

VOL. II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

RECEIVED

OCT 16 2013

S.C. Supreme Court

RANDY ELDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213665

A P P E N D I X

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WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, TBT Esquire regarding when the hearing should be set.³

Respectfully submitted,

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³The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2006-CP-40-4859 and
2010-CP-40-8822

Randy C. Elders,)
Applicant/Plaintiff,)
vs.) TRANSCRIPT OF RECORD
The State of South Carolina,)
Defendant.)

May 24, 2012
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

TRISTAN M. SHAFFER, ESQUIRE
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Crystal Holmes
Official Court Reporter

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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1	(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE		
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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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April W. Sampson

By Mr. Shaffer	11		53	
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By Mr. Corney		42		
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Stacy Rowell

By Mr. Shaffer	60		94	
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By Mr. Corney		82		
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Randy C. Elders

By Mr. Shaffer	100		113/115	
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By Mr. Corney		109		113
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1 Thursday, May 24, 2012:

2 MR. CORNEY: May it please the Court, Your
3 Honor.

4 THE COURT: Yes, sir.

5 MR. CORNEY: Your Honor, this is a PCR
6 application of Randy Chuck Elders. It's kind of a funny
7 situation. It's actually under two docket numbers, I'll
8 kind of go through and explain that. It's 2006-CP-40-
9 4859 and 2010-CP-40-8822. I'll kind of explain why
10 there's two but we're handling them collectively today.

11 Mr. Elders was true bill indicted at the June
12 2005 term of the Richland County Grand Jury for armed
13 robbery, carjacking, two counts of assault and battery
14 with intent to kill and two counts of kidnapping. He was
15 represented by Stacy Owings (phonetic), now Stacy Rowell
16 and April Sampson.

17 He proceeded to jury trial February 17th, 2006
18 before the Honorable James Johnson, Jr. At the start of
19 the trial, after empanelment of the jury but before the
20 opening statements, Mr. Elders entered guilty pleas to
21 the carjacking charge and one of the two counts of
22 assault and battery with intent to kill. The trial
23 proceeded forward on the remaining four charges, Your
24 Honor, kidnapping -- kidnapping, armed robbery, one more
25 count of assault and battery with intent to kill and, if

1 I have that correct, and the kidnapping -- I show five
2 charges -- four charges, that's right.

3 He was found guilty of the armed robbery, both
4 counts of kidnapping and the lesser included to assault
5 and battery of a high and aggravated nature by the jury.
6 He was sentenced collectively on the pleas and the trial
7 at that point in time. He received 20 years on the
8 carjacking charge, concurrent, 30 year charge -- sentence
9 for the armed robbery, 30 years on the kidnapping charges
10 and 10 years on assault and battery of a high and
11 aggravated nature. And those were filed consecutively
12 with a 15 year sentence on the assault and battery with
13 intent to kill.

14 He filed a notice of appeal and the appeal was
15 perfected on the four charges that were brought to trial.
16 He was represented by attorney Bob Mills on those, on the
17 appeal, and by order filed January 28th, 2010, the South
18 Carolina Court of Appeals confirmed his convictions. The
19 remittitur was issued February 17th, 2010.

20 Your Honor, Mr. Elders filed a timely PCR
21 application on the charges that were pled to and not
22 raised on appeal in 2006. That was filed Feb -- or, I
23 apologize, April -- August 23rd, 2006. That's why we
24 have a 2006 docket number on those charges.

25 He filed a second application for PCR

1 challenging the convictions that were raised on direct
2 appeal after the remittitur date. He filed that December
3 17th, 2010. So that's the 2010 docket number. And they
4 were both timely, based on those grounds. The two
5 applications were assigned separate docket numbers but we
6 will handle them collectively here today.

7 THE COURT: All right.

8 MR. CORNEY: Your Honor, just to start, the
9 State would -- we talked in chambers briefly about
10 bringing a motion to object to some additional
11 allegations brought forth by Mr. Shaffer today who is PCR
12 counsel. I had not seen them until today and was not
13 given notice of them. For the record, we were making a
14 timely -- making an objection this morning on the
15 supplemental claims that I didn't have notice of them. I
16 believe we've worked out somewhat of an agreement that we
17 will move forward with them.

18 And I believe Mr. Shaffer might have an
19 objection to bring on the record before we start as well.

20 THE COURT: All right, Mr. Shaffer.

21 MR. SHAFFER: Your Honor, as we discussed in
22 chambers, I believe that Ms. Rowell is going to actually
23 testify via telephone. We're objecting to that today and
24 Your Honor graciously offered to allow her to do a
25 telephone testimony in August or a video conference if we

1 actually provided it.

2 THE COURT: Uh-huh.

3 MR. SHAFFER: We'd like to preserve that
4 objection ---

5 THE COURT: Okay.

6 MR. SHAFFER: --- based off what we talked about
7 with the credibility.

8 THE COURT: What I concluded to do was there's
9 -- the next term of PCR is in August and I thought we'd
10 cover all the issues we could here today, give Mr. Corney
11 an opportunity to review and prepare for the additional
12 -- help me out.

13 MR. SHAFFER: The additional allegations.

14 THE COURT: The additional allegations, thank
15 you, that he raises the issue of timeliness about that
16 notice. And so I -- I think, to help everybody out and
17 to get as much of this matter behind us as we possibly
18 can, I concluded to give him a chance to look at the
19 additional allegations, we'll try to schedule Ms. Owings'
20 ---

21 MR. SHAFFER: Ms. Rowell, yeah.

22 THE COURT: --- telephone deposition or video
23 deposition, if you're inclined to go that far, during the
24 week of August the 23rd I think it is?

25 MR. SHAFFER: Your Honor ---

1 THE COURT: August the what -- August the 13th,
2 all right.

3 MR. SHAFFER: Yes, Your Honor, that's correct.
4 What we -- what we had worked out ---

5 THE COURT: Okay.

6 MR. SHAFFER: --- after we had talked to you,
7 noting both of our objections, we believe that we can get
8 everything taken care of and not get the video deposition
9 then and actually do it today pursuant to your ruling
10 and, of course, with both of our objections ---

11 THE COURT: I'm confused. You want to do the
12 deposition today or not?

13 MR. SHAFFER: Yes, Your Honor. I think we're
14 ---

15 THE COURT: The telephone deposition?

16 MR. SHAFFER: --- to do it today.

17 MR. CORNEY: Your Honor, it's my understanding
18 that -- I've looked over the supplemental allegations. I
19 wasn't given proper notice of them but I would be okay
20 moving forward on them ---

21 THE COURT: Okay.

22 MR. CORNEY: --- if we move forward and complete
23 the whole matter today, take care of it and just move on
24 as long as he's okay with providing -- having phone
25 testimony provided in that regard.

1 MR. SHAFFER: And ---

2 THE COURT: All right. Will -- will the
3 telephone deposition be today or later?

4 MR. SHAFFER: Today, Your Honor.

5 THE COURT: Okay. And she's on standby still?

6 MR. CORNEY: Yes, sir. She'll provide live
7 testimony under oath just -- in court by phone.

8 MR. SHAFFER: The reason that we did it this way
9 is just so that I can preserve the record for the
10 objection to telephone depositions in general.

11 THE COURT: That's fine. That's fine.

12 MR. SHAFFER: Thank you, Your Honor.

13 THE COURT: So we're ready to go then?

14 MR. CORNEY: I don't know, for purposes of the
15 record, if I just need to voice my, you know, reasoning
16 for the phone deposition, phone testimony ---

17 THE COURT: Yeah, go ahead. You should, you
18 should.

19 MR. CORNEY: Just to preserve that.

20 Your Honor, it's the State's -- it's the State's
21 position that there's no prejudice to the -- to the
22 Applicant by having Ms. Rowell here by phone. Obviously,
23 I don't have out of state subpoena power. I issued a
24 subpoena to Mr. Rowell, spoke with her on the phone. She
25 voiced her -- I don't know the right way to say it, her

1 desire to not be here today, to appear by phone.

2 THE COURT: I don't want to be here either.

3 MR. CORNEY: She will be placed under oath live
4 on the phone, is my understanding, and have -- and Mr.
5 Shaffer will have a full opportunity to cross-examine
6 her. The only thing -- the only issue that I can see is
7 credibility. She was an Assistant Public Defender in
8 Richland County.

9 THE COURT: And I think I noted, and I'll repeat
10 for the record, in chambers that I know Ms. Owings. I
11 remember when she started with the Public Defender's
12 office. She appeared in front of me, I said, I think, in
13 chambers 30 times or more, like a hundred times. So it's
14 not like the Court would be hearing the testimony of an
15 unknown unseen witness. An officer of the Court then, in
16 good standing now, and considering the peculiar facts of
17 this case and the trial judge, the one who's got to rule
18 on the believability and credibility, I don't think
19 anybody would be prejudiced by the testimony, telephonic
20 testimony, of a former officer of the Court here who
21 practiced in this very courthouse, so. That was my
22 ruling.

23 MR. CORNEY: Thank you, Judge. That's all I
24 have.

25 MR. SHAFFER: Thank you, Your Honor.

APRIL W. SAMPSON -- DIRECT BY MR. SHAFFER:

11

1 THE COURT: All right. So, Mr. Shaffer, you may
2 proceed, sir.

3 MR. SHAFFER: Your Honor, if I may pass up this.
4 This is the -- what I ---

5 THE COURT: The supplemental.

6 MR. SHAFFER: Yes, Your Honor.

7 THE COURT: All right, that's fine. Additional
8 grounds, supplement PCR claim.

9 (Pause.)

10 THE COURT: All right, you may all your first
11 witness.

12 MR. SHAFFER: Your Honor, the Applicant is going
13 to call Ms. Sampson to the stand.

14 THE COURT: Come around, Ms. Sampson.

15 (APRIL W. SAMPSON, having first been duly sworn,
16 testified as follows:)

17 THE COURT: Please take a seat. Tell us your
18 full name -- tell us your full name and spell your last
19 name for the record

20 THE WITNESS: April Woodard Sampson, last name
21 is S-a-m-p-s-o-n.

22 THE COURT: You may proceed, Mr. Shaffer, thank
23 you.

24 MR. SHAFFER: Thank you, Your Honor.

25 DIRECT EXAMINATION

APRIL W. SAMPSON -- DIRECT BY MR. SHAFFER:

12

1 BY MR. SHAFFER:

2 Q Ms. Sampson, you represented Charles Elders, right?

3 A Let me explain how it works. I was in the Public
4 Defender's office. At the time I was Deputy Public
5 Defender. Ms. Owings, now Ms. Rowell, represented
6 him. Whenever a Defendant is going to go to trial,
7 we get a second seat. So I was co-counsel on the
8 case.

9 So, yes, I represented him but he was actually
10 assigned to Ms. Owings.

11 Q Okay. At what point did you get assigned to the
12 case?

13 A And there is going to be the problem, I can't give
14 you dates because I went to the Public Defender's
15 office, they keep the file, they don't have the file.
16 They could not find it from archives so I can't give
17 you the date, I don't know. I know it was -- I got
18 involved in late 2005 or early 2006, but I couldn't
19 give you the exact date.

20 Q Approximately how many months before trial would you
21 say?

22 A I know it was early on so I -- and I say early
23 meaning, she knew it was a trial early on and had
24 asked me about it. I became her official second seat
25 probably four to five months prior to trial.

1 Q Okay. And, if you could, could you tell us a little
2 bit about the -- about the facts of the crime
3 charged?

4 A Again, this is all from memory because I haven't seen
5 the file since. But my remembrance of it is this
6 happened on Garners Ferry Road at a -- across from a
7 golf course, I remember that part of it. The victims
8 were in their own car, Mr. Elders and a co-defendant,
9 it might have been two co-defendants, were alleged to
10 have come up on them and I believe he had a knife.
11 He had some sort of weapon was the allegation.

12 He and the male victim got into a physical
13 altercation, if I remember correctly, and the female
14 got pushed, fell, I'm not -- I can't remember that
15 part exactly. And the problem was the stories
16 changed depending on when -- who you talked to when.
17 And sometimes it was that Mr. Elders had maybe pushed
18 her down and other times, he hadn't touched her.
19 Sometimes her purse had been taken, other times her
20 purse was just missing. And so that was why we went
21 to trial on it.

22 But that was kind of the basics. The co-
23 defendant -- the female co-defendant testified if I
24 remember correctly.

25 THE COURT: Testified against your client?

APRIL W. SAMPSON -- DIRECT BY MR. SHAFFER:

14

1 THE WITNESS: Correct.

2 THE COURT: Okay.

3 A And there had been some statements made. And so her
4 statement was different, if I remember correctly, at
5 trial than it was in her original statement.

6 Q Now, you said you went to trial. Did go to trial on
7 all the facts?

8 A Cases, you mean?

9 Q On all the cases ---

10 A No.

11 Q Which ones did you go to trial on?

12 A On the female assault, on both armed robberies, I
13 think he was charged with two counts of armed
14 robbery. And we argued about the kidnapping, whether
15 he should -- that should even be included as a
16 charge. So I don't believe he pled to the
17 kidnapping. We would have gone forward on that as
18 well.

19 Q Okay. And were you privy to the conversations
20 concerning which charges he should plead to and ---

21 A Yes.

22 Q --- which ones he shouldn't?

23 A Yes.

24 Q What were -- what was your advice on which charges he
25 should plead to?

1 A My remembrance is he should plead to the ones
2 involving the male victim except for not necessarily
3 the armed robbery. I can't remember on the armed
4 robbery, I'm going to be honest. The reasons we did
5 it was we wanted -- if we were going to have to go to
6 trial, we wanted the jury to see him plead to what we
7 said he did and that he was going to trial on what we
8 said he didn't do.

9 Q Okay.

10 A So I can say that what he pled to is what we were
11 alleging he actually did. What he went to trial on
12 were the things we said he didn't do.

13 Q Okay. And now, did -- tell us a little bit about
14 your background in that -- at that point, how long
15 had you been an attorney?

16 A Eight years.

17 Q Eight years, okay. And so you were sworn in in '98,
18 is that correct?

19 A I got sworn in in '98, I started in the Public
20 Defender's office in June of '99. I worked there for
21 two years and left for about a year, came back in
22 2002 and was there until October of 2006. And at the
23 time I went to trial with Mr. Elder, I was Deputy.

24 Q Okay. And you had seven years of experience, is that
25 correct?

APRIL W. SAMPSON -- DIRECT BY MR. SHAFFER:

1 A Correct.

2 Q Okay. Or seven years of experience in criminal law?

3 A All -- all of it was criminal.

4 Q Okay. Now, you -- whenever you prepare for a trial,
5 do you research case law?

6 A Yes.

7 Q Okay. Are you familiar with the law on -- on
8 kidnapping in this state?

9 A Yes.

10 Q It is a normal tactic whenever someone's charged with
11 a crime such as CSC, armed robbery or in this case, I
12 guess, carjacking, I'm not sure how familiar or how
13 often carjacking comes up, but especially with armed
14 robbery, have you -- is it a standard practice of the
15 Solicitor's office to charge someone with kidnapping
16 in addition to armed robbery?

17 A Let me just say, the kidnapping charges normally come
18 from the police not the prosecutor's office. They
19 can come from the Solicitor's office later if they
20 want to directly present something. But normally
21 what happens is the police will choose to charge any
22 crime they can where their -- where the Defendant or
23 the alleged assailant has to hold the person, whether
24 it's a CSC or an armed robbery or a carjacking, hold
25 them even for a second, that qualifies for

1 kidnapping.

2 So, yes, normally they are also charged with
3 kidnapping. That's not unusual.

4 Q Okay. And are you familiar -- have you ever
5 researched that issue, have you ever done any
6 research on it?

7 Q Yes, we -- and we argued in this case that we didn't
8 feel that it was proper because in order to do almost
9 any crime under our definition of kidnapping, because
10 it is so broad, you would have to kidnap somebody.
11 Our definition of kidnapping is if you hold anyone,
12 even if it's for merely a second. So any crime you
13 can think of where you hold somebody still is going
14 to qualify for kidnapping, whether it's a simple
15 assault all the way up to a true armed robbery or a
16 CSC, it's part of the crime.

17 So we argued that it should be almost as a
18 double jeopardy type of thing to charge him twice.

19 Q Okay. And you're also familiar with the old assault
20 and battery with intent to kill?

21 A Correct.

22 Q Okay. Was it assault with intent to kill or assault
23 and battery with intent to kill? I know the
24 transcript uses both terms.

25 A It would have had to have been assault and battery

APRIL W. SAMPSON -- DIRECT BY MR. SHAFFER:

18

1 with intent to kill. Assault -- assault with intent
2 to kill would be if you, say for example, shot
3 someone and missed, you -- you -- the assault is the
4 commission to attempt to commit the crime, the
5 battery is the actual hitting of someone. So it
6 would have had to have been assault and battery in
7 this case.

8 Q Okay. And that's on both the people?

9 A On both the people.

10 Q Okay.

11 A And that was part of the problem is we didn't --
12 there was disagreeing statements as to whether Mr.
13 Elders had touched the female or not. And I'm sorry,
14 I don't remember y'all's names. I know they're
15 sitting right there ---

16 THE COURT: Mr. and Mrs. Riggs.

17 THE WITNESS: I'm sorry.

18 THE COURT: That's all right.

19 Q I guess we can forgive you, you haven't had your
20 file.

21 A No.

22 Q Now, tell us about the charge of assault with intent
23 to kill and assault and battery with intent to kill,
24 what are the elements ---

25 A The difference or the ---

1 Q What are the elements of assault and battery with
2 intent to kill?

3 A Assault and battery with intent to kill is that you
4 use a weapon of -- usually it's going to be a weapon
5 of some sort or in some manner assault someone and
6 actually hit them or injure them in a way that could
7 kill them. It doesn't mean -- you actually don't
8 have to intend to kill them. It has to be you used
9 either a weapon that could kill them, either a knife,
10 a gun, etcetera, or in a manner such as run them over
11 with your car. You could kill them, it didn't
12 necessarily have to be your intent.

13 Assault with intent to kill is the same but you
14 withdraw the battery. You actually don't touch them
15 physically or they don't get injured in any way.

16 Q Now, I know there is also the charge of armed robbery
17 in this case?

18 A Correct.

19 Q What are the allegations concerning armed robbery in
20 this case?

21 A I believe, and I would have to look at the
22 transcript, I can't remember -- it was a knife, if I
23 remember correctly, that he was alleged to have had
24 when he committed the crime.

25 Q And what -- what are the elements of assault and

APRIL W. SAMPSON -- DIRECT BY MR. SHAFFER:

20

1 battery -- or, I'm sorry, armed robbery?

2 A You have to commit a robbery with either a weapon or
3 in a manner which the victim could believe you have a
4 weapon. So, for example, if I say, give me all your
5 money and I have my hand in my pocket but it looked
6 -- it looks reasonable for the victim to believe I
7 have a gun or I say I have a gun but they don't see
8 one, that would still be armed robbery. It doesn't
9 matter if the weapon works, it doesn't matter if it's
10 a plastic gun, just any kind of weapon that could be
11 considered by the victim to be a weapon.

12 Q Okay. And is it your understanding of the law that
13 the weapon does or does not have to actually be an
14 element or an instrumentality in the -- the robbery
15 itself. Say ---

16 A I know what you're asking. I argued that both ways.
17 So, I mean, we have argued in the past that if it's a
18 weapon that you couldn't actually use or if it was a
19 steak knife that's bent, that that didn't make it a
20 deadly weapon as it needs to be for armed robbery.
21 We've lost that argument almost every time. We've
22 made it, we do make that argument.

23 Q Now -- now, when did you actually become a Solicitor,
24 when did you ---

25 A I just started in the Solicitor's office in 2010.

1 Q Okay. So whenever I'm asking these questions, I'm
2 discussing your understanding of the law in 2006, you
3 understand that?

4 A Correct, it's not changed.

5 Q Okay.

6 A The law has actually changed since then but my
7 understanding of it ---

8 Q Okay. I don't want to put you in a bad spot with
9 asking you questions about, you know ---

10 A That's fine.

11 Q --- current cases or anything like that. But in
12 2006, that was your understanding of those laws?

13 A Uh-huh, correct.

14 Q Okay. What is -- what was your understanding of the
15 law in 2006 of carjacking?

16 A Carjacking? Basically taking of a vehicle with the
17 person has to be in the car or attempting to get in
18 the car and with either hurting them or using a
19 weapon in their -- in order to go through with the
20 crime.

21 Q Is a car personal property?

22 A It can be.

23 Q Okay. And ---

24 THE COURT: Well, it's not real property.

25 MR. SHAFFER: What ---

APRIL W. SAMPSON -- DIRECT BY MR. SHAFFER:

22

1 THE COURT: Beg your pardon?

2 MR. SHAFFER: I apologize, Your Honor.

3 THE COURT: Well, did you hear me?

4 MR. SHAFFER: No, Your Honor.

5 THE COURT: Good.

6 THE WITNESS: Yeah, I heard you.

7 THE COURT: I just said, under my breath, well
8 it ain't real property.

9 (Laughter.)

10 THE COURT: It is personal property, that's all.

11 A The reason I say it can be, it might not be your
12 personal property, if it's a rental car or you're in
13 someone else's car.

14 Q That makes sense. But the car that was stolen in
15 this case was -- did belong to the Riggs?

16 A Correct.

17 Q Okay. Now, you said that you had advised him --
18 well, first of all, what was the plea offer in this
19 case?

20 A There wasn't one.

21 Q There wasn't one?

22 A No, that I remember. You probably would be better
23 asking Ms. Owings that but my memory, and it was Luck
24 Campbell, there wouldn't have been one.

25 THE COURT: Who's now a colleague or yours.

1 THE WITNESS: She is but she still doesn't make
2 any offers.

3 THE COURT: I understand.

4 Q Regardless of Luck or notwithstanding the fact that
5 Ms. Campbell was actually the Solicitor on it ---

6 A Uh-huh.

7 Q --- does a Defendant still have a right, even in a
8 case where the Solicitor is not giving an offer, to
9 plea straight up?

10 A Yes.

11 Q Okay. And with that, did -- essentially he pled --
12 Mr. Elders pled straight up to carjacking, is that
13 correct?

14 A Correct. What we did was our strategy was to have --
15 we were going to try to attempt to plead him directly
16 in front of the jury once they had been impaneled,
17 that was on purpose. We had talked to Mr. Strickler
18 who was our boss, he was Chief at the time, about how
19 could we get that done because we wanted the jury to
20 see him taking responsibility for the charges we were
21 saying he was guilty of and taking to trial the
22 things we were saying he was not guilty of. We
23 thought it would have a better impact if the jury saw
24 him do that versus just heard about it. But we
25 weren't allowed to do it, we were ---

APRIL W. SAMPSON -- DIRECT BY MR. SHAFFER:

24

1 THE COURT: Judge Johnson refused to let you do
2 that?

3 THE WITNESS: Correct.

4 THE COURT: That's all right.

5 Q Now, why did you think that it would have a better
6 impact if it was in front of the jury?

7 A Well, the jury had already been told when we
8 impaneled them, that when you first start to pick
9 them, they're told what the charges are. So
10 initially they hear all of the charges. We wanted
11 him to then be able to say in front of them, I am
12 guilty of only these things. It has a subliminal
13 message of, so I'm therefore not guilty of these
14 other things.

15 And so we -- we -- that's what the strategy was.
16 We, in the end, were not allowed to do that, the
17 Judge allowed him to plead but the jury was just told
18 they weren't going to be trying those anymore.

19 Q Okay. Now ---

20 A And I think we might have been opening and closing,
21 and just told them, if I remember correctly.

22 THE COURT: So in your opening statement, he
23 pled guilty to this because he is guilty of this but he
24 ain't guilty of that.

25 THE WITNESS: Correct.

1 THE COURT: That's an old workable theory that's
2 been used by a lot of people.

3 THE WITNESS: We tried.

4 Q Now, have you ever tried any capital cases?

5 A Yes.

6 Q You have?

7 A I have.

8 Q Have you ever done any capital defense training?

9 A Yes.

10 Q Okay. Have you ever heard the theory of not -- or
11 one of the downsides to -- to pleading a client and
12 just doing a sentencing phase is that the jury might
13 want to hand down justice for themselves or show
14 their outrage for the verdict?

15 A I mean, I've heard that.

16 Q Okay.

17 A But then again this, (a) wasn't a capital case; but,
18 (b) they still were getting to decide what portion of
19 it. He had already -- were making sure they
20 understand he pled to what he said he'd done.

21 Q But you said they were getting to decide a portion of
22 it?

23 A Right. He -- he took some power away from them in
24 that he pled to some of the charges and they were
25 made aware of that.

1 Q Okay.

2 A So we didn't feel that there would be that effect
3 because he was -- they had an understanding that he's
4 going to get sentenced on these charges, you don't --
5 you don't get to do that but he's admitting guilt to
6 those.

7 Q So the -- your strategy was more or less to allow him
8 to plead guilty, actually say he's guilty in front of
9 the jury?

10 A Correct.

11 Q Okay and when did you learn that you were not allowed
12 to do that?

13 A That day.

14 Q Okay. Was it before or after he decided to plead
15 guilty?

16 A Before. Well, we had made that decision, we just
17 didn't tell the State until the last minute. And so
18 -- and that's typical. You try to keep your cards
19 under your vest as much as you can. So we didn't
20 know the Judge's ruling as far as whether he was
21 going to allow us to do what we wanted to do until
22 that minute.

23 We also were hoping he would limit some of the
24 things that they could go into if we plead guilty to
25 it, then they wouldn't be able to go into certain

1 aspects of the crime.

2 Q Which aspects do you think?

3 A Well, if he pled guilty to having assaulted Mr.
4 Riggs, we didn't want them to be able to go into the
5 fact that he did so because there's no need to, we
6 made it irrelevant. We were overruled on it but that
7 was part of the strategy, was if we could diminish
8 what they talked about as well as let the jury know
9 he was saying he did these things and take the out of
10 your mind and just focus on the things he was saying
11 he didn't do.

12 Q Are you aware of res gestae and ---

13 A Yeah, I mean, we were overruled.

14 Q Okay.

15 A That's what happened but that was the strategy.

16 Q Okay.

17 A Is to try that.

18 Q Why -- why did you decide -- whenever you found out
19 that he would not be able to actually do it in front
20 of the jury itself, why did you decide to go ahead
21 with the plea and not just go to trial?

22 A Again, the same result. We would still be able to
23 tell the jury but also we were still -- there was two
24 different portions of the argument. There was, let's
25 do it in front of them, and then he said, no. And

1 then he said, but if you want to go ahead and plead,
2 you can, and mention it, and we went through all
3 that. But then there was also the conversation of,
4 let's limit what they can now talk about if he's
5 going to plead.

6 So those were two separate strategies. So you
7 had to go through one to get to the next.

8 Q Okay. In your experience, do people -- for the same
9 offense, do people generally get more time if they
10 plead or less time if they plead or more or less time
11 if they go to trial?

12 A It depends. What I normally tell the Defendant as to
13 what I've seen is it depends, (a) on what judge
14 you're talking about, some judges don't care; (b) it
15 depends on the type of the case, meaning if it looks
16 like there's a reason for the person to have gone to
17 trial, that there's some factor that -- that they
18 need to prove, that would be hard for the State to
19 prove, that the defense could actually win it, judges
20 tend to not hold that against the person, I guess.

21 But if it's a -- I don't want to say anything's
22 a slam dunk but if it's a case where it's clear, they
23 did it, and you force them to go to trial, some
24 judges will take that under advisement when -- when
25 giving your client their punishment, and so they end

1 up getting more. We call it a trial tax, they end up
2 getting more for taking the case to trial if they
3 would if they pled.

4 THE COURT: You're saying that judges might
5 unduly penalize somebody for exercising their
6 constitutional rights, Ms. Sampson?

7 THE WITNESS: I know that you would never do
8 that, Judge Manning, but I do think that there are some
9 judges who might.

10 Q There's sort of a flip side to penalization and
11 there's actually -- some judges might actually reward
12 someone, correct?

13 A That's the flipside is that you get a benefit from
14 pleading because you're accepting responsibility for
15 what you did and therefore, we're going to give you
16 less time because you went ahead and accepted
17 responsibility and didn't make the victims come up in
18 here and, I mean, both of them had to come and
19 testify and be questioned by us and all of that and
20 that's not pleasant, it's sort of victimizing them
21 again. And so judges will often give you the benefit
22 of not doing that by pleading.

23 Q Okay. And whenever you go through a trial or -- how
24 long -- generally, how long do pleas generally last,
25 to plea here?

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1 A A plea?

2 Q Yeah.

3 A Depending on how many charges you have and depending
4 on the judge. But in general, if you have say a case
5 that's three or four charges, 20 minutes if the
6 victim's not going to talk. If it's something like
7 this where you have victims who are going to want to
8 speak and it's multiple charges, that can take an
9 hour.

10 Q Are you going to present evidence -- I mean, present
11 pictures at pleas generally?

12 A They can.

13 Q Is it a normal practice in most case?

14 A If there's a lot of injuries or if the victim's not
15 present, then you do. But normally when the victim
16 is at the plea, you don't.

17 Q Okay. Do you do more or less -- you do more or less
18 evidence is presented in front of the judge in a plea
19 or a trial?

20 A Less evidence is presented at a plea than at a trial.

21 Q Okay. And would you -- in your opinion, is it
22 reasonable to think that possibly a judge might see
23 less evidence of guilt and therefore give a less
24 sentence at a plea versus at a trial?

25 A Sure.

1 Q Okay. And in fact, that might be one reason why some
2 people forego trials, is that correct?

3 A I would agree with that.

4 Q Now, what's -- what's a jury's job in a trial?

5 A They're the fact finders.

6 Q By you saying fact finders, what do you mean by that?

7 A Meaning, as we always explain, the judge decides what
8 the law is going to be and what law is given to the
9 jury, so they don't have to decide the law. But the
10 jury has to decide what the facts are, what the truth
11 is. They have to listen to the witnesses and decide
12 who's telling the truth, who's not, and what they
13 think happened that day and that's why they are the
14 fact finders. And based on whatever factors or facts
15 they believe are truthful or the truth, they'll find
16 a person guilty or not guilty, based on that.

17 Q So you're -- in your opinion, their job is to
18 basically figure out what the truth is?

19 A As best they can.

20 Q Okay. On page 81, this is only one line and I know
21 you don't have a transcript.

22 A No.

23 Q I'm going to read it to you, if that's all right.

24 A Okay.

25 Q Actually it's on page 80 of the transcript.

1 A The Judge has one. You said page 80?

2 THE COURT: 81.

3 A 81, okay.

4 Q In the Court's preliminary remarks, the Judge states,
5 your purpose as a juror in this case is to find and
6 determine what the facts are.

7 A Uh-huh.

8 Q Do you believe that's a correct statement?

9 A Yes.

10 Q Do you think it's objectionable in any way?

11 A No.

12 (Pause.)

13 Q Now, there were several pictures introduced at the
14 trial. Do you remember any of those?

15 A I know there were pictures of the victims' injuries
16 and there might have been pictures of the weapons, I
17 cannot remember.

18 Q Okay. Did you object to some or any of those?

19 A I know we did. I can't tell the specific objections
20 we made without you pointing them to me in the
21 record.

22 Q Okay. If I was to say you objected to some of them
23 but not all of them ---

24 A I would agree and let me just explain that. Most of
25 the time, before we go to trial, we will have gone

1 over with the prosecutor the pictures and we will
2 say, we don't object to these, we object to these.
3 So we've already known all that, usually not on the
4 record, and then when they go to use them, we will
5 object on the record to the ones we are objecting to.
6 Because we know some pictures are going to come in.

7 For example, pictures of their injuries are
8 going to come in, I can't keep them out. Sometimes
9 if you have some pretty gory pictures, you can keep
10 -- they're more prejudicial than probative, you can
11 keep some out. But in this case, they weren't, so we
12 wouldn't have been able to keep a lot of them out.

13 But I know there was something about a bunch of
14 knives that were found and we argued about that
15 because only one was used so they shouldn't be able
16 to see a bunch of pictures of other knives or hear
17 anything about other knives. But I can't remember if
18 it was pictures or just testimony.

19 Q Okay.

20 MR. SHAFFER: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (Pause.)

23 MR. SHAFFER: Your Honor, I believe that's it.

24 THE COURT: Well, that's fine. I forgot to take
25 my blood pressure medication and it's down in my car.

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1 I'm going to take a break and go do that before I forget
2 it. So, we'll be at ease for a few minutes.

3 MR. SHAFFER: Thank you, Your Honor.

4 (The Court was in recess.)

5 THE COURT: Thank you all. Anything further,
6 Mr. Shaffer?

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: Go ahead.

9 MR. SHAFFER: Let's see, a couple of questions.

10 THE COURT: All right.

11 DIRECT EXAMINATION CONTINUES

12 BY MR. SHAFFER:

13 Q All right, Ms. Sampson.

14 A Uh-huh.

15 Q Mr. Elders admitted to -- well, first of all, a plea
16 is an admission, correct?

17 A Correct.

18 Q Okay. And Mr. Elders admitted to -- whenever he pled
19 guilty to carjacking, he admitted to which -- what
20 facts, what were the underlying facts ---

21 A That he took their car with -- while either armed
22 with a weapon or threatening harm to them, something
23 similar to that.

24 Q Okay.

25 A I don't remember the specific facts. I just know...

1 Q Was he -- did he leave them stranded somewhere?

2 A This all happened in a parking lot of a -- I want to
3 say it was the Farmer's Market but it's a store or
4 something right there on Garners Ferry. I want to
5 say it's the Farmer's Market. So they're stranded in
6 the sense that they took the car but there's people
7 around

8 Q All right. Well, if someone pulls a knife on you,
9 can you run away?

10 A Well, I mean you could but you'd probable get
11 injured.

12 Q And whenever he pled to assault and battery with
13 intent to kill for Mr. Riggs, what did he admit to
14 then?

15 A In that case, again, my memory is that he assaulted
16 him in a way that could have caused injuries that
17 could have killed him. Again, you don't have to
18 prove he intended to kill him.

19 THE COURT: Let the record reflect that Mr.
20 Riggs testified that the knife was at least six to eight
21 inches long that he was stabbed with. I might be wrong
22 but I think that's ---

23 THE WITNESS: He was armed with a weapon but I
24 just couldn't remember whether he actually stabbed him or
25 cut him with it, I can't remember.

1 Q So he pled that he was acting with malice?

2 A Yeah. I mean, his plea of guilty was not that
3 specific as we would normally do because we were
4 doing -- trying to get it done in front of a jury.
5 And we didn't do all of those normal -- we did later
6 but initially did not do all the questions. We told
7 the Court he desired to plead guilty to these
8 particular charges and then we did the rest of it.

9 Q Okay. But malice is an element of assault and
10 battery with intent to kill, right?

11 A It -- it's malice but it's not the type of malice
12 like you would have in a murder type case, it's more
13 of you have to intend to do the action, it couldn't
14 have been for -- on an accident.

15 Q Okay. Now, one of the things we mentioned was that
16 he was armed with a knife, basically he made an
17 admission he was armed with a knife?

18 A Correct.

19 Q And that he stole a car?

20 A Correct.

21 Q Why is that not armed robbery?

22 A The way that we were reading it, if I remember
23 correctly, and I'd have to go back and look if I had
24 notes, is he -- the indictment didn't include the car
25 as part of the armed robbery. The indictment

1 included the money. So it wouldn't be armed robbery
2 to steal the car because that's not how he was
3 charged ---

4 Q In this case ---

5 A --- carjacking to steal the car.

6 Q Okay. This case came out in 2006?

7 A He was charged -- we did the trial in 2006, he was
8 charged in 2005.

9 Q Okay. And you know about Gentry, right?

10 A Correct.

11 Q Okay.

12 A I don't remember when Gentry was ruled.

13 Q Okay.

14 A I don't remember when that came out but yes.

15 Q But post Gentry, you would agree that them alleging
16 the purse and then not -- it wasn't a necessary
17 element?

18 A Do you mean if they did or that they didn't have to,
19 I'm not sure ---

20 Q If they did not allege the purse and then -- and just
21 said property or ---

22 A I would argue they would have to allege a specific
23 piece of property ---

24 Q Even post Gentry?

25 A I would say in order for him to properly defend

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1 himself. Now, you would have to get a ruling on it.
2 We've had arguments about that before when they just
3 leave it blank and don't put what the property is,
4 that that's not a proper indictment.

5 Q Okay.

6 A Even post Gentry. Because -- in this case there's
7 more than -- there's several different things that
8 were taken allegedly from the different people. So
9 there's the car, there's the purse and I want to say
10 there was money off of Mr. Riggs but I can't remember
11 that part. But there would have been different
12 things. And so that was part of the argument, that
13 you had to be specific.

14 Q Was the purse in the car?

15 A That was the whole argument, as to whether he took
16 the purse off of her or whether the purse was in the
17 car and therefore not an armed robbery off her
18 person.

19 Q Okay. But it's your assertion that notice would not
20 have been proper under Gentry, therefore the armed
21 robbery at least had a factual basis outside of the
22 -- I mean, no factual dispute ---

23 A Correct.

24 Q --- notwithstanding the admissions he made.

25 A I mean, I'm not going to say -- I'm not going to say

1 anything about Gentry without having the case in
2 front of me. What I can tell you is our argument was
3 that the carjacking was for taking the car. The
4 armed robbery was for taking the other personal
5 property because that's how it was indicted.

6 Q Okay. And he pulled a knife on them, correct?

7 A That was the allegations.

8 Q Okay. The allegation is he pulled a knife on them,
9 he admitted to having a knife, correct?

10 A Correct.

11 Q He admitted to stabbing one of them, correct?

12 A That's what I remember at least.

13 Q And ---

14 A Are you -- when you say admitting, are you talking
15 about in his statement or to us or -- I'm not sure?

16 Q By way of pleading to assault and battery ---

17 A Yeah, okay, yes, yes, yes.

18 Q Okay. So essentially he -- he made the admission
19 that, I was there?

20 A Correct.

21 Q That I had a knife?

22 A Correct.

23 Q I stabbed one of them?

24 A Correct.

25 Q And I took their car?

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1 A Correct.

2 Q Okay. With the knife and I was there and robbed
3 them, how -- how do you intend on arguing that this
4 was not a kidnapping?

5 A Again, the whole kidnapping thing was we -- it was
6 more of a law argument than anything else because in
7 order to do the crime you would have to kidnap the
8 person and therefore we did not feel like kidnapping
9 should be -- was the proper charge. It was more of a
10 technical argument than it ever was going to be to a
11 jury.

12 Q Okay. And I imagine y'all did research on the
13 argument?

14 A Correct.

15 Q The ---

16 A I don't have his file so I can't tell you.

17 Q I know you don't have the file.

18 A I know that we did and I know that we argued it, it
19 just wasn't successful.

20 Q Okay. Did -- do you remember citing any cases?

21 A I could not tell you what -- I would have to look at
22 the transcript to tell you that but I don't remember
23 what was cited or what the results of our research
24 were at that time.

25 Q Okay.

1 MR. CORNEY: The record will speak for itself,
2 Your Honor, what the transcript ---

3 THE COURT: Beg your pardon?

4 MR. CORNEY: The record will speak for itself
5 what the transcript ---

6 THE COURT: Mr. Shaffer, go ahead.

7 Q And you know about transferred malice, correct?

8 A As far as in this case?

9 Q Yeah -- well, I was just saying in general?

10 A Yes.

11 Q Okay. You know, what are ways malice could be
12 inferred?

13 A You can infer malice from the action, you can infer
14 malice from what you say, you can infer malice from
15 the fact that you purposefully cut someone or stabbed
16 them. There's different ways to infer it.

17 Q And you can infer malice from ---

18 THE COURT: Do y'all want to have an
19 intellectual like real discussion or are you going to
20 cross-examine her?

21 Q And you would agree that certainly at this time and
22 now, even though it can't be charged, that you can
23 infer malice from the use of a deadly weapon?

24 A Definitely at that time you could, yes.

25 Q Okay.

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

2 THE COURT: You can get another bite, Mr.

3 Shaffer.

4 Yes, sir, Mr. Corney.

5 MR. CORNEY: Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. CORNEY:

8 Q Ms. Sampson, thank you for being here with us. If I
9 ask you any questions that you think are better
10 directed to Ms. Rowell or you don't have, I don't
11 want you to testify outside of your personal
12 knowledge on this.

13 A Okay.

14 Q So if you don't know, just let me know and we'll keep
15 it for Ms. Rowell.

16 You said you were privy to all the discussions
17 and meetings with Mr. Elders once you came on as
18 second chair?

19 A Well, she still mainly met with him but she would
20 come back and tell me what they had talked about.
21 And then when we were right before getting ready for
22 trial, I think I met with him and her.

23 Q Okay. And based on your discussions with Ms. Rowell
24 and any meetings you were privy to with Mr. Elders,
25 do you recall Mr. Elders ever denying his guilt or

1 what his stance on these charges?

2 A I honestly cannot -- my remembrance is that he always
3 had said he didn't do anything to Mrs. Riggs. But as
4 far as what he did, Mr. Riggs, my remembrance was he
5 was saying he did do parts of it and didn't do other
6 parts of it. And he would have pled probably to more
7 charges had there been an offer but there was never
8 an offer on the table that I remember as far as time.

9 Q Okay. And you -- as part of your representation as
10 second chair, co-counsel in this, did you have the
11 opportunity to look through the discovery file?

12 A Oh, yes.

13 Q Okay. Do you recall any noteworthy items -- I know
14 you don't have it in front of you, anything that
15 sticks out to you that you might remember?

16 A Oh lord, I remember -- like I said, I want to say
17 either when they arrested him or when they searched
18 his house, they found a bunch of knives and we argued
19 about whether those knives should come in because
20 they clearly were not the knife involved. We argued
21 a little bit about the pictures because some were
22 worse than others. There were some -- like I said,
23 co-defendants made statements. I remember the female
24 co-defendant making statements that were different
25 than what she testified to and that she had told the

1 officers.

2 Q And then his co-defendant, Christina Hall, she -- her
3 -- her statement was a confession and it implicated
4 Mr. Elders?

5 A Correct.

6 Q Do you recall that statement, whether or not it had
7 referred to Mr. Elders' attack of Mrs. Riggs or any
8 ---

9 A There was -- oh, from what I can remember, she
10 initially said that the only time he touched Mrs.
11 Riggs was maybe when she was in the car and that he
12 didn't like assault her at that time. And that --
13 but at trial, she said that she saw him assault her.
14 I think that's how it went down ---

15 Q The transcript will speak for itself as to what she
16 said.

17 A Correct. I just know it was different as far as the
18 assault went.

19 Q Sure, sure. And that would have been -- and that
20 would have been a big piece of evidence that she
21 never mentioned, touching Mrs. -- him touching Mrs.
22 Riggs, to bring out at trial, to end up in a big
23 thing you used in your defense?

24 A Yeah, there was two -- if I remember, there were two,
25 it was that and it was the purse, whether he took the

1 purse or whether it was just in the car when they got
2 where they were going.

3 Q Okay. There was also Mr. Riggs made an
4 identification of Mr. Elders at the police station.
5 Is that something you remember, kind of a weird
6 situation there?

7 A I want to say it was like a show-up type of situation
8 where he was the only one there. I can't remember --
9 it was weird, it wasn't like they -- they purposely
10 did it. I want to say -- I can't remember but I just
11 know that there was -- it wasn't -- it wasn't a six
12 pack photo lineup like they would normally do. It
13 was what we call a show-up meaning he just saw him
14 and said that's the person that did it. He didn't
15 have anybody else to compare him with, if I remember
16 correctly.

17 Q And -- and if I -- if I can lead you a little bit on
18 this one, that -- Mr. Riggs was there to pick up his
19 car?

20 A Yeah -- like I said, it wasn't on purpose, that's
21 what I remember about it. It wasn't -- sometimes
22 they do a show-up right after a crime happens like,
23 let's say ---

24 THE COURT: The armed robbery yesterday.

25 A Yes, exactly, right in front of the courthouse. But

1 sometimes they'll take you directly to the person and
2 that will be the only person in -- in front of a
3 bunch of police officers and they'll say, is that the
4 person. It wasn't something planned like that, it
5 was kind of just they saw him.

6 Q Kind of happenstance?

7 A Yes and said, that's the guy.

8 Q In that discovery file there's some DNA evidence
9 taken from the car?

10 A If you say so. That I do not remember at all.

11 Q Overall, in your review of the discovery file and
12 your discussions with Mr. Elders or your consultation
13 with Ms. Rowell, it's fair to say there's no
14 question, Mr. Elders was at the scene, that he left
15 evidence there, that he could be identified, that the
16 State has put him there?

17 A There was nothing we could do as far as an alibi or
18 he was somewhere else or anything like that, from my
19 remembrance of it. It was trying to mitigate what he
20 had done.

21 Q And there's some pretty strong, I don't want to use
22 the word overwhelming, I know you don't have the file
23 in front of you and it's been a long time. It's fair
24 to say, pretty strong evidence of his guilt on the
25 charges with Mr. Riggs?

1 A From my remembrance, even at trial, Mr. Riggs pointed
2 him out and said, that's the guy who did it. So
3 that's my memory of it. And so -- but we had some
4 things that were against us that we were going to try
5 to absolutely deny that he did it.

6 Q And is that why you decided to go ahead and say,
7 let's plead to these charges against Mr. Riggs but
8 there's some inconsistencies we can bring out on Mrs.
9 Riggs' charges?

10 A My remembrance of it is Mr. Elders always wanted to
11 admit what he had done with Mr. Riggs. It was Mrs.
12 Riggs that was the issue.

13 Q Okay.

14 A Stacy would be better qualified to answer that
15 question because she dealt with him more than I did
16 but that's my memory.

17 Q His presence at the scene, that was something that
18 y'all -- y'all stressed in front of the jury at trial
19 saying, we're not questioning whether or not he was
20 at the scene?

21 A Correct.

22 Q Okay.

23 MR. CORNEY: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 (Pause.)

1 Q Do you feel that Mr. Elders in any way was punished
2 by exercising his right to trial by Judge Johnson in
3 this situation?

4 A You have to tell me what his sentence was, I don't
5 remember.

6 Q Fair enough, okay.

7 A I mean, he was looking at a lot of time regardless of
8 what we did. I mean, armed robbery is 10 to 30 years
9 in and of itself, so.

10 Q Okay. And you did make the argument to the Judge on
11 the directed verdict question about double jeopardy
12 with the carjacking and the kidnapping, correct?

13 A Correct. That was a big issue, I just remember that
14 was the one thing we tried to research the most
15 about. I don't remember what the results of the
16 research were but I remember that was -- in general
17 you know the law enough, you don't research it every
18 time you've got a case, but I remember we researched
19 it for the kidnapping because that was a big problem
20 we were having, that every time somebody committed
21 any kind of crime, they were also being charged with
22 kidnapping.

23 Q Okay. And I think you testified earlier on direct
24 examination about the knives being introduced at
25 trial?

1 A Yes.

2 Q And that was something that you did pose -- or you or
3 Ms. Rowell posed an objection to, any recollection?

4 A And it was because they were introducing knives or
5 wanting to introduce knives that were clearly not the
6 knives used in this instance. I think there might
7 have even been a machete or something. It was
8 something that was much larger than what was even --
9 he was alleged to have had in the crime.

10 Q And is it your recollection at first, initially,
11 those knives were kept out and ended up getting in
12 later on in the trial?

13 A I -- if you say so.

14 Q Fair enough.

15 A I don't remember that. I remember the argument about
16 not getting them in.

17 Q Like I said, I don't want you to testify obviously
18 outside of your personal knowledge and I'll bring
19 these things up to Ms. Rowell.

20 MR. CORNEY: Beg the Court's indulgence for a
21 moment, Your Honor.

22 THE COURT: Yes, sir.

23 (Pause.)

24 A I'll will say, what I can tell you on that issue, is
25 I remember there being an argument about the knives

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1 coming in that were clearly not the knives used in
2 the crime. I can't remember whether they came in or
3 not.

4 Q Is it -- would it be fair to say there is generally
5 pretty wide latitude given to attorneys during
6 closing arguments?

7 A Yes.

8 Q Okay. From what you recall, I know you haven't had a
9 huge opportunity to look over the transcript or
10 anything of that nature, do you remember anything
11 that Luck or whoever -- whatever Solicitor did the
12 closing, saying something so far outside the
13 boundaries that it was objectionable?

14 A I saw -- you showed me earlier the allegations of the
15 -- of Mr. Elders now, the new ones, all of those that
16 I saw in there would be ones we wouldn't have
17 objected to anyway. Them saying we muddied the
18 water, that's said every time that we get up there,
19 when I was a defense attorney. The stuff about hold
20 him responsible, again, that is said at every trial
21 just about. I now say it myself, so. I don't --
22 wouldn't think that they were objectionable things.

23 Q Okay, just one last question. In your discussions
24 with Mr. Elders and, again, your meetings with Ms.
25 Rowell ---

1 A Let me say before you -- I cannot independently sit
2 here and tell you, I met with Mr. Elders. I don't
3 remember.

4 Q Okay.

5 A Normally we let the first seat meet with the
6 Defendant and then if there's a problem such as if I
7 -- if we thought it was something he should plead to
8 and he's not having a problem -- he's having a
9 problem with his attorney, the second seat would come
10 in and try to beat him into pleading this, as we call
11 it, or try to get him to do something differently. I
12 don't remember that being a problem with Mr. Elders.

13 So I don't remember independently meeting with
14 him other than with Ms. -- Ms. Owings or Stacy being
15 there and also talking with him.

16 Q Okay. I guess let me phrase it this way then.
17 Heading into trial, was it you understanding Mr.
18 Elders was aware of the strategy to plead to two
19 charges and try the rest through a jury trial and was
20 he on board with that strategy?

21 A What I remember, we had to go over it more than once
22 with him because it's confusing. I mean, it's
23 confusing to people who don't do this, it's confusing
24 to people who do do this all the time. So I remember
25 going over it with him because we kept having to kind

1 of -- trials are always fluid so you have to change
2 what you're going to do. And the fact that the Judge
3 wouldn't let -- you know, we were, let us do it in
4 front of the jury and make sure we've got the case
5 law to do it and then he wouldn't let us do it, we
6 had to keep going back and explaining that to him.

7 So, yes, he was -- he understood it.

8 Q Just as a last question, you wanted the jury to know
9 he had pled to these, that was your intention?

10 A That was our intention.

11 Q And that was your strategy at trial, to show, we're
12 pleading guilty -- guilty to what we're guilty of and
13 the rest we want questioned because of our challenge
14 because we're not guilty of that?

15 Q Right. We don't -- unlike other states, the
16 Defendant never says guilty or not guilty. They
17 never do that, at arraignment, we don't do that, even
18 when they get bond or when they do a trial. We
19 wanted to actually ask for him to do that and there's
20 some case law on that, that we should be allowed to
21 do that, and the Judge wouldn't allow us to do that.

22 Q You feel that the charges being initially being given
23 to the jury after they were sworn and throughout the
24 trial, those never coming up again, do you think the
25 jury was able to infer that he had pled to those and

1 taken responsibility for them?

2 A I want to say we were trying to say that, might have
3 even said it, but I'd have to look at the whole
4 transcript to remember. But that was the whole
5 point.

6 MR. CORNEY: Okay. Thank you very much.

7 THE COURT: All right, Mr. Shaffer.

8 REDIRECT EXAMINATION

9 BY MR. SHAFFER:

10 Q I'm going to ask you a really general question.

11 A Okay.

12 Q And I understand that you need to give the answer
13 that applies to the case afterwards, but I'd like you
14 to first say ---

15 A Okay.

16 Q --- a general answer. When -- when you have -- do
17 you think it's a valid trial strategy to admit to all
18 the allegations and go to trial regardless?

19 MR. CORNEY: Your Honor, I think that's
20 speculative, I think it goes to the issue of ---

21 THE COURT: What was the question again?

22 MR. SHAFFER: I asked if she believes it's a
23 valid trial strategy to admit to all charges and still go
24 to trial?

25 MR. CORNEY: Your Honor, I don't think it's

APRIL W. SAMPSON -- REDIRECT BY MR. SHAFFER:

1 relevant.

2 THE COURT: Overruled, let her answer it, go
3 ahead.

4 A I don't know that I can answer that question in
5 general, it would depend on the case.

6 Q Okay ---

7 A I mean there would be cases where you might admit
8 that, in self-defense. In a self-defense case you
9 would admit everything, you're just saying it's in
10 self-defense.

11 So, yes, there are times when you are going to
12 admit that everything the State says is true.

13 Q Well, do you think it would be generally -- and not
14 -- I -- I know you're going to differentiate this
15 afterwards for this particular case. But do you
16 believe that admitting that you held someone at
17 knifepoint, stabbed one of the people, and then drove
18 off in their car, admitting that to begin with, is a
19 valid trial strategy up against a kidnapping, armed
20 robbery and assault with intent to kill charge?

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

22 That's -- I mean, I don't even know that that's ---

23 THE COURT: Overruled.

24 A Again, you're asking me a generality. It's very hard
25 for me to answer that in general. I would have to

1 say, it can be. It's going to depend -- every case
2 is case specific so it's going to depend on the case.
3 I'm not saying even this case. Sometimes there's
4 going to be a reason for that. I -- so I can't give
5 you a general answer.

6 Q Okay. Now, one thing that you said, and I don't want
7 to harp on this, and trust me, I understand how it is
8 to be a PD and not have a large caseload. Well, what
9 was your case load at the time?

10 A I was Deputy then so it only had between 50 and 60
11 cases.

12 Q But they were major cases, correct?

13 A Correct.

14 Q Involving lot of attention?

15 A Yes, I would say so.

16 Q And you had mentioned something during cross saying
17 that you don't also research every single issue?

18 A What I meant is I don't have to research the law on
19 every single case because you know it. Like, if it's
20 a burglar first degree, I can give you all the
21 elements of burglary first degree. I don't need to
22 go look it up.

23 But like you asked with carjacking and I had to
24 sit here and think for a second because we don't have
25 carjacking that often. So that would be one I would

1 probably look up because I don't remember that off
2 the top of my head. That's what I meant by we don't
3 research every single one.

4 Q Okay. And prior to this case ---

5 A That has nothing to do -- I just want to say, that
6 has nothing to do with being a Public Defender,
7 that's just -- even when I was in private practice,
8 if I know it, I'm not going to go research it.

9 Q Okay. In this case, do you remember researching
10 objectionable comments made during closing arguments?

11 A That would be -- that would be entirely too hard to
12 research. I mean, I can't anticipate what they're
13 going to say in closing so there would be no way for
14 me to research all the objections you could make. I
15 mean, I know there's -- in fact, we have a list of
16 different objections that you can make during
17 closing, they're not always going to apply.

18 But as far as to research that, no, I had a list
19 of about 20 or so objections and Stacy could tell you
20 because she probably has it. I trained Stacy so she
21 has everything that I have as far as on how to do a
22 trial. But when I train people, I give them a list
23 of objections you can make in opening and a list you
24 can make in closing. So there's a list of objections
25 in general.

1 But as far as researching it, no, I don't think
2 I don't know how you would do that.

3 Q Okay. And you said muddying the water comes up in
4 every trial?

5 A There's even a joke about it. But, yes, in almost
6 every case when there's the defense -- when there's a
7 defense attorney present, there's even a joke about
8 an attorney and, you know, a minister walk down the
9 street and the minister says, there's a quarter in
10 the water and the attorney goes and takes a stick and
11 muddies it up and says, what quarter?

12 I mean, they do that in closing. That's -- so
13 yes, muddying the water is something that comes up
14 all the time. I don't know of a proper objection to
15 that unless they said, and these attorneys are
16 terrible attorneys and they shouldn't be doing that.
17 That would be an objection.

18 But to say in general that defense attorneys
19 muddy the waters, I don't know that that is an
20 objectionable comment.

21 Q Okay. But you -- you didn't do that at closing in
22 this case?

23 A No, I wouldn't have.

24 Q Would it have been proper for you to object to ---

25 A Stacy would be the one to object but I sit there

APRIL W. SAMPSON -- REDIRECT BY MR. SHAFFER:

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1 right next to her and if there's an objection that
2 needs to be made, you hit the person and they stand
3 up and object and you argue about it after -- outside
4 the presence of the jury.

5 MR. SHAFFER: All right. Thank you very much.

6 THE COURT: All right. Anything further of this
7 witness?

8 MR. CORNEY: Nothing further of this witness.

9 THE COURT: All right, you may step down, Ms.
10 Sampson.

11 (The witness leaves the witness stand.)

12 THE COURT: Y'all want to keep her here or let
13 her go back upstairs?

14 MS. SAMPSON: Back to appearances?

15 THE COURT: Oh, you've got appearances?

16 MS. SAMPSON: Yeah.

17 MR. CORNEY: I think she can go on back
18 upstairs.

19 THE COURT: Well, if we need her again, she'll
20 be one flight up.

21 Call your next witness.

22 MR. SHAFFER: Your Honor, at time I think we
23 should do the phone witness.

24 THE COURT: Call your next witness. Is that the
25 one you want to call next or what? Are you going to call

1 your client?

2 MR. SHAFFER: Stacy Rowell.

3 THE COURT: That's fine, I'm just asking you to
4 call -- let's get her on the phone, get her set up, let
5 me know. Make sure, Crystal, that you can hear
6 everything, everything go back and forth.

7 Do y'all have it set up?

8 MR. CORNEY: Judge, what we're going to do is I
9 think we're going to call her on a cell phone and she's
10 going to call us back on a land line.

11 THE COURT: That's fine. We just need to make
12 sure that she can record everything that's said.

13 MR. CORNEY: That's fine.

14 THE COURT: Y'all set it up and let me know.

15 (The Court was in recess.)

16 THE COURT: Now, I'm assuming this is your
17 witness, Mr. Shaffer? We're back on the record.

18 MR. SHAFFER: Yes, Your Honor. I would just
19 like to remind the Court of my objection.

20 THE COURT: Okay. You told me five times
21 already. Say it again though.

22 MR. SHAFFER: Just reminding you that I object
23 to the actual phone testimony.

24 THE COURT: All right. Now I asked you for
25 authority on that point, you never submitted me any, is

STACY ROWELL -- DIRECT BY MR. SHAFFER:

1 that correct?

2 MR. SHAFFER: Yes, Your Honor. I do not have
3 direct authority. I don't think the State has authority
4 to do this either.

5 THE COURT: I think I mentioned that since the
6 inception of this great republic, there's been no
7 authority that supports your request.

8 MR. SHAFFER: None that I have found.

9 THE COURT: My further observation was, there's
10 nothing that says you can or cannot do it therefore it
11 falls within the tundra of the discretion of the trial
12 judge, so we're going to do it over your objection.

13 Ms. Owings, is that correct.

14 MS. ROWELL: That's correct.

15 (STACY ROWELL, having first been duly sworn, via
16 telecommunication, testified as follows:)

17 MS. ROWELL: Yes, sir.

18 THE COURT: All right. You may proceed, Mr.
19 Shaffer.

20 DIRECT EXAMINATION

21 BY MR. SHAFFER:

22 Q Good afternoon, Ms. Owings -- or, Ms. Rowell.

23 A Hi, how are you?

24 THE COURT: It's still morning, by the way, but
25 go ahead.

1 Q If you could, you represented Mr. -- Mr. Elders, is
2 that correct?

3 A Yes.

4 Q Okay. And when did you begin representing him?

5 A All right. Now you have to remember, I don't have a
6 copy of my file but I -- I represented or I had Randy
7 as a client on some early drug charges probably in
8 2004, 2005 maybe and then whenever these -- whenever
9 he got these charges, they naturally came to me. So
10 I have been representing him on these charges since I
11 think the day after he was arrested.

12 Q Okay. And with -- with this -- how -- how soon prior
13 to the trial did this actually happen?

14 A Honestly, I don't have ---

15 Q I apologize. We have that in the record. I guess
16 that question is not really needed.

17 A Well, whatever -- whatever he would say, I would
18 agree because you know more than I do. But looking
19 at the indictment right now, the events happened on
20 April 17th of 2005. I was probably appointed on the
21 18th to represent him on these charges. And it looks
22 like, according to the transcripts, the trial or the
23 case was called in February of 2006. So it was
24 roughly a year later.

25 Q Okay. And did you have him on any other charges

STACY ROWELL -- DIRECT BY MR. SHAFFER:

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1 other than the minor drug charges?

2 A Before this incident?

3 Q Yes.

4 A No, I didn't. He had some minor drug charges and he
5 was on bond. I didn't see him a whole lot back then.
6 He was on bond and I saw him when he came in for
7 court appearances. And then he was incarcerated from
8 the time he was arrested for these charges.

9 Q Did -- did other charges come to light after he had
10 been arrested?

11 A Well, not exactly, they were all with this. When he
12 was arrested, he had the charges that we went to
13 trial on and then there were some charges that were
14 -- they were a separate incident but they were all in
15 some way connected to this incident. While -- there
16 was after this incident, before he was arrested --
17 actually, I mean, I don't think he was arrested the
18 day this happened, so it wasn't probably on the 18th,
19 but somewhere around there.

20 There was some allegations that Mr. Elders and
21 Christina Hall went to a woman's house and she later
22 reported to the police that they tied her up and they
23 beat her up and they stole her ATM card. And this
24 was while they were -- this was before they were
25 actually arrested for the charges. Those were.

1 separate. Randy, or Mr. Elders, always contended
2 that is not what happened and those charges, the
3 State, I think, still has pending. The victim in
4 that case, the alleged victim, has some additional
5 health issues or something, there's something --
6 there's something, some health issues going on with
7 her. And that case was never and to my knowledge,
8 charges are still pending. But they are -- they're
9 not -- they're -- they're part of, I guess, the chain
10 of events, according to the State.

11 Q Okay. Now, getting back to these charges, you
12 weren't noticed that both of the -- both sets of
13 charges were going to be charged together, right, the
14 ATM incident and these?

15 A That he -- yeah. I mean, it's a little more than an
16 ATM. I mean, those -- those were a big consideration
17 for us because those were kidnapping, armed robbery,
18 I think. But yeah, the ATM card incident but the
19 charges were pretty serious.

20 Q So the pending charges though were not supposed to
21 get called with this charges, is my understanding, is
22 that right?

23 A Well, no, no.

24 Q Okay. They were not going to get called together?

25 A No.

STACY ROWELL -- DIRECT BY MR. SHAFFER:

1 Q Okay.

2 A No.

3 Q Now, what was your experience up until this point, up
4 until the point of this trial?

5 A My experience?

6 Q Yeah.

7 A I guess you mean my experience as a lawyer?

8 Q Yes, that's correct.

9 A Okay. I was sworn in in 2003 and I worked for a
10 Plaintiff's firm, handling general Plaintiff's work
11 and divorce work for nine months and then I started
12 at the Public Defender's office on June 21st, I
13 believe, of 2004.

14 Q Okay. And you had been practicing for two years in
15 criminal law?

16 A Yes.

17 Q Okay.

18 A And I was accompanied by the Assistant -- or the
19 Deputy Public Defender when I tried it.

20 Q Okay.

21 A Who I think has already testified today.

22 Q Yes, she has. Now initially, what was the offer in
23 this case?

24 A There was no offer. Ms. Campbell was adamant that
25 she thought she had a great case and she wasn't going

1 to make a plea offer and we tried to get something
2 out of her, because I always do, I mean, even, you
3 know, just to see if she would give any kind of an
4 offer to the client. Ms. Campbell was adamant that
5 she wasn't going to make any plea offers for the case
6 and if he wanted to plead, he could plead straight up
7 and she was going to ask for as much time as she
8 could get.

9 Q Okay. So essentially he -- he could plead straight
10 up, is that correct?

11 A If he was going to plead, which he did plead to some
12 of the charges, he had to plead straight up. But we
13 had a strategy for having him plead when we did.

14 Q Okay. And what was your strategy?

15 A Well, we didn't think that Randy was -- Randy was
16 willing to plead to what he did, that was kind of his
17 position which I understand. And Randy also -- I'm
18 sorry, Mr. Elders, he -- we didn't think that they
19 had -- they didn't have a case of ABIK, I guess that
20 was the charge back then but now it's attempted
21 murder, but they didn't have an ABIK charge against
22 the wife. He and the husband allegedly fought it out
23 with a knife but there was never -- there was never
24 any -- the knife was never pulled on the wife or she
25 was -- there was never an issue with that. We

STACY ROWELL -- DIRECT BY MR. SHAFFER:

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1 thought it was an ABHAN at best.

2 So what we were going to do is we wanted to
3 plead him in front of the jury. What we did -- and I
4 read through the transcript but I remember that --
5 because I was kind of nervous about it, is after we
6 picked the jury we stood up but I think it was me,
7 not April, we stood up and we told Judge Johnson that
8 we -- that Mr. Elders was going forward on to trial
9 on whatever charges and he was pleading guilty to
10 carjacking and I think it was the one ABIK. And it
11 was a big fuss and there was lots of anger and all
12 this kind of stuff but we wanted the jury to hear
13 that he was accepting responsibility for what it is
14 that he said that he did and that he was going
15 forward on the other charges. It was a trial
16 strategy for us.

17 Q Did he plead in front the jury?

18 A No, I don't think that they would allow that. I
19 don't remember though. Honestly I do not remember.
20 But I know that whenever we decided to plead him, the
21 jury had been seated and we stood up and said that.

22 Q Okay.

23 A So they were told, they know that he did.

24 Q All right. And if you can remember, what -- what
25 were the charges he pled to?

STACY ROWELL -- DIRECT BY MR. SHAFFER:

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1 A He pled to, I think -- and I looked through -- I
2 looked through the record again just a minute ago,
3 carjacking and the ABIK on Mr. Riggs. I think that
4 was the gentleman's name. He did not plead to the
5 two armed robberies and he did not plead to the ABIK
6 on Mrs. Riggs, see her name -- yeah, Mrs. Riggs, he
7 did not plead to that. He also -- we also didn't
8 plead to the kidnappings, I don't think, either. I
9 don't remember, I think it was just the two charges.

10 Q Okay. And what is the -- the elements of carjacking,
11 do you remember?

12 A All right, you're asking somebody that hasn't
13 practiced trial law in seven years.

14 Q It's all right.

15 MR. CORNEY: I don't think that's relevant, Your
16 Honor.

17 A Sorry. I don't remember.

18 MR. SHAFFER: I withdraw the question.

19 A I knew back then but I don't right now.

20 Q What is ---

21 A Oh, I have the indictment, hang on.

22 MR. CORNEY: I don't think it's relevant, Your
23 Honor, I'm going to object to the question.

24 MR. SHAFFER: I've already gotten it in the
25 record. I'm happy with what I have so far.

STACY ROWELL -- DIRECT BY MR. SHAFFER:

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1 THE COURT: Don't worry about it, Ms. Owings.

2 Go to your next question, Mr. Shaffer.

3 Q Okay. So -- generally, whenever you're talking about
4 judges and pleading, do you -- do people generally
5 get more time or less time whenever they -- when they
6 plead guilty versus going to trial?

7 A Well, I mean, that depends on the judge and what your
8 case is. I mean, that's kind of a loaded question.
9 One of the things that I learned very quickly when I
10 was a Public Defender, is there were certain judges
11 that if you had a good case, if you couldn't get a
12 plea offer from the State, if you tried your case,
13 their sentence if they were convicted was going to be
14 better than if you pled them straight up because the
15 judge had to hear all the things that he's not going
16 to let you get out if you plead.

17 So sometimes it is your best if you go to trial.
18 Other times -- other times, the absolutely best thing
19 for your client to do is to -- is to plead even if
20 it's straight up because it depends on -- it depends
21 on the judge. It depends on the circumstances. It
22 depends on, you know, are they going to cart all the
23 victims into court and we're going to have, you know,
24 a two hour plea.

25 I mean, it depends on the circumstances. That's

1 a very difficult question to answer.

2 Q So with -- you had commented on something, if you had
3 a good case, it was good to let the judge hear all
4 the stuff versus pleading straight up. What happens
5 if you have a bad case, do you think that the
6 opposite is true, that it would be good not to let
7 the judge hear everything?

8 A No, I think -- I think it's not that you want the
9 judge to hear everything, I think that whenever you
10 waste the Court's time, I think that's a trial tax
11 sometimes.

12 Q Okay.

13 A I think that your client can get a bigger sentence
14 because, you know, clearly -- you clearly don't have
15 much of a case and you're wasting valuable docket
16 time. On that level it's true but I always would --
17 you know, I think that -- I think that if you -- I
18 think that you have to evaluate each case
19 individually.

20 Q Okay. And your strategy in pleading him guilty to
21 two of the charges was what? What did you hope to
22 gain from that?

23 A Well, what we hoped to do was to get the lesser
24 included on the ABIK. I don't remember this very
25 much in detail because that was -- that was a long

STACY ROWELL -- DIRECT BY MR. SHAFFER:

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1 time ago. It was a big trial but we -- I thought we
2 had a decent argument that you couldn't charge
3 kidnapping and carjacking, I think, at the same time,
4 those were two of the charges that we thought we had
5 argument on.

6 And what we were trying to do is we wanted -- we
7 thought that it would help if we could possibly get
8 the jury to not give him the kidnapping or the armed
9 robbery, if we pled him guilty to what we thought
10 that he did. We did not have a very good case. So
11 we were using the best strategy we could come up
12 with.

13 Q Okay. And ---

14 A We had legal arguments really -- I mean, we did not
15 have a good case.

16 Q So your legal arguments for kidnapping, you believed
17 double jeopardy would preclude kidnapping?

18 A I think so but I don't remember.

19 Q Do you remember doing research on that?

20 A I did a ton of work on this case and I'm pretty sure
21 that I did. I think April and I both did. And the
22 complications of this is why I brought her in because
23 I thought she was the best lawyer in that office.

24 Q Okay, would you -- would you agree with the fact that
25 -- or that that was one of your primary reasons for

1 going forward?

2 A No, I won't agree with that because I don't remember.

3 Q Okay.

4 A It might have been but I do not remember. I remember
5 that, you know -- this is the other thing. I
6 remember that -- I don't -- I don't have my file
7 notes because if I did I would have my notices of all
8 my meetings with Randy and all the things we talked
9 about. I don't recall that Randy was actually
10 hopping to plead to all of the charges.

11 Q Okay.

12 A And so -- I mean he was -- he did not -- we didn't
13 think he had an ABIK, like I said. He was never
14 going to plead to the charges that are still pending
15 and he didn't want to plead straight up. Nobody
16 wants to plead straight up. And so I don't recall
17 that -- I don't remember, I'd have to look. I had so
18 many clients and I would have to have my file to tell
19 you exactly what our conversations were on that over
20 -- over the course of that year.

21 Q Okay. Now, but you're familiar with the rules of
22 professional conduct, correct?

23 A Yes, sir.

24 Q Okay. And you try to follow those rules, is that
25 correct?

STACY ROWELL -- DIRECT BY MR. SHAFFER:

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1 A Always, always.

2 Q Okay. And one of those rules is you don't make false
3 statements to a Court, correct?

4 A Yes.

5 Q Okay. Do you have the transcript in front of you, by
6 the way?

7 A Yeah, I do.

8 Q Okay. If you could turn to, it's in volume 2, it's
9 page 459. Could you turn to that?

10 MR. CORNEY: Your Honor, we may need to approach
11 for a minute about this or I don't guess we need to
12 approach, we can do it right in front of you, if you
13 like.

14 THE COURT: Yeah.

15 MR. CORNEY: I don't know if it's proper for him
16 to go down the route that he's going. It seems like he's
17 going down a disciplinary issue and I don't think that's

18 ---

19 MR. SHAFFER: I'm not raising ---

20 MR. CORNEY: --- proper for a PCR.

21 MR. SHAFFER: I'm not alleging that she did
22 anything wrong.

23 THE COURT: I'll let him ask one or two more
24 questions.

25 MR. CORNEY: I just wanted to make sure ---

1 THE COURT: Okay.

2 MR. CORNEY: --- for Ms. Rowell's ---

3 THE COURT: That's a separate issue if you're
4 going to claim that she violated some ethics.

5 What was your question again, Mr. Shaffer?

6 Q Now you have the page 459?

7 THE COURT: Volume 2, yes, go ahead.

8 A Uh-huh.

9 Q Could you read from line 6 to line 15?

10 A Sure. We told him there were some legal issues we
11 pursued which inferred the issue we've argued, that
12 there may be a double jeopardy argument. We didn't
13 think what he did necessarily the jury -- this is
14 very hard to read but I'm doing the best I can -- the
15 jury obviously agreed. We also weren't sure from
16 some of the discovery that we -- that this was
17 necessarily armed robbery. We thought they may
18 rather -- than him having all of these most serious
19 charges, our advice, we asked for a jury trial on
20 these charges. I ask, Your Honor, that he not be
21 penalized for asking for a trial on these charges.

22 Q Okay. And I apologize, I actually wanted you to read
23 line 2 and 3 as well -- or 2 from 5 -- line 2 to 5.

24 A Okay. The Defendant has always thought he wanted to
25 plead in this case.

STACY ROWELL -- DIRECT BY MR. SHAFFER:

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1 Okay, well then this was a case where he
2 probably did tell me that he wanted to plead which
3 probably he didn't want to plead straight up.

4 Q Okay. I was just checking and making sure that that
5 was ---

6 A My statement was to the Court.

7 Q Yeah. Well, you said that you didn't remember and I
8 just wanted to sort of clarify your memory with that.

9 A Thank you.

10 Q But -- but you would agree that between line 2 and
11 line 15 is correct statements, right?

12 A If I said it on the record back in 2006 ---

13 THE COURT: She can agree that's what the record
14 reflects, how is that?

15 A Absolutely.

16 Q Thank you. And was your -- your recollection of the
17 events and your conversations with Mr. Elders better
18 in 2006 or is it better today?

19 A This was 2006, obviously, I talked to him all the
20 time back then.

21 Q All right. Now, you did the closing argument in this
22 case, is that correct?

23 A I believe so, yes.

24 Q If you don't mind, do you know if you had any
25 objections to the closing argument of Ms. Campbell?

1 A I don't remember, I don't think so. I didn't do that
2 a lot during an attorneys' closing arguments. I
3 think they get a pretty good bit of leeway but I
4 don't remember.

5 MR. SHAFFER: Your Honor, the -- if I may, the
6 rest of this ---

7 THE COURT: The rest of what?

8 MR. SHAFFER: The rest of these questions that I
9 have for her all contain really legal arguments. I'm
10 happy ---

11 THE COURT: On your supplemental application?

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: Okay, okay.

14 MR. SHAFFER: And I could go through them ---

15 THE COURT: You know, you do what you think you
16 should do. Go ahead.

17 MR. SHAFFER: Okay. Thank you, Your Honor.

18 Q If you would turn to page 383?

19 A 383.

20 THE COURT: Volume 2 still, is that correct?

21 MR. SHAFFER: Yes, Your Honor.

22 A All right, 383. Okay.

23 Q If you could read the sentence that begins on line 20
24 and ends -- well, if you could read it to the end of
25 that sentence, really line 20 ---

STACY ROWELL -- DIRECT BY MR. SHAFFER:

- 1 A What was that again?
- 2 Q Really line 20 through 23 -- 22.
- 3 A Okay. Starting with criminal cases?
- 4 Q Yes.
- 5 A All right. Criminal cases though somewhat you seek
- 6 the truth because in criminal cases the Defendant has
- 7 the absolute right to confront each and every witness
- 8 such as DNA reports, statements that were taken.
- 9 Q Okay. Would you agree that the jury's job is to
- 10 seek the truth in a criminal case?
- 11 A They're the fact finder.
- 12 Q Okay. But would you agree with that -- is that
- 13 statement objectionable, in your opinion?
- 14 A I don't know ---
- 15 Q Okay.
- 16 A --- honestly.
- 17 Q But you did not object at the time?
- 18 A The transcript doesn't say that I did.
- 19 Q Okay. If you could turn over the 385?
- 20 A Okay, all right.
- 21 Q Now, if you recall, there's two regularly used
- 22 definitions of what a reasonable doubt is in South
- 23 Carolina, would that be fair to say?
- 24 A I don't remember but I trust you.
- 25 Q Okay. Would -- I think I can skip over that because

1 it's in the record. I'm trying to make this as fast
2 as I can because it's over the phone.

3 A No problem, no problem.

4 THE COURT: You suggest they should have
5 objected to Judge Johnson's charge on reasonable doubt,
6 Mr. Shaffer?

7 MR. SHAFFER: No, Your Honor, I'm actually
8 suggesting that that charge was confused by a statement
9 that Ms. Campbell made during her closing argument.

10 THE COURT: All right, go ahead.

11 MR. SHAFFER: And the basis for that, if you
12 wouldn't mind me ---

13 THE COURT: Go ahead.

14 MR. SHAFFER: --- saying it now, is just the
15 fact that she states the Court's involved further to say
16 ---

17 THE COURT: Just make your point, just tell me
18 what did Ms. Campbell say in your opinion should have
19 been objected to.

20 MR. SHAFFER: The line about going further from
21 -- the Court's involved further in defining reasonable
22 doubt as hesitate to act. I mean -- I apologize, I mixed
23 that up. Going further into defining it as -- as clear
24 -- or firmly convinced. I believe that those are
25 actually on equal footing and the way she ---

STACY ROWELL -- DIRECT BY MR. SHAFFER:

1 THE COURT: Well, ask Ms. Owings the question
2 then.

3 MR. SHAFFER: I think I can break these up
4 during argument so ---

5 THE COURT: Okay, that's fine.

6 MR. SHAFFER: At that point, I'll move along.

7 Q Now, briefly, I know that we said we didn't know the
8 charges on -- we didn't know all the elements of
9 carjacking?

10 A We did back then, thank you.

11 Q I know but today, here today?

12 A No, I don't remember. I would have to look ---

13 THE COURT: She wasn't privy to that
14 conversation.

15 Q Now, if you wouldn't mind, please tell us what he --
16 or what parts of kidnapping did he not admit to?

17 A Well ---

18 Q By pleading guilty, I apologize?

19 A --- kidnapping ---

20 Q I apologize, he did not plead to kidnapping, correct?

21 A I don't think so, no. I think it was just carjacking
22 and ABIK on Mr. Riggs.

23 Q Okay.

24 A My understanding of kidnapping is always kind of hard
25 to get out of because basically the way it was always

1 described to me is if somebody were to come to my
2 office right now, if I were in South Carolina, if
3 they did this to me, and not let me leave my office,
4 even for a brief period of time, that's kidnapping.
5 That was my understanding of it back then.

6 Q Okay.

7 A It's a pretty tough one to argue out of, that's why
8 it's often charged.

9 Q So -- so it was often charged?

10 A I had lots of kidnappings.

11 Q Okay. It was often charged along with armed robbery,
12 is that correct?

13 A As I recall, yeah, armed robberies, burglaries, major
14 crimes.

15 Q Okay. And is your understanding of South Carolina
16 law that in order for an armed robbery, do you need
17 to use a knife as merely as the armed or do you need
18 to use the weapon as a instrumentality in taking the
19 whatever you're intending to steal, the robbery?

20 A Now that, I do not remember. I do not remember
21 technical argument for the crime anymore, I don't
22 remember.

23 Q Okay.

24 A I know that if there was ever any weapon -- I do
25 remember that if there was ever any weapon used, it

STACY ROWELL -- DIRECT BY MR. SHAFFER:

1 was very hard to get the State to give you a strong
2 arm plea.

3 Q Okay. And did you -- you advised your -- your
4 understanding of the law is you advised -- you
5 conveyed that to Mr. Elders, is that correct?

6 A I conveyed to Mr. Elders whatever my much more
7 substantial knowledge of criminal law in South
8 Carolina was back in 2006.

9 Q Okay. And you advised him to go to trial, is that
10 correct?

11 A No, no, no, no, no, okay, let's back up a minute
12 here. I never pushed my clients into a trial. I
13 would give them their options. I would tell them if
14 I thought that one option was better than the other
15 but I was always very very careful that I wasn't
16 going to tell them that they shouldn't plead or they
17 should go to trial, they shouldn't go to trial. I
18 think what I probably told him was, I thought this
19 was our best option to get him the least amount of
20 time.

21 Q Okay. But -- but it's true that you said at the
22 sentencing hearing, on our advice, he asked for a
23 jury trial on these charges, is that correct?

24 A Right, based on my advice. Now, based on my advice
25 was a whole lot, many hours of talking about a whole

STACY ROWELL -- DIRECT BY MR. SHAFFER:

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1 lot of issues.

2 MR. CORNEY: You Honor, the record will speak
3 for itself. I understand she's got a copy of the
4 transcript in front of her but it will all speak for
5 itself. I don't think we need to question her as to what
6 the transcript says.

7 THE COURT: Well, I'm going to let him do the
8 best he can.

9 MR. CORNEY: I just wanted to say that, you
10 know. Thank you, Judge.

11 THE COURT: That's all right. Let him go ahead.
12 Go ahead, Mr. Shaffer.

13 Q And at some point he did want to plead guilty, is
14 that correct?

15 A That's what I said. I said but at some point there
16 was -- he did want to plead but just because you get
17 up there and you say that somebody wants to plead,
18 you're not -- you're -- you're not telling the Judge,
19 well, he wanted to plead to this charge or this
20 charge or this charge but not this one and not this
21 one. I mean, that is a general statement made
22 whenever you're in mitigation and you're trying to
23 get the Judge not to hammer the guy.

24 He did want to plead but I doubted he I wanted
25 to plead -- I don't remember exactly but I doubt he

STACY ROWELL -- DIRECT BY MR. SHAFFER:

1 wanted to plead straight up to all the charges.

2 Q But you don't remember exactly?

3 A No, I don't remember exactly.

4 Q Okay.

5 MR. SHAFFER: I don't think I have any further
6 questions.

7 THE COURT: All right, Mr. Corney.

8 MR. SHAFFER: You Honor, if I may just ask ---

9 THE COURT: Go ahead. We'll take a little
10 pause, Ms. Owings, while Mr. Shaffer consults with his
11 client.

12 THE WITNESS: Okay, thank you.

13 (Pause.)

14 MR. SHAFFER: Nothing further, Your Honor.

15 THE COURT: All right. Now, technically cross
16 by the State.

17 MR. CORNEY: Thank you, Your Honor.

18 THE COURT: Mr. Corney, whom you've never met,
19 Ms. Owings.

20 THE WITNESS: Hi, Mr. Corney

21 CROSS-EXAMINATION

22 BY MR. CORNEY:

23 Q This is Rob Corney from the Attorney General's
24 office. Thank you for agreeing to do it by phone
25 today with us.

1 A Not a problem.

2 Q Being very flexible with us. I am going to try to
3 kind of gloss over and just get an overview of what
4 you remember. I know you don't have your file in
5 front of you.

6 Do you remember meeting with Mr. Elders to
7 discuss the charges he was facing?

8 A Yes.

9 Q Okay. And were you able to review the indictments
10 with him and kind of the elements of the charges and
11 what was going to be sought to be proved at trial
12 against him?

13 A All right. Well, yes, I mean, I did. I mean, as
14 soon as -- once I got his discovery, I know that I
15 would have gone and viewed it with him a couple of
16 times. I don't remember because I don't have my
17 file. Mr. Elders is the one that asked to have it at
18 the jail with him. We usually advised against that.
19 But yes, I would have gone over his discovery and the
20 elements of the charges many times.

21 Q Okay. During your discussions with him, did he ever
22 deny guilt of these charges? I mean, what did he
23 relay to you? And I'll just note, under South
24 Carolina Code 17-27-130, attorney/client privilege
25 has been waived by the filing of his application for

STACY ROWELL -- CROSS BY MR. CORNEY:

1 the extent necessary to defend against the claims.

2 So what did he tell you in your -- in your
3 meetings as to his -- his guilt to these charges?

4 A Okay, I want to be very careful because my memory is
5 limited so I don't want to put anything on the record
6 if it's going to harm Randy later.

7 Q I understand that.

8 A I don't -- my memory is very limited. I know that
9 with the charges that are still pending, he was
10 always adamant that that woman was a friend of
11 Christina's and she gave her the ATM card. And she's
12 schizophrenic or she had some other issue and of
13 course she had some other issues and they never
14 robbed her.

15 My memory of the other charges and our
16 discussions is -- is -- is a little different because
17 I remember -- I remember that he told me that it
18 wasn't that big of -- that big of a fight. That -- I
19 remember that the -- the testimony by -- or the
20 statements that were given by the Riggs he thought
21 were very inflated of the actual event.

22 But as I recall -- as I recall, I think he was
23 pretty straightforward with me about what actually
24 went down that day but I just -- I don't remember,
25 Mr. Corney.

1 Q That's fine, I appreciate that very much. I know you
2 had mentioned these other pending charges. The State
3 was aware of those charges at the time of this trial,
4 is that right?

5 A Oh, yeah, oh, yeah. We had many discussions about
6 those and I was hoping that she would just dismiss
7 them. But they had a difficult victim and to me,
8 once they got this, what they got on this, I thought
9 they should just dismiss those charges.

10 But my understanding is they're still pending,
11 at least the last time that -- the last time I had
12 any knowledge of it, they were still pending.

13 Q Okay. So during the course of trial, would it be
14 fair to say you had to be very careful with what was
15 brought out to make sure those charges weren't
16 infused into this trial?

17 A Yeah, I think there were some discussion that they
18 wanted to bring this other woman in and I don't
19 remember exactly but, yeah, we were very careful
20 about that. We didn't want any mention of that other
21 set of charges coming in.

22 Q Okay. Now, as far as him entering the plea to the
23 two charges at the start of trial, was that a
24 strategy you had discussed with him prior to showing
25 up for trial that day?

STACY ROWELL -- CROSS BY MR. CORNEY:

1 A Yes, I think me and April both did, yes.

2 Q And -- and was it -- based on what you relayed to
3 him, do you think he understood that there was no
4 recommendations or negotiations on those pleas?

5 A I think he knew that all along because there were
6 never ever any recommendations. If there was going
7 to be a recommendation, it was going to be something
8 ridiculous, ridiculously high. There was never --
9 there was never anything, that was -- I was always
10 very clear on that. I do remember that, there was no
11 offer, ever.

12 Q Okay. So based on your discussions, were you able to
13 advise him that it was possible he could get the
14 maximum sentence on the pleas if he entered them
15 open-ended like that?

16 A Yes, yes. And I don't have my file so I don't know
17 if I had it but Doug was also really strict, anytime
18 there was any kind of plea, there was a form that we
19 had to fill out where we go over all their rights,
20 acknowledge what we told them, what we talked about.
21 I know if they still do that anymore. But -- and
22 April -- Ms. Sampson, I'm sorry, was with me and, you
23 know, we would have -- this was risky, going to trial
24 was risky, pleading was risky. There was nothing
25 about this that was comfortable or fine. It was --

1 this was a very stressful experience for all of us,
2 you know, not nearly for me as it was for Mr. Elders.

3 But if you went to trial, it's very scary and
4 you don't know what's going to happen. If you plead
5 then, you know, Ms. Campbell, whenever -- Ms.
6 Campbell always was -- was setting this for trial
7 because she wouldn't give us a plea offer and so that
8 means she calls her trial in front of whoever she
9 wants to and that we're kind of at the mercy of the
10 judge that she picks too.

11 So, you know, pleading was risky because
12 consecutive time on all of this could have been, you
13 know, well over a hundred years.

14 So, I mean, none of this -- all have this was
15 risky and we would have gone over all of this.

16 Q Okay. And I think you mentioned a minute ago not
17 pushing your clients to go to trial or plead. In
18 this particular instance, you feel Mr. Elders made a
19 voluntary and intelligent decision to enter to the
20 plea to those two charges?

21 A Yes, I do.

22 Q Okay. And you feel you gave him all the advice and
23 information necessary to make an informed decision on
24 whether to plead to those two?

25 A Yes, I do.

STACY ROWELL -- CROSS BY MR. CORNEY:

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1 Q Okay. Was Mr. Elders, based on your discussions, on
2 board with the strategy of pleading to two of the
3 charges and proceeding to trial on the rest?

4 A Yes. I think so. Yes, I know so. I mean, we had --
5 I -- Randy and I had a lot of discussions about a lot
6 of this. We -- we talked about it ad nauseum. April
7 discussed it with him. We wouldn't have done this if
8 he wasn't on board and ready to go.

9 Q Okay. And you mentioned the discovery file a minute
10 ago. I know it's not in front of you, I know it's
11 been a long time. Do you remember any noteworthy
12 items from that, anything you thought was going to be
13 particularly damaging to Mr. Elders?

14 A I know that Mr. Riggs could easily make an ID of him
15 so it's not like we could say it wasn't him. He --
16 and of course, it is -- based on the -- based on what
17 was said, this -- they rode in the car with them and
18 then this altercation happened and they were all very
19 up close and personal. We were going to have a hard
20 time fighting any kind of an ID.

21 Q Okay.

22 A But to me that -- you have an ID and then you have
23 this, you know, sweet little old couple who are on
24 their way home from church and picked up some people
25 to give them a ride and then they carjack them. It

1 was going to be tough.

2 Q Okay. Do you recall there being DNA evidence and
3 fingerprints, forensic type evidence against Mr.
4 Elders?

5 A I do remember that. I haven't read the transcript in
6 depth. I read the return and I went through -- I
7 went through some other things, the indictments and
8 all that kind of stuff, to try to make sure I
9 remembered everything that happened. I remember
10 there was a lot of stuff in that case. They had the
11 knife, they had blood. I know that they had a good
12 bit. I don't remember, I'm sorry.

13 Q That's fine. And would you say, based on your
14 recollections, that there was pretty overwhelming
15 evidence of Mr. Elders' guilt, at least on the
16 charges against Mr. Riggs?

17 A Yes.

18 Q Okay. And there was, based on evidence, very little
19 doubt that Mr. Elders was at least present at the
20 scene and had ridden in their car, based on the
21 fingerprints, DNA, those types of things.

22 A Right, right, exactly.

23 Q Okay. And is that what kind of -- went into your
24 formulation of a strategy to plead to the charges as
25 to Mr. Riggs and challenge the remaining charges?

STACY ROWELL -- CROSS BY MR. CORNEY:

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1 A Right. We were challenging the remaining charges and
2 we clearly didn't think the State could prove an ABIK
3 on Mrs. Riggs. We thought that was just overcharged.
4 And we were right. We got the ABHAN. But that --
5 that -- we thought that was our best chance of trying
6 to -- to keep him from getting significant time.

7 Q Okay. And that's something that you tried to stress
8 to the jury, that you weren't making any claim that
9 he wasn't at the scene or didn't take part in any of
10 this, correct?

11 A Right because if we did that, I think we would have
12 lost all credibility. We'd have lost all credibility
13 with the jury.

14 Q Okay. And by pleading guilty to those first two
15 charges, that was -- that was at least a little bit
16 of an attempt to build credibility with the jury?

17 A Yes.

18 Q Okay. There were some, I guess, inconsistencies in
19 statements, do you recall, regarding the armed
20 robbery, taking Mrs. Riggs' purse, is that something
21 you recall?

22 A I don't remember that.

23 Q Okay.

24 MR. CORNEY: Beg the Court's indulgence for just
25 one moment.

1 THE COURT: Yes, sir.

2 (Pause.)

3 Q All right. Throughout the course of the trial, you
4 made numerous consistent objections to the
5 introduction of these knives at trial, is that right?

6 A Yeah, I did see that, yeah.

7 Q Okay. And that was pretty important to get those
8 knives kept out?

9 A Well, I mean, I wanted to keep knives out, I wanted
10 to keep prejudicial pictures out, anything that, you
11 know -- anything to me that's going to be prejudicial
12 that's going to -- you know, weapons tend to scare
13 the jury. Pictures that depict an injury that may
14 not be as serious as the picture makes it look
15 prejudicial.

16 I think that one of the -- one of them was in a
17 wheelchair when the picture was taken and that made
18 them look like they had significantly worse injuries
19 than they actually did. But I know that there were
20 -- there were several things that I tried to keep out
21 just to keep -- to try to keep the anger down a
22 little bit.

23 Q Okay. And after the State rested, you made the
24 motion for a directed verdict and I think that's
25 where you made the argument about carjacking and

STACY ROWELL -- CROSS BY MR. CORNEY:

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1 kidnapping and that that violated double jeopardy?

2 A I believe so, yes.

3 Q Okay. You feel you did sufficient research and
4 investigation to argue that motion at that time?

5 A Yes.

6 Q Okay. Do you remember discussing with Mr. Elders his
7 right to testify and present evidence in his defense?

8 A Yes. I would have had a very lengthy discussion with
9 him on that. Yeah, we would have had a very lengthy
10 discussion on that and all the things that that
11 means. I don't remember Randy's record. I don't
12 have my file in front of me so I don't remember if
13 there was anything, any crime of moral turpitude that
14 could come in against him.

15 I also know that I didn't think that Randy would
16 help, I was worried that Mr. Elders would not hold up
17 well on cross-examination by Ms. Campbell. And if
18 Mr. -- and if he didn't testify, then we would have
19 the opportunity to have last closing which I think
20 sometimes really does help.

21 But I don't remember our exact discussions or
22 what lead him to that decision but I would have had a
23 very frank conversation with him about that.

24 Q And that decision would have been ultimately in his
25 hands?

1 A Yeah, it's his decision. And if he wanted to
2 testify, then we would have done the very best we
3 could.

4 Q Okay. As far as closing arguments, in your
5 experience, prior experience as a criminal defense
6 attorney, would you agree that attorneys have pretty
7 wide deference in where they're allowed to go in
8 closing arguments as long as it's based on the record
9 and the evidence and what can be inferred from that
10 evidence?

11 A Yes, and everybody pushes it, yes.

12 Q And you reviewed the transcript, is there any portion
13 of that -- that closing argument that you think was
14 objectionable that you missed an objection to?

15 A Mine or Ms. Campbell's?

16 Q Ms. Campbell's, I apologize, that you think was
17 objectionable.

18 A You know what, I haven't read thoroughly through it
19 and I -- I will -- I may have missed something in her
20 closing argument. I was never one to -- it had to be
21 something that was glaring in my face for me to
22 object during closing argument. And I -- the things
23 that were just shown to me, I don't know that I would
24 have caught those.

25 Q Okay. So and let -- is it fair to say you wouldn't

STACY ROWELL -- CROSS BY MR. CORNEY:

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1 make an objection during closing argument unless it
2 was pretty egregious and in the face of the jury?

3 A Right. And I -- and I've done it before but those
4 two that were pointed out to me on direct, I don't
5 know that I would have objected to those, if I caught
6 it.

7 Q Okay. Throughout the course of the trial, do you
8 think you did an effective job of presenting the
9 strategy that you wanted to present, that Mr. Elders
10 was guilty of the two things he had pled to and these
11 other things, there wasn't enough evidence to support
12 it?

13 A Yes.

14 Q Okay. Do you think that the ---

15 MR. CORNEY: Actually, I think that's all the
16 questions I have, Your Honor. I think I'm finished
17 there. Thank you very much.

18 THE WITNESS: Thank you.

19 THE COURT: Anything on redirect, Mr. Shaffer?

20 MR. SHAFFER: A few questions.

21 REDIRECT EXAMINATION

22 BY MR. SHAFFER:

23 Q You mentioned that there -- there would have been no
24 recommendation by Ms. Campbell if you went to -- or
25 if you pled, that's correct?

- 1 A No, I didn't say there was no recommendation.
- 2 Q Okay.
- 3 A There may have been a recommendation and it may have
4 been the max, I don't remember. I know that her
5 intention was to ask for as much time as she could
6 get.
- 7 Q What was her recommendation at trial?
- 8 A At trial?
- 9 Q Yeah.
- 10 A I don't remember.
- 11 Q What -- did you expect her to have a recommendation
12 at trial ---
- 13 A Again, I don't remember ---
- 14 Q --- going for the max?
- 15 Q In my experience with her in trials, and I had a lot
16 with her before I left, she always asked for as much
17 time as she could get.
- 18 Q Okay. That's after a trial, right?
- 19 A Right, right.
- 20 Q Okay.
- 21 A And I had pleas with her that were the exact same
22 way.
- 23 Q All right. And now you -- do you remember any trial
24 where she ever asked for something less than the max?
- 25 A No.

STACY ROWELL -- REDIRECT BY MR. SHAFFER:

1 Q Okay.

2 A No, in fact, most of my trials with her were life
3 without parole cases that I begged for maybe 60
4 years. But no, no, my experience with her was, no,
5 not in my cases.

6 Q You said something about you believe that there was
7 overwhelming evidence of guilt at a trial, do you
8 think ---

9 A The charges I pled him to, yes.

10 Q Okay. Do you think there was overwhelming evidence
11 of guilt for the charges he went to trial on?

12 A I think that it was stacked against us but I thought
13 we had some legal arguments and I didn't think that
14 they had -- I did not think they had any -- they had
15 enough evidence to prove ABIK against Mrs. Riggs. I
16 thought that was an ABHAN at best and that what I got
17 but...

18 Q Now, discussing the trial, the charges he went to
19 trial with, if he had made a statement that he had a
20 knife on him, would it help or hurt the armed robbery
21 charge?

22 A That he had an iphone?

23 Q No, if he had -- if he had made a statement that he
24 had a knife in his possession, would it have helped
25 or hurt the armed robbery charge?

1 A A knife in his possession ---

2 THE COURT: Ask her which way, would it help the
3 Defendant or help the State. That's the way to ask the
4 question.

5 THE WITNESS: I don't understand.

6 Q Oh, I apologize. If Mr. Elders had made a statement
7 that he had a knife in his possession during this
8 time, would it have helped the Defendant or would it
9 have helped the State in convicting him of armed
10 robbery?

11 A If he had made the statement to who, the police or to
12 the Riggs during the robbery?

13 Q Or if he had made the statement to the jury, the jury
14 found out that he had a knife on him, would it have
15 helped or hurt him?

16 A I assume it would have hurt.

17 Q Okay. Do you think it would help or hurt his case
18 for kidnapping?

19 A I don't know.

20 Q Okay. Would it have helped or hurt his case for
21 assault with intent to kill Mrs. Riggs?

22 A It probably would have hurt for Mrs. Riggs because --
23 but I don't know.

24 Q Okay. If he had made a statement that he had stolen
25 their car, would it have helped or hurt his case for

STACY ROWELL -- REDIRECT BY MR. SHAFFER:

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1 armed robbery?

2 A If he made that statement?

3 Q Yeah.

4 A In front of the jury?

5 Q If the jury ---

6 A I think that anything -- I don't know. I don't know.
7 I don't -- I don't quite understand. He already
8 admitted that he stole the car, he pled to
9 carjacking.

10 Q Yeah but do you think ---

11 A I don't know that it would have had any effect
12 whatsoever.

13 Q Okay. But you don't think that would have any effect
14 over whether or not ---

15 THE COURT: This is argumentative, okay.

16 MR. SHAFFER: I apologize.

17 A I don't know, he said ---

18 THE COURT: Stop, Ms. -- Ms. Rowell, wait a
19 minute. I concluded that he's arguing with you and not
20 asking questions. So move on with questions, don't argue
21 with the witness.

22 MR. SHAFFER: Your Honor, that's all I have.

23 THE COURT: All right. Anything on recross?

24 MR. CORNEY: Nothing on recross. Thank you very
25 much, Ms. Rowell.

1 THE COURT: Good luck, Ms. Rowell. Have a good
2 time down in Florida. Thank you so very much.

3 MS. ROWELL: Thank you very much.

4 MR. SHAFFER: Thank you.

5 MS. ROWELL: Bye.

6 THE COURT: And I'm going to make you pay for
7 her phone call. No, Mr. Shaffer.

8 MR. SHAFFER: It was my phone, Your Honor.

9 THE COURT: Well, she had a phone too. She was
10 on a land line, come on, that's all right.

11 Anything further, Mr. Shaffer?

12 MR. SHAFFER: I believe I'm going to call the
13 Applicant, Your Honor.

14 THE COURT: How long is this going to take?
15 It's 12:30, 20 till 1, we might do this after lunch. How
16 long is it going to take?

17 We'll do it after lunch.

18 MR. SHAFFER: Thank you, Your Honor.

19 MR. CORNEY: Thank you, Judge.

20 (The Court was in recess.)

21 THE COURT: So, Mr. Shaffer, I think you were
22 getting ready to call Mr. Elders, is that correct?

23 MR. SHAFFER: Yes, Your Honor.

24 THE COURT: All right, sir.

25 MR. SHAFFER: Call Randy Elders.

RANDY C. ELDERS -- DIRECT BY MR. SHAFFER:

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1 (RANDY CHARLES ELDERS, having first been duly
2 sworn, testified as follows:)

3 THE COURT: Place take a seat, Mr. Elders. Tell
4 us your full name and spell your last name for the
5 record.

6 THE WITNESS: My name is Randy Charles Elders,
7 E-l-d-e-r-s.

8 THE COURT: All right.

9 DIRECT EXAMINATION

10 BY MR. SHAFFER:

11 Q Mr. Elders, where are you from?

12 A From Richland County.

13 Q How old are you?

14 A 37.

15 Q Okay. Have you lived here your whole life?

16 A Yes, sir.

17 Q Okay. Where are you currently at?

18 A Broad River Correctional Institution.

19 Q Okay. And how long have you been there?

20 A Seven years.

21 Q Okay. Now, I think we both agree that we're not
22 going to go into facts with you. I want you to tell
23 me only about your conversations with your attorney.
24 When was the first time you met Ms. Owings or Ms.
25 Rowell?

1 A Whenever I was in Foxtrot, when I was in the
2 introductory dorm, I met Ms. Owings.

3 Q Okay. And what did you initially talk about?

4 A Initially she came to see me and there was another
5 Solicitor that had my case. And she said she thought
6 she could get me 15 years.

7 Q Okay. And how long were you -- how long were you at
8 Alvin S. Glenn Detention Center before trial?

9 A Not too long because I left -- I actually pled to
10 some other charges, some drug charges, and left Alvin
11 S. Glenn Detention Center and came back. I was only
12 there about two months, I believe, I'm not positive
13 on that fact about how long before we went to trial.

14 Q Okay. Now whenever you left you went to SCDC, I
15 assume?

16 A Yes, sir.

17 Q Okay. Did she -- did she see you there, did either
18 of your attorneys see you while you were at SCDC?

19 A No, sir, no.

20 Q Okay. So two months before trial you met with your
21 attorneys, correct, whenever you got back to Alvin S.
22 Glenn?

23 A I never met April until trial.

24 Q Okay. But you met with Ms. Rowell prior to that?

25 A Yes.

1 Q Ms. Owings?

2 A Yes, sir.

3 Q Okay. And whenever you had gotten back to Alvin S.
4 Glenn, what did she tell you about the case?

5 A She just said she didn't think there would be
6 anything.

7 Q Okay.

8 A Any plea bargain.

9 Q At what point did you find out that Ms. Campbell had
10 taken over as the prosecutor on it?

11 A It was -- it was before I left Alvin S. Glenn, she
12 came back to me and she told me, she said that she
13 went to the Solicitor and the Solicitor told her he
14 didn't have no problem with it with my record because
15 I did not have a bad record, is what she told me, she
16 said. But we had a problem, Luck Campbell took over
17 my case.

18 Q Okay. What did she tell you that meant?

19 A That there was going to be no plea bargain, that she
20 didn't believe there was going to any plea bargain.

21 Q Okay. Did she ever tell you that there was a plea
22 offer?

23 A No, sir.

24 Q Okay. Did she ever tell you about pleading straight
25 up?

1 A No, sir.

2 Q Do you know what pleading straight up is?

3 A No, sir. I know a little bit about what you
4 explained to me, something about all charges, but I'm
5 not really sure.

6 Q Okay. Did she ever tell you that -- that you have
7 the right to plead and let a judge decide, on any of
8 your charges, what the sentence should be?

9 A Not that I recall.

10 Q Okay. Now, prior to trial, you said that you met --
11 you met with her, how many occasions would you
12 estimate prior to trial, whenever you got back from
13 SCDC?

14 A Whenever I received back, three counting the time she
15 met me downstairs in the Detention Center.

16 Q Okay.

17 A I mean here, right downstairs.

18 Q In the holding cell?

19 A Yes, sir.

20 Q Okay. What did y'all talk about?

21 A Nothing. She just went over the case with me a
22 couple of times and that's -- all except for when we
23 were down here, she told me that our best bet was to
24 go to trial.

25 Q Okay.

1 A That's all she kept telling me. She said we need to
2 go to trial on -- she found me downstairs and
3 downstairs she came to me about 20 minutes before we
4 came up for trial and told me my only line of defense
5 was to plead to the two charges.

6 Q Okay.

7 A That was my only line -- that I had no other defense
8 if I didn't.

9 Q What did she tell you would happen if you pled to the
10 two charges?

11 A She told me that I would be eligible for parole, that
12 after the third time up for parole, the victims'
13 statements would no longer have nothing -- no -- no
14 effect as long as I had a good record. That -- and
15 that I would not -- that he could not give me the
16 maximum for no charge that I pled to, was her quote
17 to me.

18 Q Okay. And -- and did she tell you what would happen
19 to the other charges if you pled to the two?

20 A She told me that there was no way they could convict
21 me on any other charge if I pled to them two.

22 Q Okay. Did she tell you -- what did she tell you your
23 likelihood of success if you did no plead?

24 A That if I did not plead?

25 Q Yeah.

1 A That we had no case, we had nothing.

2 Q Okay. Did she tell you that if you got convicted
3 what -- what the sentence -- convicted at trial, what
4 the Solicitor would recommend?

5 A No, she did not because, as a matter of fact, we had
6 that -- that argument -- well that discussion
7 downstairs because I told her, I said, that's 40
8 years I'm facing you're asking me to plead to and I
9 would rather -- she said that there was no way I
10 could get that much time. That the judge could not
11 give me the maximum amount for either charge, I mean,
12 she just kept pushing that.

13 Q Okay. Were there any conversations between you and
14 Ms. Sampson concerning your plea?

15 A No. I never seen Ms. Sampson until, like I say, I
16 stepped into the courtroom and I shook her hand in
17 the courtroom. That was the very first time I ever
18 met Ms. Sampson.

19 Q Okay. And did Ms. Sampson tell you at any point
20 after you had met her whether or not it would be a
21 good idea for you to plead guilty on those two
22 charges?

23 A Well, at that point they already -- when we came up,
24 we started picking the -- the jury, I guess, before
25 anything else was said -- I don't know if they

1 discussed it but they never discussed anymore with
2 me, she let the judge know that I was wanting to
3 plead to them and he -- he actually turned it down
4 and said I couldn't do that, that I was not allowed
5 to do it.

6 Q Okay but he eventually let you plead?

7 A The next day he came and said we could plead.

8 Q Okay. And so you pled to the two charges?

9 A Yes. And me and Ms. -- me and April -- I think me
10 and April Sampson did have a conversation at that
11 point, whenever he agreed to it, and they was talking
12 about the strategy at the table and they said it
13 would still be the best strategy for me to plead to
14 them two charges.

15 Q Okay.

16 A That was the only strategy.

17 Q Okay. And did they tell you that -- did they tell
18 you that it would have any impact -- or what impact
19 did they tell you it would have on your trial, on the
20 other charges?

21 A They didn't tell me it would have any impact on it.

22 Q Okay.

23 A Absolutely nothing.

24 Q Okay. Did they tell you that they would use that
25 conviction?

1 A No, sir.

2 Q Okay. Did they tell you that -- that it would keep
3 you from getting a -- that those charges, by
4 pleading, you would -- you would not get convicted of
5 some of the other charges?

6 A Yes. They told me there was no way that they could
7 convict me of any of the other charges if I plead to
8 them two charges.

9 Q Okay. Did they tell you anything about double
10 jeopardy?

11 A No, sir.

12 Q Okay. And -- now was there anything that you -- you
13 had mentioned something to me about wanting them to
14 raise something. What issue did you want them to
15 raise at trial that they did not?

16 A There was an issue on -- Mr. Riggs was the only one
17 that picked me out of a photo lineup and the police
18 officers brought me in the back of Richland County
19 and not my co-defendant, they picked us both up at
20 the same time. They walked me right past Mr. Riggs.
21 And his son and him was there, he was in the car.
22 And the detective at the time, Stan Smith, and he's a
23 captain now, he made a statement and said, this is
24 him, we got him, are you ready to do your DNA and
25 everything else now?

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1 Well at the point when I was walking off, I
2 heard him saying to Mr. Riggs and I turned around and
3 he was staring at me. Two hours later they took him
4 a photo lineup and he was the only one that picked me
5 out of a photo lineup.

6 MR. CORNEY: Your Honor, I object to that
7 testimony. That wasn't an allegation raised, even in the
8 supplemental application I objected to earlier. Just to
9 let you know, I don't think I've see it.

10 MR. SHAFFER: Yeah, I -- I was unaware of it
11 until two minutes ago.

12 MR. CORNEY: Just to continue on the objection
13 of the supplemental allegations, this is also an
14 allegation I was unaware of until the very minute it did
15 come forward ---

16 THE COURT: All right.

17 MR. CORNEY: I just wanted to put that on the
18 record, Your Honor.

19 THE COURT: Thank you, sir.

20 MR. SHAFFER: My only basis would be a 15 ---

21 THE COURT: Proceed, Mr. Shaffer.

22 MR. SHAFFER: I apologize.

23 THE COURT: That's fine.

24 MR. SHAFFER: I think that that rule -- I quoted
25 you the wrong rule and I apologize.

1 Q So when you -- what happened at the end of your trial
2 -- I mean, what did you -- what -- what did the
3 Solicitor recommend for your sentence?

4 A I don't recall.

5 Q Okay.

6 A At that time, everything was kind of foggy in my
7 head. All I kept hearing was numbers.

8 Q Why did you plead guilty to those charges?

9 A I was advised to by ---

10 Q Okay. And why did you go to trial on the other
11 charges?

12 A I was advised to by my counsel.

13 MR. SHAFFER: Okay. I don't think I have any
14 further questions.

15 THE COURT: All right, Mr. Corney.

16 MR. CORNEY: Very briefly, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. CORNEY:

19 Q Mr. Elders, at the beginning of the trial when you
20 decided to enter this guilty plea, the Court went
21 through kind of a list of questions with you to
22 ensure that you were entering that plea freely and
23 voluntarily, correct?

24 A Yes, sir.

25 Q And you told the Court that it was your decision, you

RANDY C. ELDERS -- CROSS BY MR. CORNEY:

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1 made the decision of your own free will and entered
2 the plea to those two charges?

3 A I was told I would have to say that because ---

4 Q Okay but that's what the record reflects?

5 A That the Court would not accept my -- except, yes,
6 sir.

7 Q That's what the record reflects, you told the Court
8 you were making that decision yourself?

9 A Yes, sir.

10 Q You said you had enough time to discuss that matter
11 with your attorneys, correct?

12 A No, sir.

13 Q You didn't say that on the record?

14 A Well, I -- I don't recall exactly what all was said.
15 At that point in time, I really don't.

16 Q If it's reflected in the record that you agreed,
17 that's what you said?

18 A Yes, sir, if that's what it says, yes, sir.

19 Q You said that you knew everything -- that they told
20 you everything that you needed to know about the
21 charges and that you had given them all the
22 information they needed to prepare the charges for
23 trial, right?

24 A I mean, I guess if that's what's in the transcript.

25 Q And that you were satisfied with their representation

1 on those two charges you were pleading to?

2 A I mean if that's -- I may have said it. At the time

3 ---

4 Q And ---

5 A --- I didn't know what I know now.

6 Q And I apologize for speaking over you.

7 A At the time I didn't know the law. I actually
8 thought maybe that they was representing me to their
9 best ability and maybe it was -- maybe I did
10 understand and I did not understand it at all, what I
11 was pleading to.

12 Q Okay. You've heard -- you were here in the courtroom
13 for Ms. Rowell's phone testimony a little bit ago,
14 right?

15 A Ms. Owings?

16 Q Ms. Owings, yeah, Ms. Rowell now. You heard her
17 testify that she had gone over everything with you,
18 felt -- she gave you all the information you needed
19 to make a decision on your own as to whether to
20 plead, right?

21 A Yes, yes, sir.

22 Q Okay. And she said that she -- I think her
23 testimony, and I don't want to mischaracterize it,
24 was that she doesn't force anybody to plead or go to
25 trial. She just lays out the options and let you

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1 make the decision, right?

2 A That was her testimony, yes, sir.

3 Q And so you're saying that she was lying to the Court
4 when she presented that earlier?

5 A Well, I mean, all I can tell you is ---

6 MR. SHAFFER: Objection, pitting.

7 THE COURT: Basis -- what?

8 MR.. SHAFFER: Pitting witnesses.

9 THE COURT: No, I disagree. Repeat the question
10 so ---

11 A I also know ---

12 THE COURT: Stop, don't answer it until he
13 repeats the question. Repeat the question.

14 MR. CORNEY: Yes, Your Honor.

15 Q So that testimony by Ms. Rowell earlier, you would
16 say that she's lying when she presented to the Court
17 that she doesn't force any witnesses to ---

18 A I'm not going to say that she was lying because I
19 also heard her say that she doesn't recall a lot of
20 my -- of my case.

21 MR. CORNEY: Your Honor, that's all the
22 questions I have.

23 THE COURT: All right. Anything on -- I guess
24 it's redirect. It is redirect.

25 MR. SHAFFER: Very briefly.

REDIRECT EXAMINATION

BY MR. SHAFFER:

Q Did you -- did you discuss the plea colloquy of what the judge would ask you whenever you plead guilty with your attorneys? Right before you pled guilty, did they advise you what the judge may or may not ask you?

A No, sir.

Q Okay. You said something ---

A They advised me that I would have to say it was on my own freewill. That's about the only thing that they advised me that I would have to do. That it could not be their -- that I could not say that it was their decision, and it wasn't there decision.

Q Okay. But you were advised by them ---

A Yes, sir.

Q And you took that advise, is that correct?

A Yes, sir.

MR. SHAFFER: No further questions.

THE COURT: Anything further?

RECROSS-EXAMINATION

BY MR. CORNEY:

Q Just along that line of questioning, so these answers that you gave the Court weren't your own answers, just what Ms. Owings and Ms. Sampson told you to say?

RANDY C. ELDERS -- RECROSS BY MR. CORNEY:

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1 A At that point in time, I don't really know what I --
2 what I answered to there was so much going on. I was
3 really nervous, I was facing a lot of time and I
4 really -- I was taking the advice of my -- my
5 counsels -- I'm not thinking the word -- their advice
6 only on what I needed to do in order for me to get
7 out and see my kids and all again.

8 Q Okay. So when you said you were doing it of your own
9 freewill, it was your decision, that wasn't truthful?
10 It actually wasn't of your own freewill and your
11 attorneys had told you to do it and you were just
12 doing it ---

13 A My attorneys did advise me to do it, yes, sir.

14 Q Okay. But your answer was --- your answer at that
15 point in time saying that ---

16 MR. SHAFFER: Objection, argumentative.

17 THE COURT: Let me back up a little bit, like I
18 said, I mentioned -- you need to stand up when you
19 object.

20 MR. SHAFFER: Oh, I apologize ---

21 THE COURT: Stop -- what's the basis of your
22 objection?

23 MR. SHAFFER: It's argumentative ---

24 THE COURT: Overruled, go ahead, this is
25 cross-examination, go ahead.

1 MR. CORNEY: Thank you, Your Honor.

2 Q So your answer, as in the transcript, that you were
3 doing it of your own freewill, those are not truthful
4 answers?

5 A At the time I thought they were. I guess -- I guess
6 is what -- I thought it was in my best interest. No,
7 they weren't my own answers. I was on -- she
8 actually went over it with me downstairs, all the
9 questions he was going to ask me, and that I had to
10 say yes to them.

11 So I guess the answer to your question is, that
12 they're not truthful, no, sir.

13 Q And you were under oath that day when you ---

14 A Yes, sir, I understand that.

15 Q And you're under oath right now?

16 A Yes, sir, I understand.

17 MR. CORNEY: That's all I have, thank you.

18 MR. SHAFFER: May I ask one question, Your
19 Honor?

20 THE COURT: Go ahead.

21 RE-REDIRECT EXAMINATION

22 BY MR. SHAFFER:

23 Q Sometimes you do things under your own freewill under
24 advice, is that correct?

25 A Yes, sir.

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1 Q Is that fair to say?

2 A Yes, sir.

3 MR. SHAFFER: Okay, thank you.

4 THE COURT: All right. You may step down, Mr.
5 Elders..

6 THE WITNESS: Yes, sir.

7 (The witness leaves the witness stand.)

8 THE COURT: All right. Anything further from
9 anyone in this matter?

10 MR. SHAFFER: Your Honor, just argument briefly.

11 THE COURT: Go ahead, make it brief though.

12 MR. SHAFFER: Okay.

13 THE COURT: I said make it brief, go as long as
14 -- go as long as you want to.

15 MR. SHAFFER: Actually, I don't know if I can
16 make it too brief.

17 THE COURT: Just proceed, Mr. Shaffer.

18 MR. SHAFFER: There was a straight up offer in
19 this. I don't think there was anything refuting that.
20 He had the option of pleading straight up. All the
21 attorneys testified to that. I don't think there's any
22 evidence refuting that.

23 Instead they -- they advised him to go to trial
24 on some of them and plea on some of them. There was
25 really no benefit to going to trial on any of the issues,

1 especially after you plea. One of the reasons is is that
2 the judge gets to see, you know -- well, the Solicitor
3 was going to max -- or ask for the maximum either way.
4 That's the testimony, I believe, of both of the ---

5 THE COURT: There's something wrong with that,
6 Mr. Shaffer?

7 MR. SHAFFER: No, Your Honor. I'm just saying
8 that there's no benefit to going to trial because of
9 that. I mean, the Solicitor's going to ask for the max
10 one way, the Solicitor's going to ask for the max ---

11 THE COURT: And it's up to the judge to decide
12 what ---

13 MR. SHAFFER: Yes, Your Honor.

14 There is a detriment to going to trial. The
15 detriment to going to trial on a plea is -- the U.S.
16 Supreme Court has recognized at least two of them. One
17 of them is that the judge has a full understanding of the
18 case, a full -- has a complete picture and might actually
19 understand that there's not as much mitigation as if he
20 were to go in front of the Court. Also the gruesome facts
21 of the case, and I apologize for using the word gruesome,
22 I don't think that's necessarily appropriate but ---

23 THE COURT: I have not been offended, Mr.
24 Shaffer.

25 MR. SHAFFER: Okay. The -- the judge is going

1 to understand the -- the prejudicial facts of the case,
2 to your sentence, the reasons why your sentence should be
3 increased. That's one of the justifications for -- for
4 the so called trial tax. The flipside of that argument
5 is that the judge gets a full understanding of the case,
6 gets to see pictures, in this case pictures that the
7 Court of Appeals already commented that ---

8 THE COURT: That they were harmless -- that they
9 were a harmless error and that involves the introduction
10 of the four or five knives, whether they were the one
11 that was alleged that was used in the incident, I do
12 believe.

13 MR. SHAFFER: But while the Court did recognize
14 that that was prejudicial.

15 THE COURT: They said it was harmless error is
16 what they said.

17 MR. SHAFFER: Yes, Your Honor.

18 THE COURT: About the knives.

19 MR. SHAFFER: But the photos also -- they
20 recognized the photos ---

21 THE COURT: All right, show me in the per curiam
22 opinion offered by Judge Geathers where that is stated.
23 If I'm mistaking wrong, I read it earlier.

24 MR. SHAFFER: All right.

25 THE COURT: I might have missed something.

1 MR. SHAFFER: Furthermore ---

2 THE COURT: Point it out for me.

3 MR. SHAFFER: I apologize. Furthermore, while
4 the photographs may have aroused some sympathy ---

5 THE COURT: May have. They said it was error to
6 admit the knives, not the photographs.

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: All right. That's all I was saying.

9 MR. SHAFFER: Okay.

10 THE COURT: But continue with your argument, not
11 with me, on the facts of the case. This is why Mr.
12 Elders is being granted a PCR.

13 MR. SHAFFER: But basically, because of the fact
14 they decided to -- to plead him -- or to -- decided to go
15 to trial on some of these, the Court was aware of all of
16 this, that he -- the judge got to see all the evidence.
17 It wasn't a short plea hearing, it was a complete trial
18 which probably made him -- especially in this case where
19 there's no defense, made him more likely ---

20 THE COURT: Stop, it's hard to decide what a
21 judge has on his mind during the course of a trial. But
22 I will tell you this for the record. It was James W.
23 Johnson from Clinton, Laurens County, South Carolina. He
24 was the Chief Administrative Judge here at the time the
25 matter was held. I don't know what was in his mind, you

1 don't and if you want to argue what's in a judge's mind,
2 to me that's poor salesmanship because I know him
3 personally, I've known him for years and I couldn't tell
4 you what was in his mind. But you're going to argue now
5 what might have been in a judge's mind during the course
6 of a trial.

7 MR. SHAFFER: No, Your Honor ---

8 THE COURT: Well, help me understand your
9 position.

10 MR. SHAFFER: --- my argument, I don't have to
11 show what was in his mind, I have to show that there
12 might have been a reasonably probability that there ---

13 THE COURT: But my question is, how can you show
14 what somebody else is thinking?

15 MR. SHAFFER: Your Honor, I can't, that's why I
16 ---

17 THE COURT: That's what I'm saying.

18 MR. SHAFFER: I have to show a reasonable
19 probability.

20 THE COURT: Go ahead, continue.

21 MR. SHAFFER: Essentially their trial strategy
22 is they -- they -- is basically admit to all the
23 underlying facts of all the offenses and still go forward
24 with ---

25 THE COURT: Do you have a case that suggests

1 because tactically -- tactically, a defense lawyer
2 decides, with the help of his client, on a particular
3 trial strategy -- strategy? How is that ineffective
4 assistance of counsel?

5 MR. SHAFFER: Your Honor, I believe that Lafler
6 v. Cooper is ---

7 THE COURT: And what were the facts of that
8 case, sir?

9 MR. SHAFFER: Your Honor, there was a plea offer
10 ---

11 THE COURT: What were the facts of the case?

12 MR. SHAFFER: It was shooting, the Defendant
13 allegedly shot the victim below the waist, went to trial
14 for attempted murder. They decided not to take a plea
15 offer and instead to take a -- to go to trial based off
16 of the trial attorney's assertion that they would not be
17 able to prove that ---

18 THE COURT: So the facts of the case would be
19 not exactly on point with the facts of this case.

20 MR. SHAFFER: Outside ---

21 THE COURT: You're arguing, it seems to me,
22 dissimilar facts if you site that case for the
23 proposition the same thing occurred here.

24 MR. SHAFFER: Your Honor, there -- it is a very
25 similar situation.

1 THE COURT: Okay.

2 MR. SHAFFER: There's one distinction, the
3 distinction is is whether or not there was an offer.
4 Here there was ---

5 THE COURT: No offer, no offers. You can plead
6 straight up and we're going to ask for the maximum and
7 that was the deal from the very beginning apparently. It
8 seems to me from hearing everything that Ms. Campbell was
9 steadfast with that and wasn't going to change her mind
10 one way or the other.

11 MR. SHAFFER: Your Honor, Alabama v. Smith.

12 THE COURT: Uh-huh.

13 MR. SHAFFER: The Supreme Court specifically
14 noted that when a trial court or a court actually gets to
15 hear an entire trial, there's a high likely -- or there's
16 a possibility ---

17 THE COURT: Uh-huh.

18 MR. SHAFFER: --- that the evidence presented at
19 trial would cause the -- the judge to increase the
20 sentence.

21 THE COURT: All right.

22 MR. SHAFFER: The Supreme Court also said that,
23 you know, in Lafler, and I know that there is not an
24 offer, but the difference is is that their strategy was
25 to go to trial in a case that was doomed to lose because

1 of the fact that they had already admitted to all the
2 factual basis for everything that they needed to convict
3 him.

4 THE COURT: Mr. -- Mr. Shaffer, I've seen many
5 trials tactically tried along these cases. Sometimes
6 they work, sometimes they don't. It apparently didn't
7 work in this case. But that doesn't inviolate the -- the
8 importance of the tactic or the strategic decisions
9 behind to pursue that course of action.

10 MR. SHAFFER: Your Honor ---

11 THE COURT: I mean, sometimes -- sometimes you
12 swing and hit a homerun, sometimes you swing and you
13 strike out.

14 MR. SHAFFER: Their -- their ---

15 THE COURT: But they did take a swing is what
16 I'm saying.

17 MR. SHAFFER: Their misinterpretation of the
18 statutes actually is sort of the underlying ---

19 THE COURT: Just continue and try to convince me
20 of why I should grant him relief. I'm not going to go
21 back and forth with you one way or another. I'm going to
22 let you finish your presentation, go ahead.

23 MR. SHAFFER: Thank you, Your Honor. Your
24 Honor, may I have a drink of water real quick?

25 THE COURT: Yes.

1 MR. SHAFFER: Okay.

2 THE COURT: Mr. Shaffer, none of this is
3 personal. You've got to do your job, I've got to do
4 mine. Take your time, sir.

5 MR. SHAFFER: What I need to show under Lafler
6 is essentially that it was, (1) unreasonable trial
7 strategy. I think it was unreasonable because they admit
8 to all the underlying facts of all the offenses by
9 pleading. I think that it was unreasonable trial
10 strategy.

11 Then I need to show that a reasonable -- there's
12 a reasonable likelihood that he essentially would have
13 gotten a lower sentence but for that, but for the fact
14 that he decided to go to trial ---

15 THE COURT: What if he had been acquitted, he
16 wouldn't have gotten any sentence at all on those three
17 charges he was convicted of?

18 MR. SHAFFER: Yes, Your Honor, I was just saying
19 that it was not reasonable to admit to all the underlying
20 facts of the crime and then expect the jury not to find
21 him guilty.

22 THE COURT: And the case you just mentioned from
23 the Supreme Court, that's the authority that you rest on
24 in this proposition?

25 MR. SHAFFER: Your Honor, I would actually like

1 to supplement this with a written -- this is a complex
2 issue, this is a brand new case ---

3 THE COURT: It may be complex to you but it's
4 not necessarily going to be complex to the Court.
5 There's a distinction, with a difference. You think it's
6 complicated, I don't think it is

7 MR. SHAFFER: But Your Honor, this is also a
8 brand new area of the law as well. This is ---

9 THE COURT: Whether it's new, old, or it's never
10 happened before, to me it does not appear to be
11 complicated, it seems very simple.

12 Now, if you take the position it's complicated,
13 that's fine, I don't.

14 MR. SHAFFER: Okay. Essentially he went to
15 court with an invalid trial strategy. That's the basis
16 of my argument is he -- he went to trial with an invalid
17 strategy. I believe that it's ineffective assistance of
18 counsel and our position is, it's ineffective assistance
19 of counsel because of the fact that he -- the -- his
20 counsel advised him to -- to go through a substantial
21 risk by going through trial and essentially admit a lot
22 of evidence in front of the judge that he would not have
23 had during the plea.

24 THE COURT: That's fine.

25 MR. SHAFFER: That is the -- that is one

1 possible argument that we have. We have a couple of
2 other ones and I will go through them quick.

3 Page 407, line 25, Ms. Campbell says -- asks the
4 jury to hold him responsible. I believe that essentially
5 she's asking him to act for the community. There's
6 several cases on point of why that should have been
7 objected to. The -- she also states that he is admitting
8 guilt as a trial strategy which, based on the testimony
9 here, is probably true but to tell the jury that is
10 essentially saying the jury -- the Defendant is trying to
11 mislead you which is also objectionable, or the defense
12 attorneys are trying to mislead you. That's also
13 objectionable.

14 She makes a muddying the water argument. Once
15 again, it's essentially saying the defense attorneys are
16 trying to mislead you. It's a -- it is objectionable
17 partially because it's a passion and prejudice argument.
18 They're -- essentially it's saying that, hey, don't let
19 the Defendant get -- get one over on you. That's at page
20 404.

21 The -- the -- the previous one I just mentioned
22 where he was saying it was a trial strategy was 403, line
23 -- or line 11 through 14. She also asks the jury, more
24 or less, to search for the truth. That's at 383, line 18
25 through 21. It's burden shifting and confuses the ---

1 THE COURT: The comments, search for the truth,
2 is burden shifting, that's your contention, search for
3 the truth?

4 MR. SHAFFER: I just argued it in the Supreme
5 Court last ---

6 THE COURT: Well, did you win?

7 MR. SHAFFER: I haven't gotten the opinion.

8 THE COURT: My guess is you will lose on that
9 proposition.

10 MR. SHAFFER: Thank you, Your Honor.

11 THE COURT: What's your next -- Mr. Shaffer --
12 Mr. Elders, I don't know you, I've never seen you before
13 in my life. If I engage in colloquy like this with your
14 lawyer, it's not that I'm trying to rule against you but
15 I want to make sure that my decision is one that
16 satisfies my conscience. That's the only reason, it's
17 nothing personal against Mr. Shaffer, against you. I
18 don't know anybody involved in this case.

19 Mr. Corney.

20 MR. CORNEY: Judge, I don't really want to
21 belabor the point so this won't be an all inclusive
22 argument on the State's position, but just to go over it
23 very briefly.

24 First, I think Mr. Shaffer's argument about the
25 Solicitor is going to go for max either way, so what's

1 the advantage of going to trial. I think that's
2 completely contradictory to what I -- to what the State
3 would submit. The Solicitor is going to as for the max
4 whether you plead or go to trial. Go to trial, roll the
5 dice and maybe you'll get found not guilty on the
6 charges. I mean, that's a completely contradictory
7 argument, I believe.

8 Ms. Sampson and Ms. Rowell both articulated the
9 very specific trial strategy that they advised Mr. Elders
10 of and which he said he was on board with, according to
11 their testimony. Based on the evidence presented at
12 trial, there's no question that Mr. Elders was at the
13 scene. There's no question that he assaulted Mr. Riggs,
14 that he stabbed him. There's no question that he stole
15 their car.

16 The attorneys, Ms. Rowell and Ms. Sampson, at
17 that point decided the best thing to do was to advise Mr.
18 Elders to enter a guilty plea to the two charges where
19 the evidence was overwhelming and to use that to their
20 advantage down the road in the trial of the rest of the
21 charges. They didn't force him into that plea.
22 According to their testimony, he got up there, according
23 to the record, Mr. Elders entered it freely and
24 voluntarily to those two charges, after being advised of
25 the discovery, the evidence against him and all of his

1 rights in that regard, Your Honor. He was advised by two
2 knowledgeable attorneys in that regard and decided to
3 freely and voluntarily enter a plea to those to charges
4 and use it to his advantage down the road.

5 From there the record before this Court and the
6 testimony that's been submitted, clearly establishes that
7 there's deficiency on counsels' part. They said they
8 wanted to get him an assault and battery of a high and
9 aggravated nature on Mrs. Riggs' ABWIK charges. They
10 were able to do that at trial, they got him a lesser
11 included with the jury. Obviously they got the goal with
12 what they were going for. They must have presented
13 something right.

14 As far as Luck Campbell's closing, Ms. Rowell
15 said that she didn't object to it because she -- she
16 thinks that attorneys have a wide deference in their
17 closing arguments and didn't think there was anything
18 that was objectionable. She said as a general practice,
19 when she was practicing criminal defense work, she
20 wouldn't object to closing arguments unless it was very
21 egregious as they are provided with wide deference in
22 that regard.

23 I think it's important to keep in mind that Ms.
24 Rowell and Ms. Sampson both plainly testified that they
25 wanted the jury to know he pled guilty to these two

1 charges. The judge specifically tells the jury, page 79,
2 lines 4 through 11, right after the plea, you know, these
3 are the indictments that came before you, he's pled
4 guilty to two of them. They got it in front of the jury
5 just like they wanted to. That was their strategy, let's
6 use these two pleas to our advantage and make them prove
7 the elements of every crime from there out.

8 Mr. Shaffer's characterization that they
9 admitted to all the underlying facts on all of the
10 charges I think it is a mischaracterization of the record
11 before this Court. They didn't admit that Mr. Elders
12 stole Mrs. Riggs' purse in regards to the armed robbery
13 and they didn't admit that he had assault and battered
14 Mrs. Riggs with the intent to kill her in that regard.
15 They didn't admit any of the facts that -- and that's
16 actually -- that was their strategy at trial, to say they
17 haven't met the elements of the rest of these crimes.

18 Your Honor, as far as the closing argument and
19 Luck Campbell's closing argument that muddled the water
20 and what she said, Ms. Campbell herself, at the beginning
21 of her closing argument on page 382 says, if anything I
22 say contradicts with what the Judge charges you is the
23 law to be, take the Judge's law on it. The Judge, in the
24 beginning of his jury charge also says, with all due
25 respect to the attorneys, if they said anything that

1 contradicted, disregard what they said, I'm the Judge, I
2 -- I charge you the law, here is what the law is. I
3 think the cure -- any issue there would be cured by his
4 instructions to the jury.

5 As a final point, Your Honor, I think that you
6 have the opinion of direct appeal in front of you ---

7 THE COURT: And Judge Geathers who authored the
8 opinion along with Goolsby, I think, it might be Short
9 from Lancaster, said, that in light of the overwhelming
10 evidence of guilt in connection with the knives, all of
11 them shouldn't have been admitted, they found it
12 harmless.

13 MR. CORNEY: That's right, Your Honor. And the
14 State would submit, there is overwhelming evidence of his
15 guilt and under Geter v. State, which the Court is
16 familiar with, 305 South Carolina 365, the Supreme Court
17 of South Carolina has held where there's overwhelming
18 evidence of guilt, the PCR applicant could not prove
19 resulting prejudice from any alleged deficiencies that --
20 that result from that. So the State would also submit
21 that Mr. Elders was facing overwhelming evidence of guilt
22 and cannot prove that resulting prejudice from any
23 deficiency the Court may find.

24 THE COURT: All right.

25 MR. CORNEY: Thank you very much.

1 THE COURT: Yes, sir, Mr. Shaffer.

2 MR. SHAFFER. Just briefly. I think the State
3 has -- I'm not sure that they understand my argument
4 completely. Of course ---

5 THE COURT: It's not important that they
6 understand, it's important that I understand.

7 MR. SHAFFER: I'm saying that of course that
8 they have overwhelming evidence of guilt because of the
9 fact that they admitted to armed robbery, they admitted
10 to kidnapping ---

11 THE COURT: Okay, how about some confessions by
12 him, the testimony from his co-defendant, the ID by Mr.
13 Riggs here and all the other -- the totality of the
14 circumstances, sort of.

15 MR. SHAFFER: I agree. I think that there's
16 overwhelming evidence of guilt. The State mentioned the
17 -- the -- it not being an armed robbery. I submit that
18 to the Court, whenever you steal someone's car, when
19 you're armed with a knife, that's armed robbery
20 regardless of the other facts ---

21 THE COURT: You're trying to have it both ways.
22 You're trying to say he's not guilty of anything but ---

23 MR. SHAFFER: Your Honor, I'm not ---

24 THE COURT: Let me finish.

25 MR. SHAFFER: I apologize.

1 THE COURT: Well, let me finish first. You
2 object to the fact that he pled to something that the
3 lawyers concede and he pled guilty to it, that they were
4 going to convict him on. And now you want to take the
5 opposite view on the remaining set of those facts and
6 argue just the opposite. You're talking out of both
7 sides of your mouths, Mr. Shaffer, it seems to me. Your
8 mouth, not mouths.

9 On the one hand you want to criticize the
10 pleading guilty, on the other hand you want to criticize
11 him going to trial. You just can't have it both ways,
12 it's got to be one or the other.

13 And, like I said, I don't know Mr. Elders, it's
14 nothing personal, this is part of my job to ask these
15 questions of you, and ask you to explain to me exactly
16 what point you're trying to make so I can rule for you if
17 I decide to, that's all.

18 MR. SHAFFER: Your Honor, if you would like me
19 to choose a side ---

20 THE COURT: No, I just want you to respond -- I
21 want you to respond to his argument so we can conclude
22 this hearing and that's what you're up to, not to go back
23 into everything else, but to respond to the argument he's
24 just made as to why I shouldn't deny this application,
25 that's all I'm saying. And it should be in response to

1 what he argued and not new material that was brought in
2 that you feel like bringing in, Mr. Shaffer.

3 Continue.

4 MR. SHAFFER: Your Honor, the roll of the dice,
5 it's not a roll of the dice whenever you admit to the
6 underlying facts of a crime.

7 THE COURT: All right.

8 MR. SHAFFER: That's essentially my argument.

9 THE COURT: All right. Mr. Shaffer, once again,
10 Mr. Corney, this is obviously very serious to everybody,
11 Mr. Elders as well as the Riggs. I will take this matter
12 seriously, I will think about it seriously, I will review
13 the records seriously and y'all will get a serious answer
14 from me in due course.

15 Thank you all so very much.

16 MR. SHAFFER: Thank you.

17 MR. CORNEY: Thank you very much, Judge.

18 ----- END OF TRANSCRIPT OF RECORD -----

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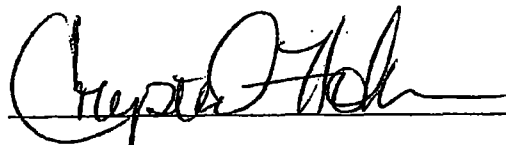
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, Crystal Holmes, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and Complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 24th day of May, 2012.

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

May 13, 2013


Crystal Holmes, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Randy "Chuck" Elders, #263032,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2006-CP-40-4869

2010-CP-40-8822

ORDER OF DISMISSAL

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 NOV 19 PM 3:07

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of a two applications for Post-Conviction Relief, the first having been filed August 23, 2006, and the second December 17, 2010. An evidentiary hearing into the actions was convened on Thursday, May 24, 2012, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tristan Shaffer, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former trial attorneys, Stacy Rowell (nee Owings), Esquire, and April Sampson, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, Applicant's direct appeal documents, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the June 2005 term of the Richland County Grand Jury for Carjacking, Armed Robbery, two (2) counts of Kidnapping and two (2)

counts of Assault and Battery with Intent to Kill ("ABWIK") (2005-GS-40-3540 through -3546). On February 17, 2006, Applicant proceeded to jury trial before the Honorable James W. Johnson, Jr., on all six (6) indictments. At the start of the trial, Applicant entered guilty pleas to the Carjacking and one count of ABWIK, at which time sentencing was deferred (2005-GS-40-3540, -3545).

Applicant proceeded with a jury trial on the remaining four (4) charges and on February 17, 2006, was found guilty of both counts of Kidnapping and the Armed Robbery as indicted, as well as the lesser included Assault and Battery of a High and Aggravated Nature. Applicant was sentenced as follow: twenty (20) years imprisonment for Carjacking, thirty (30) years imprisonment for Armed Robbery, thirty (30) years imprisonment for each count of Kidnapping, and ten (10) years imprisonment for the lesser included Assault and Battery of a High and Aggravated Nature all to run concurrently, with a consecutive fifteen (15) year term of imprisonment following for the second count of ABWIK.

A notice of appeal was filed on the four (4) charges which Applicant challenged at trial. Applicant was represented by Robert Mills, Esquire, on the appeal. By order filed January 28, 2010, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. The remittitur was issued February 17, 2010.

During the pendency of the appeal, Applicant filed a timely PCR application challenging the two (2) charges which he had pled to and did *not* appeal to the Court of Appeals (Carjacking and ABWIK). In it, Applicant set forth the following allegations as to why he was being held in custody unlawfully:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Violated Due Process of Law

(c) Denial or Refusal to Appeal All Cases

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Counsel failed to conduct a thorough investigation on my case; failed to advise me of U.S. Const. Rights; counsel

(b) failed to contact witnesses; 2.) Deficient Process of Criminal Arrest Warrants / Indictments, SCRCrim. Proc.

(c) Rule 32(a), (b), (c), (d) Petitioner advised counsel to appeal all cases; counsel failed to do so.

After the issuance of the remittitur from his unsuccessful appeal, Applicant timely filed a second application for PCR challenging the four (4) charges for which he had gone to trial and been convicted. In it, he set forth the following additional contentions as to why he was being held in custody unlawfully:

custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

(a) Council failed to adequately inform the Applicant of the applicable law relating to all of his charges. Failure to investigate

(b) _____

(c) _____

At the May 2012 evidentiary hearing, Applicant submitted a supplemental brief setting forth the following additional grounds for post-conviction relief:

1. Counsel was ineffective in failing to object to evidence of Applicant's plea being presented to the jury.

2. Counsel was ineffective in failing to object to the State's closing argument concerning reasonable doubt.

3. Counsel was ineffective in advising Applicant to plead guilty to ABWIK of Mr. Riggs.
4. Alternatively to allegation 3 and 5, Counsel was ineffective in advising Applicant to go to trial on the ABWIK of Mrs. Riggs.\
5. Counsel was ineffective in advising Applicant to plead guilty to carjacking.
6. Alternatively to allegations 3 and 5, Counsel was ineffective in advising Applicant to go to trial on the two counts of armed robbery.
7. Alternatively to allegations 3 and 5, Counsel was ineffective in advising Applicant to go to trial on the two counts of kidnapping.
8. Counsel was ineffective in failing to object to the State's closing argument concerning the defense counsel muddying the waters.
9. Counsel was ineffective in failing to object to the State's closing argument characterizing the plea a strategic attempt to confess error.
10. Counsel was ineffective in failing to object to the State's closing argument that impugned trial counsel's credibility.
11. Counsel was ineffective in failing to object to the State's closing argument that mischaracterized the jury's role by asking them to "hold [Applicant] responsible for all his action..."
12. Counsel was ineffective in failing to object to the State's closing argument that impugned trial counsel's character and credibility.
13. Counsel was ineffective in failing to object to the State's closing argument that impugned trial counsel's credibility.
14. Counsel was ineffective in failing to object to the trial court's charge on the facts concerning "U.S. Currency is personal property under the law..."
15. Counsel was ineffective in failing to object to the trial court's opening statement to the jury that "Your purpose as jurors in this case is to find and determine what the facts are."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Erroneous Advice to Enter Pleas/Proceed to Trial

The majority of the testimony at the evidentiary hearing focused on Applicant's contention that counsel was ineffective in advising him to plead guilty to two of the charges he was facing, while conversely advising him to proceed to trial on the remaining four charges. In support of this claim, Applicant cited the recent United States Supreme Court decision of Lafier v. Cooper, 132 S.Ct. 1376 (2012).

Applicant was represented by April Sampson, Esquire ("Sampson") and Stacy Rowell (nee Owings), Esquire ("Rowell") on the charges he currently seeks to challenge. Sampson testified she became involved in the representation of Applicant in late 2005 or early 2006 as "second chair" counsel with Rowell, as was the standard procedure for the public defender's office when it was determined that a case was likely going to proceed to trial. Sampson noted that from the outset of her involvement, she believed the case was based, at least partially, on credibility of the testifying witnesses as the story seemed to change among the involved parties. Sampson also noted that Applicant's codefendant was prepared to, and in fact did, testify against Applicant at trial.

In the end, Sampson said, Applicant went to trial on the ABWIK charge relating to the female victim, both counts of kidnapping, and the armed robbery charge. She said she was privy to all conversations with Applicant regarding the decision to plead to the other two charges, and readily conceded that she advised Applicant to plead guilty to those charges. Sampson stated there were never any plea offers extended by the state in this case, but said she believed Applicant pleading guilty to the two charges (carjacking and ABWIK [male victim]) would be very beneficial to their ability to challenge the remaining charges at trial, especially where there was very strong evidence of guilt against Applicant on the two charges pled to. Sampson noted that she and Rowell discussed strategy in depth prior to trial and decided to advise Applicant to plead guilty to the two charges (carjacking and ABWIK [male victim]) so they could argue that he had taken responsibility for the two charges he was actually guilty of, while maintaining his innocence to the relatively weaker charges.

Sampson went on to say it was initially their intention to have Applicant actually plead *in front of* the jury at trial to emphasize this point, but the trial judge overruled their request to do so after listening to their legal argument. Regardless, the jury was well aware of the pleas as the trial judge advised the jury of the pleas prior to the start of trial, and Sampson was able to argue in both opening and closing arguments that Applicant had pled guilty to the two charges to "accept responsibility" where he was guilty. Sampson testified they didn't want Applicant to simply concede guilt at trial to the two charges because, by pleading guilty, the state would be limited in its ability to introduce certain pieces of evidence relating to the pled charges. She also noted that pleading guilty can result in beneficial sentencing as some judges appreciate a defendant opting to take responsibility rather than dragging victims through the trial process.

Regarding her discussions with Applicant prior to trial, Sampson testified Applicant admitted to assaulting the male victim, but maintained he never touched the female victim. She noted that a key issue to be determined was whether Applicant had actually taken the female's purse during the altercation while pushing her to the ground, a factual issue that could be effectively argued to the jury based on inconsistencies in the evidence. Sampson stated that because the strategy was a bit confusing in entering pleas to some charges while going to trial on others, she and Rowell explained the strategy to Applicant several times to ensure he fully understood and was "on-board" with it. She plainly noted there was no question Applicant was at the scene and involved in the carjacking, so the strategy allowed them to mitigate his actions by disputing the charges that were able to be effectively challenged at trial while accepting responsibility for those that could not be challenged.

Having moved to Tallahassee, Florida, where she currently practices law, Rowell was able to provide live testimony to this Court via telephone. As an initial matter, this Court would note Rowell previously served as an assistant public defender in Richland County for which she came before this Court hundreds of times. This Court is personally familiar with her voice, speaking mannerisms and reputation in the legal community. Because of this personal familiarity with the witness and her former position as an officer of the court, this Court is able to thoroughly pass on the credibility of her testimony despite her physical absence from the courtroom.

Rowell testified she was representing Applicant on drug charges from 2004 and 2005 at the time the current charges arose, so was assigned represent him on them as well. She said at the time Applicant was arrested for these charges, he had additional armed robbery charges pending. That prior charge, Rowell said, was "a big consideration" in planning Applicant's defense as it

was a "most serious" offense that would not be called to trial with the current charges, thereby potentially subjecting Applicant to a life without parole sentence under the enhancement statute. Rowell noted there were no plea offers extended by the state despite her diligent efforts to obtain one, as the state was adamant they had a strong case against Applicant. She also noted the state made it clear they would be asking the court for "as much time as possible" at trial.

Rowell testified Applicant was not willing to plead guilty to all of the charges "straight-up" so they knew it was going to be a trial on at least some of the charges fairly early on. She said she believed there was an argument to be made at trial to challenge the female victim's ABWIK as the only evidence tending to prove the charge was the victim's own testimony/statement, which was contradicted by inconsistencies in other evidence. Rowell was clear in stating she believed the evidence tended to prove Applicant was guilty only of Assault and Battery of a High and Aggravated Nature (ABHAN) against the female victim. Rowell explicitly testified she and Sampson created a specific strategy to have Applicant plead guilty to the two charges (carjacking and ABWIK [male victim]) on which Applicant was facing overwhelming evidence of guilt in order to let the jury know Applicant was willing to accept responsibility for the charges that he was in fact guilty of. Like Sampson, she testified the trial judge would not allow the plea to be entered in front of the jury as requested, but noted that the strategy was still effective as the trial judge informed the jury of the pleas directly thereafter.

Regarding the specific charges, Rowell said she discussed with Applicant that there as a tenuous legal argument that could be made at trial against the kidnapping charge under the theory of double jeopardy. Sampson and Rowell both gave testimony that, while it is not unusual for both kidnapping and carjacking to be charged as a result of one incident, they did not believe charging Applicant with *both* crimes was appropriate under the circumstances. Rowell said she

and Sampson "did a ton of preparation" for Applicant's trial, including expending substantial time preparing legal arguments on the issue of double jeopardy as it related to the kidnapping and carjacking charges. In the end, Rowell said, the argument was vehemently argued to the trial court, but denied.

Rowell said she never pushes her clients to plead guilty, but rather "gives them their options" to allow them to make an informed and independent decision as to what route they wish to pursue. She explicitly stated that she was "very careful" not to push Applicant either way in deciding whether to plead or go to trial. She noted she did not believe there were "any good options" for Applicant based on the evidence and circumstances, but said she believed she and Sampson "did their best" to get Applicant the best outcome possible. Particularly, Rowell said, the victims were able to make an "easy ID" of Applicant after having plenty of opportunity to view him, and there was overwhelming evidence of guilt to at least the charges which Applicant ended up pleading guilty. She finished by stating she believed that Applicant would have "lost all credibility" with the jury had he proceeded to trial on all of the charges because of the overwhelming evidence he was facing, so it was imperative to accept responsibility for those charges to build credibility with the jury on the remaining charges Applicant sought to challenge.

Applicant testified he met with and discussed the case with Rowell, who told Applicant she "could get" him a fifteen year prison sentence on the charges. He went on to say when Luck Campbell took over as the solicitor in the case, Rowell advised Applicant there were and would be no plea offers extended by the state. He alleged Rowell never explained the option to plead "straight up" to all of the charges. Applicant stated Rowell told him the "only course of action" was to plead guilty to the two charges so he would not receive the maximum sentence on them. Applicant said Rowell told him there was "no way" he could be convicted of the other charges at

trial. Applicant finished by saying he "was not truthful" with the plea judge when he said he was pleading guilty of his own free will and was satisfied with counsel's representation, and Applicant readily acknowledged he was under oath at the time he made those allegedly false statements to the court.

Based on the foregoing, this Court finds Applicant has failed to meet his burden in proving counsel was ineffective in this regard. First, this Court finds Applicant's testimony to be wholly *not* credible, while conversely finding the testimonies of Sampson and Rowell to be very credible and persuasive. Counsel's recommendation that Applicant plead guilty to two of the charges while proceeding to trial on the remaining four charges was an objectively reasonable, valid and well designed trial strategy. "Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992), *citing* Goodson v. State, 564 F.2d 1071 (4th Cir. 1977); *see also* Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992), *citing* Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). As set forth by the Court above, counsel was able to credibly and clearly testify to a sound, well-designed trial strategy in advising Applicant to plead guilty to two of the charges, while proceeding to trial on the remaining four charges. Applicant was advised of that strategy and, according to the credible testimony, was "on board" with it. He was fully aware of his ability to plead guilty to all six charges "straight up" with no guarantee as to sentencing, or to otherwise proceed to trial on all six charges, but opted to follow counsel's strategy knowing full well that the decision was ultimately his own to make.

Further, Applicant made the voluntary and informed decision to enter the pleas in accordance with that strategy without any coercion, hope of promise/reward, threat, or other issue that would render that decision involuntary or unintelligent. *See* Boykin v. Alabama, 395

U.S. 238, 89 S.Ct. 1709 (1969). In fact, the entirety of credible evidence before this Court proves Applicant was fully and adequately advised of all relevant issues and potential consequences of pleading guilty by competent counsel acting within the range of reasonableness demanded of criminal defense attorneys, and Applicant made the independent and intelligent decision to plead guilty to two of the charges in accordance with counsel's strategy. Accordingly, this Court finds no deficiency in counsel's representation of Applicant.

Additionally, Applicant has failed to prove resulting prejudice stemming from the alleged deficiency. As a preliminary note, Applicant's reliance on Lafler v. Cooper is misplaced. No plea offers were extended to Applicant by the state; rather, he was only offered the opportunity to plead to the charges "straight up" without any recommendations or negotiation from the state. Therefore, unlike Lafler v. Cooper, there is nothing in the record to support a finding that Applicant would have received a more beneficial sentence had he pled to all of the charges rather than proceed to trial as he did. Likewise, Applicant has failed to prove there is a "reasonable probability" that the outcome of his case and sentences imposed would have been any different had he opted to proceed to jury trial on all six charges rather than following counsel's strategy by pleading to two. Any argument by Applicant to the contrary is based on pure speculation and is wholly unsupported by the record before this Court. Accordingly, this allegation is without merit and must be denied.

Failure to Object to Solicitor's Closing Argument

Applicant also alleged counsel was ineffective for failing to object to the state's closing argument in several regards. First, Applicant alleged counsel should have objected to the state's comments in closing that the jury is "the sole finder of the facts" in the case and they "somewhat...seek the truth". Further, Applicant alleged, counsel should have objected to the

state's commentary in closing accusing counsel of "muddying the waters" and in its recitation of the definition of reasonable doubt.

Sampson testified that she is familiar with the majority of the law and elements that are discussed during closing arguments, and uses a sheet detailing common objections to be made during closing arguments during trial. She noted that she did not believe the comment about the jury being the "sole finder of the facts" was objectionable as the jury's role is that of fact finder at trial. She also stated that commentary about "muddying the waters" is "always" used in closing argument by the state and she did not know of any viable objection to be made thereto, unless the comment was specifically directed at a particular defense attorney. In all, Sampson said she believed the majority of the solicitor's closing argument was "pretty standard" and noted she did not see anything that she believed was "out of bounds".

Rowell testified she generally did not object to statements made in closing arguments unless they are especially egregious as attorneys are afforded a "good bit" of leeway in closing to present their version of the case. She went on to reiterate there is "wide latitude" given to attorneys in closing arguments and noted that generally every attorney "pushes" the limits of allowable statements in their closing, but said she did not see anything particularly objectionable in the closing that she and Sampson missed. Rowell said she did not know if the "fact finder" statement was even objectionable as it seemed to be an appropriate statement of the jury's role. Rowell finished by saying even if there was a missed objection in the state's closing, she did not see anything so glaring that it affected the outcome of trial.

This Court finds Applicant has failed to prove how counsel was ineffective in this regard. First, counsel was not objectively unreasonable for failing to pose an objection to any of the areas highlighted. Counsel plainly testified she has a specific practice of not objecting to closing

arguments unless the solicitor's comments reach a level of egregiousness or impropriety that threatens a defendant's right to fair trial. None of the statements set forth above reach close to that level; in fact, the majority of the statements complained of are not improper or otherwise objectionable as they are correct statements of the law. Applicant's contention that the solicitor improperly shifted the burden of proof by telling the jury to "seek the truth" is without merit as it has been previously addressed by the South Carolina Supreme Court in State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000). In Aleksey, the Court held that while disfavored, instructions charging the jury to "seek the truth" do not alone violate a defendant's due process rights by impermissibly shifting the burden of proof or diluting the reasonable doubt standard. Therefore, this Court finds these allegations to be wholly without merit as Applicant has failed to prove how counsel's performance was objectively unreasonable in this regard.

Additionally, this Court finds no reasonable likelihood that had counsel objected to the solicitor's remarks in closing argument, the outcome at trial would have been any different. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. This Court finds Applicant has failed to prove such a denial of due process resulted from any alleged "improper" commentary by the state in closing argument. Further, any alleged inappropriate statements were cured thereafter by the trial judge's plain and unambiguous instruction on the law, including the fact that statements in closing argument are not evidence to be considered by the jury. Accordingly, Applicant has failed to prove resulting prejudice.

Overwhelming Evidence of Guilt

As a final note, this Court would note that in light of the overwhelming evidence of guilt Applicant was facing at trial, this Court cannot find any reasonable likelihood that the outcome at trial would have been different but-for counsel's alleged deficiencies. As set forth by the South Carolina Court of Appeals in its opinion affirming Applicant's convictions and sentences on direct appeal:

Nonetheless, although admitting the knives was error, we find that the error was harmless in light of the overwhelming evidence of Elders' guilt. Both Mr. Riggs and Mrs. Riggs identified Elders as the person who put the knife to Mrs. Riggs' neck, who fought with Mr. Riggs, and who stole the Riggses' car and Mrs. Riggs' purse. Additionally, testimony by Hall corroborated the Riggses' testimony regarding Elders' involvement in the crimes. Moreover, Chris Smith and his mother, Dawn Smith, both testified that Elders confessed to stealing a car. In addition, the officer who arrested Elders a couple of days after the crimes occurred testified that he observed scratch marks on Elders' arms, hands and face, as well as a bandage on Elders' wrist, thus buttressing the testimony by Hall and the Riggses regarding the struggle between Elders and Mr. Riggs. Furthermore, a cigarette butt containing DNA that matched Elders' DNA was found in the Riggses' car, as was Elders' jacket. Finally, because Elders' guilty pleas were made shortly before the trial commenced, the jury was aware of the fact that Elders had pled guilty to carjacking and ABIK with respect to Mr. Riggs. Based on the foregoing, we are convinced beyond a reasonable doubt that the admission of the knives did not contribute to the jury's verdict and that reversal of Elders' convictions is therefore not warranted. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.").

State v. Elders, 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010). A reasonable probability of a different result does not exist where there is overwhelming evidence of guilt. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); see also Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). This Court agrees with the Court of Appeals analysis of the case in finding overwhelming evidence of Applicant's guilt existed sufficient to overcome any alleged deficiency by counsel. Accordingly, the current application must be denied and dismissed with

prejudice as Applicant cannot satisfy his burden in proving resulting prejudice from any alleged deficiency on counsel's part.

CONCLUSION

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

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

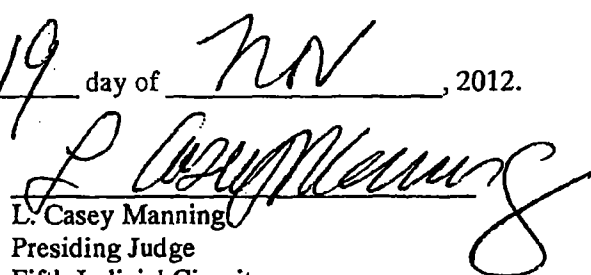
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an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

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 19 day of Nov, 2012.


L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

DOCKET NO. 2005-GS-40-3540

WITNESSES

(S) Stephen Faust, RCSD

The State of South Carolina

County of Richland

42

COURT OF GENERAL SESSIONS

JUNE TERM 2005

Defendant

Witness:

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

THE STATE

vs.

RANDY C. ELDERS

ARREST WARRANT NUMBER

1971800

ACTION OF GRAND JURY

For K McCloud
Foreperson of Grand Jury
Date: JUN 1 6 2005

VERDICT

Indictment for

CARJACKING

SC Code: 16-3-1075(B)(1)

CDR Code: 2599

Class: UNC/FELONY

Foreperson of Petit Jury
Date:

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

Defendant

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Stephanette W. McCloud
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

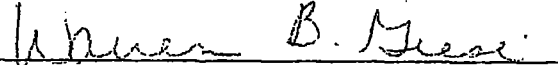
INDICTMENT

CARJACKING

At a Court of General Sessions, convened on June 15, 2005, the Grand Jurors of Richland County present upon their oath:

That RANDY C. ELDERS did in Richland County on or about April 17, 2005, take or attempt to take, a motor vehicle from the victim, Dwight Riggs and Catherine Riggs, by force and violence or by intimidation, while the person, Dwight Riggs, was operating the vehicle, or while the person was in the vehicle, to wit: a 1997 Lincoln. All in violation of S.C. Code Section 16-3-1075(b)(1).

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


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

AKA:

Race: W Sex: M Age: 31DOB: 1 SS#: _____

Address: _____

City, State, Zip _____

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

05 -GS- 40 - 3540AW#: I471800Date of Offense: 4-17-05S.C. Code §: 16-3-1075 (B)(1)CDR Code #: 2151919☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Carjackingin violation of §16-3-1075 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 2151919☐ 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 20 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.→ This is not concurrent. This is the lead indictment. *dy*

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: _____

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeannette Williams
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA
SCCA/217 (7/2003)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

657

WITNESSES

(S) Stephen Faust, RCSD

DOCKET NO. 2005-GS-40-3542

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

42

THE STATE

vs.

RANDY C. ELDERS

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

ARREST WARRANT NUMBER

1971814

ACTION OF GRAND JURY

TRUE BILL

De L. McLeod

Foreperson of Grand Jury
Date: JUN 1 6 2005

VERDICT

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

Indictment for

Foreperson of Petit Jury
Date:

After being fully advised as to my

legal rights, I hereby waive
to the Grand Jury.

Defendant

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

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

Defendant

Witness:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 15, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That RANDY C. ELDERS did in Richland County on or about April 17, 2005, commit robbery by feloniously taking from the person or presence of Catherine Riggs by means of force or intimidation goods or monies of Catherine Riggs, such goods or monies described as purse which contained U.S. Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

INDICTMENT/CASE#:

-GS-

I 971814

16-11-330(A)

0111319

319

☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

in violation of §16-11-030(A) of the S.C. Code of Laws, bearing CDR Code # 0111319

☐ 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: 2-17-06☒ 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:

Court Reporter:

Clerk of Court/ Deputy Clerk

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
JANETTE W. W. BADE
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

WITNESSES

As stipulated, Just. J. S. D.

DOCKET NO. 2006-34015-03

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUNE TERM 2006

42

974818

APPEARANCE NUMBER

ACCION OF GRAND JURY

THE STATE

VS.

RAMON C. BLIVERS

Verdict

Indictment for

MURDER

SIG. Exd. 11/1/2010

CLERK, COURT

OVERSIGHT, PICKENS
JURY

After being advised as to the
rights of the defendant, the defendant
to the same suit.

Defendant

He/she appears in my courtroom, and I read
to the defendant the indictment to

Defendant

Witness

6000 P. 11/1/2010

CERTIFIED TRUE COPY
OF ORIGINAL
FILED IN
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

INDICTMENT

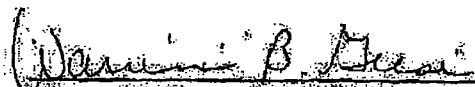
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on June 15, 2005, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That RANDY C. ELDERS did in Richland County on or about April 17, 2005, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: Catherine Riggs, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS

IN THE COURT OF GENERAL SESSIONS

2005

CS

INDICTMENT/CASE #

42

3543

AW#

Date of Offense

S.C. Code §

GDR Code #

2971010

4-17-05

16-3-716

0 0 1 3 1 3

CASE RESTORED

SENTENCE

PESA TRIAL

AKA:

Race

Sex

Age

DOB

SS#

Address

City, State, Zip

DL#

SID#

In disposition of the said Indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSto felonyin violation of 16-3-716 of the S.C. Code of Laws, bearing CDR Code # 011 9 9 5☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is ☒ Felony, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$0; provided that upon the service of 25 days/months/years and/or payment of \$0 plus costs and assessments as applicable, the balance is suspended with probation for 25 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: 2-17-06

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, ☐ OrderedTotal: \$0 plus 20% fee: \$0

Payment Terms:

☐ by SCORPRS

Recipient:

Total:

\$14-200 (Assessment 107.5%)

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

\$14-211(A)(2) (PD) Surcharge

\$66-5-2905 (DUI Assessment)

\$35-13 (Public Def. Prob)

\$73-3, 1B TP (Law Enforcement Funding)

\$33-7, 1B TP (Jud. Court Surcharge)

\$50-21-114 (DUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

[Signature]

Clerk of Court/Deputy Clerk

Court Reporter

[Signature]

CERTIFIED TRUE COPY

OF ORIGINAL

[Signature]

C.C.P.R.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PTUP:

days/hours Public Service Employment

Obtain GED

Attend Vol. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug Alcohol Testing

Final may be placed in public service weekly/monthly

penalty of \$0 beginning\$0 paid to Public Defender Fund

Other

SCCA/217/27272727

663

WITNESSES

(S) Stephen Faust, RCSD

DOCKET NO. 2005-GS-40- 3544

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

42

ARREST WARRANT NUMBER

1971818

THE STATE
vs.

RANDY C. ELDERS

ACTION OF GRAND JURY
TRUE BILL

Joe V McClary
Foreperson of Grand Jury JUN 16 2005
Date:

VERDICT

Foreperson of Petit Jury
Date:

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

Indictment for
KIDNAPPING

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

Defendant

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

FILED TRUE COPY
ORIGINAL FILED
JUN 16 2005
C.C.C.P.C.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 15, 2005, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That RANDY C. ELDERS did in Richland County on or about April 17, 2005, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: Dwight Riggs, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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



Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

INDICTMENT/CASE#:

2005

-GS-

40

3544

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIALIn 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 # 0 1 0 1 9 1 5

☐ 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: 2-17-06☒ 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

Barbara A. Scott

Clerk of Court/ Deputy Clerk

Court Reporter:

Gurand

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:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

2-17-06
ORIGINAL FILED
G.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) Stephen Faust, RCSD

DOCKET NO. 2005-GS-40-3545

The State of South Carolina

County of Richland

42

COURT OF GENERAL SESSIONS

JUNE TERM 2005

ARREST WARRANT NUMBER

1971820

THE STATE

vs.

RANDY C. ELDERS

Defendant

Witness:

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

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

Defendant

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

ACTION OF GRAND JURY

RETURNED TO COURT

John L. McClane

Foreperson of Grand Jury

Date: JUN 16 2005

VERDICT

Indictment for

ASSAULT AND BATTERY WITH
INTENT TO KILL

SC Code: 16-3-620

CDR Code: 0014

Class: C-Felony

Foreperson of Petit Jury

Date:

666

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on June 15, 2005 the Grand Jurors of Richland County present upon their oath:

That RANDY C. ELDERS did in Richland County on or about April 17, 2005 with malice aforethought commit an assault and battery upon one Dwight Riggs with intent to kill the said victim. All in violation of S.C. Code Section 816-3-620.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

Richland

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

2005

-GS-

40

3545

A/W#:

1971820

Date of Offense:

4-17-2005

S.C. Code §:

16-3-620

CDR Code #:

010114

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: ABWIKin violation of § 16-3-620 of the S.C. Code of Laws; bearing CDR Code # 010114☐ 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:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 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: 2-17-06 (05-GS-40-3540)☐ 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		\$

[Signature]
Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

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: _____

CERTIFIED TRUE COPY

2006 APR 17 11:55 AM

2006 APR 17 11:55 AM

J. [Signature]

O.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

SCCA/217 (7/2003)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

WITNESSES

(S) Stephen Faust, RCSD

DOCKET NO. 2005-GS-40-3546

The State of South Carolina
County of Richland

42

COURT OF GENERAL SESSIONS

JUNE TERM 2005

ARREST WARRANT NUMBER

1971821

THE STATE
vs.

RANDY C. ELDERS

Defendant
Witness:
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

NOE WILLIAMS

June E. McCloud
Foreperson of Grand Jury
Date: JUN 1 6 2005

VERDICT

Indictment for
ASSAULT AND BATTERY WITH
INTENT TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class: C-Felony

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive previously held rights to the Grand Jury.
Defendant
hereby appear in my own, proper person and plead guilty to the within indictment or
CERTIFIED TRUE COPY
OF ORIGINAL FILED
JUNE 16 2005
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on June 15, 2005 the Grand Jurors of Richland County present upon their oath:

That RANDY C. ELDERS did in Richland County on or about April 17, 2005 with malice aforethought commit an assault and battery upon one Catherine Riggs with intent to kill the said victim. All in violation of S.C. Code Section §16-3-620.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

2005

-GS-

INDICTMENT/CASE#:

40

3546

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO:

in violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0101113

☐ 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: 2-17-06☒ 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, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$ 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:

Court Reporter:

Clerk of Court/Deputy Clerk

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

CERTIFIED TRUE COPY
OF ORIGINAL DEED.
JACQUELINE W. WILSON
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA
SCCA/217 (7/2003)