelve
23 jurors must agree on the verdict but you are authorized,
24 Madam Forelady, to write for the Court.

25 I'm going to ask ya'll to go back. Please

1 do not begin your deliberations until I send the indictments,
2 along with the exhibits, back to you. Once those are
3 brought into the jury room, you may begin your deliberation.
4 If any of you have kept notes, that's fine, but you
5 use them for your own personal reference and do not
6 share them with another juror.

7 Now, if you decide to take a break, smoke
8 break or anybody needs to leave the room to get some
9 fresh air, whatever that reason, all twelve of you
10 may not be together, you must cease your deliberations
11 until all twelve of you are back together. For example,
12 most of the time somebody on the jury has a right to
13 take a smoke break and if two leave to take a smoke
14 break, the remaining ten should cease the deliberations
15 until those two come back, okay.

16 All right, don't begin your deliberations
17 now until I send those documents back to you. Because
18 I've got to check in with the attorneys one last time
19 and we've got to check off our exhibit list to make
20 sure we've got everything accounted for.

21 With that said, I'm going to ask you to follow
22 Mr. Bailiff back to the jury room and we will have
23 you to work here in just a few minutes.

24 (WHEREUPON, Jury retired to the jury room
25 and the following proceedings were held in the absence
of the jury.)

1 THE COURT: Juror are now clear of the courtroom.
2 Anything for the record at this time from the State?

3 SOLICITOR: Nothing from the State, Your
4 Honor.

5 THE COURT: From the defense?

6 MR. BRYAN: I just renew our request to charge
7 number one and number three.

8 THE COURT: Noted. I think I sufficiently
9 covered everything that we needed to cover. I specifically
10 charged several of yours and then some of them were
11 included already. Thank you. I will turn that those
12 two over to Madam Court Reporter. One and three.

13 All right, tell the jury to commence their
14 deliberations.

15 (WHEREUPON, Jury began their deliberations
16 at 11:45 A.M.)

17 (WHEREUPON, Jury returned at 11:55 A.M.
18 with their verdicts .)

19 CLERK: Madam Forelady, have you agreed upon
20 a verdict?

21 madam forelady; Yes, we have.

22 CLERK: Indictment #04-GS-03-69, the State
23 versus Cazario Anton Marshall, indictment for burglary
24 in the first degree, verdict GUILTY.
25

1 Indictment #04-GS-03-71, the State versus
2 Cazario Anton Marshall, indictment for armed robbery,
3 verdict GUILTY.

4 Indictment #04-Gs-03-125, the State versus
5 Cazario Anton Mrshall, indictment for kidnapping,
6 verdict GUILTY.

7 Indictment #04-GS-03-70, the State versus
8 Cazario Marshall, indictment for assault and battery
9 of a high and aggravated nature, verdict GUILTY.

10 Indictment #04-Gs-03-130, the State versus
11 Cazario Anton Marshall, indictment for possession of
12 a firearm during the commission of certain crimes,
13 verdict, GUILTY. All signed by the Foreman.

14 THE COURT: Anything further from the jury
15 from the State?

16 SOLICITOR: Not from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. BRYAN: We request that you poll the
19 jury, Your Honor.

20 THE COURT: Very well, Madam Clerk.

21 (WHEREUPON, The Clerk polled the jury individually
22 and they all answered in the affirmative.)

23 (WHEREUPON, Jury was dismissed.)

24 THE COURT: Anything else?

25 MR. BRYAN: Nothing else, Your Honor.

1 THE COURT: All right, are you ready for
2 sentencing, Mr. Bryan?

3 MR. BRYAN: Yes, sir.

4 THE COURT: Mr. Bryan, if you will escort
5 Mr. Marshall around to the podium.

6 Madam Solicitor, the Court will hear your
7 matters in mitigation on this sentence at this time,
8 including his record.

9 SOLICITOR: Your Honor, he has a prior juvenile
10 record for armed robbery with a deadly weapon, that
11 was committed on 4/7/00, he received a not to exceed
12 21st birthday juvenile sentence. In addition, in 2002
13 he had a burglary third degree, first offense, for
14 which he received a Youthful Offender not to exceed
15 three years. Alongside that charge he had a grand
16 larceny, greater than \$1,000, less than \$5,000, receiving
17 a Youthful Offender not to exceed six years. In addition
18 to that, he had a breaking into a motor vehicle for
19 which he received a YOA not to exceed five years. And
20 in addition, he had a petit larceny at that same charge.

21 So he's got a juvenile record of armed robbery
22 with a deadly weapon, he has a Youthful Offender sentence
23 for the breaking into a motor vehicle and grand larceny
24 and burglary third degree, along with the petit larceny.

25 THE COURT: Mr. Bryan, he's presently housed

1 where and why?

2 MR. BRYAN: Right now he's in Turbeville,
3 Your Honor, and I believe it's for entering a motor
4 vehicle.

5 SOLICITOR: It's a YOA revocation, he was
6 revoked on YOA parole.

7 THE COURT: It's a revocation?

8 SOLICITOR: Yes, Your Honor.

9 THE COURT: All right, I'll come back to
10 Mr. Smart in just a minute. Mr. Bryan?

11 MR. BRYAN: Your Honor, he's 21 years old
12 now. He went through the tenth grade at Birchwood
13 High School in Columbia and he tells me all his relatives
14 live around here. He's got no children, he's not married.
15 He tells me his relatives live around here but I really
16 didn't see any of them come to watch the trial or come
17 to visit him when he was in lockup and that may explain,
18 you know, part of the background of how he came to
19 be what he is.

20 But he's 21 years old, Your Honor, he's got
21 his whole life ahead of him. There's a big chance
22 that he's going to mature, grow wiser and get smarter
23 as time passes on. He's not dumb, he's got some potential,
24 Your Honor. We would ask the Court to show him some
25 mercy.

1 THE COURT: Mr. Marshall.

2 MR. MARSHALL: I don't know what to say.

3 THE COURT: Mr. Smart, anything you would
4 like to relate to the Court at this time, since we're
5 in this sentencing phase?
6

7 MR. SMART: All I can say I say yesterday,
8 they intend to kill me, that's all I know. I'm just
9 glad they got the right man.

10 THE COURT: Thank you for being here. Anyone
11 else to be heard?

12 SOLICITOR: Your Honor, Mr. Marshall's mother
13 and sister are here. Do you want to come forward,
14 do you want to speak?

15 MRS. MARSHALL: No.

16 SOLICITOR: Your Honor, although I know it's
17 not necessary I would say that Mr. Smart was --- he's
18 a 78 year old man, very fragile, in the winter of his
19 life and Mr. Marshall is in the spring of his life
20 and this could have very easily ended in the winter
21 being over for Mr. Smart.

22 THE COURT: Well, the defendant's age bothers
23 me. That a young man has, in effect, ruined the rest
24 of his life and has drastically altered another person's
25 life, the injuries were bad, they could have been worse
but I think Mr. Smart is taking everything into

1 consideration, he's a fortunate individual in a way,
2 you can say that.

3 The defendant's age gives me great concern.
4 But on the other hand of this pendulum when it swings
5 the other way, this, to me, is more than just a mere
6 burglary situation. This situation is what we hear
7 quite often in the everyday world out there is termed
8 one of those home invasions. Which is sort of, to me,
9 a type of aggravated type of burglary. Sort of like
10 carjacking is, you know, it's been written up and dis-
11 cussed about how serious that is and people being hurt
12 and losing their lives over automobiles out on the
13 open highway being forcibly pulled over and invaded.

14 But the worse part of this mitigation that
15 cuts against the grain for Mr. Marshall is that previous
16 armed robbery. This Court cannot allow him back out
17 on the streets of our society. This is the second armed
18 robbery, along with the aggravation of that home invasion.

19 Mr. Marshall on that burglary in the first
20 degree, I see no alternative for this Court and I'm
21 going to have to sentence you to life imprisonment.

22 On the armed robbery, I'm going to sentence
23 you to thirty (30) years. That will be concurrent,
24 however.

25 On the kidnapping, the sentence is thirty

1 (30) years concurrent.

2 On the assault and battery of a high and
3 aggravated nature, the sentence if ten (0) years
4 concurrent.

5 And on the firearm, I believe, there's a
6 maximum there of five (5) years, that's five (5) years
7 but that will be concurrent.

8 I know that is a dismal outlook for you but
9 as I said, this day and time, this Court is not going
10 to have any part of letting you back out loose on society.
11 Good luck to you.

12 SOLICITOR: Thank you, Your Honor.

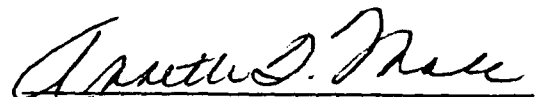
13
14 END OF TRANSCRIPT.
15
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25

CERTIFICATE

I, the undersigned, Annette T. Mole, Official Court Reporter for the Fourteenth 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 above captioned cause, relative to appeal, in the Court of General Sessions for Allendale County, South Carolina, on the 24th day of August, 2004.

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

NOVEMBER 11, 2004


Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Allendale County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CAZARIO MARSHALL,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing Officer Marvin Williams to testify the victim told him that he had last seen Sean [REDACTED] on the night of the burglary, and that his talk with [REDACTED] led him to DeLoach, and that what DeLoach told him led to the arrest of appellant and DeLoach, since this testimony was impermissible hearsay?

STATEMENT OF THE CASE

Appellant was indicted by the Allendale County grand jury for the offenses of burglary in the first degree, armed robbery, kidnapping, assault and battery of a high and aggravated nature (ABHAN), and possession of a firearm during the commission of a violent crime. R. 128 - 137. His case was called to trial on August 25, 2004 before the Honorable Paul M. Burch, and a jury. John D. Bryan represented appellant. Tamaeka Legette was the assistant solicitor. R. 1.

At the conclusion of the trial the jury found appellant guilty on each charge. R. 120, l. 22 – 121, l. 13. Judge Burch sentenced appellant to life imprisonment for burglary in the first degree, thirty years concurrent for armed robbery, thirty years concurrent for kidnapping, ten years concurrent for ABHAN, and five years concurrent for possession of a firearm during a commission of a violent crime. R. 125, l. 19 – 126, l. 7.

This appeal follows.

ARGUMENT

The judge allowed Officer Williams, through impermissible hearsay, to testify that the victim told him he had last seen Sean [REDACTED] on the night of the burglary. Officer Williams then testified that what [REDACTED] told him led him to DeLoach. Officer Williams further testified that DeLoach implicated appellant in the crime. This series of testimony was impermissible "disguised" hearsay, and it was highly prejudicial since the state's entire case against appellant was co-defendant DeLoach, and it bolstered DeLoach's testimony.

Relevant Facts

SLED agent Jeffrey Crooks was dispatched to Apartment 419, Union Avenue Apartments, on the late evening of February 6, 2004 to investigate a burglary and robbery. The apartments were referred to as the "Projects." R. 30, l. 15 – 31, l. 21. Crooks acknowledged that no inculpatory fingerprints were found in Apartment 419. R. 33, ll. 3 – 4.

Toby Smart, Jr. was the seventy-nine victim in this case. R. 39, l. 16 – 40, l. 9. Smart admitted he sold products similar to those found in a convenience store out of his apartment -- candy, soft drinks, and, as will be seen *infra*, cigars. R. 40, l. 16 – 41, l. 4.

Smart remembered that on the night of February 6, 2004 that "a lad came in and said he wanted to get a soda or something. . ." Smart said another young man ran into his apartment when he opened the door for the other man. "[T]hey chained me right there in the living room . . . [and they] carried me in the bathroom, shoved me in the bathroom and that's when they take that thing and tied the bathroom door [shut] . . ." R. 40, l. 22 – 41, l. 14. The state presented physical evidence showing the door had been tied shut from the outside.

Smart testified that one of the unidentified young men had what looked like a pistol, and that the man hit Smart in the mouth with the object. R. 41, l. 18 – 42, l. 2. Smart said the man took about \$400.00 in cash from him. Smart said, “I tell [sic] them to go ahead don’t kill me, just get the money and go on about their business.” R. 52, ll. 1- 7.

Smart said after the men left, that it took him about five minutes to open the bathroom door. The police were then called. R. 44, ll. 3 – 20.

Fairfax Police Officer Manuel acknowledged that Smart did not identify either of the perpetrators. R. 51, ll. 4 – 6. Fairfax Assistant Chief of Police Marvin Williams then testified. R. 51, l. 17 – 52, l. 5. The following exchange then occurred:

Q. Turning your attention to February 6, 2004, did you investigate a burglary at Mr. Toby Smart’s house?

A. Yes.

Q. What did your investigation reveal?

A. {The}Investigation revealed that - - - I spoke with Mr. Smart the day of the incident and I asked him who were (sic) the last person he seen that night because he sells a little goodies for the kids out there to the apartments. And he stated that Sean [REDACTED] - -

Mr. Bryan: Your Honor, this calls for hearsay.

Solicitor: Your Honor, I don’t believe this is hearsay, I believe he’s telling what his investigation revealed and Mr. Smart is present in the courtroom and can be cross-examined as to what he did or did not say.

The Court: All right, you are still in the basics of the or the preliminary parts of the investigation. I’ll allow you to go forward but I don’t want you to get too carried away with hearsay, now.

Q. Who did your investigation lead you to?

A. Sean [REDACTED]

Q. Did you talk with Sean [REDACTED]?

A. Yea, ma'am.

Q. What did Sean [REDACTED] tell you?

A. He - -

Mr. Bryan: Objection, Your Honor. Once again, Your Honor, this is just hearsay.

Solicitor: I'll withdraw that question.

The Court: Her question is withdrawn, pose another one, pose your question and see if he had an objection to this one.

Q. What did you learn from Sean [REDACTED]?

Mr. Bryan: On the same grounds, Your Honor, - - -

The Court: Sustained.

Q. Chief, who did your investigation lead you to finally?

A. Quincy DeLoach and Cazario Marshall.

Q. Did you talk to Mr. DeLoach?

A. Yes, ma'am.

R. 52, l. 6 - 53, l. 20.

The solicitor then asked what happened when Williams spoke to DeLoach. Defense counsel again objected. The solicitor then summarized the testimony in this exchange with the trial judge:

The Court: What was the name of the person?

Solicitor: Quincy DeLoach, the first person was Sean [REDACTED], the answer was Sean [REDACTED] and then I asked who did his investigation lead him to and the next question and the answer was Quincy DeLoach.

R. 54, ll. 7 – 11.

The following concluded the exchange:

Q. What did you learn from Quincy DeLoach?

The Court: Sustained.

Q. Did you make an arrest in this case?

A. Yes, ma'am.

Q. Who did you arrest?

A. Cazario Marshall and Quincy DeLoach.

Q. Why did you arrest Quincy DeLoach?

A. After speaking with Mr. DeLoach, we took a written report from him, from Mr. DeLoach, and he stated that him, and along with him was - - -

Mr. Bryan: Your Honor, that would be hearsay.

A. - - - Cazario Marshall - - -

The Court: Hold on. Your objection is sustained, we're getting all over the Bruton rule now.

Solicitor: Your Honor, I have no further questions of this witness.

Mr. Bryan: No questions, Your Honor.

R. 54, l. 16 – 55, l. 7.

Armed with the above, the solicitor then called the twenty-three-year old Quincy DeLoach as a witness. DeLoach testified that on February 6, 2004 he was drinking and smoking with appellant and some other young men. DeLoach said they talked about robbing the victim. R. 63, l. 14 – 65, l. 17.

DeLoach said he knocked on Smart's door late that night, and asked him for "a blunt." R. 65, ll. 14 – 19. DeLoach said Smart asked him if he knew what time it was, but Smart nonetheless opened the door.

DeLoach said he went inside the apartment with appellant. DeLoach claimed appellant then hit the victim in the face with a gun. R. 65, l. 14 – 67, l. 25. DeLoach testified the men robbed the victim after he was hit. The money was taken from a cigar box where the victim apparently kept the proceeds of his sales. DeLoach said appellant later gave him about sixty dollars from the robbery at a pool hall. R. 67, l. 10 – 68, l. 18.

On cross-examination, the judge refused to allow the defense to elicit from DeLoach the penalties he was facing for similar offenses pursuant to State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002). Counsel later waived his right to pursue this line of questioning after the judge realized this was permissible cross-examination. R. 70, l. 5 – 72, l. 25; R. 75, ll. 8 – 22.

Discussion

Rule 801(c), SCRE defines hearsay as a "statement, other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted." The admission of hearsay evidence is presumed to be prejudicial. This is true regardless of whether the declarant testifies or is available for cross-examination. See State v. Gullledge, 326 S.C. 220, 487 S.E.2d 590 (1997); Orangeburg D.S.S. v. Schlins, 291 S.C. 477, 354 S.E.2d 388 (1987).

The hearsay exchange listed above appears convoluted, but it leads to several inescapable conclusions. Assistant Police Chief Williams was told by the victim that

Sean [REDACTED] was the last person he saw that night. Williams then interviewed [REDACTED] which directly led him to co-defendant DeLoach.

DeLoach then implicated appellant and himself to Williams in the burglary robbery and kidnapping. This was hearsay, and it bolstered DeLoach's testimony against appellant. Without DeLoach, the state did not have any case against appellant. See Collins, South Carolina Evidence, § 16.4 at pp. 482-483 (2nd. ed. 2000). Appellant should be granted a new trial.

Respectfully submitted,



Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

November 29, 2005

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CAZARIO MARSHALL,

APPELLANT

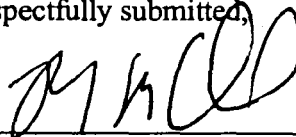
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cazario Marshall states:

1. He is Assistant Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Paul M. Burch, which was held on August 25, 2004, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Cazario Marshall.

Respectfully submitted,

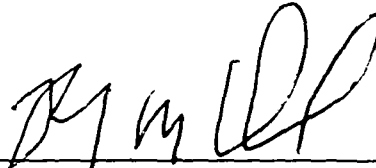


Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

November 29, 2005

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

S. C. Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, SC 29201
(803) 734-1330
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Allendale County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

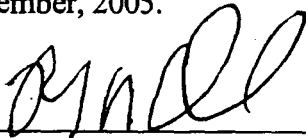
V.

CAZARIO MARSHALL,

APPELLANT

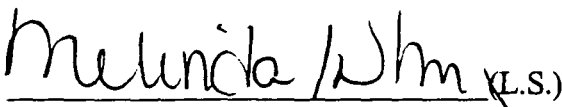
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, and the Final Anders Brief and Record on Appeal has been served upon Cazario Marshall, #265561 at Lieber Correctional Institution this 29th day of November, 2005.


Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of November, 2005.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: November 15, 2008

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT
BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Cazario Marshall,

Appellant.

Appeal From Allendale County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No.2007-UP-034
Submitted January 2, 2007 – Filed January 19, 2007

APPEAL DISMISSED

Assistant Appellate Defender Robert M. Dudek, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,

of Columbia; Solicitor Randolph Murdaugh, III, of Hampton, for Respondent.

PER CURIAM: Cazario Marshall appeals his convictions for burglary-first, armed robbery, kidnapping, assault and battery of a high and aggravated nature (ABHAN), and possession of a firearm in the commission of a violent crime. Marshall's appellate counsel argues the circuit court erred in admitting certain hearsay evidence and in allowing improper bolstering of a co-defendant witness. Marshall did not file a pro se brief. After a thorough review of the record pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.

ANDERSON, HUFF and BEATTY, JJ. concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



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Close
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OFFICE

The South Carolina Court of Appeals

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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 20, 2007

REMITTITUR

The Honorable Mary Jean Carlson
611-A West Mulberry St
PO Box 126
Allendale, SC 29810-0126

Re: The State v. Marshall, Cazario
2004-GS-03-00069
2004-GS-03-00070
2004-GS-03-00071
2004-GS-03-00125
2004-GS-03-00130

Dear Ms. Carlson:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The exhibit being returned is: State's Exhibit #42 (Photo). Please sign attached copy of this letter and return to acknowledge receipt of this item.

Sincerely,

Handwritten signature of Kenneth A. Richstad.
Kenneth A. Richstad
Clerk of Court

KAR/lf

cc: Assistant Appellate Defender Robert M. Dudek
Cazario Marshall, #265561
Assistant Deputy Attorney General Salley W. Elliott
I. McDuffie Stone, III, Esquire

Receipt Acknowledgement:

Name _____ Date _____

FORM 5

14 P
07-CP-03-1063(d)

STATE OF SOUTH CAROLINA

County of Alendale

Cazario Marshall 265561

Full name and prison number (if any) of Applicant

FILED FOR
2007 DEC 31 IN THE COURT OF COMMON PLEAS

CLERK OF COURT
ALLENDALE COUNTY, S.C.

v.

APPLICATION FOR

POST-CONVICTION REVIEW

State of South Carolina

Date

TRUE COPY

1/3/08

CLERK OF COURT
ALLENDALE COUNTY, S.C.

FILED FOR
2007 DEC 20 PM 1:25
CLERK OF COURT
ALLENDALE COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Alendale County
3. Name(s) of co-defendant(s) (if any) Quincy Deloach
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 1st Degree Burglary #04-65-03-0069
 - (b) ABHAY #04-65-03-0070

(c) Armed Robbery #04.65-03-0071 (e) session of a firearm
the commission of certain
crimes #04-65-03-0136

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 8-25-04 Life
(b) 8-25-04 10 yrs
(c) 8-25-04 30 yrs (d) 8-25-04 30 yrs (e) 8-25-04 5 yrs

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. Appellate Court
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal Dismissed
ii. _____
iii. _____

(c) the date of each such result:

- i. January 2, 2007
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) _____

Attachment (L)

(11)

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FILED FOR RECORD

2024 DEC 20 PM 1:26

CLERK OF COURT
ALLENDALE COUNTY, S.C.

(a) Was trial counsel ineffective for not properly including DNA evidence into evidence which could have been used to impeach state's key witness testimony? Evidence in question is a shirt that belongs to the state's key witness (co-defendant) containing medium velocity blood spatter from the victim of these crimes. This item of evidence could've been used to impeach the state's key witness testimony that he was just the look out man while I supposedly robbed and beat the victim while holding him at gun point. This evidence could've prove to the jury that the state's key witness and sole evidence against me at least lied about his involvement in this crime where blood was found on his clothes alone, and not on any of mine. Keeping this piece of evidence from me and the jury was unreasonable and prejudice, where it alone could have made a big difference in the outcome of my trial. Evidence referred to as item 10. R/A logged in film as item 15.

(b) Was trial counsel ineffective for not properly cross examining victim? At the end of prosecution direct examination of victim the solicitor ask the victim, "Mr. Toby, did you recognize one of the guys?"
The victim answered, "Yep."

Attackment (2)

(11)

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The prosecutor said, "You did? Mr. Smart, I have no further questions, answer any questions from the defense."

So instead of asking the obvious question which the prosecutor avoided asking, which is who did Toby Smart recognize, counsel instead attacked the credibility of Mr. Smart's vision. By doing this counsel failed to establish for the jury that I was not the person recognized by the victim; but instead counsel made it look as if he was trying to hide the fact that I was recognized by trying to prove that the victim has poor vision. I didn't commit these crimes. I made that clear from the start. I was never in any lineup, the prosecutor never had me pointed out by the victim as being one of his attackers and the state never even suggested that I was ever even remotely recognized by the victim as one of the attackers in these crimes. So there were no reason to believe that the victim would say my name or point me out when asked who of his two attackers did he recognize. In fact, the actions of this person that the victim recognized could've proved my innocence. If this mystery person was the one holding the weapon, but wasn't me, then at least it could've been established that I was not the gunman, lowering the credibility of the state's key witness. And if who the victim recognized was not my

Attach rent(3)

(1.1)

150

co-defendant, who had already admitted being involved in the crimes, then how could I have been there when there was only two criminals involved? And if it was my co-defendant the victim recognized then my co-defendant's action that night could've been truthfully recounted to the jury by the victim. Unreasonable trial strategy. Prejudice by counsel's impression upon the jury that he had to cover up the fact that I was recognized by the victim by attacking the credibility of the victim's sight. When in fact it was already known that the victim didn't recognize me at all.

(C) Was trial counsel ineffective for not properly polling jury? When it came time to select jury counsel allowed counsel of the state's key witness to poll my jury. There were no joint trial; my co-defendant wasn't even on trial or planning to take a trial. In fact he was advised to untruthfully testify against me by counsel whom selected my jury, which was allowed by my counsel without enlightening me that the attorney he was allowing to poll my jury was the counsel of the state's key witness. Trial counsel's actions were below professional norm. And I was prejudiced by counsel's decision not to inform me that assistance was being received from the state's key witness attorney; or for even allow it. Absent the assistance of the state's key witness counsel nearly an entire different jury could have been selected.

who could have perceived my case in an entirely different light, possibly changing the outcome of the trial. Trial counsel's actions were unreasonable which in itself alone is bordering on conflict of interest.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective Assistance of Trial Counsel in violation of
 (a) U.S. and state Constitution Section 17-27-20(a)(1), article I §14 as violate
in the lower courts
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
stated in attachments
 (a) _____
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. 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
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. 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:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. 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) PCR is the proper vehicle for the allegations asserted.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
- (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. John D. Bryan ESQUIRE, Office of the Public Defenders
P.O. Box 506 Hampton, SC. 29924
- ii. Robert M. Dudek, South Carolina Office of Appellate Defense
1205 Pendleton Street, Room 306, Columbia, SC 29201
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial Attorney - John D. Bryan
- ii. Appellate - Attorney Robert M. Dudek
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate and Remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
 County of _____)

VERIFICATION

I, Cazario Marshall, 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.

Cazario Marshall

SWORN to and subscribed before me this 17
 day of December, 2007.

Alfred L Walker (L.S.)
 Notary Public

My Commission Expires: 4/4/2017

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

I, Cazario Marshall, 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.

Cazario Marshall
Applicant

SWORN or affirmed to and subscribed before me this
17 day of December, 2007.

Orpua J Walker
Notary Public

My Commission Expires: 4/4/2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE	)	
	)	2007-CP-03-361
	)	
Cazario Marshall, #265561,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 31, 2007, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Allendale County Clerk of Court. The Applicant was indicted at the May 2004 term of the Allendale County Grand Jury for burglary – 1st degree (2004-GS-03-0069), assault and battery of a high and aggravated nature (ABHAN) (2004-GS-03-0070), armed robbery (2004-GS-03-0071), kidnapping (2004-GS-03-0125), and possession of a firearm during commission of certain crimes (2004-GS-03-0130). John D. Bryan, Esquire, represented the Applicant. On August 25, 2004, the Applicant proceeded to trial, in which the jury found him guilty as indicted. The Honorable Paul M. Burch sentenced him to confinement for life for burglary – 1st degree, thirty (30) years each for armed robbery and kidnapping, ten (10) years for ABHAN, and five (5) years for possession of a firearm. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Office of Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Marshall, Op. No. 2007-UP-034 (S.C. Ct. App. filed January 19, 2007). The Remittitur was issued on April 20, 2007.

Attached herewith and incorporated herein are the records of the Allendale County Clerk of Court regarding the subject conviction, the records of the South Carolina Department of Corrections, the record on appeal, the Final Anders Brief of Appellant, the opinion from the Court of Appeals, and the Remittitur dated April 20, 2007.

II.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of counsel in that counsel
 - a. Did not properly put DNA evidence into evidence that would have impeached a key State's witness.
 - b. Did not properly cross-examine the victim.
 - c. Did not properly poll the jury.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
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By: Matthew J. Friedman
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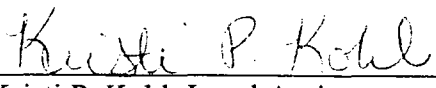
10/31, 2008.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	
	)	
	)	2007-CP-03-0361
	)	
Cazario Marshall, #265561,	)	
	)	
Applicant,	)	
	)	
v.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

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

H. Woodrow Gooding, Esquire
Gooding & Gooding, PA
P.O. Box 1000
Allendale, SC 29810

DATED this 31st day of October, 2008.


 Kristi P. Kohl, Legal Assistant
 Office of the Attorney General
 Post Office Box 11549
 Columbia, SC 29211-1549
 (803) 734-3737

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF ALLENDALE) CASE NO.: 2007-CP-03-361

CAZARIO MARSHALL,)
)
 APPLICANT,)
)
 v.) TRANSCRIPT OF RECORD
)
 STATE OF SOUTH CAROLINA.)
)

WEDNESDAY, APRIL 7TH, 2010
 WALTERBORO, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER, III

APPEARANCES:

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 ALLENDALE, SOUTH CAROLINA 29810
 Attorney for the Applicant

Rebecca H. Hill
 Official Court Reporter
 522 Dowling Avenue
 Walterboro, SC 29488

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EXHIBITS

NONE.

1 **THE COURT:** Madame court reporter, this is an Allendale
2 case 2007-CP-03-361, Cazario, C-A-Z-A-R-I-O, Marshall v.
3 State of South Carolina. Present in the courtroom is Mr.
4 Matthew Friedman, on behalf of the State of South Carolina,
5 and Mr. Woodrow Gooding, on behalf of the Applicant, Cazario
6 Marshall. Also present in the courtroom are Mr. J. D. Bryan
7 and Mr. Stephen Plexico in addition to the Applicant.

8 I understand that this is a trial; is that correct, Mr.
9 Gooding?

10 **MR. GOODING:** That is correct, Your Honor.

11 **THE COURT:** Is that correct, Mr. Friedman?

12 **ASST. ATTY. GEN. FRIEDMAN:** Yes, sir.

13 **THE COURT:** All right. I have in front of me the
14 Application, the Return, the Indictments, the Department of
15 Correction records, and I have the record on appeal from the
16 Court of Appeals, and I have the Decision from the Court of
17 Appeals dated January the 19th, 2007; so that each of you
18 know what's in the Court's packet. I also have a letter
19 where the remittitur was sent back to the Clerk of Court in
20 Allendale on April the 20th, 2007, from the Court of
21 Appeals.

22 Mr. Gooding, I'll be happy now to hear from you. We've
23 been -- most of my attorneys have been waiving openings,
24 unless you think it would assist the Court in some fashion,
25 I, obviously, am going to have to read the transcript, which

1 is lengthy, which I have not done.

2 **MR. GOODING:** Your Honor, other than just maybe
3 summarizing why we're here.

4 **THE COURT:** Be happy for you to.

5 **MR. GOODING:** Judge, this Application for PCR was
6 filed on December 31st of '07, as a result of Mr. Marshall
7 being indicted in the May 4th term in Allendale of burglary
8 1st, assault and battery of a high and aggravated nature,
9 armed robbery, kidnapping, and possession of a weapon during
10 a crime. He had a trial on August 25th of 2004 before Judge
11 Burch. He was convicted of burglary 1st, convicted of
12 kidnapping, and convicted of assault and battery of a high
13 and aggravated nature, convicted of having the gun, and was
14 sentenced to life, plus 30 years on the kidnapping and the
15 armed robbery, and 10 years on the assault and battery of a
16 high and aggravated nature, and five years on the firearm
17 possession.

18 **THE COURT:** This was a jury trial?

19 **MR. GOODING:** Yes, it was, Judge. And as you've
20 indicated, the Appeal was dismissed by the Court of Appeals.
21 The PCR was filed alleging ineffective assistance of
22 counsel, and there's three bases for that: one involved
23 discovery not being requested and not being used; it
24 involved improper examination of the victim and of the
25 State's witness, and the most important element, Your Honor,

1 in this PCR is the fact of how this jury was struck. And I
2 can get into that later, but actually Mr. Bryan was
3 appointed to represent Mr. Marshall; Mr. Plexico, in the
4 same office, was appointed to represent the co-defendant,
5 Mr. Deloach. Mr. Deloach ends up being the State's case
6 against Mr. Marshall. Mr. Plexico, who represents the co-
7 defendant, Mr. Deloach, who testified against Mr. Marshall,
8 struck Mr. Marshall's jury without Mr. Marshall knowing
9 anything about Mr. Plexico being involved in the co-
10 defendant's case.

11 Judge, to be quite honest with you, I've been doing
12 this a long time, and I've never heard of such, and I
13 realize it's going to be very hard for me to establish.
14 There's no question that I think that this type of conduct
15 by an attorney is absolutely in violation of the
16 professional norms, that the part that concerns me is the
17 prejudice and how in the world I would ever prove prejudice
18 of what happened here. And I would ask Your Honor ---

19 **THE COURT:** You're referring to prejudice required by
20 Strickland v. Washington?

21 **MR. GOODING:** Yes, Your Honor.

22 **THE COURT:** I see.

23 **MR. GOODING:** But there is some Court's that have
24 acknowledged there can be a presumption of prejudice
25 according to such conduct.

1 **THE COURT:** We've never had a case in South Carolina
2 that I know of, where there has been a case of proving a
3 presumption of prejudice on ineffective assistance of
4 counsel; are you aware of any?

5 **MR. GOODING:** I was going to tell you, I was not aware
6 of any. There's some Federal Court cases involving that
7 presumption, but those cases involve when an attorney was
8 appointed the day of trial, or appointed the day before
9 trial, and it was obvious that they could presume prejudice
10 because they just absolutely had no way of being able to be
11 prepared for the trial.

12 But, Judge, this is the situation, and this was
13 acknowledged on the record, that the co-defendant's attorney
14 struck Mr. Marshall's jury, and as you well know, it's very
15 critical, the jury selection is very critical, in knowing
16 who your client is, in knowing what his status is in the
17 community, and striking a jury with information from him,
18 discussing it with him, and Mr. Bryan, on the record, even
19 on the record, indicated he took no part in striking the
20 jury, this gentleman's attorney. With that said, Judge, I
21 am ready to proceed.

22 **THE COURT:** All right, sir. Mr. Friedman, I'd be happy
23 if you'd like to make an opening, in light of the fact that
24 Mr. Gooding chose to do so, I'm happy to hear from you.

25 **ASST. ATTY. GEN. FRIEDMAN:** Just briefly, Your Honor.

1 I'd like to address the conflict of issue, for now, briefly.
2 The State would acknowledge that it does have the appearance
3 of a conflict, but we agree with testimony of Mr. Plexico
4 and Mr. Bryan there was no prejudice and there was no evil
5 intent and no confidences shared, and that no actual
6 conflict that materialized.

7 **THE COURT:** As to the striking of the jury?

8 **ASST. ATTY. GEN. FRIEDMAN:** Yes, sir.

9 **THE COURT:** So your position is there was no prejudice
10 to Mr. Marshall and no confidence was revealed, which would
11 have been a violation?

12 **ASST. ATTY. GEN. FRIEDMAN:** Yes, Your Honor. Mr.
13 Plexico did not sit in the second chair throughout the
14 trial; he only sat in during jury selection.

15 **THE COURT:** I have some questions about it, but I think
16 I will leave those until I hear the testimony. I understand
17 the position of each of you. Mr. Gooding, you may call your
18 first witness.

19 **MR. GOODING:** I call Mr. Bryan, Your Honor.

20 **THE COURT:** J. D. if you would come around, Mr. Padgett
21 is going to hold the Bible for you. Left hand on the Bible,
22 raise your right.

23 **WHEREUPON, MR. J. D. BRYAN, ESQUIRE, WAS DULY SWORN.**

24 **THE COURT:** Please have a seat on the witness stand.
25 You know what to do; state your full name and spell your

1 last name for the court reporter.

2 **MR. BRYAN:** My name is John D. Bryan, B-R-Y-A-N.

3 **THE COURT:** Your witness, Counsel.

4 **DIRECT EXAMINATION**

5 **MR. GOODING:**

6 **Q** Mr. Bryan, you were appointed to represent Cazario
7 Marshall in this particular case?

8 **A** I was.

9 **Q** Does your record reflect when you were appointed?

10 **A** (Referring to records.) Well, we requested preliminary
11 hearings on March 15th, so that would have been about the
12 time.

13 **THE COURT:** March 15th of what year?

14 **A** 2004.

15 **Q** March the 15th of 2004?

16 **A** Yes.

17 **Q** And was there a co-defendant? Were you aware that a
18 co-defendant was also charged along with Mr. Marshall?

19 **A** Yes, sir.

20 **Q** And were you aware that Mr. Plexico had been appointed
21 to represent him?

22 **A** Yes.

23 **Q** And were you and Mr. Plexico in the same office?

24 **A** Well, I was a contractor. I usually worked out of my
25 own office in Walterboro.

- 1 Q Right.
- 2 A And Mr. Plexico worked out of the office in Hampton.
- 3 Q My question is were you in the same office? Were you
- 4 an assistant public defender?
- 5 A Yes.
- 6 Q And I don't mean physically, but the same office as
- 7 public defender?
- 8 A Oh.
- 9 Q But you were the assistant to Steve Plexico?
- 10 A Yes, sir.
- 11 Q And you were aware, you said, that Steve was appointed
- 12 to the co-defendant?
- 13 A Yes, sir.
- 14 Q And you held a preliminary hearing in March?
- 15 A We requested it in March; I don't know if it was held.
- 16 Q Does your record reflect when it was held?
- 17 A I don't think I have the note from a preliminary
- 18 hearing. (Looking through records.)
- 19 Q Well, do you remember having a preliminary hearing?
- 20 A I don't remember having one.
- 21 Q Well, do you remember, or does your file reflect when
- 22 you may have discussed this case with Mr. Marshall?
- 23 A No, sir. I usually take notes when I talk with my
- 24 clients and for some reason I can't find them in this file.
- 25 I do have notes where I talked with a couple of witnesses he

1 named.

2 Q Who is that?

3 A Hang on. But not where he told me their names. And my
4 memory is so poor; I know I would have had to write their
5 names down, Harry Marshall and a Herbert Duncan.

6 Q Do you know -- did you have a discussion with those two
7 witnesses?

8 A Yes, sir.

9 Q And what was the significance of their testimony?

10 A Well, Herbert Duncan said he gave the defendant, maybe,
11 a couple of \$20 bills, not \$191.

12 Q All right.

13 A And I think Mr. Cazario Marshall had said that's where
14 he had gotten all the money he had; and Harry Marshall was
15 an alibi witness. He said the defendant was in bed when he
16 left and he was in bed when he got back around two, three,
17 or four in the morning, and the witness was going back and
18 forth to the club that night. But it wasn't a -- he was in
19 the house continuously. He was in bed when he left and he
20 was in bed when he got back, late at night, and this
21 incident apparently happened in between those times.

22 Q So you didn't think the alibi defense was something you
23 needed to follow up with?

24 A It didn't seem very strong.

25 Q All right. And the money situation, for the Court's

1 information, you talked about the other witness indicating
2 he had given money to Cazario. Cazario was found with some
3 money on him that was allegedly stolen from the victim?

4 **A** Yes.

5 **Q** Now, when did you become aware that Steve Plexico was
6 also representing the co-defendant; would that have been
7 prior to the preliminary hearing?

8 **A** I'm not sure.

9 **Q** Well, when did you become aware that the co-defendant
10 was going to testify against your client?

11 **A** I don't know. Mr. Plexico would often help me pick a
12 jury and I'd help him pick a jury, but we made it a custom
13 not to help each other pick juries when we represented co-
14 defendants, and for some reason, he did it on this one, and
15 I don't know why, unless he -- I mean, if I had it in my
16 mind at the time we were picking the juries, that Mr.
17 Plexico was representing Mr. Deloach, I wouldn't have let
18 him do it, and I'm -- I don't see why he would have offered.

19 **Q** Well, let me back up a minute, Mr. Bryan. My question
20 was not that, my question was when did you realize that Mr.
21 Plexico's client was going to testify against your client?

22 **A** I'm -- I'm not sure.

23 **Q** Well, when you were going to trial with your client,
24 did you not know who the witnesses for the State for?

25 **A** Yes, sir.

1 Q Okay. Well, did they tell you that Mr. Plexico's
2 client was testifying against your client?

3 A Yes, sir.

4 Q And did you advise your client that that was going to
5 be the case?

6 A Well, I'm sure I went over Mr. Deloach's testimony -- I
7 mean, his witness statements.

8 Q Okay. Is it fair to say that before you proceeded to
9 trial that you were aware that Mr. Plexico's client was
10 going to testify against yours?

11 A I guess so.

12 Q Okay. And then you still allow Mr. Plexico to strike
13 your client's jury?

14 A And I don't -- I -- I -- well, I did, and I don't why.
15 I mean, it's just not the way we do it, but it happened that
16 time.

17 Q That's not the way any lawyer does it?

18 A No, sir, but it did happen that way that time.

19 Q In normal situation, when you first find out that
20 there's a conflict, and you've had this happen time and time
21 again, you spin one client off, do you not? Is that what
22 you call it, spinning them off?

23 A Well, formerly, we -- Mr. Plexico would represent one
24 and I would represent one, and we just wouldn't talk with
25 each other, and then, I think later on, the procedure became

1 our office would keep one and spin the other one out of the
2 office.

3 Q To avoid any appearance of impropriety?

4 A Yes, sir.

5 Q But in this case, you didn't do it?

6 A No, sir. Back in 2004, the way we would do it is if
7 there were two co-defendants, Mr. Plexico would get one, I
8 would get one. I'd have my file at my office in Walterboro,
9 he'd have his file at his in Hampton.

10 Q Well, what caused y'all to change that policy?

11 A Um, I don't know.

12 Q Why do you think it would be changed?

13 A Well, I think it would be changed to avoid the
14 appearance of impropriety.

15 Q Avoid what just happened in this particular case?

16 A Exactly.

17 Q And -- and you've heard Mr. Friedman indicate that he
18 was going to argue there was no prejudice in this case. Is
19 there any way for Mr. Marshall to prove prejudice in this
20 type of case where you have allowed another attorney to
21 strike your client's jury?

22 A I don't see where it would be possible to prove there
23 was or was not, either way.

24 Q Did you and Steve have any conversation at all about
25 what was developing about the trial and his client

1 testifying about Mr. Marshall?

2 **A** Not that I recall.

3 **Q** And after the trial, you realized how critical Mr.
4 Deloach, Mr. Plexico's client, Mr. Deloach's testimony was
5 against Mr. Marshall; did you not?

6 **A** That essentially was their case.

7 **Q** That was the whole State's case, wasn't it?

8 **A** Yes, sir. I made a bid in the closing argument that
9 the victim did not identify Mr. Marshall as one of the
10 assailants, and he had good vision; we actually brought that
11 up in cross-examination that he had good vision and there as
12 no line-up, no show up, there was no photographic line-up.
13 I mean, never at any point, stated that Mr. Marshall was one
14 of the assailants. Mr. Deloach is the one who identified
15 him.

16 **Q** So Mr. Plexico's client single-handedly convicted your
17 client, so to speak?

18 **A** Basically, yes, sir.

19 **Q** And Mr. Plexico is the one who, again, struck your
20 client's jury?

21 **A** Yes, sir.

22 **Q** What part did you take in the jury selection?

23 **A** Well, ultimately, I was the one who made the decisions,
24 but Mr. Plexico was residing in Allendale County, so quite
25 often we would discuss with each other, you know, do we want

1 this person? Do we want that person? He might have more
2 local knowledge than I would.

3 Q Did you review the transcript, Mr. Bryan, before you
4 came here today?

5 A Some.

6 Q Look on Page 15, Line 20 of the transcript.

7 A (Mr. Bryan looking at transcript.) Okay.

8 Q And in reference to the Court's questions to you about
9 the jury selection, you said, "Mr. Plexico was sitting by my
10 client during the jury selection process, so he was asking
11 him most of the questions and doing most of the talking with
12 him. I, myself, mostly looking at the list, and kind of
13 looking over my shoulder to see if prospective jurors were
14 giving my client an ugly look while they were standing up.
15 I didn't notice anything out of the ordinary, Your Honor."
16 So, basically, you were just on the sidelines during the
17 jury selection; is that a fair statement?

18 A I wouldn't call it a fair statement that I was on the
19 sidelines. I was the one making the ultimate decision.

20 Q But that's not what you indicated to the Court in this
21 transcript; is it?

22 A What it says is he was talking with Mr. Marshall.

23 Q Well, who was seated by Mr. Marshall, was it not Steve
24 Plexico?

25 A Apparently, it was.

1 Q Do you not think that this undermines the proper
2 functioning of the adversarial process, Mr. Bryan?

3 A It would have a tendency in that direction.

4 Q Do you think that by allowing this to happen, that your
5 performance as an attorney was deficient?

6 A I would have to say that for some reason it must have
7 slipped my mind that Mr. Plexico was representing Mr.
8 Deloach, that's all I can think of, because if I knew at
9 that time, and had it present in my head, that this man was
10 representing Deloach, I wouldn't have let him sit at the
11 table.

12 Q So if it slipped your mind, it would still be
13 deficient, would it not?

14 A Yes, sir.

15 Q And do you think your actions -- your actions and Mr.
16 Plexico's actions were -- do you think they were reasonable
17 and professional norms?

18 A Well, I couldn't call it reasonable and -- that's ---

19 Q Well, what would you call it? Unreasonable?

20 A Yeah, it was unreasonable.

21 Q In a situation like this, you've already indicated that
22 it would probably be impossible for me representing Mr.
23 Marshall to prove prejudice, don't you think that a
24 situation like this where you've agreed your actions were
25 unreasonable, you've agreed that -- that you were deficient,

1 either by letting it happen or by not knowing that Mr.
2 Plexico was still involved in the case, would you agree with
3 me that the law ought to presume prejudice under these
4 facts?

5 **ASST. ATTY. GEN. FRIEDMAN:** I would object to that,
6 Your Honor.

7 **THE COURT:** Sustained. I think that's a matter for the
8 Court. Proceed.

9 **Q** When did you -- and you may have already answered this,
10 when did you first meet -- well, let me ask you this, you
11 said you didn't know when you met with your client, what
12 dates; would you deny if Mr. Marshall tells the Court that
13 you met with him the day of the trial for the first time?
14 Would you deny that?

15 **A** That might be possible.

16 **Q** And if you met with him the day of the trial, would you
17 have had adequate time to prepare his defense?

18 **A** Well, the preparation of defense, the way we usually do
19 it, is to go through the reports and see what kind of
20 evidence the State has against him, and then if he has
21 something he can tell us, they tell us the day of Court,
22 then, but 95 percent of the work is figuring out what the
23 State's got; the strengths and weaknesses of their case.

24 **Q** All right. While you're on that issue, what did you --
25 did you file some discovery motions, or Rule 5, to determine

1 what the State had?

2 A We might not have back then. When I first started
3 working with the office, we usually relied on the
4 Solicitor's Office "open file policy". At that time, we
5 could just go up to the Solicitor's Office and get a copy of
6 the file or go to the law enforcement and get a copy.

7 Q Well, what do you have in your file that you got,
8 however you got it?

9 A I've got photographs.

10 Q Of what?

11 A Looks like tire marks. Photographs of what appears to
12 be a grassy field.

13 Q What's that got to do with this case? This happened
14 inside of a house.

15 A Photographs of Quincy Deloach. Let's see... I've got
16 notes from where I went over the statement of Harry
17 Marshall.

18 Q That's the witness on the money issue?

19 A Uh-huh. No -- no, that's -- I think -- I think that
20 was the alibi. Got notes from the statement of Quincy
21 Deloach. Got notes from another statement that he made on
22 the 7th of February.

23 Q Well, while you're ---

24 A --- got statements from the 11th and 7th.

25 Q Well, while you're at that part of your file, does it

1 show where you have ever interviewed Quincy Deloach?

2 **A** No, sir.

3 **Q** Did you ever talk with Steve Plexico, his lawyer, about
4 what he was going to testify to?

5 **A** No, sir. I just figured it would be about what he put
6 in his statement.

7 **Q** Okay. Go ahead and tell me what you found from the
8 evidence or whatever you had from the State.

9 **A** And then there was a statement

10 **Q** From Sean [REDACTED]. And then there was a statement from
11 Toby Smart, and it was about the same as in Emmanuel
12 Williams's report.

13 **Q** Toby Smart, the victim?

14 **A** Uh-huh.

15 **THE COURT:** You have to say "yes".

16 **A** Yes, sir. And then I've got notes from where I went
17 through the report and then I've got notes from where I went
18 through the report of Sullivan.

19 **Q** Do you have the blood sample report from SLED?

20 (Brief pause while Mr. Bryan looks through file.)

21 **MR. GOODING:** Your Honor, may I approach the witness?

22 **THE COURT:** You may.

23 **A** I've got a -- looks like a laboratory examination
24 worksheet from SLED.

25 **Q** Does it look like this?

1 **A** Yeah.

2 **Q** Okay. What did you gleam from that? What was the
3 significance of that? In any way did it help or hurt your
4 client?

5 **A** (No answer.)

6 **Q** What I'm getting at, Mr. Bryan, is there was a blood
7 sample taken at the scene. There was also a shirt being
8 worn by Mr. Plexico's client that also was stained with
9 blood.

10 **A** Yes, sir.

11 **Q** Did you look into the DNA issue on that as to whose
12 blood, where it was?

13 **A** No, sir. The reports just say that there was blood;
14 apparently, they didn't test it for DNA.

15 **Q** Did you look into that issue about getting it tested?

16 **A** No, sir.

17 **Q** Okay. And the reason I'm asking you that, you've
18 already indicated to the Court that Mr. Deloach's testimony
19 pretty much single-handedly convicted Mr. Marshall. Well,
20 there's evidence that -- I mean, he testified, Mr. Deloach
21 testified that he was sort of the look-out man, that Mr.
22 Marshall did all of the -- most of the crime.

23 **A** Uh-huh.

24 **Q** And wouldn't it have made a lot of difference if that
25 shirt that Mr. Deloach was wearing was covered in Mr.

1 Smart's blood and Mr. Marshall's shirt had no blood on it?
2 Wouldn't that have affected his credibility a great deal?

3 A Well, yes.

4 Q But you didn't -- that issue never came up? You didn't
5 present that on cross-examination of Mr. Deloach?

6 A No, I didn't.

7 Q Well, the SLED report indicates that the same shirt
8 that Mr. Deloach had on, they took samples of it.

9 A Uh-huh.

10 Q And if Mr. Deloach had been standing back as an on-
11 looker, or look-out man, it would be kind of almost
12 impossible for him to have blood all over him, would it not?

13 A It would be less likely, yes.

14 Q And wouldn't that have greatly affected his
15 credibility?

16 A Yes, sir.

17 Q But you have no where in your file that that issue was
18 pursued?

19 (Brief pause while Mr. Bryan looks through file.)

20 Q Do you, Mr. Bryan?

21 A You're right, I didn't.

22 Q And Mr. Bryan, throughout the transcript when Mr.
23 Smart, the victim, testified, he referred as to what was
24 happening to him that it was happening to him by two people.

25 A Uh-huh.

1 Q He never once said one; do you remember that?

2 A Uh-huh.

3 Q Quoting him, "They chained me, they beat me, they
4 panhandled me, they tied me." Every time he referred to
5 what was going on, he used "they".

6 A Uh-huh.

7 Q Which he had already testified that there were two
8 people there.

9 A Uh-huh.

10 Q Why did you not cross-examine him on that issue about
11 him repeatedly saying that there were two people beating
12 him?

13 A I think I brought that out in closing argument. He
14 never at one time and in cross-examination I did bring out
15 that his vision was good, and in closing I brought out that
16 he had never, at any time, made any identification, that Mr.
17 Marshall was there ---

18 Q Okay.

19 A --- or one of the people doing this.

20 Q When you're talking back about his vision, the
21 Solicitor's question to Mr. Smart on Page 45 of the
22 transcript, Line number 13, the Solicitor asks, "Mr. Toby,"
23 who is Mr. Smart, "did you recognize one of the guys?" His
24 answer, "Yep." Mr. Solicitor, "You did? Mr. Smart, I have
25 no further questions. Answer any questions from the

1 defense." Your cross-examination, starting on Line 22 was,
2 "Mr. Smart, how is your vision?" Why would you ask him
3 about his vision if he never identified your client?

4 **A** To bring out that his vision is good.

5 **Q** And if his vision is good, that's all you wanted to
6 determine? You never interviewed the victim, did you?

7 **A** No, sir.

8 **Q** If you had interviewed the victim, you would have known
9 whether or not he could have identified Mr. Marshall?

10 **A** Yes, sir.

11 **Q** And you were also aware that Tremaine Emmanuel, with
12 the Fairfax Police Department, who investigated this case
13 shortly after it happened, also took a statement from Mr.
14 Smart, did he not?

15 **A** Yes, sir.

16 **Q** And in that statement, he couldn't identify anyone,
17 could he?

18 **A** Yes, sir.

19 **Q** All right. So why didn't -- if you -- if he didn't
20 identify, the Solicitor, there must have been some reason,
21 and I know probably your strategy was, I better not ask him
22 that question, because he might kill me and answer it.

23 **A** Exactly.

24 **Q** But why would you go to the issue of vision, because
25 usually vision, somebody has hurt you with it. Because it

1 made the jury, in my opinion, don't you think it would have
2 made the jury think, well, he's trying to contest his
3 vision; the implication being that he's recognized Mr.
4 Marshall?

5 **A** Well, I think if they had -- if he was going to testify
6 that Cazario Marshall was one of them, he should have said
7 so. Maybe the Solicitor was setting me up. They do that
8 sometimes. Sometimes people's testimony ---

9 **Q** I understand.

10 **A** --- improves between the time of the report and the
11 time of the trial. So if I went into, "Well, who did you
12 see?" Chances are that would have blown us out of the
13 water, so I went into his vision.

14 **Q** That's my only question, why would you go into his
15 vision if he hadn't identified anybody?

16 **A** And then I brought out that his vision was good.
17 Nothing brings out -- nothing can point out a fact to a jury
18 like a cross-examination that blows up, and I did this
19 cross-examination to blow up to impress on the jury that he
20 could see.

21 **Q** Okay.

22 **A** And then I brought it out in closing argument. He can
23 see. He identified none of the attackers at no time; in
24 this trial or at any time, did he say that Mr. Marshall was
25 one of the attackers. I brought that out in closing

1 argument.

2 Q But did you interview Mr. Toby Smart prior to the
3 trial?

4 A I don't believe so.

5 Q So there's a good reason why you didn't ask the
6 question, you didn't know what his answer was going to be?

7 A Well, his report was saying that he didn't identify
8 anybody; suddenly, now, he's able to identify somebody.

9 A Do you know whether or not Steve Plexico was with the
10 Solicitor when they interviewed Mr. Deloach, the witness?

11 A I don't know.

12 Q Did y'all ever discuss that?

13 A No, sir.

14 Q Mr. Bryan, if you had established through the victim
15 that he couldn't identify your client, you did a pretty good
16 job, and through the DNA evidence, the co-defendant was not
17 telling the truth, do you agree that in all likelihood the
18 result of this trial would have been different?

19 A It could have been, but you don't necessarily have to
20 be the attacker to get blood on you. You just have to be
21 nearby.

22 Q But my question is, do you think if you had attacked
23 his credibility with what you had as far as those blood
24 samples, and Mr. Smart saying there were two people
25 involved, don't you think the likelihood of it, that the

1 trial result would have been different?

2 **ASST. ATTY. GEN. FRIEDMAN:** Objection, Your Honor,
3 speculation.

4 **THE COURT:** I'll allow him to answer that question if
5 he knows. Both of you are aware of the standard of
6 Strickland v. Washington, and that question, obviously,
7 comes from the standard to establish prejudice. If he knows
8 the answer, I will allow him to answer it. If he doesn't, I
9 understand. If you know the answer, Mr. Bryan, you may
10 answer the last question.

11 **A** I'm not certain.

12 **THE COURT:** He's responded. Proceed.

13 **MR. GOODING:** Give me just a second, Your Honor,
14 please? I don't have anything further for this witness,
15 Your Honor.

16 **THE COURT:** Cross-examination?

17 **CROSS-EXAMINATION**

18 **ASST. ATTY. GEN. FRIEDMAN:**

19 **Q** Mr. Bryan, is it normal for you and Mr. Plexico to sit
20 together and assist each other in selecting a jury?

21 **A** Normally, that's what we do.

22 **Q** In this case, do you recall Mr. Plexico offering to
23 assist you? Did you ask for his assistance?

24 **A** Usually, it's just automatic, unless we're representing
25 co-defendants. This is the only example I know of where

1 that happened.

2 Q In this case, you don't recall whether you just simply
3 asked him and he offered to help you?

4 A Well, usually he offers to help me, but, I mean ---

5 Q You're the one who was actually addressing the Court as
6 far as stating jurors or striking jurors?

7 A I would have been the one to say "seat the juror" or
8 "swear the juror" or "strike the juror, please."

9 Q Did you have the final decision in this?

10 A Yes.

11 Q You mentioned that Mr. Plexico lived in Allendale
12 County; is that right?

13 A Yes.

14 Q And where do you live?

15 A Colleton County.

16 Q And this was an Allendale County trial?

17 A Yes, sir.

18 Q Is that part of the reason that he sits with you on
19 some of these jury selections?

20 A Yes.

21 Q Do you recall if there were any confidences exchanged
22 as far as your client and Mr. Plexico?

23 A I'd be surprised if that happened at jury selection.

24 Q Okay. And I think Mr. Gooding point out Page 15 where
25 you mentioned that Mr. Plexico was sitting by your client

1 during jury selection, asking him most of the questions,
2 doing most of the talking with him. Do you recall what they
3 would have been talking about?

4 **A** I don't recall, but normally that sort of question is,
5 you know, that's someone that's related to so-and-so, or
6 used to work with so-and-so, that kind of . . .

7 **Q** Can you point to any other potential jurors that were
8 either accepted or struck from the jury that Mr. Plexico
9 influenced you on or that he had the final decision on?

10 **A** Well, he wouldn't have had the final decision on any
11 of them, and sometimes I will seat a juror that he doesn't
12 like, but I can't recall whether or not that happened this
13 time. But I would have been the one making the decision as
14 to whether to swear the juror.

15 **Q** Do you recall in this case that you testified that the
16 co-defendant was really the State's main witness as far as
17 testifying against the Applicant? Do you recall if there
18 were any other witnesses that place the Applicant at the
19 scene?

20 **A** If I remember correctly, Deloach was the only witness
21 who identified Mr. Marshall as being at the scene.

22 **Q** Do you recall that the co-defendant's cousin is a 13-
23 year-old?

24 **A** Oh, yeah, the little child. Sean [REDACTED] I think was his
25 name.

1 Q Yes. He testified that they all went to the victim's
2 house to get a soda and the co-defendant and the
3 defendant ---

4 MR. GOODING: Objection, form of the question. I don't
5 think that goes to testimony.

6 THE COURT: Object on what? It's cross-examination; on
7 what grounds?

8 MR. GOODING: Your Honor, he -- in his question, he
9 indicated that Mr. [REDACTED] was with them at the house, and
10 that's not what the testimony is.

11 THE COURT: Well, I understand. I don't want anybody
12 to start quoting testimony. Why don't you ask the question
13 from the transcript and give him, if you have a reference as
14 to the testimony, because you have a copy of it, don't you?

15 ASST. ATTY. GEN. FRIEDMAN: Yes, Your Honor. Let me
16 see if I can find that page.

17 MR. BRYAN: I think it's on, like, Page 50-something.
18 Sean [REDACTED] basically said he was with them that night. They
19 went to the place, they bought a soda.

20 THE COURT: Hold on one second, Mr. Bryan. Let him ask
21 the question. Page 55 is what he's telling you. What page
22 are you on?

23 MR. BRYAN: It starts at 55.

24 Q Mr. Bryan, could you just briefly characterize Sean
25 [REDACTED] testimony as far as whether he was with the

1 Applicant, or the Applicant and co-defendant, that day?

2 **A** He was with them that day or that night, and they went
3 to the victim's apartment and bought, like, a soft drink and
4 then left. Then, later on, Mr. Deloach and Mr. Marshall got
5 rid of Mr. [REDACTED]; I think they sent him home or just told
6 him to get lost and that was about the extent of it, but he
7 puts the two of them together and in the area.

8 **Q** Okay. Let me turn your attention to Page 59, Line 17,
9 see if that goes to what you're testifying about, Sean
10 [REDACTED], sending him home; is that right?

11 **A** Yeah. "They told me to go home because they meant they
12 was gonna do something." "And then what did you do after
13 that?" "Went home."

14 **Q** Mr. Gooding questioned you about the victim, as far as
15 him not being able to identify the defendant. Do you think
16 it helped your client that the victim could not identify
17 him?

18 **A** Oh, yes.

19 **Q** Would you have had any reason to ask the victim
20 specifically if he could identify him?

21 **A** You know, sometimes the other side in a trial will
22 leave a -- kind of bait you a little trap where they don't
23 bring out something in direct so it can blow up in your face
24 in cross-examination. Now, the victim, suddenly, he tells
25 the police at the time, he didn't recognize them; now, at

1 the trial, he's saying, "Yeah, I recognized one." But then
2 doesn't say who it is, doesn't name the person, and it
3 looked like the bait for me to ask him who it was. And that
4 would have pretty much destroyed, you know, asking him,
5 "Well, who did you see?" and if he says, "Cazario Marshall,"
6 that's pretty much damaging for the trial. It's more -- the
7 jury would notice it more.

8 Q I believe you testified that there were two witnesses
9 the Applicant wanted you to speak with, Harry Marshall and
10 Herbert Duncan; is that right?

11 A Uh-huh.

12 THE COURT: You have to say "yes".

13 A Yes, sir.

14 Q And did you speak with both of them?

15 A Yes, sir.

16 Q Were those potential alibi witnesses?

17 A Well, if I remember and I don't have this crossed with
18 another case, but I think he told me that he had money, but
19 he had gotten it from his uncle. I talked with the uncle
20 and the uncle said he had given him, maybe, \$20 or \$40; not
21 the whole 191, and the other was an alibi witness, but
22 alibis, generally, aren't very impressive with the jury
23 unless you just have a really good alibi that if you have
24 gaps, like, "I saw him at 11, saw him at 4:00." "Well, he
25 could have crawled out the window, couldn't he?" "Yeah,"

1 and there goes your alibi. It's not very -- alibis just
2 generally don't work unless you've got a really good alibi
3 like "I was in jail that night," or "I was in the hospital."

4 Q Did he help interview any of the witnesses, contacts?

5 A I don't think so.

6 Q Do you think you had enough time to prepare for trial?

7 A I think so. I did go through all the reports and
8 statements.

9 ASST. ATTY. GEN. FRIEDMAN: I don't have anything
10 further.

11 THE COURT: Redirect?

12 MR. GOODING: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. GOODING:

15 Q Mr. Bryan, how do you know you had enough time to
16 prepare for trial when you told me you wouldn't deny that
17 you just met him the day of the trial -- met with him the
18 day of the trial?

19 A Well, sometimes our clients don't meet with us until
20 the day of the trial. They don't call the office. They
21 don't come by. They don't write. It's just, they show up
22 for Court and the Solicitor says that we're going to try the
23 case, and we talk to them and get their side of the story.

24 Q Well, who's in charge of preparing it for trial?

25 A I am.

1 Q And the alibi issue, if there's some holes in the alibi
2 witness, you need to coordinate the timing with your client
3 to find out whether or not it would be worthwhile in
4 following up with that alibi witness; would it not?

5 A Uh-huh.

6 Q In other words, when the State said it happened, and
7 where it happened, and how far the alibi witness was from
8 the scene; wouldn't all that be important?

9 A It could be.

10 Q And my only reason that I objected to the question a
11 while ago about Mr. [REDACTED] was he never -- he never went to
12 the house with Mr. DeLoach and Mr. Marshall; he was just in
13 the vicinity; was he not?

14 A I think he went to the house with them earlier.

15 Q But the testimony says that he went by himself to get a
16 soda; did it not?

17 A It might have. I can't remember exactly.

18 Q And that was the issue about Chief Williams speaking to
19 -- to Mr. [REDACTED], that was the issue that went upon appeal
20 about it being hearsay when Chief Williams indicated that as
21 a result of talking to Mr. [REDACTED], he went and arrested Mr.
22 Marshall and Mr. DeLoach; is that correct?

23 A I believe so.

24 Q But he never -- Mr. Williams never indicated to what
25 Mr. [REDACTED] said. I think -- I think you objected to that

1 being hearsay and the judge wouldn't allow it; but the
2 Solicitor said as a result of your investigation, or talking
3 to Mr. [REDACTED], we arrested Mr. DeLoach and Mr. Marshall; is
4 that the issue that went up on appeal?

5 **A** I believe so.

6 **Q** And what is -- what is the -- you said that y'all
7 usually assist each other in striking juries, and I think
8 your answer was "assistance is normal, unless we represent
9 co-defendants."

10 **A** Right.

11 **Q** And this is not just representing co-defendants. This
12 is representing a co-defendant that's testifying against
13 your guy. That's even worse; is it not?

14 **A** Yes, sir. Well, I mean, if we're representing co-
15 defendants in a joint trial we would both be there of
16 course, but -- but, like, one of them's at trial and of them
17 is not, then, normally, we don't. I mean, this is the only
18 example I can think of where that happened.

19 **Q** And you have an obligation to look into what position
20 the co-defendant is taking, especially, when Steve Plexico
21 is representing them; do you not?

22 **A** Yes, sir.

23 **Q** And lastly, on this issue, you said you were in charge
24 of the jury selection. You said you were in charge of
25 saying whether to take the juror. How would you be in

1 charge if you didn't know anything about the jury, and
2 that's why you had Mr. Plexico there?

3 **A** Well, the main thing I go by is the way they look at my
4 client. If they give him an ugly look, I want to strike
5 that juror. Another is the type of occupation they have or
6 just the way they stand. I mean, little things can make a
7 big difference. Now, if somebody is related to somebody or
8 if somebody worked with somebody, then, you know, Mr.
9 Plexico can be of assistance to me in that. But I've
10 basically found that there's certain occupations you don't
11 want on a jury as a criminal defense lawyer. They might
12 vote for you, but they probably won't.

13 **Q** I understand that, Mr. Bryan, but when Mr. Plexico is
14 seated by your client and having an open discussion during
15 the selection process, how do you have privy to the
16 information that they're discussing, and then you make that
17 determination as to whether a juror is sworn or not?

18 **A** I guess they would tell me.

19 **MR. GOODING:** I don't have anything further.

20 **THE COURT:** Recross, limited to redirect?

21 **ASST. ATTY. GEN. FRIEDMAN:** Nothing, Your Honor.

22 **THE COURT:** As to this witness, did either one of you
23 subpoena him?

24 **ASST. ATTY. GEN. FRIEDMAN:** No, sir.

25 **MR. GOODING:** I did, Your Honor.

1 **THE COURT:** May he be excused, insofar as the
2 Applicant's concerned?

3 **MR. GOODING:** Yes, Your Honor.

4 **THE COURT:** How about the State?

5 **ASST. ATTY. GEN. FRIEDMAN:** Yes, Your Honor.

6 **THE COURT:** J. D., you may step down and you are
7 excused from the courtroom.

8 **MR. BRYAN:** Thank you, Your Honor.

9 **THE COURT:** Call your next witness, Mr. Gooding.

10 **MR. GOODING:** Your Honor, we would call Mr. Plexico.

11 **THE COURT:** Come around and be sworn.

12 WHEREUPON, MR. STEVE PLEXICO WAS DULY SWORN.

13 **THE COURT:** Have a seat on the witness stand. State
14 your full name for the record.

15 **MR. PLEXICO:** Steve Plexico, P-L-E-X-I-C-O.

16 **THE COURT:** Your witness, Counsel.

17 **DIRECT EXAMINATION**

18 **MR. GOODING:**

19 **Q** Mr. Plexico, you've heard Mr. Bryan testify that he was
20 your assistant back in the time that he represented Mr.
21 Marshall?

22 **A** Yes, he was a contract attorney with the office.

23 **Q** And you will agree with me that you were also
24 representing Mr. DeLoach, the co-defendant, at the time?

25 **A** Yes, sir.

1 Q And do you remember anything about when you first found
2 out that your client was going to be testifying against Mr.
3 Bryan's client?

4 A I do not specifically remember that. It did not, I'm
5 so sorry, it did not dawn on me that he was actually
6 testifying against Mr. Bryan's client. For some reason,
7 until Solicitor Rowell pointed it out to me at that time.

8 Q Solicitor Rowell?

9 A Solicitor Rowell came up and said, "Do you realize your
10 client is testifying against John's client?"

11 Q What does Solicitor Rowell -- what does she have to do
12 with it?

13 A She was in -- Tameka Legette was actually trying the
14 case, but she came over and pointed that out. She was the
15 Solicitor in charge.

16 Q And who came over and pointed it out? Ms. Rowell?

17 A As I recall, it was Ms. Rowell.

18 Q And when was that in relation to ---

19 A When the jury -- it was sometime during the process,
20 and I cannot tell you when, but at that time ---

21 Q What process?

22 A The jury selection process?

23 Q On Mr. Marshall?

24 A Right.

25 Q Had your client pled guilty or gone to trial yet?

1 **A** No, I think he did, in fact, the next day.

2 **Q** The next day?

3 **A** Yes.

4 **Q** And you had a deal worked out for him?

5 **A** I think it was the, you know, "hope that good things
6 happen to people who help the State" kind of a deal. I
7 don't know if it was a specific deal, to my memory. I did
8 not review the file here to come here. So I'm sorry,
9 because I didn't put it together that, you know . . .

10 **Q** But from your recollection, you remember that they had
11 offered him a deal if he would testify against Mr. Marshall?

12 **A** They were withholding sentencing. They weren't
13 interested in pursuing him if they got Mr. Marshall.

14 **Q** So, actually, your client and Mr. Marshall came up in
15 the same term?

16 **A** Yes.

17 **Q** And he went to trial and your client pled guilty the
18 very next day?

19 **A** Right.

20 **Q** And were you present during the trial when Mr. Deloach
21 testified against Mr. Marshall?

22 **A** I don't remember if I was in the courtroom at that time
23 or not.

24 **Q** Do you normally allow a client to testify without you
25 being present when you know his case is coming up that same

1 term?

2 **A** Well, I don't remember if I was in there or not, and
3 there would not -- I don't think it would be relevant if I
4 was in there anyway, because, you know, I don't want to --
5 I'm not in there for him to be looking at me and take away,
6 actually, from the credibility of his testimony.

7 **Q** But you do remember assisting Mr. Bryan in the
8 selection of Mr. Marshall's jury?

9 **A** Yes.

10 **Q** And would you agree with me that that's not normal?

11 **A** I would agree, yes, sir.

12 **Q** Would you agree with me that you shouldn't have done
13 it?

14 **A** I agree that it should -- that would -- would appear
15 improper, yes, sir. "Yes" is the answer to your question.

16 **Q** Did it not -- did it not appear -- I mean, when was it
17 that you realized that, "Whoa, whoa, I got a -- I got a
18 serious conflict of interest here"?

19 **A** When Solicitor Rowell pointed that out.

20 **Q** Was that during the selection process or prior?

21 **A** During the selection process.

22 **Q** What did you do when she did that?

23 **A** I quietly eased off.

24 **Q** You did what?

25 **A** I quietly eased off and went out the side door, if I

1 remember correctly.

2 Q Quietly eased off?

3 A I got up and left. I went out the side door.

4 Q Had you already selected the jury?

5 A No, he had not finished selecting the jury, as I
6 recall.

7 Q Well, if that's not noted -- wouldn't the judge, if you
8 were in there selecting a jury, you think the judge would
9 have noted it on the transcript that you left?

10 A No, I'm not the lead attorney.

11 Q Well, you were seated by Mr. Marshall in selecting ---

12 A I was seated on one side. I think he was in the middle
13 and Mr. Bryan was at the lead chair, as I recall.

14 Q So you participated in part of the jury selection and
15 then you realized you had a conflict and then you left?

16 A Yes, sir.

17 Q Did you ever share any information with Mr. Bryan
18 concerning the substance of Mr. Deloach's testimony and what
19 that was going to mean to his client?

20 A No, I don't -- I don't recall that.

21 Q What kind of deal did your client get?

22 A He wound up with a YOA when it was all said and done.

23 Q Anything in addition to YOA? Any conditions on the
24 YOA?

25 A I don't recall.

1 Q So you haven't even looked at the file?

2 A I haven't looked at the file or talked with the
3 Attorney General about that. He said he had a YOA.

4 Q Would you agree with Mr. Bryan that his performance
5 was deficient on allowing you to help strike a jury in this
6 case?

7 A I think it would appear so.

8 THE COURT: You think it was what?

9 A It would appear so. I had no evil intent. I was only
10 trying to help.

11 Q That's not the issue, Mr. Plexico.

12 A I understand.

13 THE COURT: Ask a question. Go ahead.

14 Q And is that -- that -- what happened here is not
15 reasonable under professional norms, is it?

16 A No, sir. You are correct, sir.

17 Q And you heard me asking questions about it would be
18 impossible for me to establish on behalf of Mr. Marshall
19 whether he suffered any prejudice here. Would you ever do
20 this again?

21 A No. No. Not at all.

22 MR. GOODING: I don't have anything further, Your
23 Honor.

24 THE COURT: Cross-examination?

25 ASST. ATTY. GEN. FRIEDMAN: Briefly.

CROSS-EXAMINATION

1
2 **BY ASST. ATTY. GEN. FRIEDMAN:**

3 **Q** Mr. Plexico, do you live in Allendale County?

4 **A** Yes, I did at the time; I do now.

5 **Q** And does Mr. Bryan live in that county as well?

6 **A** No, he does not.

7 **Q** How long have you lived there?

8 **A** On and off since about 2000, thereabouts.

9 **Q** Would you agree with Mr. Bryan that it was normal for
10 you all to assist each other in jury selection, typically?

11 **A** Yes.

12 **Q** Who had the final say in this particular jury
13 selection?

14 **A** Mr. Bryan.

15 **Q** In the transcript, Page 15, it appears that you were
16 actually sitting at the table with the Applicant?

17 **A** Yes, sir.

18 **Q** Do you recall what you were discussing?

19 **A** No, what I typically do is, like, if you used to throw
20 rocks at the guy or the sister and beat him up in school,
21 or, you know, you used to steal apples out of the tree, you
22 need to tell us that, otherwise don't say anything. Okay?
23 And then, what I play is like assistant, because we don't
24 have that much time to do all the things that are necessary
25 during a jury selection -- individual jury selection

1 process. The process is actually quite complex. What I do
2 is I turn to write on the page while he's sizing up the
3 juror, so we can then compare notes. You don't always have
4 the same thing written down, because you know people mutter
5 and mumble and that kind of thing, and then you need to
6 transmit what the client is saying about that person. You
7 know, "They grew up in my neighborhood" or "They never liked
8 my father's side of the family" or whatever it is, and then
9 you have to put all these things together as you're sizing
10 up whether or not the person is glaring at you or whatever.
11 Actually, it's a lot of things to do and it's quite complex.
12 It certainly helps to have an assistant there.

13 **Q** Do you recall if any confidences were exchanged between
14 you or Mr. Bryan relating to the Applicant?

15 **A** No, not about that. We were only there for the jury.
16 Nothing about the case. I was only there for the jury.

17 **ASST. ATTY. GEN. FRIEDMAN:** I have nothing further,
18 Your Honor.

19 **THE COURT:** Redirect?

20 **MR. GOODING:** Just one.

21 **REDIRECT EXAMINATION**

22 **BY MR. GOODING:**

23 **Q** Mr. Plexico, I don't understand how you would have
24 known that you didn't share any confidences with Mr. Bryan,
25 if you didn't even know that you had a conflict until you

1 had selected a jury?

2 **A** I wasn't there to talk to him about the -- about the
3 case.

4 **Q** I'm talking about prior to that date; during your
5 entire representation of Mr. DeLoach and Mr. Bryan's
6 representation of Mr. Marshall.

7 **A** I don't recall ever discussing anything about the file,
8 ever. I don't recall any conversation about this case with
9 Mr. Bryan.

10 **MR. GOODING:** That's all I have, Your Honor.

11 **THE COURT:** Recross, limited to redirect.

12 **ASST. ATTY. GEN. FRIEDMAN:** Nothing further, Your
13 Honor.

14 **THE COURT:** As to this witness, may he be excused, as
15 far as the Applicant is concerned?

16 **MR. GOODING:** No objection, Your Honor.

17 **THE COURT:** From the State?

18 **ASST. ATTY. GEN. FRIEDMAN:** No objection, Your Honor.

19 **THE COURT:** Mr. Plexico, you may step down and you are
20 excused from the courtroom. Mr. Gooding, call your next
21 witness.

22 **MR. GOODING:** I have discussed with Mr. Marshall his
23 right to testify and he has agreed that he will not. We
24 discussed it earlier.

25 **THE COURT:** Would you like for me to inquire of him?

1 **MR. GOODING:** Please.

2 **THE COURT:** Mr. Marshall, would you come around to the
3 microphone for me, please, sir; right here at the clerk's
4 desk. Mr. Padgett is going to swear you right there. Raise
5 your right hand as best you can.

6 **WHEREUPON, THE APPLICANT, MR. CAZARIO MARSHALL IS DULY**
7 **SWORN.**

8 **THE COURT:** Step over to this one, it's easier for you.
9 You don't have to bend down into it. Just speak up. State
10 your full name for the record.

11 **APPLICANT, MR. MARSHALL:** Cazarius Marshall.

12 **THE COURT:** Mr. Marshall, we've reached a point in your
13 post-conviction relief proceeding where you may testify in
14 your own behalf. I'm advised by Mr. Gooding that you do not
15 wish to testify in your behalf in this post-conviction
16 relief proceeding; is that correct?

17 **APPLICANT, MR. MARSHALL:** Yes, sir.

18 **THE COURT:** Now, Mr. Gooding can give you advice as
19 your attorney, but you understand the decision as to whether
20 or not you testify is yours alone and not your attorneys; do
21 you understand that?

22 **APPLICANT, MR. MARSHALL:** Yes, sir.

23 **THE COURT:** And no one can make you testify. It's
24 entirely up to you; do you understand that?

25 **APPLICANT, MR. MARSHALL:** Yes, sir.

1 **THE COURT:** Is it your decision not to testify in the
2 trial of this case?

3 **APPLICANT, MR. MARSHALL:** Yes, sir.

4 **THE COURT:** Did anyone force you into that decision?

5 **APPLICANT, MR. MARSHALL:** No, sir.

6 **THE COURT:** You're doing that of your own free will and
7 your own accord?

8 **APPLICANT, MR. MARSHALL:** Yes, sir.

9 **THE COURT:** And it is your decision?

10 **APPLICANT, MR. MARSHALL:** Yes, sir.

11 **THE COURT:** Thank you very much. You may return to
12 your seat. With that, Mr. Gooding, does the Applicant rest?

13 **MR. GOODING:** We do, Your Honor.

14 **THE COURT:** Mr. Friedman, I'd be happy to hear from the
15 State. Does the State wish to present any evidence in
16 connection with this hearing?

17 **ASST. ATTY. GEN. FRIEDMAN:** We do not, Your Honor.

18 **THE COURT:** All right. Let me tell you that I think
19 you will find some interesting law. I'll give you the site.
20 This was a recent case by the Supreme Court. It was decided
21 February the 16th, 2010. Interestingly, it was Judge
22 Burch's case. This is Opinion 26773, Smith v. The State of
23 South Carolina, Larry Smith v. State of South Carolina. I
24 want to tell you both, because I'm going to request proposed
25 orders, but I want to tell you what I believe is the correct

1 statement of the law, and I'll hear from you if you
2 disagree, although this is a recent case.

3 Obviously, Mr. Gooding, the burden is on your client,
4 the Petitioner, or the Applicant, to prove the allegations
5 in a PCR Application. I know you know that. To establish a
6 claim of ineffective assistance of counsel, the PCR, or
7 post-conviction relief applicant, must prove, one, that
8 counsel's performance fell below an objective standard of
9 reasonableness; and two, that counsel's deficient
10 performance prejudiced the defendant's case; both of y'all
11 are aware of that standard, because it comes directly from
12 Strickland v. Washington which is the United States Supreme
13 Court case.

14 The Court goes on to say, according to Strickland, that
15 an error by counsel, even if professionally unreasonable,
16 does not warrant setting aside the judgment of the criminal
17 proceeding if the error had no effect on the judgment.

18 To establish prejudice, the defendant is required to
19 show -- or the Applicant, that there is a reasonable
20 probability that but for counsel's unprofessional errors,
21 the result of the proceeding would have been different. A
22 reasonable probability is a probability sufficient to
23 undermine confidence in the outcome.

24 Moreover, the Court points out in this case, "No
25 prejudice occurs, despite trial counsel's deficient

1 performance, where there is otherwise overwhelming evidence
2 of the defendant's guilt."

3 I point that out to you because I believe that's the
4 standard by which the Court should judge the allegations in
5 this case; do you agree, Mr. Gooding?

6 **MR. GOODING:** I do agree, Your Honor.

7 **THE COURT:** Do you agree, Mr. Friedman?

8 **ASST. ATTY. GEN. FRIEDMAN:** Yes, Your Honor.

9 **THE COURT:** Well, then, I think you both might want to
10 take a look. Now, in that case, you're going to find,
11 obviously, that the facts are different. I'm not telling
12 you it's an identical fact situation. It was a question of
13 trial counsel's failure to object to whether there was valid
14 trial strategy, although there is a very interesting
15 discussion when Judge Kittredge wrote the Opinion, and I
16 think it's a correct statement of the law; I'm certainly
17 bound by it.

18 **MR. GOODING:** Your Honor, is that Smith v. State that
19 you just ---

20 **THE COURT:** Larry William Smith -- there are so many
21 Smiths. Let me help you, it's Larry William Smith v. State
22 of South Carolina. It was filed February the 16th, 2010,
23 and it is Opinion Number 26773. So it came out about a
24 month and a half ago, almost two months ago, and it is Larry
25 William Smith v. State of South Carolina. It is an appeal

1 from Darlington County. Paul Burch was the judge. And I
2 quoted directly from that case. They cite, in addition to
3 Strickland, obviously, they cite the South Carolina case,
4 which you both are familiar with, Sherry v. The State, which
5 is 386, S.E. 2d, 624. And they also cite another South
6 Carolina case in there; it is Grossmon v. Catoe, 680, S.E.
7 2d, 5, which is a 2009 case. And that is a case in which,
8 even if the -- as to whether or not even if trial counsel if
9 deficient, prejudice does not occur where there is otherwise
10 overwhelming evidence of the defendant's guilt.

11 I say that to you because Rules of PCR, or the standard
12 by which a PCR Application is to be judged, is something
13 that we both should be on the same page on. Having said
14 that, I would be remiss as a judge if I did not tell you
15 both that I have grave concerns here in whether or not one
16 counsel striking a jury for a co-counsel, where the
17 counsel's client testifies against the co-defendant doesn't
18 undermine the confidence in our judicial system and in
19 trials.

20 Having said that, I will expect you both to prepare
21 proposed orders in that regard. I don't think I need to
22 hear argument on this because I think I am very familiar
23 with the facts giving rise to Mr. Gooding ---

24 **MR. GOODING:** Judge, If I may, I'm assuming that you're
25 going to say 10 days. I'm going to be out of the office

1 next week.

2 **THE COURT:** I'll give you additional week. How long
3 will you be out?

4 **MR. GOODING:** I just need, maybe, an extra week. I'm
5 going to be out most of the week next week.

6 **THE COURT:** Mr. Friedman, I'm obviously going to give
7 you more time, too. He's going to be out. If I give him --
8 he wants another week, so I might as well say 21 days to
9 make sure. Does that suit you, Mr. Friedman?

10 **ASST. ATTY. GEN. FRIEDMAN:** Yes, Your Honor.

11 **THE COURT:** This is a matter that I want good Orders on
12 that I want to look at extremely carefully in light of the
13 testimony.

14 **MR. GOODING:** Thank you, Your Honor.

15 **THE COURT:** All right. Twenty-one days from today.
16 P.O. Drawer 470, Walterboro, 29488. Copy opposing counsel,
17 include a self-addressed, stamped envelope with sufficient
18 postage affixed thereto for the return of the proposed
19 order.

20 So you'll know, I have in my packet, the Record on
21 Appeal, the Court of Appeals Decision, I think I've
22 published these; the Remittitur, the Application, the
23 Return, his criminal record, his record from Department of
24 Correction, the Anders Brief, from the Appellate, and the
25 Indictment. Is there anything else that either side feels

1 that I need? I've given you the latest PCR case, I think
2 that I have, and I think is the standard by which this Court
3 needs to look at this. Anything else that the Applicant
4 feels that the Court needs that I don't have in my packet?

5 **MR. GOODING:** Nothing from the Applicant.

6 **THE COURT:** From the State of South Carolina?

7 **ASST. ATTY. GEN. FRIEDMAN:** Nothing else, Your Honor.

8 **THE COURT:** All right. In that case, I look forward to
9 getting your proposed Orders. Any questions about the
10 proposed order procedure from either counsel?

11 **MR. GOODING:** None from us, Your Honor.

12 **ASST. ATTY. GEN. FRIEDMAN:** None, Your Honor.

13 **THE COURT:** I want to thank you both for your patience.
14 I appreciate this very much. I look forward to getting your
15 proposed Orders. The record is now closed as to this
16 hearing.

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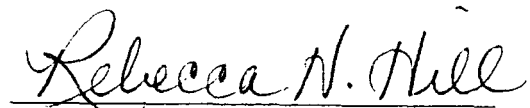
STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department 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 in the PCR Hearing of the captioned case, in the Court of Common Pleas for Colleton County, South Carolina, on the 7th day of April 2010.

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

June 1st, 2010



Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF ALLENDALE	)	C/A#: 2007-CP-03-361
	)	
CAZARIO MARSHALL,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	ORDER
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
DEFENDANT,	)	
_____	)	

#1
PMB

This matter came before the Court for an evidentiary hearing on April 7, 2010, upon Cazario Marshall's Application for Post-Conviction Relief. Marshall was present and represented by H. Woodrow Gooding, Esquire, and Matthew Friedman, Esquire, appeared on behalf of the State.

BACKGROUND

In May 2004, Marshall was indicted by the Allendale County Grand Jury for burglary- 1st degree (2004-GS-03-0069), assault and battery of a high and aggravated nature (ABHAN) (2004-GS-03-0070), armed robbery (2004-GS-03-0071), kidnapping (2004-GS-03-0125), and possession of a firearm during commission of certain crimes (2004-GS-03-0130). John D. Bryan, Esquire, of the Public Defender's Office was appointed to represent the indigent defendant. On August 25, 2004, Marshall proceeded to trial with Mr. Bryan as his counsel, and the jury found him guilty on all charges. The Honorable Paul M. Burch sentenced Marshall to life for burglary - 1st degree, thirty (30) years for armed robbery, thirty (30) years for kidnapping, ten (10) years for ABHAN, and five (5) years for possession of a firearm - each

sentence to run concurrently. Marshall filed an Appeal that was dismissed by the South Carolina Court of Appeals in State v. Marshall, Op. No. 2007-UP-034 (S.C. Ct. App. filed January 19, 2007). The Remittitur was issued on April 20, 2007. Marshall filed his Application for Post-Conviction Relief (PCR) on December 31, 2007.

In his application for PCR, Marshall claims that his trial counsel rendered ineffective assistance of counsel on the following grounds:

- 1) Trial counsel failed to introduce DNA evidence to impeach the State's key witness against Marshall;
- 2) Trial counsel failed to properly cross-examine the victim; and
- 3) Trial counsel failed to properly poll the jury by allowing defense counsel for the State's key witness to poll and participate in striking Marshall's jury.

#2
P.B.
At the PCR hearing, Marshall called two witnesses to testify, John D. Bryan and Steve Plexico. Mr. Bryan testified that he was appointed to represent Marshall on the above-referenced charges in or around March 2004. Steve Plexico was appointed to represent the co-defendant, Quincy Deloach, who was charged along with Marshall with the same charges. At all relevant times herein, Mr. Bryan and Mr. Plexico were employed by the Public Defender's office -- Mr. Plexico as public defender and Mr. Bryan as assistant public defender. Mr. Bryan was aware that Mr. Plexico had been appointed to represent Marshall's co-defendant. Mr. Bryan also knew prior to trial that Marshall's co-defendant would be testifying against Marshall at the trial. Even with such knowledge, Mr. Bryan allowed Mr. Plexico to strike Marshall's jury. PCR Transcript, p. 13. In fact, Mr. Plexico was seated next to Marshall during the jury selection. Id. at 15. According to the trial transcript, Mr. Bryan responded to a question from the Court as follows: "Mr. Plexico was sitting by my client during the jury selection process, so he was asking him most of the

questions and doing most of the talking with him.” Id. at 13. Moreover, Mr. Deloach was the only witness who identified Marshall as the assailant, Id. at 14, and Mr. Bryan admitted that “Mr. Plexico’s client single-handedly convicted [his] client.” Id. Furthermore, Mr. Plexico testified that his client (Marshall’s co-defendant) had agreed to help the State by testifying against Marshall because the State was “withholding sentencing” and was not “interested in pursuing [Deloach] if they got Marshall.” Id. at 38.

Marshall argues that he received ineffective assistance of counsel. In an action for post-conviction relief, the applicant bears the burden of proving the allegations in the PCR application. Bannister v. State, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). “To establish a claim of ineffective assistance of counsel, the PCR applicant must prove:

#3
Pmk
(1) counsel’s performance fell below an objective standard of reasonableness; and (2) counsel’s deficient performance prejudiced the defendant’s case.” Smith v. State of S.C., 2010 S.C. LEXIS 102, Opinion No. 26773 (S.C. Feb. 16, 2010)(citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 674 (1984)(other citation omitted). “To establish prejudice, the defendant is required ‘to show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability **sufficient to undermine confidence in the outcome**’” Id. (emphasis added). “Moreover, no prejudice occurs, despite trial counsel’s deficient performance, where there is otherwise overwhelming evidence of the defendants’ guilt.” Id. (citing Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009).

In a PCR case, trial “[c]ounsel’s performance is accorded a favorable presumption, and [the court] proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance

and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984)). Here, Mr. Bryan’s performance fell below an objective standard of reasonableness. Not only did Mr. Bryan proceed in his representation of Marshall with knowledge that Steve Plexico was representing the co-defendant who would testify against Marshall, but Mr. Bryan also allowed Mr. Plexico to strike Marshall’s jury. This glaring conflict of interest clearly shows that Mr. Bryan did not exercise reasonable professional judgment. Moreover, Mr. Bryan conceded in his testimony that his performance as an attorney was deficient and unreasonable.

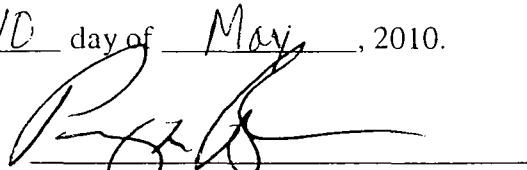
#4
Pnb
The Court further finds that Mr. Bryan’s deficient performance prejudiced Marshall’s case. At Marshall’s trial, Marshall’s co-defendant was the only witness who identified Marshall as the assailant. The co-defendant’s testimony was devastating to Marshall’s case. Even Mr. Bryan admits that the co-defendant’s testimony was “essentially [the State’s] case,” PCR Transcript, p. 14, line 6) and that “Mr. Plexico’s client single-handedly convicted [his] client.” Id. at lines 16-18. Here, the outcome of Marshall’s case hinged on the co-defendant’s identification of Marshall as the assailant, and “there was otherwise an absence of overwhelming evidence of [Marshall’s] guilt.” Smith v. State, 2010 S.C. LEXIS 102. Mr. Plexico, counsel for the co-defendant, has acknowledged that his client was testifying against Marshall under the belief that the State was not “interested in pursuing [Deloach] if they got Marshall.” PCR Transcript, p. 38, lines 12-13. Without a doubt, it was in Mr. Plexico’s client’s best interest for Marshall to be convicted – a conviction for Marshall meant freedom for Deloach. This court simply cannot ignore the severity of the conflict of interest that arose out of Mr. Bryan’s allowing Plexico to strike Marshall’s jury when Mr. Bryan knew that Plexico’s client would be

the State's key witness. This error in judgment creates a reasonable probability sufficient to significantly undermine the Court's confidence in the outcome of Marshall's trial. Moreover, there was no other overwhelming evidence of Marshall's guilt.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be granted;
2. That the Applicant is entitled to a new trial; and
3. That the Respondent has 30 days to appeal this Order.

AND IT IS SO ORDERED this 10 day of May, 2010.



Perry M. Buckner
Presiding Judge
14th Judicial Circuit

Walterboro, South Carolina.

128

WITNESSES

Toby Smart

Chief John R. Sullivan

Martin Williams

ARREST WARRANT #:

D701645

Arrested on February 07, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

James Priest
Grand Jury

VERDICT

*Guilty**\$*

Foreman:

Shirley Whitten
Petit JuryDate: *8/25/04*

DOCKET #: 04GS03-0069

THE STATE OF SOUTH CAROLINA
County of Allendale

COURT OF GENERAL SESSIONS

Term: May, 2004

THE STATE

vs.

Cazario Antrone Marshall

INDICTMENT FOR

0079

BURGLARY IN THE FIRST DEGREE

(DWELLING) 16-11-311(A)(1)(A)

129

STATE OF SOUTH CAROLINA)
County of Allendale)

INDICTMENT #04GS03-0069

At a Court of General Sessions, convened on May 10, 2004,
the Grand Jurors of Allendale County present upon their oath:

COUNT: BURGLARY IN THE FIRST DEGREE
(DWELLING) 16-11-311(A)(1)(A)

That Cazario Antrone Marshall did in Allendale County on or about February 06, 2004, willfully and unlawfully enter the dwelling of Toby Smart without consent and with the intent to commit a crime therein and the defendant or another participant in the crime was armed with a deadly weapon or explosive and that the entering did occur in the nighttime.

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

SOLICITOR

Randolph Mundong

130

WITNESSES

Toby Smart

Chief John R. Sullivan

Marvin Williams ✓

DOCKET #: 04GS03-0070

THE STATE OF SOUTH CAROLINA
County of Allendale

COURT OF GENERAL SESSIONS

Term: May, 2004

THE STATE

vs.

Cazario Antrone Marshall

ARREST WARRANT #:

G688263

Arrested on February 09, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

Joanna D. Priester
Grand Jury

VERDICT

Guilty

Foreman:

Shirley L. Smith
Petit JuryDate: *8/25/04*

INDICTMENT FOR

0013

ASSAULT AND BATTERY OF A HIGH AND

AGGRAVATED NATURE (17-25-30)

131

STATE OF SOUTH CAROLINA)
) **INDICTMENT #04GS03-0070**
County of Allendale)

At a Court of General Sessions, convened on May 10, 2004,
the Grand Jurors of Allendale County present upon their oath:

COUNT: **ASSAULT AND BATTERY OF A HIGH AND
 AGGRAVATED NATURE (17-25-30)**

That Cazario Antrone Marshall did in Allendale County on or about February
06, 2004, commit an assault and battery upon the victim, Toby Smart,
constituting an unlawful act of violent injury to the person of the said
victim, accompanied by circumstances of aggravation, to wit: the infliction of
serious bodily injury and the use of a deadly weapon by striking Toby Smart in
the face with a gun, and that there is great disparity in ages between the
participant(s) and said victim.

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

SOLICITOR

Randolph Mundango

WITNESSES

Toby Smart

Chief John R. Sullivan

John R. Sullivan

ARREST WARRANT #:

G688258

Arrested on February 09, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

Joanne Miller
Grand Jury

VERDICT

Guilty

Foreman:

Shirley Whitte
Petit JuryDate: *8/25/04*

DOCKET #: 04GS03-0071

THE STATE OF SOUTH CAROLINA
County of Allendale

COURT OF GENERAL SESSIONS

Term: May, 2004

THE STATE

vs.

Cazario Antrone Marshall

INDICTMENT FOR

0139

ARMED ROBBERY

(16-11-330)

133²²⁴

STATE OF SOUTH CAROLINA)
)
County of Allendale) **INDICTMENT #04GS03-0071**

At a Court of General Sessions, convened on May 10, 2004,
the Grand Jurors of Allendale County present upon their oath:

COUNT: **ARMED ROBBERY**
 (16-11-330)

That Cazario Antrone Marshall did in Allendale County on or about February
06, 2004, while armed with a deadly weapon, to wit: a gun, feloniously take
from the person or presence of the victim, Toby Smart, by means of force or
intimidation goods or monies of said victim, such goods or monies being
described as follows: appproximately \$400.00 in U.S. Currency.

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

SOLICITOR

Randolph M. Mendenhall

134

WITNESSES

Toby Smart

Marvin Williams ✓

ARREST WARRANT #:

ALL0179

Arrested on February 09, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

Joanna D. Preston
Grand Jury

VERDICT

Guilty

Foreman:

Shirley Hutton
Petit Jury

Date: 8/25/04

DOCKET #: 04GS03-0125

THE STATE OF SOUTH CAROLINA
County of Allendale

COURT OF GENERAL SESSIONS

Term: May, 2004

THE STATE

vs.

Cazario Antrone Marshall

INDICTMENT FOR

0095

KIDNAPPING

(16-3-910)

135

STATE OF SOUTH CAROLINA)
County of Allendale)

INDICTMENT #04GS03-0125

At a Court of General Sessions, convened on May 10, 2004,
the Grand Jurors of Allendale County present upon their oath:

COUNT:**KIDNAPPING
(16-3-910)**

That Cazario Antrone Marshall did in Allendale County on or about February 06, 2004, did wilfully and unlawfully seize, confine, inveigle, decoy, abduct, or carry away one Toby Smart, without authority of law.

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

SOLICITOR

Randolph M. Mendenhall

136

WITNESSES

Chief John R. Sullivan

Marvin Williams ✓

ARREST WARRANT #:

ALL0184

Arrested on February 09, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

James D. Puster
Grand Jury

VERDICT

Guilty

Foreman:

Shereel Witter
Petit Jury
Date: 8/25/04

DOCKET #: 04GS03-0130

THE STATE OF SOUTH CAROLINA
County of Allendale

COURT OF GENERAL SESSIONS

Term: May, 2004

THE STATE

vs.

Cazario Antrone Marshall

INDICTMENT FOR

0082

POSSESSION OF FIREARMS DURING
COMMISSION OF CERTAIN CRIMES (16-23-490)

137

STATE OF SOUTH CAROLINA)
) **INDICTMENT #04GS03-0130**
County of Allendale)

At a Court of General Sessions, convened on May 10, 2004,
the Grand Jurors of Allendale County present upon their oath:

COUNT: POSSESSION OF FIREARMS DURING
 COMMISSION OF CERTAIN CRIMES (16-23-490)

That Cazario Antrone Marshall did in Allendale County on or about February
06, 2004, while committing the violent crime of Armed Robbery and Burglary
First Degree have in his possession and/or did visibly display a firearm during
the commission of the aforementioned crime.

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

SOLICITOR

Randolph M. Mendenhall

126556
229

INMATE RECORDS OFFICE
2004 AUG 31 AM 9:52

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Allendale
STATE VS.
Cazario Antrone Marshall

INDICTMENT/CASE#: 04 - GS - 03 - 0069

AKA: _____
Race: B Sex: M Age: _____
DOB: 04/03/83 SS#: _____
Address: _____
City, State, Zip: Fairfax, SC 29827
DL# _____ SID# _____

A/W#: D 101645
Date of Offense: 02/06/04
S.C. Code §: 16-11-311
CDR Code #: 010171
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Rape 1st degree
in violation of § 16-11-311 A of the S.C. Code of Laws, bearing CDR Code # 010171
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

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

Solicitor _____ Defendant _____ Attorney for Defendant _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

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: _____

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

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____

PRESIDING JUDGE _____
Judge Code: 1 1 4 1 0
Sentence Date: 8/25/04

STATE OF SOUTH CAROLINA

JUDICIAL BRANCH OFFICE

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Allendale

2004 AUG 31 AM 9:52

INDICTMENT/CASE#:

Cazario A. Marshall

04 -GS- 03 - 0070

AKA:

A/W#: G688263

Race:

Sex:

Age:

Date of Offense:

DOB:

04/03/83 SS#:

S.C. Code §:

Address:

CDR Code #:

City, State, Zip

Fairfax, SC 29827

DL#

SID#

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Assault & Battery of High & Aggravated Nature

in violation of § 16-1-20 of the S.C. Code of Laws, bearing CDR Code # 010111

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and/or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$_____

\$14-1-206 (Assessments 107.5%) \$_____

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

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

\$56-5-2995 (DUI Assessment) \$12 \$_____

\$ 35.13 (Public Def/Prob) \$500 \$_____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$_____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$_____

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

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

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

TOTAL \$_____

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: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

Clerk of Court/ Deputy Clerk

Court Reporter: _____

STATE OF SOUTH CAROLINA

INMATE RECORDS OFFICE

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Allendale

2004 AUG 31 AM 9:52

INDICTMENT/CASE#:

04 GS-03 - 0071

AKA:

Race:

Sex:

Age:

DOB:

04/03/83

SS#:

Address:

City, State, Zip

Fairfax, SC 29827

DL#

SID#

AW#:

G688258

Date of Offense:

02/06/04

S.C. Code §:

16-11-330(A)

CDR Code #:

0 1 1 1 3 1

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

ARMED ROBBERY

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code #

0 1 1 3 1

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

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: _____☐ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

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

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

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

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

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$
	\$
\$100	\$
\$100	\$
\$12	\$
\$500	\$
\$25	\$
\$100	\$
\$50	\$
\$40/ea	\$
	\$

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: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

INMATE RECORDS OFFICE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Allendale

2004 AUG 31

AM 9:52

INDICTMENT/CASE#:

VS.

Cazario Antrone Marshall

A/W#:

GS-

03

0125

Date of Offense:

02/06/04

S.C. Code §:

16-3-910

CDR Code #:

010191

AKA:

Race:

Sex:

Age:

21

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

☐ CASE RESTORED

SENTENCE

☐ PLEA

☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 010191

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

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: _____

☐ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

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: _____

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

PRESIDING JUDGE

Judge Code:

Sentence Date:

8/25/04

STATE OF SOUTH CAROLINA

JUDICIAL RECORDS OFFICE

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Allendale

VS.

Cazario Marshall

2004 AUG 31 AM 9:52

INDICTMENT/CASE#:

04 -GS- 03 - 0130

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

02/06/04

16-23-490

015141

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession of a Firearmin violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 015141☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

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: _____☐ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$

\$

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: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

CLASSIFICATION SUMMARY REPORT DATED 01/20/08

C024686

ICDC# 265561 MARSHALL, CAZARIO -
 OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
 INSTITUTION ... LIEBER CORRECTIONAL INST.
 SECURITY/CUST.: 3 MINIMUM IN
 CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS
 CENTRAL MONITORING.: YES
 SED CLASS: 2 MED PROB/NO WORK RESTRICT
 MENTAL CLASS: NMH (NO MENTAL HEALTH TRE
 CURRENT PROGRAM...: NO CURRENT PROGRAM
 AGE...: 24

FBI# 355621WB8

DORM.....: WA02058
 TOBACCO USER....: Y
 PROJ MAXOUT DATE: 99/99/9999
 PROJ PAROLE DATE: 00/00/0000
 EWC JOB...: MECHANIC HELPER
 EDUC PGM...: NO CURR EDUC PROGRAM
 EWC LEVEL: 3F5 EEC LEVEL:
 ASSIGNMENT...: PRISON INDUSTR

PREVIOUS NUMBERS:

Y00265561

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			INDICT
	YRS	MOS	DYS		START	V/VU	CAT	
FIREARMS PROVISION	5	0	0	ALLENDALE	08/25/2004	N	3	046S030130
KIDNAPPING	30	0	0	ALLENDALE	08/25/2004	V	5	046S030125
ARMED ROBBERY	30	0	0	ALLENDALE	08/25/2004	V	4	046S030071
ASSAULT & BATTERY-HIGH & AGG. NA	10	0	0	ALLENDALE	08/25/2004	N	3	046S030070
MURDER-1ST DEGREE	999	99	999	ALLENDALE	08/25/2004	V	4	046S030069
OFFENSES UNDER PREVIOUS NUMBER: Y00265561								
FIREARMS PROVISION	5	0	0	ALLENDALE	08/25/2004	N	3	046S03-0130
KIDNAPPING	30	0	0	ALLENDALE	08/25/2004	V	5	046S03-0125
ARMED ROBBERY	30	0	0	ALLENDALE	08/25/2004	V	4	046S03-0071
ASSAULT & BATTERY-HIGH & AGG. NA	10	0	0	ALLENDALE	08/25/2004	N	3	046S03-0070
MURDER-1ST DEGREE	999	99	999	ALLENDALE	08/25/2004	V	4	046S03-0069
PETIT LARCENY	0	0	58	ALLENDALE	02/17/2002	N	1	016S03-210+
BREAKING INTO MOTOR VEH	4	0	0	ALLENDALE	10/29/2000	N	2	016S03-207+
GRAND LARCENY	4	0	0	ALLENDALE	10/29/2000	N	2	016S03-0237
MURDER-3RD DEGREE	4	0	0	ALLENDALE	10/29/2000	N	2	016S03-0236
ARMED ROBBERY	0	0	0	ALLENDALE	01/19/1999	V	4	98JU03-120

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

DETAINERS (HOLD, WANTED, NOTIFY):

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

08/26/02 DAMAGE, DESTROY, DEFACE, PR DROPPED

MAJOR

11/16/00 DAMAGE, DESTROY, DEFACE, PR

OTHER

HISTORY OF MOVEMENTS:

09/02/04	LIEBER	INCARCERATED	YOA CONVERSION
09/02/04	LIEBER	INCARCERATED	ADMINISTRATIVE
08/25/04	TURBEVILLE	INCARCERATED	RETURN FROM COURT
08/24/04	ALLENDALE CO	AUTH ABSENSE (AWL)	TO COURT
08/23/04	TURBEVILLE	INCARCERATED	RETURN FROM COURT
08/23/04	ALLENDALE CO	AUTH ABSENSE (AWL)	TO COURT
04/29/04	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
03/23/04	KIRKLAND	INCARCERATED	YOA PAROLE VIOLATOR
02/10/04	ALLENDALE CO	AUTH ABSENSE (AWL)	LOCKUP-FRM EPA, SF, PAR, PRB
02/10/04	UNK	DEAD TIME	WARRANT ISSUED
02/14/03	ALLENDALE CO	YOA PAROLE - CONDITI	PAROLE BOARD ACTION
05/08/02	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
04/19/02	KIRKLAND	INCARCERATED	R&E PROCESSING
04/18/02	LIEBER	INCARCERATED	NEW SEN W/OUT YOA-PAR-REV
11/17/00	ALLENDALE CO	YOA PAROLE - CONDITI	PAROLE BOARD ACTION

CDC# 245561

MARSHALL, CAZARIO -

(CONTINUED)

04/21/00 TURBEVILLE INCARCERATED

ADMINISTRATIVE

04/07/00 KIRKLAND INCARCERATED

NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	
DESCRIPTION	DATE	DATE	REASON	
MECHANIC HELPER	10/28/04	00/00/00		JO LV 3F

HISTORY OF EARNED EDUCATION CREDITS:

SEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
VL 2 - FULL TIME(NO EWC)	04/30/04	08/25/04	PLACED IN ST/SP CUSTODY
VL 2 - FULL TIME(NO EWC)	05/24/02	02/14/03	RELEASED/PAROLED
VL 2 - FULL TIME(NO EWC)	05/13/02	05/23/02	MI ELIGIBLE FOR LEVEL 2
VL 2 - FULL TIME(NO EWC)	04/24/00	11/17/00	RELEASED/PAROLED

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

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/23/08
OMCOMITA RELEASE DATE SCREEN C024686
SCDC# > 265561 LOC: LIEBER
MARSHALL, CAZARIO - SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: Y
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
LIFE CURRENT SENT START DATE: 08/25/2004
PROJECTED COMPLETION DATES
MAXOUT DATE: 99/99/9999 CURRENT EWC ..
YOA SIX YEAR DATE: CURRENT EEC ..
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

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

PFKEYS: 5: HISTORY OF DATE CHANGES
4- 1 Sess-1 167.7.50.33 TNET1194 3/11