

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Allendale County

D. Craig Brown, Circuit Court Judge

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S.C. Supreme Court

ERIC HEMINGWAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001465

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 that was where my thoughts were going when it was placed
2 in.

3 MR. PLEXICO: I just think there's no evidence in the
4 record to support that, Judge.

5 THE COURT: Okay. Um ---

6 ASSISTANT SOLICITOR LEGETTE: There was testimony he
7 knocked her down, and he choked her.

8 MR. PLEXICO: Again, I think it would be a comment on
9 the facts, Judge. I mean, you're the judge.

10 THE COURT: Okay.

11 MR. PLEXICO: That's my objections.

12 THE COURT: Um with those earlier comments, the Court
13 has indicated with respect to the testimony -- I'm going
14 to take out fists, because I think that's going too far,
15 but I think that um if we don't put that in, it's not
16 within the normal mindset to think of a hand when we say
17 "weapon."

18 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

19 THE COURT: Weapon is um, in most layperson's mind,
20 is considered to be a um, you know, hard object of some
21 sort.

22 ASSISTANT SOLICITOR LEGETTE: Yes.

23 THE COURT: And so I will leave in the portion, but I
24 will not say "fist."

25 Okay. Okay, Number Four?

1 **MR. PLEXICO:** Your Honor, before we go to Number
2 Four?

3 **THE COURT:** Sure.

4 **MR. PLEXICO:** I have a Request to Charge Two. I
5 would like to add to that, Your Honor, to the murder
6 charge, Your Honor.

7 **THE COURT:** Okay.

8 **MR. PLEXICO:** I'm withdrawing three.

9 **THE COURT:** Okay. Oh, before we come to that
10 comment, are we taking out this latter part on murder,
11 felony murder, taking out the whole paragraph, or are you
12 just saying substitute um ---

13 **ASSISTANT SOLICITOR LEGETTE:** I -- substitution for
14 "implied?"

15 **THE COURT:** Well, earlier he was saying with respect
16 to the body of the murder charge elements, but felony
17 murder inference is a whole separate charge under the same
18 Murder Charge Number Three.

19 **MR. PLEXICO:** I don't think they pled that in the
20 indictment, Judge. I mean in any of the indictments,
21 they're just saying assault, Your Honor. They're not
22 saying a particular felony. I would ask that you delete
23 that whole paragraph.

24 **ASSISTANT SOLICITOR LEGETTE:** I'd ask you keep it,
25 Your Honor.

1 **THE COURT:** Ms. Legette, you've got the CSC first and
2 the burglary already in as separate indictments anyway, so
3 do you still see a need? Tell me just what your reasoning
4 is for a need for that to remain in.

5 **ASSISTANT SOLICITOR LEGETTE:** Well, Your Honor, it
6 would go to whether or not the jury believed that he
7 actually committed a felony, felony being the burglary or
8 the CSC, and so if they found him not guilty on those two
9 charges, then the felony murder inference would not arise,
10 Your Honor. And so I was just simply looking forward to
11 the point where they might find him guilty of the CSC and
12 burglary, thereby giving him the felony murder inference.
13 If the Court is inclined not to give it, I am certainly --
14 I certainly will go along with that, Your Honor.

15 **THE COURT:** Okay. Well, given that the body of the
16 murder charge indicates malice aforethought may be
17 expressed or implied, um this is just an indication that
18 if you went in with the intent to commit a felony that
19 there may be also an inference of malice, but um I believe
20 we've covered that, so I'm going to take that out, you
21 know, having the other indictments as well.

22 Now to the Defendant's Request to Charge Number Two
23 that you'd like to add into the murder charge?

24 **MR. PLEXICO:** Yes, Your Honor. On the murder charge,
25 I'd like to add Two. I'm not requesting Number Three. So

1 it's just Two, Four, Five, um Six, and when we get to
2 lesser included offenses, then I'll get to Seven.

3 THE COURT: Okay. Under Number Two, Defense Number
4 Two, um the Court has under Number Six the presumption of
5 innocence, an entire charge on that. Do you not think
6 that covers what you're indicating? It has the robe of
7 righteousness um language in there, as well as that he's
8 not pled guilty, the burden's on the State, you know, to
9 offer proof that he is guilty, and he's never required to
10 prove himself innocent.

11 MR. PLEXICO: I understand, Judge. It just -- it
12 just seems to that since it's different charges, I'd like
13 to delineate as much as I can, each one of them. We can't
14 try more serious cases than what we have before the Court.

15 THE COURT: You can't what?

16 MR. PLEXICO: We can't try more serious cases than
17 what we have before the Court in this case.

18 THE COURT: Right. Right.

19 I don't see any need to add that to it. I think when
20 I -- I'll make it clear in my Charge about the presumption
21 of innocence, and then there will be other inferences in
22 the Charge when we get to reasonable doubt anyway. So,
23 okay, so I'll decline that one.

24 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

25 THE COURT: So then that gets us to -- oh, okay.

1 Four, Five and Six go to the murder charge; is that ---

2 MR. PLEXICO: Yes, Your Honor.

3 THE COURT: Okay. Okay. I don't see any real
4 problem with Number Three, I mean his Request to Charge
5 Four, Five and Six added into the State's Number Three. I
6 guess he's just trying to indicate that um -- we'll say it
7 later as to all the charges, but it's just indicating that
8 you have to find the elements on each specific charge.

9 ASSISTANT SOLICITOR LEGETTE: Your Honor, I would ask
10 that the Court not emphasize the same language in each
11 particular indictment as particularized as it is in Mr.
12 Plexico's charges. I believe that the Charge the Court
13 will give will suffice. I would like the Court not to
14 just over -- continue to emphasize certain elements.

15 THE COURT: Elements of it. I gotcha. Now I see
16 that.

17 MR. PLEXICO: I think that's the law, Judge. They
18 need to know that.

19 THE COURT: Well, we're going to have reasonable
20 doubt. We're also going to have presumption of innocence,
21 and so um that would be indicated as to all indictments.
22 Because are you offering that kind of language as to the
23 CSC first, as well as the burglary first, too?

24 MR. PLEXICO: Well, what I'm offering on the um -- on
25 the burglary, Your Honor, is um -- is the one that you

1 declined. That would have been, I think, my Number Two
2 that you declined. I assume you are probably inclined to
3 decline that one, too.

4 The only other one would say in the burglary, if you
5 have a reasonable doubt as to whether the defendant is
6 guilty of burglary in the first degree, then you must
7 resolve the doubt in favor of the defendant and find him
8 not guilty of burglary in the first degree. So that's the
9 only one I'd have for burglary.

10 Um, Judge, and on the CSC, I had one similar to the
11 one that you turned down for murder. And the other two
12 were Nine and Ten, which are: In order to convict the
13 defendant of criminal sexual conduct in the first degree,
14 the State would have to prove beyond a reasonable doubt
15 the defendant engaged in sexual battery with Harriett
16 Washington and that the defendant knowingly used
17 aggravated force to accomplish sexual battery. However,
18 aggravated force means -- actually means physical force or
19 physical violence of a high and aggravated nature to
20 overcome the victim and includes the threat of use of a
21 deadly weapon.

22 And that's the only thing that they alleged in the
23 indictment. They didn't allege anything else in the
24 indictment, Your Honor, in reference to the rest of that
25 statute.

1 So I don't -- we are not defending against the rest
2 of it, Judge, because it's not ---

3 **THE COURT:** Right.

4 **MR. PLEXICO:** --- alleged.

5 And then Number Ten, Your Honor, is the CSC, and
6 it's: If you have a reasonable doubt as to whether the
7 defendant is guilty of a crime ---

8 **THE COURT:** And when you say Ten, you're talking
9 about your charge?

10 **MR. PLEXICO:** Yes, Your Honor.

11 **THE COURT:** Okay. Let me do this. Let me go with
12 how the Court has theirs again, and then we'll come and
13 add yours in, because that way, some of this language is
14 duplicative, and then that way, we can see if it's already
15 been taken care of. And I understand that you focused on
16 your charges, because you hadn't had the Court's charges
17 yet, so obviously your language is in your head, but I
18 think some of it is taken care of.

19 **MR. PLEXICO:** Judge, I understand.

20 **THE COURT:** Okay. So now I'm going back to Number
21 Four, which is the Court's Number Four, first degree
22 criminal sexual conduct. Are we okay with that?

23 **MR. PLEXICO:** Um, Your Honor, since it's not alleged
24 in the indictment, I would ask that you um -- um ---

25 **THE COURT:** Take out ---

1 MR. PLEXICO: --- if you'd delete the part that's not
2 alleged in the indictment.

3 THE COURT: Right, that last paragraph, yeah. It's
4 in italics. We were waiting -- when my other law clerk,
5 my real law clerk, who was here earlier in the week,
6 obviously has not been here through the completion of the
7 trial, so we had to see factually what was coming up.
8 That's why it's in italics. And it says "or" before, but
9 that last paragraph will be taken out.

10 ASSISTANT SOLICITOR LEGETTE: That's fine, Your
11 Honor. No problem with that.

12 MR. PLEXICO: I think um -- yes, all right, and you
13 want to discuss mine later; correct?

14 THE COURT: Yes. Right.

15 MR. PLEXICO: Okay. I'm sorry.

16 THE COURT: All right. And then I will um -- okay,
17 and then that takes us to Number Five, first degree
18 burglary.

19 And then the last paragraph on the second page will
20 come out dealing with entering or remaining in the
21 dwelling at nighttime, because the State is going with the
22 aggravating circumstances of causing physical injury;
23 correct?

24 ASSISTANT SOLICITOR LEGETTE: That's correct, Your
25 Honor.

1 **THE COURT:** Okay.

2 **ASSISTANT SOLICITOR LEGETTE:** I have no objection to
3 Number Five, deleting the last paragraph.

4 **MR. PLEXICO:** Um I don't have any problem with that,
5 deleting the last part of that, Judge. I think that's
6 fine.

7 **THE COURT:** Okay. And then Number Six deals with
8 presumption of innocence.

9 **ASSISTANT SOLICITOR LEGETTE:** I have no objection to
10 Number Six, Your Honor.

11 **MR. PLEXICO:** It's better than mine, Judge. I would
12 withdraw mine.

13 **THE COURT:** Okay. Thank you.

14 And then Number Seven, we will not use the reasonable
15 doubt charge that the Court gave you. I gave you another
16 one ---

17 **ASSISTANT SOLICITOR LEGETTE:** Yes, Your Honor.

18 **THE COURT:** --- you know, back in my chambers, but
19 we're going to take out the last paragraph.

20 **MR. PLEXICO:** Yes, no objection. Thank you, Judge.
21 I have no problem with that.

22 **THE COURT:** Is that okay with the State?

23 **ASSISTANT SOLICITOR LEGETTE:** No objection to number
24 um -- well, the reasonable doubt that you gave us in
25 chambers, deleting the last paragraph, Your Honor.

1 **THE COURT:** Okay. And then Eight is credibility of
2 witnesses.

3 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I have no
4 objection to Number Eight.

5 **MR. PLEXICO:** I have um -- I have no objections to
6 Number Eight, Your Honor.

7 **THE COURT:** And Number Nine, testimony of children?

8 **MR. PLEXICO:** Your Honor, I don't think Number Nine
9 -- I -- I -- don't think it's necessary.

10 **THE COURT:** Okay. And I didn't -- when you asked him
11 the right questions starting out, and unless the defense
12 had any reason to question that, so we'll take Number Nine
13 out. Okay.

14 Ten is expert witnesses.

15 **ASSISTANT SOLICITOR LEGETTE:** I would ask for that
16 one, Your Honor. I would have no objection to Number Ten.

17 **MR. PLEXICO:** I'm fine. I believe it's an accurate
18 reflection of what the law is, Your Honor.

19 **THE COURT:** Okay. Eleven is direct and
20 circumstantial evidence.

21 **ASSISTANT SOLICITOR LEGETTE:** I have no objections to
22 Number Eleven.

23 **MR. PLEXICO:** If I could just have a second, Your
24 Honor?

25 **THE COURT:** Sure.

1 **MR. PLEXICO:** Your Honor, I would ask that instead of
2 the circumstantial evidence that you have in Number
3 Eleven, I have submitted Defendant's Request to Charge
4 Number One, Your Honor. I believe it is an accurate
5 reflection of the law, and I think it's more detailed and
6 provides better tie to the jury, Your Honor, and it
7 follows the rule where there's no distinction between the
8 two, Your Honor. But it does emphasize circumstantial
9 evidence does have to be beyond a reasonable doubt, too,
10 and that's why -- so I believe it would be a better
11 charge.

12 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I would be
13 opposed to the use of Mr. Plexico's Request to Charge
14 Number One, and I would ask the Court to use the Court's
15 Number Eleven Request to Charge.

16 **THE COURT:** Okay. The Court will look at this.
17 Do either of you plan on quoting the language from
18 either this particular type charge, circumstantial
19 evidence, in your closing?

20 **MR. PLEXICO:** I -- I -- I -- I would like to be able
21 to emphasize, Judge, that, you know, the evidence needs to
22 point to my client and exclude other reasonable
23 possibilities, Judge, which is not in the charge, and I
24 would like ---

25 **THE COURT:** Okay.

1 MR. PLEXICO: --- to quote Your Honor when she gives
2 the charge in regards to the matter, because you've heard
3 -- we've been here ---

4 THE COURT: No, that's okay.

5 MR. PLEXICO: It would be quite helpful.

6 THE COURT: No, I just didn't know if you
7 specifically wanted to use it in closing. I would just
8 look at it in more detail. That's all. Okay. We'll come
9 back to that one.

10 Okay. Um and then that leads us to ---

11 ASSISTANT SOLICITOR LEGETTE: Number Twelve.

12 THE COURT: Yeah. Oh, okay, which is failure of
13 defendant to testify, which I always put at the end.

14 ASSISTANT SOLICITOR LEGETTE: I have no objection to
15 Number Twelve.

16 THE COURT: Okay. That's why it's there, I was going
17 to put it at the end.

18 MR. PLEXICO: I have no problems with Number Twelve,
19 Judge.

20 THE COURT: Okay.

21 MR. PLEXICO: And I'll withdraw Number Thirteen.

22 THE COURT: You're -- oh, you're withdrawing Number
23 Thirteen.

24 Do you have that, Ms. Legette?

25 ASSISTANT SOLICITOR LEGETTE: I have it, Your Honor.

1 I put some things on top of it. I have it here, Your
2 Honor.

3 THE COURT: You what?

4 ASSISTANT SOLICITOR LEGETTE: I have it.

5 THE COURT: Okay. He wants to withdraw that.

6 ASSISTANT SOLICITOR LEGETTE: Yes, ma'am.

7 THE COURT: You're okay with that?

8 ASSISTANT SOLICITOR LEGETTE: I'm okay with that,
9 yes.

10 THE COURT: Okay. Thank you.

11 ASSISTANT SOLICITOR LEGETTE: His Number Thirteen, or
12 yours?

13 THE COURT: I'm sorry. Is Number Thirteen what you
14 submitted?

15 MR. PLEXICO: Was what I submitted.

16 THE COURT: He submitted to the Court, apparently.

17 ASSISTANT SOLICITOR LEGETTE: Okay, yes, ma'am.

18 THE COURT: Okay. So, yes. Okay.

19 All right, and then now these end up coming to the
20 lesser included offenses, I believe. Number Fourteen is
21 assault and battery of a high and aggravated nature.

22 ASSISTANT SOLICITOR LEGETTE: Your Honor, I think we
23 skipped your Number Thirteen.

24 MR. PLEXICO: We need to talk about your Number
25 Thirteen, Judge.

1 **THE COURT:** Oh, my Number Thirteen. Maybe I'm
2 confused. It says "prior inconsistent statements."

3 **MR. PLEXICO:** Right. We haven't talked about that.

4 **THE COURT:** Oh, I thought you said that that came
5 from you. So that's not your Thirteen. That's my
6 Thirteen.

7 Okay. Anyway, we're talking about the Court's Number
8 Thirteen. I'm trying to keep it straight as well. You're
9 withdrawing your Number Thirteen. Okay. I have you now.

10 Okay. The Court's Number Thirteen says "prior
11 inconsistent statement." I thought that was a little
12 strange that y'all were withdrawing that after -- yeah.

13 **ASSISTANT SOLICITOR LEGETTE:** I have no objection to
14 Number Thirteen, Your Honor.

15 **THE COURT:** You what?

16 **ASSISTANT SOLICITOR LEGETTE:** I have no objection to
17 Number Thirteen.

18 **THE COURT:** Okay.

19 **MR. PLEXICO:** Your Honor, I would object to Number
20 Thirteen. The second paragraph begins with "if the
21 witness is shown to have knowingly testified untruthfully
22 concerning any material matter, you may consider this in
23 determining whether to trust the witness's testimony as to
24 other matters."

25 Um I think that's adequately addressed in paragraph

1 one, Your Honor, and I would ask that um -- um that ---

2 THE COURT: Because you're trying to say not having
3 emphasis, as if we're speaking about a particular witness.

4 MR. PLEXICO: Yes.

5 ASSISTANT SOLICITOR LEGETTE: Well, Your Honor, I
6 believe that there was other earlier cross-examination by
7 Mr. Plexico when he tried to impeach witnesses by their
8 having two statements as well, and um ---

9 THE COURT: And the way to do that, I think, in
10 Number Two is not to say "if a witness," so that, you
11 know, it kind of takes care of your issue with respect to
12 the last witness.

13 If we say "if any witnesses have shown," or um, but
14 essentially, I'll clean up the language, but we're talking
15 about any witnesses. So that'll cover both sides.

16 ASSISTANT SOLICITOR LEGETTE: I believe so, Your
17 Honor.

18 THE COURT: Because you're just essentially giving
19 them some guidance on how to deal with statements.

20 ASSISTANT SOLICITOR LEGETTE: I would have no
21 objection to that, Your Honor.

22 THE COURT: Okay. So I'll clean up that language,
23 but it essentially will be "if any witnesses who have
24 testified."

25 MR. PLEXICO: That would be fine with me.

1 THE COURT: Okay.

2 MR. PLEXICO: I will withdraw my objection.

3 THE COURT: Okay. We'll clean up the language and
4 then put that in there.

5 Okay. Now to the Court's Number Fourteen, which
6 thereafter goes into the lesser included offenses. Okay.

7 Um so, Mr. Plexico, we'll deal with you on the
8 assault and battery of a high and aggravated nature. As I
9 look at it, this charge is usually relevant when you don't
10 have a sexual crime or any other inference of um, you
11 know, that particular element at issue, but we have
12 evidence of that.

13 MR. PLEXICO: Do you want -- would you like ---

14 THE COURT: Sure.

15 MR. PLEXICO: All right, Your Honor, um like I've
16 said several times during the trial and in argument, Your
17 Honor, sex -- the presence of sperm equals sex, which does
18 not um necessarily equal a crime of criminal sexual
19 conduct. They may find that there was -- that he came in
20 and that -- and that he did have an unlawful touching that
21 was high and aggravated, Judge, but they may find that --
22 that there was actually no sex. If they find there was no
23 sex, the only thing they could find him guilty of then
24 would be assault and battery of a high and aggravated
25 nature. And they may find that, you know, he did not kill

1 her, because I mean, quite frankly, her health was bad,
2 Judge.

3 THE COURT: Uh-huh.

4 MR. PLEXICO: It's just sad, but her health was real
5 bad, Judge.

6 THE COURT: So your um argument essentially goes to
7 how they, on that particular DNA evidence, how they would
8 indicate how to use that for their deliberations, the
9 jury.

10 MR. PLEXICO: Yes, Your Honor.

11 THE COURT: Okay.

12 Ms. Legette?

13 ASSISTANT SOLICITOR LEGETTE: Your Honor, I would be
14 opposed to Number Fourteen or any other lesser included,
15 in fact, in this case. Especially Number Fourteen, Your
16 Honor, I believe that the jury, if they find he actually
17 -- if they believe that the DNA belonged to Mr. Hemingway,
18 then they could only find that he committed CSC first
19 degree, Your Honor.

20 There's no testimony of it being consensual in
21 nature. In fact, the testimony goes towards him wanting
22 to rape her and actually having raped her.

23 In fact, there are injuries, as diagrammed by the
24 pathologist here, Your Honor, and I would submit to the
25 Court that Number Fourteen, there is no -- there is no

1 evidence to prove merely an assault and battery of a high
2 and aggravated nature, Your Honor, and that he's guilty of
3 a CSC first degree, or that he's guilty of nothing. And
4 the jury could find him guilty or not guilty of CSC first
5 degree.

6 **THE COURT:** Okay. Okay. And again, listening to how
7 the State is framing their argument, as to any of the
8 lesser included offenses, it's not for me to um think
9 about how to charge a jury based on the inferences. I
10 have to establish charging them based on what evidence is
11 before the Court. You understand what I'm saying, the
12 distinction?

13 **MR. PLEXICO:** And there is no evidence my client
14 committed, no credible evidence, my client committed CSC,
15 because he's one of, as their best witness said, it went
16 from a hundred and forty-nine million to now he's at the
17 end of their case, he's one of a hundred thousand
18 suspects. That's no evidence against my client. That's
19 the best evidence they've got.

20 **THE COURT:** Well, if you're adding direct and the
21 circumstantial evidence, you know, as presented um by the
22 State, then that is the reason for denying the initial
23 motion for directed verdict. But what I'm asking is that
24 on charging any of the lesser included offenses, I have to
25 do so based on what evidence is before the Court to allow

1 us to put that particular charge before the jury.

2 ASSISTANT SOLICITOR LEGETTE: Your Honor, I think
3 based on the evidence that we heard, the statement and the
4 presence of the semen, well, spermatozoa semen, and that
5 following up, being DNA, that cannot exclude Mr.
6 Hemingway. Your Honor, I don't believe that there is
7 evidence here merely of an assault and battery of a high
8 and aggravated nature, based on her injuries, based on the
9 statements made by Mr. Hemingway to Mr. Williams, the
10 prior statement that he made before he went into the house
11 and that statement that he made when he left the house.

12 In addition to the scratches that were seen on his
13 chest, physically, Your Honor, that would indicate there
14 was some -- something more than merely an assault and
15 battery of a high and aggravated nature, Your Honor, and I
16 would ask the Court not to submit -- not to charge the
17 jury on the law of assault and battery of a high and
18 aggravated nature based on the evidence being much higher
19 than the mere level of assault and battery of a high and
20 aggravated nature.

21 THE COURT: Okay. I'm going to um, given the way
22 this reads, meaning the charge itself, and that within the
23 charge of assault and battery of a high and aggravated
24 nature, it indicates as circumstances of aggravation, it
25 would be, you know, the difference between the genders,

1 taking of indecent liberties or familiarity of a female
2 through force, and that the defense has um their theory of
3 the case, too, that even if something occurred, it could
4 have been consensual, what have you. I'm going to go
5 ahead and allow the ABHAN as a lesser included offense of
6 CSC first.

7 Okay. CSC second.

8 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I think if
9 the Court is going to allow ABHAN, then the Court
10 certainly should submit the CSC second degree. It is the
11 State's opinion, Your Honor, that this is certainly a CSC
12 first degree, not an ABHAN, and not a CSC second, but if
13 the Court is going to, as I said, use the ABHAN, then
14 certainly, we would ask the Court to use the CSC second.

15 **THE COURT:** Under the CSC second, it would include
16 the elements of the CSC first, except the circumstances of
17 aggravation, whereas ABHAN requires circumstances of
18 aggravation; right?

19 **ASSISTANT SOLICITOR LEGETTE:** Yes, Your Honor. I see
20 that in the charge. Yes.

21 **THE COURT:** But I'm saying that you're not giving up
22 on that there were circumstances of aggravation.

23 **ASSISTANT SOLICITOR LEGETTE:** I am not, Your Honor.
24 I would submit that it was a murder, CSC first, and a
25 burglary first.

1 **THE COURT:** Right.

2 **ASSISTANT SOLICITOR LEGETTE:** And if the Court is
3 going to charge the ABHAN, I would certainly ask the Court
4 to charge the CSC second as well.

5 **THE COURT:** But that's what I was trying to get at,
6 that ABHAN does require circumstances of aggravation
7 versus CSC second would contain all the elements of first
8 degree criminal sexual conduct, except the circumstances
9 of aggravation.

10 **ASSISTANT SOLICITOR LEGETTE:** And I'm afraid I'm not
11 understanding what you're asking me, Your Honor.

12 **THE COURT:** Well, the circumstances of aggravation
13 don't have to be in a CSC second, so if you're sticking to
14 your guns on that we need circumstances of aggravation ---

15 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I will
16 stick to my guns in that I believe he committed a CSC
17 first.

18 **THE COURT:** Right. Right.

19 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, and he did
20 not commit an ABHAN, but he committed an ABHAN in
21 conjunction with committing a CSC first, he probably
22 committed a kidnapping and all those kinds of things, Your
23 Honor, but I'll stick to my guns in that he committed a
24 CSC first. And my only request is that if the Court is
25 intending to charge the ABHAN that the Court also charge

1 CSC second, as well as CSC first.

2 THE COURT: Under CSC second, though, I would need
3 evidence of aggravated coercion, which means that the
4 defendant threatened to use force of violence of a high
5 and aggravated nature to overcome the victim or another
6 person.

7 MR. PLEXICO: May I, Your Honor?

8 THE COURT: Yes?

9 MR. PLEXICO: That's why I was saying that I thought
10 that CSC third, which is attempted force or coercion, Your
11 Honor, would be an appropriate jury charge, because I
12 argued that CSC third, the first part of it, is clearly a
13 lesser included offense of CSC first. If it's sexual
14 battery using aggravated force, but they don't prove
15 aggravated force but they can prove sexual battery with
16 use of force, clearly, that falls under CSC third.

17 So I think CSC third would be an appropriate charge,
18 Your Honor. Because they may look at those bruises and
19 think, oh, this just isn't serious. I mean, that very
20 easily can be looked at from what's in the record and
21 evidence.

22 THE COURT: And, Ms. Legette, under the second,
23 because it's reading that defendant threatened to use
24 force of violence, you know, of the high and aggravated
25 nature to the victim, and if the victim reasonably

1 believed defendant had that present ability to carry out
2 that threat, that's my concern on that. We don't have
3 any, um you know, obvious evidence on that issue, because
4 nobody knows what happened, ---

5 COURT REPORTER: I'm sorry, Your Honor, I couldn't
6 hear you.

7 THE COURT: I said no one would know what happened on
8 that particular evening, except the victim and the
9 defendant on that particular issue, when I'm talking about
10 the threat of force and the victim believing -- um
11 reasonably believing harm.

12 ASSISTANT SOLICITOR LEGETTE: Your Honor, I believe
13 CSC second degree is a lesser included offense of CSC
14 first degree.

15 THE COURT: Oh, I'm not doubting that at all, but I'm
16 talking about on any lesser included offense, you can't
17 just put them in. They have to be as to the proof in the
18 case, or the evidence before the Court in the case. And I
19 was just asking what would you essentially contend is the
20 evidence on that particular element of aggravated
21 coercion?

22 ASSISTANT SOLICITOR LEGETTE: Your Honor, ---

23 THE COURT: And I mean, the statement, for sure, but
24 then the other part of that is talking about what the
25 victim reasonably believed.

1 **ASSISTANT SOLICITOR LEGETTE:** Well, Your Honor, in
2 the moment when he was knocking her down, he wasn't
3 actually sexually assaulting her at that point. Him
4 knocking her down is the threat.

5 **THE COURT:** Uh-huh.

6 **ASSISTANT SOLICITOR LEGETTE:** And my -- and the State
7 is saying that to use force, you know, overcome her will
8 and use aggravated coercion, that is your knocking her
9 down, whether or not he hit her to get her down or
10 something else to get her down, the mere threat, well the
11 actual force of knocking her down, Your Honor, we submit
12 to the Court could be construed as a threat used to become
13 aggravated coercion.

14 However, the State does stick by our previous
15 argument that this is a CSC first degree and not ABHAN,
16 nor CSC second, nor is it CSC third, Your Honor.

17 **THE COURT:** Oh, absolutely. Right. Right. I just
18 have to, you know, entertain defense's argument on that.

19 **ASSISTANT SOLICITOR LEGETTE:** Yes.

20 **THE COURT:** Um but do you all see it as a -- it would
21 either be CSC second, obviously, or ABHAN, if I had a
22 lesser included offense?

23 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I would
24 oppose any lesser included offense on this.

25 **THE COURT:** Absolutely. Right.

1 **ASSISTANT SOLICITOR LEGETTE:** Respectfully. However,
2 I would abide whatever ruling the Court makes.

3 **THE COURT:** Right. Right. But I mean, it's one or
4 the other. You're not -- I'm not going to have on a
5 second charge ---

6 **ASSISTANT SOLICITOR LEGETTE:** I would ask the Court
7 to submit all three, if the Court is going to, but ---

8 **THE COURT:** Right.

9 **MR. PLEXICO:** Well, I'm not trying to push my luck,
10 so to speak, ---

11 **THE COURT:** Right.

12 **MR. PLEXICO:** --- but I really think a CSC third,
13 because they may find, "I know it's not ABHAN, it's a
14 CSC," but we want them to have the opportunity to find the
15 correct CSC charge, if they find it is that and not an
16 ABHAN, and if they didn't have the third but they thought
17 it was a CSC, they're going to be forced to convict my
18 client of a greater charge that the evidence doesn't
19 actually quite support, because that's their only choice.
20 But they may find it was just an old, you know, pushing
21 down and the force -- the sexual act with no aggravation
22 whatsoever.

23 So if they find sex act and no supporting evidence of
24 aggravation or coercion, they're going to be in a bind.
25 And I'd like for them to have an opportunity, if they're

1 going to convict my client, to convict him only of that
2 which they think the evidence supports. Of course,
3 we've -- we've pled not guilty, Your Honor.

4 THE COURT: Okay.

5 MR. PLEXICO: Or my client's not guilty.

6 THE COURT: Okay. Because you're essentially saying
7 that you -- obviously, your theory of the case is without
8 aggravating circumstances, but I've got a pathology report
9 on the bruises and the, you know, various other injuries.
10 And so I believe that to get to third, I would have to not
11 have that, you know, -- you know, just have the DNA
12 samples and things of that nature.

13 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor. There
14 were bruises to both the victim's head and her neck and
15 her upper chest area and her arms.

16 THE COURT: Right. In other words, again going back
17 to the distinction that I see whenever we're doing any of
18 the charges, it's all about what evidence is before the
19 Court, not the inferences to be drawn from that. Do you
20 all get what I'm saying?

21 That's your theory of the case, but I can only do the
22 charges based on what the evidence is. And this says for
23 CSC third, it has to be without aggravating circumstances,
24 which means that I would have to have nothing before me
25 that indicates that there were any aggravating

1 circumstances to be able to get to a CSC third lesser
2 included offense.

3 MR. PLEXICO: I believe, arguably, the record
4 supports CSC third, and that's why I'm requesting it.

5 THE COURT: Right. Right. Right.

6 MR. PLEXICO: I'm not trying to try your patience. I
7 apologize if I seem to be.

8 THE COURT: No, no, no.

9 MR. PLEXICO: But they may look at that very record
10 that -- that the State says should support a CSC first. I
11 believe also it would support a CSC third, Your Honor.

12 I think there is a proper record to support a charge
13 on CSC third. So I think it's a matter of interpretation,
14 and I would ask that you give my client the benefit of the
15 doubt. And with that, I don't think I have anything else
16 on my request.

17 THE COURT: Okay. And why do you indicate not CSC
18 second?

19 MR. PLEXICO: Well, as far as aggravated coercion, if
20 you -- if -- who determines whether it's aggravated or
21 not? Those -- those bruises, obviously, she's got a job
22 or some activity that resulted in bruises, because she had
23 old healing on her body and bruises in the area, old
24 wounds.

25 THE COURT: But I have to go by the evidence, not

1 your inferences. Again, I'm trying to make that
2 distinction.

3 MR. PLEXICO: Well, that ---

4 THE COURT: You can argue that, but what I'm saying
5 is I need evidence before the Court. You -- you can have
6 your inferences of that, but I don't have any testimony
7 that says what her job was.

8 MR. PLEXICO: Correct, Your Honor.

9 THE COURT: You see what I'm saying?

10 MR. PLEXICO: I just think that -- I just don't think
11 that since there's no -- no -- there's no testimony of
12 sexual -- I don't think there's anything aggravated about
13 the alleged sexual act, and just going with what was
14 described as sexual injuries, Judge, they said there were
15 none. Therefore, I think there would be no aggravated
16 sexual activity, and any of it would have to be a third,
17 and I think that's what the record supports. And with
18 that, that's my argument, Judge.

19 THE COURT: Okay.

20 ASSISTANT SOLICITOR LEGETTE: Your Honor, if I may?

21 THE COURT: Yes.

22 ASSISTANT SOLICITOR LEGETTE: I would be opposed to a
23 CSC third charge, based on the lack of the -- well, the
24 actual aggravating circumstances that we believe the
25 evidence does allege, Your Honor. And CSC third is clear

1 that there are -- that there is the absence of aggravating
2 circumstances, and we do have aggravating circumstances
3 here ---

4 THE COURT: CSC third is not going to be given. So,
5 I'm going to go ahead and rule on that.

6 ASSISTANT SOLICITOR LEGETTE: Thank you.

7 THE COURT: Anticipating the rest of your argument.

8 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

9 THE COURT: Okay. So the Court is going to um --
10 we're going to move on, but I'm going to give
11 consideration to CSC second or ABHAN. I'm going to just
12 hold onto that for a second. Okay.

13 MR. PLEXICO: Thank you, Judge.

14 THE COURT: Moving on to voluntary manslaughter and
15 involuntary manslaughter.

16 ASSISTANT SOLICITOR LEGETTE: Your Honor, the State
17 again is opposed to both Number Sixteen and I believe what
18 would be Number Seventeen, involuntary manslaughter as
19 well. Your Honor, there is no evidence that the State
20 recollects to allege that there was some heat of passion
21 to cause Mr. Hemingway to commit the crime of murder or
22 the killing against Ms. Harriett Washington.

23 The testimony though, I believe yesterday was
24 misstated, the testimony of the young man who was present
25 in the home, Patrick Washington, was that he heard noises.

1 He heard the door opening and closing, that he did not
2 hear any actual voices, Your Honor, and that there is no
3 heat of passion here, Your Honor. As such, we believe
4 that the charge of voluntary manslaughter is not
5 warranted, and that there is no evidence to support such a
6 charge, Your Honor. He's either guilty of murder or he's
7 not guilty of murder.

8 THE COURT: Okay. All right.

9 Mr. Plexico?

10 MR. PLEXICO: I um -- I had submitted those earlier,
11 Your Honor, and I don't have any argument at this point,
12 Your Honor.

13 THE COURT: Okay. That won't be offered.

14 And then I'm going to deny involuntary manslaughter,
15 because I don't see any indication there.

16 All right. And then we already discussed um -- okay.
17 So that takes care of that. Now we're coming back to the
18 CSC second and ABHAN.

19 Now, Mr. Plexico, you had some other charges you
20 wanted. Now having considered the Court's, are there any
21 you would like to add?

22 MR. PLEXICO: Yes, Your Honor. Let's look back to
23 the murder. Can we start there, Your Honor? Is that ---

24 THE COURT: Yes. Go ahead and do yours.

25 MR. PLEXICO: I have requested ---

1 **ASSISTANT SOLICITOR LEGETTE:** What number is that?

2 I'm sorry.

3 **MR. PLEXICO:** My -- this would be my Number Four, the
4 Judge's Number Three.

5 **THE COURT:** Your number what?

6 **MR. PLEXICO:** My Number Four, Five and Six, Your
7 Honor. You have already denied Number Two, I believe it
8 is. You said you would consider the other ones. You
9 denied Number Two, in reference to the murder charge, and
10 you had not ruled on my Number Four, Five and Six, Your
11 Honor.

12 **THE COURT:** One moment, please.

13 Okay. Thank you. We've got the general um
14 reasonable doubt, as well as the presumption of innocence
15 charges, and those are going to apply to each indictment.
16 So what um would be the need to add anything further?

17 In other words, you're asking me to essentially make
18 those same statements to the jury as to the elements of
19 murder, it looks like what these requests to charge go to.

20 **MR. PLEXICO:** I think the clarity of the charges are
21 very important to the jury, Your Honor, and I think that
22 Four, Five and Six would be of great use with legal
23 specificity and a great aid to the jury to come to a just
24 verdict, Your Honor. Even though the Court may believe
25 it's repetitious, it'll take only a few minutes, and in

1 the interest of justice, we would ask that you add Four,
2 Five and Six, Your Honor.

3 THE COURT: State?

4 ASSISTANT SOLICITOR LEGETTE: Your Honor, Mr. Plexico
5 said himself repetitious, redundant, waste of time. We're
6 trying to avoid wasting the Court's time, as well as the
7 jury's time, Your Honor, and I believe, or I would submit
8 to the Court that to charge Number Four, Five, and Six, in
9 addition to the Court's general charge that the Court's
10 going to charge, Your Honor, would simply emphasize what
11 the Court has already said, Your Honor. And I believe to
12 over-emphasize would be a waste of the Court's time, would
13 be repetitious, would be redundant and, Your Honor,
14 perhaps prejudice the State's case by repeating something
15 that the Court had already said.

16 MR. PLEXICO: I don't see where it's in the general
17 charge, Your Honor.

18 THE COURT: The General Charge Number Six is the
19 presumption of innocence charge, and then right behind
20 that, we have the reasonable doubt charge, as amended.

21 MR. PLEXICO: Yes, Your Honor. Neither one of those
22 delineate the very important elements of murder, but that
23 they must know that you have to find malice aforethought
24 beyond a reasonable doubt, I mean ---

25 THE COURT: Well, -- go ahead.

1 **MR. PLEXICO:** --- this is all that my charge does is
2 merely -- merely um give them that which is not matter of
3 fact, which is only generally covered. This is just more
4 specifically covered.

5 And they must know that -- that there would have been
6 no death, but for my client's actions, then it's not
7 murder, and I feel they must know that, that malice
8 aforethought must include beyond a reasonable doubt, or
9 there is no murder, he's not guilty of murder, Your Honor.
10 And, of course, you know, they have to resolve every doubt
11 in his favor.

12 **THE COURT:** Let me state, Ms. Legette, in Number
13 Four, which is first degree criminal sexual conduct, as
14 well as Number Five, which is first degree burglary, both
15 of those um ---

16 **ASSISTANT SOLICITOR LEGETTE:** Which Number Four, Your
17 Honor? Your Four and Five?

18 **THE COURT:** The Court's Four, thank you, Four and
19 Five. Um both of those have language in there about the
20 State having to prove certain elements beyond a reasonable
21 doubt.

22 **ASSISTANT SOLICITOR LEGETTE:** And, Your Honor, that
23 is fine. I just would ask the Court not to continue to
24 repeat the same information again, because it's already in
25 the Court's charges.

1 MR. PLEXICO: But it's not.

2 THE COURT: But it's not in the murder one, is what
3 -- is it? Let's see.

4 Well, yeah, they start out with that. You have to
5 prove it beyond a reasonable doubt that the defendant
6 killed another person with malice aforethought. So that
7 reasonable doubt language is in each one of the um charges
8 already.

9 MR. PLEXICO: But not the "but for," Your Honor. She
10 had some serious health issues here.

11 THE COURT: Okay.

12 ASSISTANT SOLICITOR LEGETTE: Your Honor, there's no
13 testimony she had any serious health issues. The
14 pathologist testified. She didn't testify she had any
15 serious health issues.

16 MR. PLEXICO: The Coroner said she was on fourteen
17 times the ---

18 ASSISTANT SOLICITOR LEGETTE: The Coroner was not an
19 expert witness, Your Honor.

20 MR. PLEXICO: Your Honor, Your Honor, ---

21 THE COURT: Okay.

22 MR. PLEXICO: She did say that she appeared to be,
23 and she was the Coroner, she said and everybody, including
24 the doctor's report to the Coroner ---

25 ASSISTANT SOLICITOR LEGETTE: Your Honor, according

1 to the Coroner, she's not dead yet.

2 MR. PLEXICO: I'm not -- I'm not done. In the
3 Coroner's notes, she took thirteen times the amount of
4 medicine, and, from that, you know, we learned she had
5 serious health problems. And -- and the pathologist said
6 it could have been sudden heart death.

7 ASSISTANT SOLICITOR LEGETTE: Your Honor -- Your
8 Honor, I believe the testimony is that her cause of death
9 was asphyxia due to strangulation.

10 THE COURT: Right.

11 ASSISTANT SOLICITOR LEGETTE: And I believe, Your
12 Honor, and I would submit to the Court, that the Court's
13 Charge, General Charge, on each and every indictment
14 covers sufficiently what the State is required to prove
15 with regards to the indictments, Your Honor. And I would
16 be opposed to Numbers Four, Five, and Six.

17 THE COURT: Um the Court will decline to charge
18 Defendant's Requests Four, Five, and Six. I think these
19 are adequately covered in the charges that we have on the
20 individual indictments, as well as the general language
21 that will be offered for the burden of proof, presumption
22 of innocence, defendant's ability to not have to testify,
23 as well as the reasonable doubt charge.

24 Okay. Anything further by the defense?

25 MR. PLEXICO: Um not on that matter, Your Honor. I

1 would move on to Numbers Eleven and Twelve and
2 respectfully request that those be charged, Your Honor.

3 ASSISTANT SOLICITOR LEGETTE: I have a question. I'm
4 sorry.

5 THE COURT: Okay.

6 ASSISTANT SOLICITOR LEGETTE: What happened to Number
7 Seven, Eight, Nine, and Ten?

8 THE COURT: Of?

9 ASSISTANT SOLICITOR LEGETTE: Mr. Plexico's requests.

10 MR. PLEXICO: Your Honor, you have already ruled on
11 Number Seven, which is murder or manslaughter. I believe
12 you ruled not to do that.

13 Number Eight is the same language, and I would ask
14 for you to rule on my Number Eight, but it's the same
15 language that you turned down on the murder indictment
16 initially. That would have been my Number Two.

17 THE COURT: Okay.

18 MR. PLEXICO: And I would ask for you to officially
19 rule on that, because I am making that request, Judge.

20 THE COURT: Yeah, I would decline Number Eight,
21 because that's another one that's already incorporated.

22 MR. PLEXICO: And I would ask that you charge Number
23 Nine and Number um -- Number Ten, Judge.

24 And I'll withdraw Number Nine. We've got that
25 covered already.

1 **THE COURT:** Okay. Thank you. Okay.

2 And then, you know, I would decline again Number Ten,
3 just because that's going to be indicated with the charges
4 that if you don't find the defendant guilty of the
5 specific indictments, then don't find him guilty. Don't
6 check that box, essentially, on the verdict form.

7 Okay. Anything further?

8 **MR. PLEXICO:** Judge, Number Twelve, addressed that on
9 the burglary first degree, and those are similar ones that
10 we've already talked about earlier.

11 **THE COURT:** Okay.

12 **ASSISTANT SOLICITOR LEGETTE:** And the State is
13 opposed to Numbers Eleven, Twelve, Your Honor.

14 **THE COURT:** Okay. And for the same reasons. Okay.

15 Anything further at this time? I just need to deal
16 with your CSC second and ABHAN. I'm just looking up a
17 couple more cases on that, those issues, but other than
18 that, are you all okay?

19 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, can I just
20 -- can we go over what we're going to charge? Can we just
21 ---

22 **MR. PLEXICO:** Can I ask -- can I request another
23 charge, Your Honor?

24 **THE COURT:** Yes.

25 **MR. PLEXICO:** I don't specifically see here on

1 presumption of innocence a -- a charge similar, I would
2 ask for a general charge similar to my "if you have a
3 reasonable doubt if he's guilty of any crime, then you
4 must resolve the doubt in favor of the defendant and find
5 him not guilty of that specific charge."

6 I would like a general charge to that, if the Court
7 would permit that, Your Honor. I believe that's ---

8 **ASSISTANT SOLICITOR LEGETTE:** And the State has no
9 objection, Your Honor.

10 **MR. PLEXICO:** Thank you.

11 **THE COURT:** So that is essentially going in the
12 Court's Request to Charge Number Six, ---

13 **MR. PLEXICO:** Yes.

14 **THE COURT:** --- at the last paragraph, um last line,
15 last two lines "from the evidence of the defendant's guilt
16 beyond a reasonable doubt as to each charge?"

17 **MR. PLEXICO:** Uh, yes. As to -- as to any charge,
18 you must resolve the doubt in favor of -- of each charge
19 you must resolve the doubt in favor of the defendant and
20 find him not guilty, Your Honor, of that charge.

21 **THE COURT:** Okay. Okay. I'll accept that verbiage.

22 **MR. PLEXICO:** Thank you, Your Honor.

23 **THE COURT:** All right, Ms. Legette?

24 **ASSISTANT SOLICITOR LEGETTE:** I have no objection to
25 that, Your Honor.

1 **THE COURT:** You what?

2 **ASSISTANT SOLICITOR LEGETTE:** I have no objection.

3 **THE COURT:** Okay. Yeah, but I mean anything else?

4 **ASSISTANT SOLICITOR LEGETTE:** Oh, I was just going to
5 ask the Court to delineate which ones we're going to
6 charge, so I can make sure I have them.

7 **THE COURT:** Okay. We're going to give you all a new
8 set.

9 **ASSISTANT SOLICITOR LEGETTE:** Okay. All right.

10 **THE COURT:** We'll take these out.

11 **ASSISTANT SOLICITOR LEGETTE:** I have nothing further,
12 Your Honor.

13 **THE COURT:** Okay. The Court will be in recess about
14 fifteen or so minutes so you all can gather up, and then
15 I'll let you know about the CSC second or ABHAN issues.
16 We're just going to look up a couple more things, but you
17 all can have this time now to deal with your closing
18 arguments in preparation for that.

19 **ASSISTANT SOLICITOR LEGETTE:** Can we approach, Your
20 Honor, briefly?

21 **THE COURT:** Yes. Uh-huh.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
23 RECORD OUT OF THE PRESENCE OF THE JURY, AND THEN A
24 BREAK WAS TAKEN. THEREAFTER, THE FOLLOWING
25 PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE

1 PRESENCE AND HEARING OF THE JURY:)

2 THE COURT: Getting back on the record on the issue
3 about defendant's request to charge the lesser included
4 offense of assault and battery of a high and aggravated
5 nature or CSC third, um with respect to the current charge
6 of criminal sexual conduct in the first degree, as well as
7 the State's request that if I was to consider any of the
8 defendant's lesser included offenses, then also to
9 consider charging criminal sexual conduct in the second
10 degree, um I have been researching further this issue,
11 just you know, the whole -- on both sides, it's very
12 serious, as I was trying to indicate earlier, while the
13 counsel can draw inferences from the evidence, I still
14 have to look at what evidence is there, you know, if
15 either there is some or there isn't as to any of these,
16 but I have found a case that I believe is on point, which
17 is State v Fields. I'll give you the cite in just a
18 second.

19 Um which in that case, although one of the
20 allegations -- I'm sorry, it's 589 S.E.2d 792, Court of
21 Appeals, 2003, um that the defendant was on trial for
22 criminal sexual conduct in the first degree and argued
23 that he should have been entitled to a lesser included
24 offense of assault and battery of a high and aggravated
25 nature. The trial judge had declined to charge the lesser

1 included offense, because the indication by the defense
2 was that the jurors could disregard any evidence or
3 testimony by the State on the original criminal sexual
4 conduct charge, but that the issue was whether or not
5 there was any evidence before the Court, for example,
6 under the defense's theory that the -- if any sexual
7 intercourse occurred, that it was consensual. And right
8 now, the record is devoid of any evidence that it was
9 consensual. Without the defendant testifying and
10 presenting any evidence to that affect, then I don't have
11 any way of having that as evidence from which the jury
12 could consider.

13 We also had some earlier cases that I looked up
14 indicating that when there was criminal sexual conduct in
15 the first degree and the victim alleged rape, you know, as
16 a result of that criminal sexual conduct, defendant
17 testified having another theory saying it was consensual.
18 The Court then said, yes, you have to include it, because
19 they could accept either version.

20 Right now, I only have evidence as presented by the
21 State and only inferences, which means that they can
22 accept that that is what has occurred based on those
23 offenses, or they don't. Right now, I have to go by what
24 the evidence is, not just um inferences from them.

25 So, um there will be no lesser included offenses on

1 the criminal sexual conduct in the first degree.

2 Respectfully note the defense's objections.

3 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

4 THE COURT: All right. We'll stand down for about
5 five minutes, and I'll be ready -- yes?

6 MR. PLEXICO: Your Honor, there was also a matter of
7 Defendant's Request to Charge Number One on the
8 circumstantial evidence. I don't believe you ever
9 addressed that.

10 THE COURT: Thank you. Okay.

11 And, Mr. Plexico, where is this request to charge
12 coming from? Is this one of like *Ervin's Request to*
13 *Charge*, or where are you getting this information from?

14 MR. PLEXICO: Um -- um the charge comes from -- I
15 have the cites, Your Honor. It's -- it's from *Hubbard's*
16 *Charge*. It's State versus Meads, Your Honor. It was
17 charged, well established, and appropriate, Your Honor. I
18 believe it's 1999. It's still good law, Judge.

19 THE COURT: Okay. All right. Um ---

20 MR. PLEXICO: Jean Toal concurring.

21 THE COURT: Okay. What I'm going to do is accept
22 this, but I'm going to incorporate it into what the Court
23 already has.

24 So for purposes of your closing, you can indicate
25 that the language will be in here. I'm just going to make

1 it read clear with some of the stuff that the Court has,
2 as well as the language that you're requesting.

3 MR. PLEXICO: Thank you, Judge.

4 THE COURT: To the extent there's any duplication,
5 we'll fix that.

6 MR. PLEXICO: Thank you, Judge.

7 THE COURT: Okay.

8 Okay. Just let me -- five minutes, and then I'll be
9 right back to you.

10 (WHEREUPON, A BREAK WAS TAKEN, AND THEREAFTER, THE
11 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD, OUT
12 OF THE PRESENCE OF THE JURY:)

13 THE COURT: Are counsel ready to proceed with closing
14 arguments?

15 ASSISTANT SOLICITOR LEGETTE: Your Honor, we're
16 ready.

17 THE COURT: Okay.

18 MR. PLEXICO: Defense is ready, Your Honor.

19 THE COURT: Okay. We're ready for the jurors.

20 (APRIL 26, 2007, 12:24 P.M., WHEREUPON, THE JURY
21 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
22 WERE HELD IN THEIR PRESENCE.)

23 THE COURT: And, the alternate, you can keep your
24 seat, the former alternate who is now a part of the jury,
25 because we brought that out for you.

1 JUROR: I can keep my seat?

2 THE COURT: Yes, that's fine.

3 JUROR: Thank you.

4 THE COURT: Okay. All right, ladies and gentlemen of
5 the jury, I certainly apologize. I've been trying to run
6 a tight schedule with this week, but I note that in every
7 case getting started and then trying to get finished is
8 always the hardest two days of any particular trial. Um
9 we have very serious matters before you and for your
10 consideration, so we wanted to make sure from a legal
11 perspective and fairness and equity to the parties, that
12 the Court is giving full consideration to both sides in
13 this matter, just as I've asked you to do throughout this
14 entire week. So thank you for your patience, and we're
15 now going to move to the closing arguments of the parties.

16 MR. PLEXICO: May we approach, Your Honor?

17 THE COURT: Yes.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
19 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
20 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
21 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
22 AND HEARING OF THE JURY:)

23 THE COURT: Um and before we do that, insofar as some
24 issues that I have considered outside of your presence,
25 you heard the State rest earlier, and I had one other

1 legal matter that they needed to tend to, and so Ms.
2 Legette, if you will formally introduce that last item
3 into evidence.

4 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, at this
5 time, the State would offer for admission into evidence
6 State's Exhibit Number Eleven.

7 **THE COURT:** Okay. And the description of it?

8 **ASSISTANT SOLICITOR LEGETTE:** That is statement of
9 Ms. Katrina Goodwin.

10 **THE COURT:** Okay. And I've heard arguments by both
11 parties on that, and that is -- my ruling is that that
12 will be admitted.

13 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.

14 **THE COURT:** And with that extra piece of evidence,
15 the State is resting; is that correct?

16 **ASSISTANT SOLICITOR LEGETTE:** That's correct, Your
17 Honor. At this time the State rests.

18 **THE COURT:** Okay. And I've dealt with all the
19 motions that would come in between the State resting
20 before the defense proceeds.

21 And, Mr. Plexico, you're now ready to proceed?

22 **MR. PLEXICO:** Yes, Your Honor. The defense would
23 rest at this time, and we would request that the trial
24 move to closing arguments, Your Honor.

25 **THE COURT:** Okay. All right.

1 So you've heard all of the evidence and testimony in
2 the case, and as I indicated to you earlier, the State has
3 the burden of proving the case, and then the defense can
4 cross-examine any of the State's witnesses in presentation
5 of its case, but the defendant has no burden of proof in
6 the case. And so when he indicates he is resting, he does
7 not intend to put up any evidence at this time. You'll be
8 further instructed on how that burden of proof works when
9 I get to my charge to the jury on the law.

10 At this time the parties will have an opportunity to
11 present their closing arguments to you. I remind you that
12 these are arguments. They are not evidence. You are the
13 sole finders of the facts, and it's up to you in how you
14 determine and interpret the evidence, you know, through
15 your own mind.

16 Um with respect to the closing arguments, though,
17 they will each have the opportunity to give you their
18 version of the evidence and any reasonable inferences to
19 be drawn from the evidence. So if you'll give your
20 attention to them.

21 Ms. Legette, the State can proceed.

22 **MR. PLEXICO:** Your Honor, I also need to renew my
23 prior motions, Your Honor.

24 **THE COURT:** Okay. Okay.

25 **MR. PLEXICO:** For the record.

1 **THE COURT:** Thank you. And then based on the same
2 grounds earlier, then I will respectfully deny those.

3 **MR. PLEXICO:** Thank you, Judge.

4 **THE COURT:** Okay. Thank you for all of that. I
5 apologize, because we have taken some things out of turn,
6 but now I believe we are okay in terms of the legal
7 procedure.

8 Ms. Legette on behalf of the State?

9 **ASSISTANT SOLICITOR LEGETTE:** May it please the
10 Court?

11 **THE COURT:** Yes.

12 **ASSISTANT SOLICITOR LEGETTE:** Mr. Plexico.

13 Good morning, or I should say good afternoon. Good
14 afternoon.

15 Ladies and gentlemen, when we first met, I told you
16 this was a case about safety of a home, safety at home,
17 and more specifically, the safety of Harriett Washington's
18 home. I told you that on March 24th, 2005, the safety of
19 Harriett Washington's home was forever shattered. And
20 with that home being shattered, a young woman, Harriett
21 Washington, and her two children forever lost the safety
22 of their home.

23 Now, ladies and gentlemen, the testimony that we
24 heard was that Harriett Washington was a mother, a mother
25 of Patrick and a mother of another young boy. She was a

1 friend. She's also a classmate. She was a woman in the
2 community of Allendale.

3 And, ladies and gentlemen, what happened on March
4 24th, 2005, what Eric Hemingway did on March 24th, 2005,
5 destroyed safety, destroyed a family.

6 MR. PLEXICO: Your Honor, this is an appeal to
7 emotions, Your Honor. This is, you know, so I'll object
8 to that, Your Honor.

9 ASSISTANT SOLICITOR LEGETTE: Your Honor, this is ---

10 MR. PLEXICO: He's accused of CSC -- he's accused of
11 these three crimes against one person, not against a
12 family. He's -- against a family is improper.

13 THE COURT: Okay. I'll offer a curative instruction
14 that if you keep everything that you're going to say to
15 draw reasonable inferences from the evidence as to the
16 defense, but in the end, jurors, as I indicated, you're
17 the sole judge of the facts.

18 All right, you can move on.

19 ASSISTANT SOLICITOR LEGETTE: Ladies and gentlemen,
20 what happened on March 24th, 2005, was burglary first, it
21 was criminal sexual conduct first degree, and it was
22 murder.

23 Now, the Judge ultimately will tell you exactly what
24 burglary first, exactly what criminal sexual conduct first
25 degree, and exactly what murder is. She will give you the

1 law, but just so you know what to look for, the State is
2 here as a minister of justice. That's what we're here
3 for.

4 We want you to try this case, because ultimately,
5 this is Eric Hemingway's day in court. Yes, it is. It is
6 what we have brought before you today, this week.

7 Let's not forget that, ladies and gentlemen, as a
8 duty, you must acquit or convict, but just so you know
9 what to look for, let me explain. Let me break down in my
10 terms, layman terms that I can understand. Though I went
11 to law school, I understand things in a real simple way.

12 Now, ladies and gentlemen, it is what it is, and this
13 is what it is. Let's talk about what evidence did we
14 have?

15 Let's go over burglary first, because burglary first
16 was what happened first. We heard the testimony about
17 earlier in the day when Michael Williams and Eric
18 Hemingway walked by Harriett's house. We heard that
19 testimony. But what happened that night?

20 Burglary first is entering, entering a dwelling
21 without consent, with the intent to commit a crime
22 therein. And in effecting entry or while in the dwelling
23 or in the house, he causes physical injury to a person who
24 is not a participant in the crime.

25 So, let's go over it, and if we prove it, we'll check

1 it off. So, what did we hear? What evidence did we have?

2 Entering. The testimony we had was that Eric
3 Hemingway went to Harriett Washington's house. He's
4 bamming, knocking on the door.

5 The testimony is that she came to the door, and when
6 she came to the door, he knocked her down, began to rape
7 her. Entering. He didn't have to break in, he just had
8 to enter in, enter across the threshold. He said he
9 knocked her down and began to rape her inside the house.
10 That is entering.

11 Now, a dwelling. Let's be real. A dwelling, what's
12 a dwelling? It's a house. It's a home.

13 Harriett Washington. We had her son, Patrick, come
14 in here and tell you that he lived with his momma and his
15 little brother at

16 We had other people tell you, like Cleo Sanders, "She
17 was my neighbor. I took her sons shopping every now and
18 then. She lived across the street at

19 That's what a dwelling is.

20 Now, without consent. Without consent. What does it
21 mean to consent?

22 Consent means I give you permission. In this case,
23 did he have permission?

24 Let's -- let's think about it. Let's think about it.

25 Permission. Consent. The testimony is that he

1 knocked on the door. She came to the door. He knocked
2 her down, bum-rushed her, began to rape her.

3 She didn't get a chance to give him permission to
4 come in. He didn't give her a chance to say, "How are you
5 doing? Come on in."

6 Sometimes people come to my house. They knock on my
7 door. Sometimes they're selling stuff. Sometimes they
8 want me to come to their organizational meeting. I stand
9 at the door. I don't offer them to come in my house.
10 That is not consent to come in.

11 Harriett Washington went to the door, and he knocked
12 her down. She didn't give him the consent to come into
13 her house. The consent, without consent.

14 Without consent and with the intent to commit a crime
15 therein. Now, what was that statement made earlier in the
16 day? "She fine. Make me want to rape her. Makes me want
17 to rape her."

18 The testimony is that he went to Michael Williams'
19 house and told him, "I did it. She came to the door. I
20 knocked her down. I began raping her and choking her."
21 With the intent to commit a crime.

22 The testimony was that he left his girlfriend, Erica
23 Jones, who would not have sex with him, went down the
24 street with the intent to fulfill his earlier statement.
25 "Makes me want to rape her."

1 A crime is rape, ladies and gentlemen. He went there
2 with the intent to commit a crime of raping Harriett
3 Washington.

4 And did he hurt somebody in the end in effecting his
5 injury, or while he was leaving, did he hurt somebody? We
6 had testimony Harriett Washington was dead. The
7 pathologist, expert, a doctor, gave her medical opinion
8 that Harriett Washington was dead.

9 You had a Deputy Coroner tell you, "I pronounced her
10 dead."

11 Now, you had Cleo Sanders who went there who couldn't
12 rise her. You had all these people say Harriett
13 Washington was dead.

14 You had testimony that Eric Hemingway said that he
15 raped her. He choked her. Not only did he choke her, but
16 the next morning, he went back to Michael Williams and
17 told him, "I done killed her."

18 He hurt somebody. He killed Harriett Washington.

19 Now, ladies and gentlemen, that's burglary first.
20 Criminal sexual conduct first degree. What is criminal
21 sexual conduct first degree?

22 It's where an actor engages in sexual battery with
23 the victim and the actor uses aggravated force to
24 accomplish the sexual battery. Now, ladies and gentlemen,
25 the actor here is Eric Hemingway. Unequivocally, he is

1 the actor here.

2 What did he do? He engaged, meaning he did
3 something. To engage means to do.

4 And sexual battery, sexual battery is something like
5 sexual intercourse. That's what Eric Hemingway did. And
6 what was the testimony that we had? That he went there,
7 knocked on the door, knocking on the door. Harriett comes
8 to the door. He bum-rushes her, jumps on her, rapes her,
9 rapes her.

10 And not only does he rape her, but she apparently
11 fights back, because somebody saw scratches. Michael
12 Williams saw scratches.

13 He said, "Look what this bitch did to me."

14 You know, ladies and gentlemen, his momma saw
15 scratches on him. Sheila Jones saw scratches on him.

16 He engaged in a sexual battery, which is sexual
17 intercourse, with the victim, who was Harriett Washington.

18 Aggravated force. What does it mean? What is
19 aggravated force? Aggravated force. Aggravated force has
20 a definition. It means physical force or physical
21 violence of a high and aggravated nature to overcome the
22 victim.

23 What -- what is aggravated force? Is it aggravated
24 force to put your hands around a woman's neck and choke
25 her while raping her? Is that aggravated force?

1 Is it aggravated force to knock on the door and jump
2 on her and rape her and kill her? Is it aggravated force,
3 ladies and gentlemen? Is that aggravated force? That is
4 aggravated force.

5 Ladies and gentlemen, that's criminal sexual conduct.
6 Sexual battery, aggravated force.

7 Now, ladies and gentlemen, what is murder? What is
8 murder? Murder is the killing of any person with malice
9 aforethought, express or implied.

10 Now I told you when we started, you might like the
11 testimony of what some of the witnesses said, you might
12 not. Some of the witnesses came in here and told you it
13 was natural cause. Some of the witnesses came in here and
14 told you they didn't see any foul play. Some of the
15 witnesses came in here and told you nothing was turned
16 over.

17 One of the witnesses told you he heard noises during
18 the night, that he heard the door open and shut.

19 Another witness told you he came to his house, told
20 him that he raped her, that he choked her, and that he
21 thought he killed her. That same witness told you he came
22 back the next day and said, "I done killed her." Not only
23 did he say, "I done killed her," but he left town.

24 Killing. The other witness, the expert, the only
25 doctor we had among us, the one who has all that

1 education, using words I can't even understand myself,
2 came in here and told you it wasn't a natural death.
3 Huh-uh. Huh-uh. No.

4 She saw bruises. She diagrammed the bruises for you,
5 stood here and diagrammed bruises, told you about the
6 choke marks she had, peeled back her skull and showed you
7 the bruises she had on her head, the bruises she had on
8 her chest, the bruises she had on her arm.. Now, anybody
9 else didn't see the bruises, so, yes, the one expert among
10 us, the one doctor we had saw the bruises. Oh, yes. And
11 her medical opinion was -- her medical opinion was that it
12 was death by asphyxia due to strangulation, choking her to
13 death, choking her to death, killing.

14 And that matches up, ladies and gentlemen, with what
15 Eric Hemingway said. The pathologist says she died
16 because she was strangled to death. Eric Hemingway said,
17 "I raped her. I choked her. I think I killed her."

18 That's the killing, ladies and gentlemen. Harriett
19 Washington is dead and gone. That's the person, Harriett
20 Washington. She was a person.

21 Her son, Patrick, told you she was a person. Cleo
22 Sanders told you she was a person. Pookie Smith told you
23 she was a person. Even Martha Priester told you that she
24 was a person.

25 With malice aforethought. What is malice

1 aforethought? Malice, malice can be described as a wicked
2 or depraved heart, wicked and depraved spirit, that kind
3 of stuff.

4 Aforethought meaning to happen before. It doesn't
5 mean it has to happen an hour before. It doesn't have to
6 happen twenty-four hours before. It could happen in a
7 millisecond, or in a period of time when you begin doing
8 the act.

9 The wicked, depraved spirit, before, during the
10 actual crime. It can be express or it can be implied.

11 Express to mean that perhaps the person said it.
12 Implied to mean that they did things that would cause
13 someone's death. That is murder, ladies and gentlemen.

14 So, ladies and gentlemen, it's not enough, it is not
15 enough to simply say what we have here. We must prove it
16 beyond a reasonable doubt. So let us then add up the
17 facts.

18 I told you what the law is. The Judge will
19 ultimately tell you what it is, and I know this is written
20 kind of small, so I'll go through each one.

21 Now, ladies and gentlemen, let's add the facts up.
22 What facts did we have?

23 Eric Hemingway, the young man sitting over there,
24 lived three minutes away from Harriett Washington, down
25 the road. Harriett lived at

1 Eric Hemingway lived with his girlfriend, Erica
2 Jones, at the apartments located at Oakland Drive.. It's a
3 picture that you're going to be able to see where Sheila
4 Jones pointed out to you where the Oakland Drive
5 Apartments are. That's how far he lived away from
6 Harriett Washington.

7 Eric Hemingway saw the victim on March 24th, 2005,
8 informed of the intent to rape her, the intent to rape
9 her. It sends chills down my spine.

10 Harriett Washington, standing in her yard, minding
11 her own business. Eric Hemingway walks by, sees her.
12 "She's fine. Makes me want to rape her." That's his
13 intent, to rape her.

14 Ladies and gentlemen, not only that, but Eric
15 Hemingway wanted to have sex with his girlfriend, Erica
16 Jones. She told us that. She's the mother of his child.

17 He wanted to have sex with her, and she refused him.
18 What did he do? Left. He left.

19 And where did he go? Where did he go?
20 e, and he wouldn't take no for an answer. Huh-uh!
21 Huh-uh! Not two rejections in one night! Oh, no!

22 What else do we have, ladies and gentlemen? Eric
23 Hemingway went to Michael Williams and told him he knocked
24 her down, raped and choked Harriett Washington.

25 Now, ladies and gentlemen, some may say we're hanging

1 our hats on what Michael Williams said. Why? Why would a
2 man -- what matter of man would tell somebody he raped a
3 person, choked them and killed them, if he didn't do it?

4 What matter of man is this? One with malice
5 aforethought, a wicked and depraved spirit.

6 What else do we have, ladies and gentlemen? The
7 victim was found dead in her home on March 25th, 2005. We
8 also have Eric Hemingway told Michael Williams he had done
9 killed the victim.

10 Where did he do this? When did he do this?

11 Well, the next morning he goes barking at somebody
12 else's house. "Hey, man, I done killed her. I done
13 killed her."

14 Everybody's standing down the road. "I done killed
15 her."

16 What else? Eric Hemingway shows Michael Williams the
17 scratches. "Look what this bitch did to me. I raped her,
18 but look what she did to me. Look what she did."

19 Sheila Jones saw those scratches on Eric Hemingway
20 early on the morning of March 25th. He came downstairs in
21 a white tee-shirt, a white tank top, wife-beater type tank
22 tee-shirt.

23 She saw fresh, red scratches on his chest. She said
24 he looked afraid, afraid like he had never looked before.

25 Went back upstairs. Put on another shirt. Went out

1 the door. Where did he go? To tell Michael Williams what
2 he did, how he killed her.

3 Ladies and gentlemen, what else did Eric Hemingway
4 do? Laid up in the bed with his shoes on.

5 I asked Sheila, and Sheila is the mother of his
6 child, they dated for a while, "Sheila, is it usual for
7 Eric to come to bed with all his clothes on and his
8 shoes?"

9 She didn't want to really admit it, but he don't get
10 in the bed with his shoes on. He had done been down to
11 Harriett's house and killed her and raped her.

12 Ladies and gentlemen, Eric Hemingway, and you see,
13 this is where it gets kind of interesting, because see, we
14 had to go through this litany of where people who were
15 saying it was natural death. Everybody wanted to say it
16 was natural, but that pathologist came in here and said it
17 wasn't natural. It's actually a murder.

18 And then they kind of implied that Michael Williams
19 had something to do with this, that Michael Williams was
20 somehow guilty of this crime. Michael Williams came in
21 here and said from the bottom of his heart, "I didn't have
22 nothin' to do with this."

23 I told you, we might not even be here, but for
24 Michael Williams. If he had taken this information to his
25 grave, we wouldn't be here.

1 Harriett is dead and buried and gone. Michael
2 Williams was excluded as a contributor of the DNA found in
3 Harriett Washington's anal cavity.

4 What does it mean to be excluded? He didn't do it!
5 I ain't the baby's daddy! I didn't do it!

6 The DNA proved it. Michael Williams had nothing to
7 do with it. His only, only connection here is that Eric
8 Hemingway confessed to him.

9 Now, ladies and gentlemen, Eric Hemingway left
10 Allendale immediately, immediately after he found out she
11 was dead. Come downstairs in a tee-shirt. People see
12 scratches on him. He goes and tells Michael Williams what
13 happens.

14 Then he called his momma. Erica Jones says his momma
15 came and got him, came and got him from Allendale.

16 Where did he go? Virginia. Virginia.

17 When did he come back? When Shawn Harley and Donnie
18 Hutto went and got him. That's the facts.

19 Oh, yeah, Ms. Goodwin. Ms. Goodwin, she's Eric's
20 momma. Like Harriett, she has a son. His momma saw
21 scratches on him. He was acting quiet. That's what his
22 momma told the S.L.E.D. Agent.

23 And not only that, Eric told his mother he thought he
24 hurt someone. She told him he should turn himself in.

25 What do our facts equal, ladies and gentlemen? Our

1 facts equal that Eric Hemingway burglarized Harriett
2 Washington's house, Eric Hemingway raped Harriett
3 Washington, and Eric Hemingway murdered Harriett
4 Washington.

5 Now, ladies and gentlemen, I told you I'd come back
6 and I'd ask you to find Eric Hemingway guilty. I do that
7 right now. I ask you to find him guilty of burglary
8 first.

9 And I ask you to find him guilty of criminal sexual
10 conduct first degree for how he raped Harriett Washington,
11 how he passed by her house and saw her in the yard and
12 decided he wanted to rape her, and how he went back to
13 that house and bum-rushed her and raped her. And Patrick
14 said -- I'm sorry, Michael said that Eric told him a
15 little boy came out and saw him, and he sent him back in
16 the room and said, "Everything is going to be all right."
17 I ask you to find him guilty of CSC first degree.

18 And, ladies and gentlemen, I ask you to find Eric
19 Hemingway guilty, guilty of murder, the murder of Harriett
20 Washington on March 24th, 2005, at in
21 the Town of Allendale. Thank you.

22 MR. PLEXICO: Your Honor, can I have the Court's
23 indulgence one moment, please?

24 THE COURT: Certainly.

25 MR. PLEXICO: If it pleases the Court?

1 THE COURT: Yes.

2 MR. PLEXICO: You've been here for a long time this
3 week, and I would like to thank y'all for being here.

4 I want to go over some preliminaries with you.
5 There's always two sides to a story, and summations are
6 always vastly very different.

7 Some points of law to begin with. The State has the
8 burden of proof. They have to prove the defendant is
9 guilty beyond a reasonable doubt. They have to produce
10 evidence of that, and they have precious little direct
11 evidence or any evidence against my client at all.
12 Basically, they have a statement of Michael Williams,
13 which I will address later on.

14 They have other -- they have circumstantial evidence,
15 depending on how you interpret that circumstantial
16 evidence, that may or may not help the State prove their
17 burden, but it's very important. You have to understand
18 circumstantial evidence. It has to be proven beyond a
19 reasonable doubt for whatever you rely on.

20 Circumstantial evidence is -- has to point
21 conclusively beyond a reasonable doubt to the guilt of the
22 accused and to the exclusion of every other reasonable
23 hypothesis or theory. That's very important when you
24 consider circumstantial evidence. You must seek some
25 other reasonable explanation thereof, other than the guilt

1 of the accused. If you can find such an explanation, you
2 cannot convict on circumstantial evidence.

3 Here, the only direct evidence is what Michael
4 Williams claims my client supposedly told him, and there
5 is no other evidence. Furthermore, it appears to me the
6 evidence that has been put in front of you has been put in
7 front of you in a manner to intentionally, to
8 intentionally, mislead you and misguide you and make you
9 believe that it's something that it's not.

10 Y'all are the determiners of the facts. Y'all have
11 great power. Y'all have more power than you'll ever have
12 in your entire lives. Not only do you collectively have
13 power over whether or not an individual is convicted and
14 the obvious consequences thereof, you have this great
15 power to determine the facts individually. Nobody can
16 take that away from you.

17 That is your job as a juror, to be just and to seek
18 out the truth. And here, when you look at all this
19 evidence, there is no way you can determine a verdict of
20 guilty.

21 On the kind of evidence that they have here, we don't
22 have to prove we're innocent. This is America. The State
23 has to prove that you're guilty. You have nothing to
24 prove.

25 Now, let's begin to look at what they don't have. Um

1 and I'll address also credibility, credibility of their
2 witnesses. Look at their witnesses. You had to pick, I
3 mean, with -- with surgical instruments, you had to pick
4 the truth out of them.

5 The State on direct, that's where the State presents
6 its case, and then there's cross-examination where the
7 defense gets to bring out relevant facts to the jury. The
8 DNA expert, did he come in here and tell you, "I don't
9 know why they called me." The fellow from Columbia. You
10 know, "My evidence is meaningless."

11 No. We had to pick that out of him. Why? Because
12 they wanted to mislead you. They wanted to fool you.
13 They wanted to trick you into thinking that there's some
14 DNA evidence here.

15 Did the fellow from LabCorp come in -- you know, he
16 looked all professional. He looked fine. Okay. He
17 didn't know about "trash in equals trash out." I think
18 pretty much anybody who knows anything about any kind of
19 testing on computers knows what that means. You've got to
20 have good data coming in to have reliable data coming out.

21 And they wanted to say ninety-nine percent sure,
22 okay, we can't exclude him, just ninety-nine percent. But
23 what does that mean in real life? That means that our
24 client is one of a hundred thousand possible people that
25 their limited data could also match, one of a hundred

1 thousand. But they wanted you to believe that it was
2 ninety-nine percent sure.

3 Why? Because that sounds like guilt beyond a
4 reasonable doubt.

5 Why did they want to? They wanted to fool you. They
6 wanted to trick you. They wanted to manipulate the
7 evidence into something to show something that it doesn't,
8 and that's not right.

9 That's not just, and I'm asking you to sit down and
10 consider all the evidence and look at it reasonably. Look
11 at it critically, critically, critical analysis. Your
12 English teachers taught you in school about okay, look at
13 it critically.

14 My client gets the benefit of every reasonable doubt.
15 If you have a reasonable doubt, you must, this is the law,
16 you must resolve it in my client's favor. And they have
17 to go from zero percent guilty all the way up to guilt
18 beyond a reasonable doubt, where you don't have a reason.

19 But if you hesitate to act, then okay, then all
20 right, you cannot convict. If you're just hesitant, you
21 have that reasonable doubt.

22 What is it here? Okay. Um like I said, this
23 situation, this is not a case. This is about a
24 manipulation of innocent facts to find a wrong.

25 If you look at -- if you look at the home itself,

1 when they got there, there were up to forty people there.
2 That's what Officer Davis said. Okay? They needed crowd
3 control. Okay?

4 There was no appearance of a crime, no burglary.
5 There was no appearance of a murder. There was no
6 appearance of a CSC.

7 Consider in the home. Okay? No broken windows, no
8 cut screens, no broken window locks, no broken door locks,
9 no signs of a struggle. No evidence of that. No witness
10 to say, "Hey, there's something wrong." Okay?

11 All right. They talked to Patrick. All right.
12 Patrick said he heard voices. All right.

13 Patrick said he heard the bed going up and down.
14 Obviously he knows what that means. Okay?

15 He's ten years old at the time. He never talked to
16 anybody.

17 Your first indication, Michael Williams came in and
18 told y'all a story. That testimony is not reliable. It's
19 not credible, and you can balance out all the testimony
20 here, when someone tells you a story, tells you something
21 that you find to be untrue, when you measure out all the
22 facts.

23 Michael Williams said that allegedly my client told
24 him the little boy came in when he spoke to him. The
25 child never said that. Okay? All right?

1 11:00 o'clock. What did the child say? Heard
2 voices. Heard the bed moving. Heard a thud. Didn't hear
3 anything after that. All right?

4 Michael Williams claims he was with my client until
5 12:30. Okay?

6 They have to prove my client's guilty, but my client,
7 okay, he's claiming he's with the guilty party past the
8 time of the crime. What does that tell you? Who is the
9 perpetrator?

10 He told his momma, Ms. Richardeen Williams. What do
11 momma's do? Momma's protect their boys. The boys are in
12 trouble. What do you do? Blame it on somebody else,
13 apparently.

14 All right, now, why doesn't the story match up?
15 Because you can't trust his testimony, because it's
16 obviously not the truth.

17 Patrick didn't get up here and tell anything. You
18 saw his demeanor. Y'all, he's twelve years old. He told
19 the truth. He's a good child. Okay? He's not Michael
20 Williams, for sure. Okay?

21 Now, like I said, there's no sign of a struggle.
22 Okay? There's no overturned furniture. Okay?

23 They looked. They didn't see any unusual evidence of
24 bruising. They saw no evidence of a sexual assault, no
25 evidence of an assault at all. Okay?

1 The body had old bruises on it, and if you look at
2 those pictures, there were other healing -- there were
3 healing bruises, she said, along with other bruises.
4 Okay?

5 Now, if you grab somebody, you've got one, two,
6 three, four, and a thumb print. I think when you look at
7 that, it looks like somebody's been grabbed, and you would
8 think on vascular expanders, okay, it expands the vessels
9 of the capillaries. Okay? You keep blowing something up,
10 and it breaks at some point in time. Somebody grabs you
11 and they're taking vascular expanders, you're going to
12 have a handprint. Okay?

13 Why isn't that there? Because there's no evidence of
14 that. Okay? Because it didn't happen. That's not what
15 happened.

16 The body, they hooked up the monitor. Where did they
17 hook up the monitor? Now that's the crime. Now that's
18 evidence of a crime. Okay? That doesn't make any sense.
19 Look at those pictures, and you take out what can be
20 accounted for, and there's no evidence of that.

21 Now, the testimony was that she had on a thin
22 nightie. Well, a nightie is just that. It's a short, you
23 know, pair of pajamas, girls' pajamas.

24 Um she had a heart attack and she had an aneurysm.
25 She had prior, you know, she had a prior history, that

1 they thought, of strokes. You -- you recall the evidence.

2 She was on, up to, you know, the Coroner, you know,
3 the Coroner, pointed out when you've got forty, you're at
4 a rate of forty, you should be at a rate of three. Three
5 times thirteen is thirty-nine. That is thirteen times the
6 amount of medicine you should be on in your blood. The
7 Coroner pointed that out. Okay?

8 Now, the Coroner makes the decisions. She uses
9 tools. They go in. They talk to the children in the
10 house. They talk to the neighbors. They talk to the
11 pathologist, and then it was the Coroner's decision, the
12 Coroner's role in society, the Coroner's job, to determine
13 the cause of death. Here, the Coroner couldn't even say
14 that it was a homicide.

15 And all a homicide is, it isn't a natural death.
16 Okay? It could be you got hit by a car. That could be an
17 unnatural death. You could fall off a cliff. That's an
18 unnatural death.

19 Now, when vessels start to expand, and if you have --
20 and I asked -- I asked the pathologist, Ms. Schandl, I
21 said, "What was it wrong with her cardiovascular system?"
22 Okay? When you go back in there and you go to read the
23 Autopsy Report, you're going to see that the people who
24 have the burden of doubt, in that stack of paper you get,
25 they didn't put in the Autopsy Report, because they didn't

1 want you to know that, because she had cardiovascular
2 problems. And when you go in there, when you keep pumping
3 that medicine in, keep expanding, it's like blowing up a
4 balloon. Okay? If you keep blowing and blowing, what's
5 going to pop first? It's the little veins. Okay?

6 They came and observed the body. It's their job.
7 It's the Coroner's Office. It's not a pretty job. You
8 know, we've got -- glad we've got people to do that. It's
9 certainly an honorable job, but not many people would
10 volunteer to be the Coroner. Okay? So, I mean, this is
11 what they normally see. And they didn't see anything
12 unusual. That's really important, now.

13 The Coroner actually looked for signs of a struggle,
14 and they found none. Everybody there, the officers,
15 everybody associated with it, believed it was a natural
16 death. Okay?

17 The Coroner said she still has serious doubts of
18 whether it's a homicide or not. Like I said, remember the
19 doctor can only give an opinion. Okay? So, so far when
20 you go through everything on that first day and all those
21 witnesses, the first day of trial, there is no evidence
22 against my client.

23 They talked about, you know, he never -- he never
24 said he was awake. He was right down the hall. He never
25 heard shouting. He testified he never heard anything like

1 a struggle. Okay? He never heard calls for help. He
2 never heard, "Run kids." Okay? "Go to a neighbor's
3 house." You know, "Dial 911."

4 You never heard -- he never testified to that. Okay?
5 All right? Because it didn't happen. Okay?

6 And I submit that his testimony is credible. He was
7 awake. He was alert. He came in. He still hadn't
8 forgotten. He came in here and told us what happened.
9 Okay?

10 All right? And if it was a burglary and a rape and
11 attempted murder, well, you know, she's going to be saying
12 something. Okay? She's going to be shouting out. That
13 just doesn't make any sense.

14 Now, if she had a migraine -- she was suffering the
15 day before. Okay?

16 Now, like I said, everybody believes it's a natural
17 death. The funeral arrangements are made. They go to
18 embalm the body. Okay?

19 Now, you've got an aspirator that's two feet long
20 that's inserted in there. He says it only cleans out the
21 stomach, but he's not an embalmer. An embalmer goes back
22 to the Egyptian times. The embalming, it lasts a long
23 time. That's what you want. You're certainly going to
24 clean out the intestines, for lack of a better word, it's
25 just common sense. Think about it.

1 That you're going to go in there without fluid?
2 You've got fluid in there to get everything out, because
3 that's part of the embalming. Common sense would tell you
4 that's part of the embalming process.

5 Now, the first autopsy. Okay? All right. It's
6 a-okay.

7 I asked her, "Did you pick up the phone Friday
8 afternoon? Did you pick up the phone Monday? Did you
9 pick up the phone Tuesday? Did you pick up the phone
10 Wednesday, Ms. Schandl, Ms. Expert Pathologist?"

11 No, because there was nothing that she warranted
12 anything. But when the Solicitor contacted her, then,
13 then it becomes, okay, a different matter. Okay?

14 So what happened? Her professional judgment was
15 overcome by the allegations that the Solicitor's Office
16 told her. She took those allegations and took her
17 findings to fit, to fit, what the Solicitor's Office said.
18 So, this is the pathology report of the Solicitor's
19 Office. I would call it -- I would call it the
20 Solicitor's Office autopsy findings. And this is why
21 we're in this jam now. Okay?

22 All right, now, you're over here, and this was the
23 evidence of murder. Extremely weak. Extremely weak.

24 All right, now, I asked the pathologist, and of
25 course, you know, we went back and forth. You saw that

1 between the State and the defense. What evidence of
2 sexual trauma is there to the body? None. None.

3 So, what's the evidence of CSC? Oh, we found semen.

4 Well, when you -- Ms. Washington, I assume, you know,
5 use your common sense. Is she a normal forty year old
6 woman? Normal forty year old women have sex, have
7 boyfriends, have dates, fiances, whatever.

8 I don't know anything about her personal life, but
9 the point is, the presence of semen equals sex. It
10 doesn't equal CSC. So they're taking another perfectly
11 innocent fact and twisting it around. Okay?

12 With those experts -- it doesn't mean anything, and
13 I'll get to that, to make it -- to make it evidence of
14 CSC, but that doesn't count. Okay? That doesn't mean
15 anything.

16 Then um even the pathologist said it could be sudden
17 heart death. I'm sure that the jurors remember that.
18 Okay? So she's second guessing her own supposed opinion.
19 All right, now?

20 And all the bruises, if you'll look at those
21 pictures, all of those are in areas, like I said, none of
22 them are fingerprints. They're all in areas where there's
23 healing from other wounds, which means it had nothing to
24 do with -- with the death. Okay?

25 So she might have a job or an activity or maybe her

1 child pulls at her in a particular way or something. Kids
2 are rambunctious. That's just the nature of our children.
3 Okay? Or something. Okay? Where she would consistently
4 get a bruise on her arm.

5 She had them on her chin. She had healing things on
6 her face. All that's normal. And remember she's on --
7 she's on vascular expanders, so anything that happens to
8 her, she's going to easily bruise. You know?

9 Did she walk around with a basket of clothes and bump
10 her arm on the door frame or something? Okay? Think
11 about it. Okay?

12 The tissue of skin is very sensitive and vessels and
13 little capillaries are all below that. Okay? So you're
14 going to bruise much easier than a normal person.

15 Now, since there's no evidence of any sexual trauma
16 to the body, no vaginal tears, no contusions, okay, they
17 want you to believe the presence of sperm means CSC, and
18 they're trying to build a case to bolster Michael
19 Williams' obviously untrue testimony. That's what all --
20 that's what this case has been about. Okay?

21 It's obviously untrue. Why? Because from the start,
22 we know it doesn't match Patrick's, and we can trust
23 Patrick. Okay? Because he doesn't have anything to hide.
24 He didn't say that he felt guilty, that he felt bad. He
25 didn't hide to cover this thing up until Richardeen

1 Williams finally said something about it to protect her
2 boy. Okay? All right?

3 If he -- if he was out there trying to do the right
4 thing, you think about it. Okay? All right? That
5 morning, he would have said something, if he was true.
6 That's five, five days, five days. Of course the timing
7 changed it later on. Okay? Where he said he was in by
8 11:00 o'clock. This was after he found out the times
9 didn't match up, so he could be a suspect. Okay? That
10 was smart.

11 And I questioned him about the two different
12 statements. Now, y'all think about that. You know, it's
13 completely unreliable. Of course the State wants you to
14 believe that he's just a helpful citizen.

15 Now, I've explained any injuries and that kind of
16 thing. Now, if you look at -- if this will stand up. No
17 signs of sexual assault, no evidence. Once again, just no
18 evidence.

19 Presence of semen means sex. Presence of semen does
20 not mean criminal sexual conduct, CSC. Okay? You have to
21 have more. The only thing they have is Michael Williams.

22 Would you buy a used car from Michael Williams?
23 Would you let Michael Williams babysit your children?
24 Would you trust his word? Would you let him hold your
25 money? Think about it. Would you entrust somebody's life

1 to him, essentially? That's what they're asking you to
2 do.

3 And all this other stuff is just puffed up, because
4 it's obviously misleading and untrue. They're trying to
5 -- to, I believe in this case -- there's no evidence of
6 bruising at the crime scene that they see. Okay?

7 There's no reason to believe a murder occurred.
8 There's no evidence of anything. There's no evidence.
9 Okay?

10 Once you understand how they're -- how they're making
11 this -- this injustice, okay, and asking you to go along
12 with this injustice, once you address Michael Williams,
13 and if you address the Michael Williams' statement and
14 say, "I cannot trust this statement," okay, "I cannot in
15 good conscience, I hesitate to act. I hesitate." And if
16 you hesitate to act, then you cannot find the defendant
17 guilty.

18 Guilt beyond a reasonable doubt. Reasonable doubt is
19 one who would hesitate to act, if you look at this lack of
20 evidence, lack of evidence and made up evidence.

21 Now, no bruising, no sign of forced entry. I've
22 already addressed the bruises on the body and the neck.
23 There's no signs of forced entry. All right?

24 There's no DNA fingernail scrapings. Okay? You
25 heard all this stuff about the claw marks. You know,

1 Erica, okay, his girlfriend, all right?

2 Did the State call her up there and say, "Did you
3 claw the boy up?" No. Why? Because they're in the job
4 of hiding evidence in this case. All right? Did they
5 call her up here and say that?

6 Did they say, "Erica, did you claw Eric in any way?"
7 Why? They didn't want you to know. They didn't want you
8 to know.

9 Not only -- just like the DNA, ninety-nine percent
10 sure. Oh, don't worry about those other ninety-nine
11 thousand people out there. Okay? Evidence that's used to
12 trick you, that's not evidence you should use to convict.

13 Now, if, you know, if the expert second guesses
14 herself, you know, can you trust her opinion? But that's
15 what they're asking you to do. I mean, think about it.
16 It makes no sense.

17 Now, no DNA in the fingernail scrapings. Look at
18 those DNA reports.

19 Let's talk about the DNA. Well, we had the Dyna --
20 LabCorp, excuse me, LabCorp, individuals come, all right,
21 and they receive their stuff from S.L.E.D. Well, let's
22 look at what S.L.E.D. did. There was this long, drawn out
23 drama to hide the fact that when they got the evidence,
24 okay, they got the DNA, and this mysterious Agent Black,
25 okay, wound up with the DNA. Nobody knew where it was.

1 Ms. Stutts got on the stand and they tried to say, "Well,
2 here you had that."

3 She says, "No, I don't know where this came from."

4 They never explained where Item Sixteen, which is the
5 blood sample from Eric Hemingway, okay, and those rectal
6 swabs, where they were at. They had no evidence.

7 Now, the best evidence they got -- I don't know if it
8 was contaminated, mixed together, touched. Okay? But the
9 best evidence that they got is that he cannot be excluded,
10 along with ninety-nine thousand, nine hundred and
11 ninety-nine other possible suspects. That's no evidence
12 at all.

13 The S.L.E.D. agent said his own evidence was useless,
14 meaningless, was the word. Meaningless.

15 They take the time to go through all this to put up
16 meaningless evidence to you.

17 Now, what did LabCorp, the group out of North
18 Carolina, say? We're accredited by two different
19 agencies.

20 S.L.E.D., apparently, is not accredited by a single
21 agency. It's an unaccredited lab, and you can tell by
22 their incompetence, their bumbling, and their mishandling
23 of the evidence. They lost the evidence.

24 No, you had it. No, I didn't. I don't know who did.

25 They never put up anybody to explain it, never heard

1 from the mysterious Agent Black about what happened to
2 these samples, whether or not they were mixed. We never
3 had an opportunity, the jurors never had an opportunity,
4 to hear a question, "Did you tamper with this when you
5 found out how bad this case was to make it look like they
6 had something?" No, because he wasn't here. Okay?

7 What's that called? Oh, we know what that is. It's
8 a frame. Okay? All right?

9 Now, did they do any DNA on the fingernails? No.
10 Because it's not going to point to the person that they
11 want.

12 Now here's the real kicker. They do the DNA test for
13 Michael Williams at the unaccredited lab at S.L.E.D., and
14 they say he's excluded by the incompetents. So, we've got
15 the incompetents, those who can't even get accreditation,
16 who can't run a respectable DNA organization, okay,
17 excluding their witness. Okay?

18 Now, what did the LabCorp DNA second witness say? He
19 said, "Look" -- let me find it. I want to be accurate.
20 He said only a nuclear DNA test would exclude Michael
21 Williams, and S.L.E.D. never said they performed this.
22 They might not know, because they're incompetent. Okay?
23 They can't get accreditation. There's nothing in the
24 record that says the nuclear DNA test was ever performed
25 on the DNA of Michael Williams.

1 "We're the only trusted professional in the DNA field
2 who is accredited."

3 So then a nuclear DNA test has to be performed, and
4 they never said one was. But they got the boy off the
5 hook. They got the witness off the hook. They were
6 smart. Okay?

7 Now, they sent Eric Hemingway's DNA on to North
8 Carolina to the accredited lab. They don't send Michael
9 Williams'. Okay?

10 Now, a fellow from the -- the guy who ran, and I
11 forget it, from S.L.E.D. said it was a hundred -- he was
12 one of a hundred and forty-nine million suspects that had
13 not been excluded. Okay?

14 My client Eric Hemingway could not be excluded, nor
15 could a hundred and forty-nine million, nine hundred and
16 ninety-nine thousand, nine hundred and ninety-nine other
17 people. Okay? Meaningless. Meaningless.

18 Okay. So they send it out to LabCorp, not Michael
19 Williams', mind you, no, no, no. They sent off my
20 client's to LabCorp. Now the number -- numbers improve,
21 of course.

22 First he wanted to sit up there, and as you know,
23 looking professional and confident, tell y'all his
24 credentials so you're going to listen to him and respect
25 him, and then he hits you with this

1 ninety-nine-point-nine. I said, "Well, what is that?

2 What does that percent mean?"

3 "Well, it's a hundred thousand people."

4 "Well, how many people did you test in Allendale to
5 get in your sample?"

6 "We don't know."

7 "How about Bamberg? How about over in Sylvania?"

8 "We don't know."

9 It's all random from somewhere in the United States.
10 Okay? But there's a hundred thousand more.

11 More smoke, more smoke, more smoke. This is wrong.
12 It's just plain wrong.

13 And I had to ask him that. Okay? The State is here
14 to seek truth and justice. Why did I have to ask him
15 that? Okay?

16 They didn't want you to know that because they
17 thought they'd got you, tied you to a track. They want
18 you to throw coal in the train and be the engineers and
19 run him down. Okay?

20 You know, we're not here to run a train station.
21 Today we're not here to run a railroad. That's not what's
22 going to happen to my client. I'm not going to sit down
23 and let something happen like that to anybody, not
24 anybody.

25 Look at the witnesses, my client's girlfriend, his

1 girlfriend. Okay? Now, you can't be trusted when you
2 look at what he said. It doesn't make sense. Okay?

3 Now, if you get strangled, you ain't going to get
4 strangled and not have fingerprints on your neck. That's
5 just all there is to it. You're going to see that first
6 thing. Okay? There's no explanation for that. All
7 right? Something didn't happen the way he claims, which
8 means that, you know, we know that from his testimony it's
9 not true.

10 If he was a fine, upstanding citizen, he would have
11 picked up the phone and called somebody. Okay? Did he do
12 that? No. Because he's got something to hide.

13 What does he have to hide? Okay? What does he have
14 to hide? That's the question.

15 What did my client tell his girlfriend when he was
16 trying to start over? You know, "They're harassing me
17 over something I didn't do." Okay?

18 Turned himself in. Called the police. Okay? All
19 right, so they went and got him, because he obviously
20 doesn't have a car. Okay? Because he left with his
21 girlfriend to go start over, and there's nothing wrong
22 with that.

23 Now he came to face justice. Why? Because he's pled
24 not guilty, because as you can see, as I can see, he
25 cannot be guilty. Okay?

1 This is just a bunch of made up, twisted around, what
2 they call evidence to try to wrongfully convict my client.
3 This is a sad day in any courtroom, particularly in
4 criminal court.

5 This isn't civil court where, you know, somebody
6 pulls out your checkbook and you write them a check for,
7 you know, Five Hundred Dollars, or a Thousand Dollars and
8 that's it. This is criminal court. This is where people
9 lose their freedom, and that's the most important thing
10 that you have. It's not your money. It's not anything
11 else. It's your freedom. Okay? And that's what this is
12 about.

13 We know that every time there's a loss in our
14 community, this community, okay, it's a great loss to the
15 people of the community, but you cannot let emotions,
16 emotions, overcome your duties, your duty to be a fair and
17 impartial juror. You may not like finding my client not
18 guilty. You may not like it.

19 You may not like the rules of law that you have to
20 apply. This is America. I'm begging you to try to do
21 that. Good conscience. If you look at this evidence, this
22 does not make any sense.

23 Now, remember what I said, where's the broken
24 fingernails at? Okay? Where are they? All right?

25 If there was this violent struggle, why not? It

1 didn't happen that way. Okay?

2 Look at the -- look at the EMS report. No signs of
3 trauma. No physical evidence of foul play.

4 The child provided no information that would cause a
5 suspicion of anything. You know, I heard -- I heard
6 voices. What was it? Mom and Michael? Heard the bed
7 going up and down. Okay? Now, what's going on? There's
8 no suspicion of anything, nothing that would cause
9 suspicion of anything, other than a natural death.

10 Now, looking at the burglary. I've addressed murder.
11 It's the malice aforethought, you know, the taking of a
12 life with malice aforethought. That's with evil intent.
13 It's just not here. There's no evidence to support that.
14 Okay? All right? But they have to have guilt. They have
15 to show you proof that amounts to guilt beyond a
16 reasonable doubt. They just haven't proved that.

17 Okay. Criminal sexual conduct. No evidence. Sex
18 and sperm equals sex. Just because there's sperm there
19 doesn't mean that a woman's been raped.

20 You know, my God, we'd never have any children.
21 Okay? I mean, we're all adults. You know, that's --
22 that's how you get babies.

23 That's one of the blessings God gave us in marriage.
24 Okay? That's just, you know, that's life, literally, it
25 is.

1 There's nothing wrong with that. They want you once
2 again to take an innocent fact and twist it around and
3 make it evil in your mind. Okay? And they can't do that.

4 If somebody entered her home, okay, in the night, it
5 had to be somebody she was familiar with. Who is she
6 familiar with? Michael Williams.

7 Who does a single woman open her door to? Somebody
8 she knows. Okay? Not somebody she doesn't know or barely
9 knows or she might have seen walking by the house once.

10 Who does a woman, a mother with children, mind you,
11 open her door up to at night? There's not many people.
12 Common sense. Think about it.

13 She had to know he was out there. She had to know,
14 and who is it? It's Michael Williams. Okay?

15 And all of this is smoke, and you see through the
16 smoke and you look at the clear sky and you can see what's
17 happened in this case. They are determined, determined
18 that it was Eric Hemingway, and they built this case. And
19 all it is is a house of cards they're trying to make look
20 like a mountain of evidence to wrongfully convict my
21 client. They've done everything they can to make Michael
22 Williams, okay, Michael Williams not a suspect, through,
23 you know, running a game with all the procedures of tests.
24 Okay. All right?

25 You think about all this. There is nothing, nothing,

1 here against my client, aside from the word of Michael
2 Williams. There's nothing else here.

3 Would you -- would you buy a used car? Would you
4 take his check? Would you cash a check he had written and
5 expect it to be good at the bank? Can you trust him?

6 Do you trust Pat? Think about Patrick Washington.
7 Think about Patrick. Little Patrick is honest. Okay?
8 All right?

9 And, of course, we feel very -- a great loss here,
10 but don't convict the wrong man. Don't you think for one
11 minute that over in Allendale and over in Jasper and every
12 other prison, there aren't innocent people in there.
13 Okay? I'm serious.

14 You have to do justice, and if you look at this
15 evidence, okay, and this evidence is so weak, there is no
16 way a juror honestly seeking the truth would not hesitate
17 to act. And if you hesitate to act, you go, "I don't
18 know," okay, "I'm not sure," then you cannot convict.

19 And I'm begging you to do your duty in good
20 conscience. Okay? Please consider everything that's been
21 said, and this is just a rush, okay, and we are not
22 engineers.

23 We're not here to get even for Harriett. Losing
24 Harriett Washington is a great loss to this community.

25 We're not here angry. We're not a mob. Okay?

1 We're going to think clearly. We're going to follow
2 oaths. Okay? All right. And we're going to do justice,
3 and justice in this case is not guilty on all verdicts.
4 Thank you very much.

5 **THE COURT:** Okay. Thank you.

6 All right, ladies and gentlemen of the jury, I'm
7 ready to charge you on the law. I'm waiting on the law
8 clerk to give me that last couple of pages that we made
9 some edits on. Let me have you all take just a five
10 minute break or so. Just comfort yourself, and then we'll
11 be right with you. I'll remind you not to discuss the
12 case, because we have to hand everything to you. Thank
13 you. We'll be right back with you.

14 (APRIL 26, 2007, 1:32 P.M., WHEREUPON, THE JURY
15 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
16 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

17 **THE COURT:** Anything from counsel?

18 **ASSISTANT SOLICITOR LEGETTE:** Not from the State,
19 Your Honor.

20 **THE COURT:** Okay. Okay. We're just waiting on her.
21 to run that last copy, and then we'll be ready to proceed.

22 And the court reporter has indicated that you all
23 have already looked at the evidence?

24 **ASSISTANT SOLICITOR LEGETTE:** I'll -- I'll look at it
25 again.

1 MR. PLEXICO: I'll look at it, too.

2 THE COURT: Okay. Thank you. Here's the verdict
3 form also.

4 MR. PLEXICO: I have no objections.

5 ASSISTANT SOLICITOR LEGETTE: I have no objections,
6 Your Honor.

7 MR. PLEXICO: I have no objection to the verdict form
8 either, Your Honor.

9 (WHEREUPON, A SHORT BREAK WAS TAKEN, AND THEREAFTER,
10 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD,
11 OUT OF THE PRESENCE OF THE JURY:)

12 THE COURT: Counsel ready to proceed with the charge
13 to the jury?

14 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

15 MR. PLEXICO: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. PLEXICO: Defense is ready.

18 ASSISTANT SOLICITOR LEGETTE: State's ready, Your
19 Honor.

20 THE COURT: All right.

21 Bring the jurors in, please.

22 (APRIL 26, 2007, 1:40 P.M., WHEREUPON, THE JURY
23 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
24 WERE HELD IN THEIR PRESENCE.)

25 THE COURT: All right, and if the deputy would secure

1 the courtroom um for the purpose of the charge? Um I do
2 not like anybody to come in or out of the courtroom for
3 purposes of the Charge. Okay?

4 So, any persons indicated in the hall? If they're
5 intending to come in, they need to come in now. If not,
6 -- okay.

7 All right. Ladies and gentlemen of the jury, I
8 remind you that during this trial, you and I have certain
9 duties to perform. As the trial judge, it is my
10 responsibility to preside over the trial of this case, and
11 I also have the duty of ruling on the admissibility of the
12 evidence offered during this trial.

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

20 I have the additional duty to charge you the law
21 applicable to this case. It is your duty as jurors to
22 accept and apply the law as I now state it to you. If you
23 think you have any idea as to what the law is or what the
24 law ought to be and it does not agree with what I tell you
25 the law is, you must forget that idea, because you are

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

3 In every case tried in this court before a jury, the
4 jury becomes the sole and exclusive judge of the facts. A
5 trial judge cannot comment on or make any statement about
6 the facts in the case. Since you are the sole judges of
7 the facts, do not think by anything I have said during
8 this trial that I have any opinion about the facts in this
9 case. The law does not allow me to have an opinion about
10 the facts in this case.

11 The indictments in this case allege the offenses of
12 murder, in violation of South Carolina Code of Laws,
13 Section 16-3-20; criminal sexual conduct in the first
14 degree, in violation of South Carolina Code of Laws,
15 Section 16-3-652; and burglary in the first degree, in
16 violation of South Carolina Code of Laws, Section
17 16-11-311.

18 You must decide the indictments on the evidence and
19 the law applicable to it. I remind you that the fact that
20 the defendant was arrested, charged and indicted in this
21 case is not evidence in this case and cannot be considered
22 by you as evidence of guilt in this case, nor does it
23 create any presumption or inference of guilt.

24 These documents of the indictments are simply the
25 formal written instrument which contains the charges made

1 against the defendant. It is the formal document by which
2 the case is brought into this courtroom.

3 Each indictment charges a separate and distinct
4 offense. You must decide each indictment separately on
5 the evidence and the law applicable to it, uninfluenced by
6 your decision as to any other indictment.

7 The defendant may be convicted or acquitted on any or
8 all of the offenses charged. You will be asked to write a
9 separate verdict of guilty or not guilty for each
10 indictment.

11 The defendant is charged with murder. The State must
12 prove beyond a reasonable doubt that the defendant killed
13 another person with malice aforethought.

14 Malice is hatred, ill-will, or hostility toward
15 another person. It is the intentional doing of a wrongful
16 act, without just cause or excuse and with an intent to
17 inflict an injury or under circumstances that the law will
18 infer an evil intent.

19 Malice aforethought does not require that malice
20 exists for any particular time before the act is
21 committed, but malice must exist in the mind of the
22 defendant just before and at the time that the act is
23 committed. Therefore, there must be a combination of the
24 previous evil intent and the act.

25 Malice aforethought may be expressed or implied.

1 These terms, expressed and implied, do not mean different
2 kinds of malice, but merely the manner in which malice may
3 be shown to exist. That is either by direct evidence or
4 by implication from the facts and circumstances which are
5 proved.

6 Express malice is shown when a person speaks words
7 which express hatred or ill-will for another, or when the
8 person beforehand to do the act which was later
9 accomplished; for example, lying in wait for a person or
10 any other acts of preparation going to show that the deed
11 was within the defendant's mind, would be -- would express
12 malice.

13 Malice may be implied from conduct showing a total
14 disregard for human life. Implied malice may also arise
15 when the deed is done with a deadly weapon.

16 A deadly weapon is any article, instrument, or
17 substance which is likely to cause death or great bodily
18 harm. Whether an instrument has been used as a deadly
19 weapon depends on the facts and circumstances of each
20 case.

21 A hand is not normally considered a deadly weapon;
22 however, under some circumstances, depending on the manner
23 and means of its use, the wounds inflicted and other
24 relevant facts, a hand may be considered a deadly weapon.
25 It is for you to decide in this case beyond a reasonable

1 doubt whether or not a hand is a deadly weapon.

2 The defendant is charged with criminal sexual conduct
3 in the first degree. The first element which the State
4 must prove beyond a reasonable doubt is that the defendant
5 engaged in a sexual battery with the victim.

6 A sexual battery is sexual intercourse, cunnilingus,
7 fellatio, anal intercourse, or any intrusion, however
8 slight, or any part of a person's body or of any object
9 into the genital or anal openings of another person's
10 body, except when the intrusion is accomplished for
11 medically recognized treatment or diagnostic purposes.

12 If you find that the State has not shown beyond a
13 reasonable doubt that a sexual battery occurred, you would
14 stop deliberating, and your verdict would have to be not
15 guilty on this particular offense of first degree criminal
16 sexual conduct. If you find that a sexual battery did
17 occur, you must then decide whether the State has proven
18 beyond a reasonable doubt that the defendant used
19 aggravated force to accomplish the sexual battery.

20 Aggravated force means the use of physical force or
21 physical violence of a high and aggravated nature to
22 overcome the victim. This includes the threat of using a
23 deadly weapon.

24 The defendant is charged with first degree burglary.
25 The State must prove beyond a reasonable doubt that the

1 defendant entered a dwelling without consent.

2 A dwelling is any building or portion of a building
3 in which a person ordinarily sleeps. A building
4 constructed as a dwelling that has never been occupied
5 cannot be considered a dwelling for purposes of burglary,
6 but a building is a dwelling, even if the residents are
7 temporarily absent from the building.

8 In order to prove that the defendant entered the
9 dwelling, the State does not have to show that the
10 defendant's entire body entered the dwelling. The
11 smallest entry is sufficient. It may be any part of the
12 body, such as a hand or foot or even an instrument, such
13 as a hook or other instrument.

14 In addition, the State does not have to prove that
15 force was used to gain entry. If a person enters a
16 building by using deception, artifice, trick, or
17 misrepresentation to get consent to enter, this is an
18 entry without consent.

19 Next, the State must prove beyond a reasonable doubt
20 that the defendant intended to commit a crime, either a
21 felony or a misdemeanor, at the time of the entry. The
22 mere entry into a dwelling without consent is not
23 burglary.

24 If the intent to commit a crime is formed after the
25 entry, it is not burglary. On the other hand, if the

1 defendant intended to commit a crime at the time of the
2 entry, it is a burglary, even if the intent was abandoned
3 after the entry. It does not matter that the intended
4 crime was not completed. Intent may be shown by acts and
5 conduct of the defendant and other circumstances from
6 which you may naturally and reasonably infer intent.

7 Finally, the State must prove beyond a reasonable
8 doubt that when entering, while in the dwelling or when
9 fleeing, the defendant or an accomplice caused physical
10 injury to anyone not participating in the crime.

11 The defendant has pled not guilty to these
12 indictments, and that puts the burden on the State to
13 prove the defendant guilty. A person charged with
14 committing a criminal offense in South Carolina is never
15 required to prove himself innocent.

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

22 The presumption of innocence does not end when --
23 when you begin your deliberations, but it accompanies the
24 defendant throughout the trial until you reach a verdict
25 of guilt based on evidence satisfying you that guilt -- of

1 that guilt beyond a reasonable doubt. The presumption of
2 innocence is like a robe of righteousness placed about the
3 shoulders of the defendant, which remains with the
4 defendant until it has been stripped from the defendant by
5 evidence satisfying you of the defendant's guilt beyond a
6 reasonable doubt.

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

12 If you have a reasonable doubt as to the guilt of the
13 defendant as to any charges, you must resolve that doubt
14 in favor of the defendant and find him not guilty of that
15 charge.

16 What is a reasonable doubt? It is not an imaginary
17 or fanciful doubt or a weak doubt. It is a substantial
18 doubt. It is a doubt which the words imply, a doubt for
19 which you can give or assign a reason based on the
20 testimony and the evidence in the case.

21 A reasonable doubt is not any sort of a doubt. You
22 and I know from everyday experiences that you may have a
23 sort of a doubt about any matter that arises, no matter
24 how trivial it may be or how serious it may be.

25 A reasonable doubt is a doubt which makes an honest,

1 sincere, conscientious jury in search of the truth
2 hesitate to act. Proof beyond a reasonable doubt is proof
3 which leaves you firmly convinced of the defendant's
4 guilt. If you have a doubt for which you can give or
5 assign a reason as to the guilt of the defendant, then he
6 is entitled to a verdict of not guilty.

7 Reasonable doubt may arise from evidence which is in
8 this case, or from the lack or absence of evidence in this
9 case. You, the jury, must make the determination of
10 whether or not reasonable doubt exists as to the guilt of
11 the defendant.

12 There are two types of evidence generally presented
13 during a trial, direct evidence and circumstantial
14 evidence. Direct evidence is the testimony of a person
15 who claims to have actual knowledge of a fact, such as an
16 eyewitness. It is the evidence which immediately
17 establishes the main fact to be proved.

18 Circumstantial evidence is proof of a chain of facts
19 and circumstances indicating the existence of a fact. It
20 is evidence which immediately establishes collateral facts
21 from which the main fact may be implied.

22 Circumstantial evidence is based on implication and
23 not on personal knowledge or observation. It is proof
24 that does not actually establish the fact in question, but
25 that asserts or describes something else from which you

1 may either reasonably infer the truth of a fact, or at
2 least reasonably infer an increase in the probability that
3 the fact is true.

4 For circumstantial evidence to be sufficient to
5 warrant the finding of a fact, the circumstances must lead
6 to that fact with reasonable certainty. The facts and
7 circumstances should be considered in light of ordinary
8 experience and common sense. The existence of a fact
9 cannot be based on speculation, surmise, or conjecture.

10 To the extent that the State relies on circumstantial
11 evidence, it must prove all the circumstantial --
12 circumstances relied on beyond a reasonable doubt. They
13 must be wholly, and in every particular circumstances,
14 perfectly consistent with one another, and they must point
15 conclusively and beyond a reasonable doubt to the guilt of
16 the accused to the exclusion of every other reasonable
17 hypothesis or theory.

18 Every circumstance which is relied upon by the State
19 as material must be brought to the test of strict proof
20 and satisfy the burden of showing guilt beyond a
21 reasonable doubt. All of the facts proven, taken
22 together, should be of a conclusive nature and tendency
23 producing a certainty beyond a reasonable doubt that the
24 defendant and no one else committed the offenses charged.
25 It is not sufficient that they create a probability.

1 In the consideration of circumstantial evidence, you
2 must seek some reasonable explanation thereof, other than
3 the guilt of the accused, and if such explanation can be
4 found, you cannot convict on circumstantial evidence. The
5 law makes absolutely no distinction between the weight or
6 value to be given to either direct or circumstantial
7 evidence, nor is a greater degree of certainty required of
8 circumstantial evidence than of direct evidence.

9 Necessarily, you must determine the credibility of
10 witnesses who have testified in this case. Credibility
11 simply means believability.

12 It becomes your duty as jurors to evaluate the
13 evidence and determine which evidence convinces you it is
14 true. In determining the believability of witnesses who
15 have testified in this case, you may believe one witness
16 over several witnesses or several witnesses over one
17 witness. You may believe a part of the testimony of a
18 witness and reject the remaining part of the testimony of
19 that same witness.

20 You may believe the testimony of a witness in its
21 entirety or reject the testimony of a witness in its
22 entirety. You may consider whether the witness has an
23 interest in the result of the trial, whether the witness
24 is prejudiced toward either the State or the defendant,
25 the opportunity for the witness to have seen the matters

1 and things about which the witness may testify and the way
2 the witness acts on the witness stand.

3 The rules of evidence ordinarily do not permit
4 witnesses to testify to opinions or conclusions. An
5 exception to this rule exists for witnesses we call expert
6 witnesses. A witness, who by education and experience has
7 become expert in some art, science, or profession may give
8 an opinion as to the subject the witness plans to be an
9 expert in and may also give the reason for the opinion.

10 You should consider any expert opinion given by a
11 witness and like any other evidence, give it the weight
12 you think it deserves. If you decide that an expert
13 witness's opinion is not based on sufficient education and
14 experience, or if you decide that the reasons given in
15 support of the opinion are not sound or that the opinion
16 is outweighed by other evidence, you may disregard the
17 opinion entirely. An expert witness's testimony is to be
18 given no greater weight than that of other witnesses,
19 simply because the witness is an expert, and you do not
20 have to accept an expert's opinion, even though it is
21 uncontradicted.

22 There has been evidence presented that witnesses have
23 made prior statements which are not consistent with the
24 witness's present testimony. You may use this evidence to
25 decide whether to believe the witness.

1 You may also use evidence of the earlier
2 contradictory statements to determine the truth of those
3 statements. It is up to you to decide whether to believe
4 the earlier statement or the testimony given at trial.

5 If any witnesses have testified untruthfully
6 concerning any material matter, you may consider this in
7 determining whether to trust the witness's testimony as to
8 other matters. You may reject all testimony of that
9 witness or give all or part of the testimony the weight
10 you think it deserves.

11 I instruct you and emphasize that the fact the
12 defendant did not testify is not a factor to be considered
13 by you in any way in your deliberations and in your
14 consideration on the question of guilt or the innocence of
15 the defendant. It must not be considered by you in any
16 manner whatsoever.

17 A defendant has the constitutional right to remain
18 silent, and the assertion of this right must not be
19 considered by you in your deliberations. I repeat, under
20 your oath, you are to draw no conclusion whatsoever from
21 the fact the defendant in this case did not testify.

22 The fact that this defendant did not testify should
23 not even be discussed in the jury room. The defendant is
24 not required to prove his innocence. The burden of proof
25 remains on the State to prove guilt beyond a reasonable

1 doubt.

2 Now, all twelve of you must agree on the verdict.
3 Your verdict cannot be based on sympathy, passion,
4 prejudice, emotion, or any other consideration not in
5 evidence in this case.

6 Madam Foreperson, I have in front of me the verdict
7 form. It indicates each of the indictments, and it tells
8 you the indictment number and what charge it's for, and
9 the charges are in no particular order than I believe
10 numerical based on the indictment number. As to each
11 charge, the jury must, all twelve of you, agree on guilty
12 or not guilty, and you would circle that particular
13 indication.

14 After you have concluded your deliberations, you
15 would sign it and date it and then give it to the bailiff
16 so that he would indicate that you all have concluded your
17 deliberations.

18 We are now going to um send you to your jury room
19 with all of the evidence, but you cannot begin your
20 deliberations until all evidence is in there. I realize
21 we're at the lunch hour, so you all are welcome, and we
22 apologize, to take a moment to eat and then, you know,
23 other comfort needs, do that, but no one is to discuss the
24 case until you all are all in the room assembled together
25 and the Madam Foreperson indicates that you are ready to

1 proceed with your deliberations.

2 Okay, anything from counsel at this time?

3 **ASSISTANT SOLICITOR LEGETTE:** May we approach, Your
4 Honor?

5 **THE COURT:** Yes.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
7 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
8 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
9 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
10 AND HEARING OF THE JURY:)

11 **THE COURT:** All right, ladies and gentlemen, just one
12 last thing. On the charge for first degree criminal
13 sexual conduct, one of the elements that must be proved is
14 aggravated force, and just to redefine that to you,
15 aggravated force means the use of physical force or
16 physical violence of a high and aggravated nature to
17 overcome the victim.

18 With that amendment of my charges, are the parties
19 okay?

20 **ASSISTANT SOLICITOR LEGETTE:** Yes, Your Honor.

21 **MR. PLEXICO:** Um, no, I have no further exceptions or
22 additions, aside from those that we spoke about earlier.

23 **THE COURT:** Absolutely, and all parties' objections
24 as to the entire trial are reserved. Thank you.

25 Okay, ladies and gentlemen of the jury, I'm going to

1 now excuse you to your jury room. And then, Madam
2 Foreperson, as I indicated earlier, you all can take a
3 break and then begin with your proceedings, but wait until
4 we send everything in before you begin. In fact, you let
5 the bailiff know when you all are ready to proceed, and
6 then we'll send everything in. Thank you all and have a
7 good lunch, and thanks again for your patience.

8 (APRIL 26, 2007, 2:06 P.M., WHEREUPON, THE JURY
9 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
10 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

11 ASSISTANT SOLICITOR LEGETTE: Do we need to release
12 the alternate?

13 THE COURT: Well, they're going -- we'll be fine,
14 because they're going to let me know when they're going to
15 begin with their deliberations, so I'll let the alternate
16 eat with them, but they're not to get into deliberations.
17 They'll let the bailiff know, and we'll indicate the time
18 they begin, and then I will excuse the alternate.

19 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

20 THE COURT: Okay, because they've been told not to
21 deliberate. Thank you. All right, court's in recess
22 until we hear something.

23 (WHEREUPON, A BREAK WAS TAKEN. AT 2:43 P.M., THE
24 FOREPERSON INDICATED TO THE BAILIFF THAT THEY WERE
25 READY TO BEGIN DELIBERATIONS. THE ALTERNATE WAS

1 RELEASED, AND THE EXHIBITS WERE TAKEN INTO THE JURY
2 ROOM WITH INSTRUCTIONS TO BEGIN DELIBERATIONS.)

3 (AT 3:10 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON
4 THE RECORD OUT OF THE PRESENCE OF THE JURY:)

5 THE COURT: Back to the trial. I received a question
6 from the jurors which says, "Can we please have a copy of
7 the Judge's Charges with definitions, etcetera?"

8 It's usually my practice not to give them, but you
9 all let me know how you would like to indicate to the jury
10 what you'd like to do.

11 ASSISTANT SOLICITOR LEGETTE: Your Honor, I believe
12 that -- I prefer that the Court would re-charge it again
13 to the jury, rather than send them in. I think there is
14 some caselaw that suggests that it would be reversible
15 error. I haven't found a cite yet, but I would prefer
16 that you bring them out and recharge them as to any
17 matters they have questions about.

18 MR. PLEXICO: Your Honor, they haven't been
19 deliberating I guess but twenty minutes, because the
20 evidence just left a few minutes ago.

21 THE COURT: Well, and I will indicate that I went and
22 took a walk, you know, just to get some fresh air outside,
23 and then that's when the bailiff came to me, which was I
24 would say less than fifteen minutes that they had been in
25 there. So I don't know if when they began their

1 deliberations they just started right out with indicating
2 that they wanted this information, but of course we had to
3 get all counsel in the courtroom first.

4 MR. PLEXICO: I would ask that -- I would ask that
5 you not do that and you instruct them that it would be --
6 that it's not admissible to send the charges back.

7 THE COURT: Okay.

8 MR. PLEXICO: Or how ever you think it's best worded,
9 Judge.

10 I would ask that you not recharge them until they ask
11 for that.

12 THE COURT: I have no indication, and I'm just
13 looking at Ms. Legette, at the time that they -- at this
14 time that they have a real question about something
15 specific. It seems to me that because they um only sent
16 this question out, in my opinion, in less than fifteen
17 minutes or so, that they did it um kind of at the
18 beginning perhaps of their deliberations, indicating they
19 just wanted to have everything before them. Um I mean, of
20 course, we would all be guessing, but I'm just saying that
21 they asked for this within less than fifteen minutes of
22 even assembling in the room after they were actually given
23 the evidence and the verdict form.

24 ASSISTANT SOLICITOR LEGETTE: Um, Your Honor, I ---

25 THE COURT: And it -- and I would, in other words,

1 instead of sending the whole packet back, you're asking me
2 to recharge everything we just did?

3 ASSISTANT SOLICITOR LEGETTE: Just -- what -- Your
4 Honor, what I'm asking you to do is not send anything back
5 to them.

6 THE COURT: Right. Right, and he's -- he's agreeing
7 with that.

8 ASSISTANT SOLICITOR LEGETTE: Yes.

9 THE COURT: Okay.

10 ASSISTANT SOLICITOR LEGETTE: And I would ask that
11 the Court perhaps inquire as to what they may be confused
12 about and recharge them on whatever issues that they may
13 have some question regarding, or maybe get a clarification
14 to the question or something.

15 THE COURT: Right. But both -- all of us are
16 agreeing not to send the entire packet of the charges
17 back.

18 MR. PLEXICO: Correct, Your Honor.

19 THE COURT: Okay.

20 ASSISTANT SOLICITOR LEGETTE: Yes.

21 MR. PLEXICO: I would ask that you just simply tell
22 them no, that that can't be done. I believe our Jury
23 Forelady appears to be an organizational professional, and
24 that just may be part of her nature. She's the one in
25 charge and it might help her in her management of the jury

1 deliberations, but I think that would be unnecessary. And
2 I mean, ---

3 THE COURT: Would you all like me to have just her
4 come out and explain that to her, because I just need to
5 have indication from her as to whether or not there's
6 anything further, or did they just use that as their
7 process for deliberating?

8 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor, or you
9 could put it in writing.

10 THE COURT: Right.

11 ASSISTANT SOLICITOR LEGETTE: Or bring her in the
12 courtroom, yes, Your Honor, whichever the Court prefers.

13 MR. PLEXICO: I would just ask that you say no and
14 leave it at that. That may take care of it and have less
15 contact with them.

16 ASSISTANT SOLICITOR LEGETTE: Your Honor, I would ask
17 that you bring her out and question her as to what their
18 question is, make inquiry, or have them send a note out as
19 to what specifically they are questioning or what they
20 actually want, what confusion there is.

21 MR. PLEXICO: I've been doing this eighteen years,
22 and I've never, never, seen that done, Judge.

23 THE COURT: My -- my concern, and as I'm thinking
24 about it, as to her, I don't want her to give me any
25 indication as to their deliberations, because it needs to

1 come out to be the collective um -- um question of all of
2 them and not something that she, individually, is doing.
3 Um let me just write some language here, and then I'll
4 show y'all.

5 If counsel would approach, please?

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
7 RECORD OUT OF THE PRESENCE OF THE JURY; THEREAFTER,
8 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT
9 OF THE PRESENCE OF THE JURY:)

10 **THE COURT:** After having consultation with the
11 parties, the Court will send a note back in to the jurors,
12 "The Court is not permitted to provide the jurors with a
13 copy of the written jury charges."

14 (APRIL 26, 2007, 3:21 P.M., WHEREUPON, A NOTE FROM
15 THE COURT WAS SENT BACK TO THE JURORS AND THIS CASE
16 WAS RECESSED, AWAITING A VERDICT:)

17 (AT 3:38 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON
18 THE RECORD OUT OF THE PRESENCE OF THE JURY:)

19 **THE COURT:** You two approach, please, and then I'll
20 put the question on the record. Attorneys, if you'll
21 approach?

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
23 RECORD OUT OF THE PRESENCE OF THE JURY; THEREAFTER,
24 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT
25 OF THE PRESENCE OF THE JURY:)

1 **THE COURT:** Let the record reflect that I got another
2 question from the jurors indicating, "Judge, can we have
3 testimony transcripts?"

4 Um my response back to them would be, "The court
5 reporter does not have written transcripts available at
6 this time."

7 (APRIL 26, 2007, 3:45 P.M., WHEREUPON, A NOTE FROM
8 THE COURT WAS SENT BACK TO THE JURORS AND THIS CASE
9 WAS RECESSED, AWAITING A VERDICT:)

10 (AT 4:24 P.M., THE COURT WAS INFORMED THERE WAS A
11 VERDICT. AT 4:34 P.M., THE FOLLOWING PROCEEDINGS
12 WERE HELD ON THE RECORD OUT OF THE PRESENCE OF THE
13 JURY:)

14 **THE COURT:** All right, I understand we have a
15 verdict.

16 All right, are the parties ready to proceed?

17 **MR. PLEXICO:** The defense is ready to proceed.

18 **THE COURT:** All right, if you would um, bailiff, get
19 the jurors?

20 (APRIL 26, 2007, 4:35 P.M., WHEREUPON, THE JURY
21 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
22 WERE HELD IN THEIR PRESENCE.)

23 **THE COURT:** Madam Foreperson, it's my understanding
24 that the jurors have reached a verdict in this case?

25 **FOREPERSON:** Yes, we have.

1 **THE COURT:** Okay. If you would hand that over to the
2 deputy?

3 Okay, Madam Clerk, I'll ask that you publish the
4 verdict.

5 **CLERK:** In the State of South Carolina, the County of
6 Allendale, State versus -- the State of South Carolina
7 versus Eric Hemingway, Indictment Number 2005-GS-03-139,
8 2005-GS-03-143, 2005-GS-03-142.

9 As to the Indictment Number 2005-GS-03-139 for the
10 charge of murder, in violation of South Carolina Code
11 16-3-20, we, the jury, unanimously find the defendant
12 guilty.

13 As to the Indictment 2005-GS-03-143 for the charge of
14 criminal sexual conduct in the first degree, in violation
15 of South Carolina Code 16-3-652, we, the jury, unanimously
16 find the defendant guilty.

17 As to the Indictment 2005-GS-03-142 for the charge of
18 burglary in the first degree, in violation of the South
19 Carolina Code 16-11-311, we, the jury, unanimously find
20 the defendant not guilty.

21 Ladies and gentlemen of the jury, is this your
22 verdict?

23 **JURY:** Yes.

24 **CLERK:** Is this still your verdict?

25 **JURY:** Yes, it is.

1 **THE COURT:** Thank you, Madam Clerk.

2 Ladies and gentlemen of the jury, we certainly
3 appreciate your service this week. As we indicated
4 throughout, it's been a long trial, and that the State and
5 defense both did a great job in presenting their evidence
6 for such a, you know, serious matter, and um we tried to
7 give them, you know, fair minded reasonable jurors to
8 decide this matter for them.

9 At this time, this will conclude your jury service
10 for the week. There will be no additional trials.

11 Yes?

12 **MR. PLEXICO:** I would ask that the jury be polled,
13 Your Honor.

14 **THE COURT:** Okay. And that is fine. Okay.

15 Ladies and gentlemen of the jury, the defense has
16 asked that you be individually polled, so I'm going to
17 point toward you and then ask: Is this your verdict? Is
18 it still your verdict?

19 Okay? All right?

20 And I'll start with Madam Foreperson. Is this your
21 verdict?

22 **FOREPERSON:** Yes.

23 **THE COURT:** Is this still your verdict?

24 **FOREPERSON:** Yes.

25 **THE COURT:** Is this your verdict?

1 JUROR: Yes.

2 THE COURT: Is this still your verdict?

3 JUROR: Yes.

4 THE COURT: Is this your verdict, sir?

5 JUROR: Yes.

6 THE COURT: Is this still your verdict?

7 JUROR: Yes.

8 THE COURT: Is this your verdict, ma'am?

9 JUROR: Yes.

10 THE COURT: Is this still your verdict?

11 JUROR: Yes.

12 THE COURT: Is this your verdict, ma'am?

13 JUROR: Yes.

14 THE COURT: Is this still your verdict?

15 JUROR: Yes.

16 THE COURT: And on the back row, is this your
17 verdict, ma'am?

18 JUROR: Yes.

19 THE COURT: Is this still your verdict?

20 JUROR: Yes.

21 THE COURT: Is this your verdict, sir?

22 JUROR: Yes.

23 THE COURT: Is this still your verdict?

24 JUROR: Yes.

25 THE COURT: Is this your verdict, sir?

1 JUROR: Yes.

2 THE COURT: Is this still your verdict?

3 JUROR: Yes.

4 THE COURT: Is this your verdict, ma'am?

5 JUROR: Yes.

6 THE COURT: Is this still your verdict?

7 JUROR: Yes.

8 THE COURT: Is this your verdict, ma'am?

9 JUROR: Yes.

10 THE COURT: Is this still your verdict?

11 JUROR: Yes.

12 THE COURT: Is this your verdict, sir?

13 JUROR: Yes.

14 THE COURT: Is this still your verdict?

15 JUROR: Yes.

16 THE COURT: And finally, is this your verdict, sir?

17 JUROR: Yes.

18 THE COURT: Is this still your verdict?

19 JUROR: Yes.

20 THE COURT: Okay. All right, as to you all, that
21 will conclude your service for the week, and we thank you
22 for your time.

23 As with any trial, a lot of times you might get
24 persons calling you to ask you about, you know, your
25 decisions or your deliberations. It is up to you as to

1 whether or not you wish to speak to anybody. You are free
2 to do so, or you are free to begin discussions with
3 somebody and then if you feel like at some point you want
4 to cut those discussions off, you can do so at any time.

5 I don't believe that anyone would, you know, be
6 harassing you in any regard, but if that is the case, then
7 you can report it to the Clerk, and we will deal with it
8 appropriately.

9 We really thank you for your service for this week,
10 and we appreciate everything that you've done. The Clerk
11 will handle your form of payment for the week, and don't
12 spend it all in one place. But thank you so much for your
13 service this week.

14 Anything further from the parties at this time?

15 ASSISTANT SOLICITOR LEGETTE: Not from the State,
16 Your Honor.

17 MR. PLEXICO: Nothing for the jurors, Your Honor.

18 THE COURT: With the jury. Correct.

19 All right. You can be excused. Thank you.

20 (WHEREUPON, THE JURORS WERE EXCUSED AND THE
21 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

22 THE COURT: All right, anything from the State?

23 ASSISTANT SOLICITOR LEGETTE: Not from the State,
24 Your Honor.

25 MR. PLEXICO: Yes, Your Honor. Thank you, Your

1 Honor. I would renew all my prior motions in regards to
2 2005-139, the indictment for murder, and 2005-143, the
3 indictment for criminal sexual conduct first degree, Your
4 Honor, and renew all my prior motions for directed verdict
5 and also renew all my mistrial motions I made during the
6 trial, Your Honor.

7 Obviously, this was a split verdict, and I'd move to
8 um -- for a directed verdict or a mistrial in view of
9 that.

10 THE COURT: Okay. The State's response, please?

11 ASSISTANT SOLICITOR LEGETTE: Your Honor, I would be
12 opposed to any such motion based on previous rulings and
13 previous argument, Your Honor.

14 THE COURT: Okay. Okay. And I feel like the Court
15 um definitely taking concern about the serious nature of
16 the matter from the beginning of jury selection and the
17 beginning with some pre-trial motions, all the way um
18 coming in this morning around 9:30 or so, we spent a lot
19 of extensive time on just various directed verdict motions
20 as well as jury charges, just trying to make sure
21 everything was fair and legally sound.

22 The jurors had indicated questions, and you know, we
23 responded to them, but I really feel like at this point in
24 time, the Court will stand by its prior rulings, in that
25 the jury indicated in their deliberations, without any

1 specific questions on any issue, I have no way to indicate
2 that they misunderstood anything along the way. So the
3 Court will respectfully deny defense motions.

4 MR. PLEXICO: Your Honor, you want us to come around?

5 THE COURT: Excuse me?

6 MR. PLEXICO: You want us to come around for
7 sentencing at this time?

8 THE COURT: Yes, but the Court will take a short
9 break before we do that. Well, let's go ahead and have
10 you all present -- do your presentations now, and then
11 we'll take a short break after that.

12 ASSISTANT SOLICITOR LEGETTE: Your Honor, we're
13 preparing the sentencing sheets at this time, so we can
14 take a short break.

15 THE COURT: Okay. Okay. That's fine.

16 (WHEREUPON, A BREAK WAS TAKEN; THEREAFTER, AT 5:07
17 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE
18 RECORD:)

19 THE COURT: The State ready to proceed with
20 sentencing?

21 ASSISTANT SOLICITOR LEGETTE: Yes, we are, Your
22 Honor. I'm passing up the sentencing sheets.

23 THE COURT: Okay. Thank you.

24 Okay. I'm ready to hear from the State's case, you
25 know, the State's comments to the Court on sentencing.

1 **ASSISTANT SOLICITOR LEGETTE:** Uh, Your Honor, it's
2 the State's position, and we respectfully ask the Court to
3 sentence Mr. Hemingway to the balance of his life in
4 prison for the offense of murder and thirty years on the
5 CSC first degree, Your Honor, and we base this on the
6 seriousness of this particular offense, as well as Mr.
7 Hemingway's prior record, which I can read for the Court.

8 **THE COURT:** Okay.

9 **ASSISTANT SOLICITOR LEGETTE:** He has a 2001, as my
10 RAP sheet indicates, 2001, possession of less than one
11 gram of crack cocaine.

12 He also has in December of 2001 a PWID, it looks like
13 cocaine here, as well as PWID cocaine proximity, which is
14 a serious offense, Your Honor.

15 Additionally, he has a 2002 malicious injury to
16 personal property and a criminal domestic violence first
17 offense.

18 In 2003, he also has, Your Honor, what it looks like
19 here -- and, Your Honor, he also has a 2004 public
20 disorderly conduct.

21 Your Honor, given the serious nature of this
22 particular offense, these offenses, Your Honor, in
23 addition to some comments made by a young woman who Mr.
24 Hemingway had some dealings with prior to this offense,
25 Your Honor, we respectfully ask the Court to sentence him

1 to the balance of his life on the murder and to thirty
2 years on the CSC.

3 THE COURT: Okay. Um do you care to go into the
4 comments?

5 ASSISTANT SOLICITOR LEGETTE: Well, Your Honor, the
6 comments were to me. I heard allegations that there was a
7 prior offense of CDV against Erica Jones, who was Mr.
8 Hemingway's girlfriend, um the young woman who testified
9 here in this court. I spoke to her about this, which she
10 confirmed to me, as well as my investigator, that indeed,
11 the offense happened.

12 What she indicated to me was that Mr. Hemingway, she
13 was -- he was in her apartment. Some guys were there. He
14 asked for her comments or her opinion. She gave him an
15 opinion that he didn't particularly like. He jumped on
16 her and choked her.

17 Mr. Michael Williams happened to be there at that
18 time, and Michael Williams happened to pull him off of
19 her. According to Michael Williams, I think he followed
20 her upstairs, at which point he then jumped on her again
21 and began choking her again.

22 Her sister, Sheila Jones, confirmed that when she saw
23 her sister, she had spit coming out of the side of her --
24 had dried on the side of her face. According to Ms.
25 Jones, Erica Jones, she told me that she had been choked

1 to the point to where she could barely talk.

2 Your Honor, additionally, I think it's evident when
3 -- well, not necessarily evident, but one could infer that
4 even Mr. Hemingway's mother commented that um he -- she
5 thought he had gotten into a fight with his girlfriend,
6 Erica, when she saw the scratches on his neck, which leads
7 the Court -- which leads this prosecutor to believe, Your
8 Honor, that the allegations made against Mr. Hemingway,
9 though they were not the subject of a conviction, that
10 they were, indeed, true.

11 Additionally, Your Honor, with regards to the young
12 child who may have come out and witnessed this event,
13 there are two young boys who are today devoid of a mother.
14 And they have lost each other, because they had two
15 separate fathers, and one lives in Barnwell, and one lives
16 in Bamberg, Your Honor.

17 So, Your Honor, the State believes that what Mr.
18 Hemingway has done in the County of Allendale is indeed
19 reprehensible. And, Your Honor, we have to send a message
20 that this kind of thing will not be tolerated in Allendale
21 County.

22 And I ask the Court once again to sentence him to
23 life in prison on the murder and to thirty years on the
24 CSC.

25 THE COURT: Okay.

1 All right, Mr. Plexico?

2 MR. PLEXICO: Thank you, Your Honor. I have no way
3 of refuting that, since um Ms. -- Ms. Erica Jones is not
4 here. She was here yesterday, I will inform the Court, um
5 repeatedly asking to see my client, and they have a baby
6 together, and she wanted to show him the baby and spend
7 some time. So, whatever happened in -- in -- in
8 apparently Ms. Jones' mind, is not of the nature that was
9 just described by the prosecutor, or she certainly
10 wouldn't want to be around my client, Judge.

11 My client is twenty-three years old, Your Honor.
12 This was a split verdict. That indicates that the jury
13 believed that there should be some mercy in regards to
14 this matter, Your Honor.

15 Um he -- he has um -- the part of his record that's
16 of concern, Your Honor, is he had a record for drugs.
17 People using drugs often end up in difficult situations
18 such as these, Your Honor. I'm telling young people this
19 all the time.

20 Um -- um thirty years for murder is a day for day
21 sentence. There is absolutely no parole, Your Honor. Um
22 that is a tremendously long amount of time. That is
23 tremendously severe punishment for my client, Your Honor,
24 for that for which he has been convicted.

25 Um and as far as the CSC goes, Your Honor, a thirty

1 year concurrent sentence, I believe would all be so
2 punitive and so tremendously long to a twenty-three year
3 old. That is about thirty percent longer, at least,
4 excuse me, it's much longer than that, that he has lived,
5 because he's only twenty-three, Your Honor. It's like
6 every waking day of his existence on earth.

7 Not only won't he repeat that again locked up in a
8 maximum security prison, Your Honor, but with an
9 additional at least another seven years, Your Honor. I
10 think it will be extremely and unduly punitive to punish
11 my client to more than the thirty year sentence on these
12 charges, concurrently, Your Honor. I think it's important
13 to give a person hope that they will actually have a
14 future, Your Honor, on the outside.

15 He is today here with Marsha Singleton, Your Honor,
16 and I would like the Court to hear a few comments from Ms.
17 Singleton, please.

18 **THE COURT:** Happy to hear from you.

19 **MS. MARSHA SINGLETON:** Good evening. Um I'm Eric's
20 aunt. I've known him for all of his life, all of his
21 twenty-three years.

22 What I would like to say most of all is that
23 throughout Eric's twenty-three years, he has his eleven,
24 twelve, cousins who are male and female, and he's been a
25 role model to them. We know about the drug charges, and

1 he also has talked -- talked to them against those
2 charges, in order for them to live their lives better.

3 He also came to me two or three years ago, which is
4 how he ended up in Denmark in the first place, to ask me
5 to help him get into school. The plan was that he would
6 go to Denmark Tech for a year, that he would complete it,
7 and then he would either go to State or Claflin with his
8 cousins and finish out the rest of his three years there.

9 So it doesn't sound like he had planned to spend the
10 rest of his life drifting or raping or robbing or killing
11 and just living his life out just as a criminal. He spoke
12 to his cousins all the time, as I've said. He encouraged
13 them to do the right thing.

14 And as far as Erica is concerned, they're sharing a
15 child together. And the point is, if he was ever that
16 violent to her, surely she would not have come to court.
17 She would not have spoken. She would not have waited
18 around the entire afternoon yesterday for him to see the
19 child. So I'm absolutely sure that Ms. Erica doesn't feel
20 that way regarding Eric.

21 MR. PLEXICO: Your Honor, now I would like for you to
22 hear from Ms. Wandra Holmes, please?

23 THE COURT: Okay.

24 MS. WANDRA HOLMES: I'm really just at a loss of
25 words. So I don't have much to say.

1 **THE COURT:** How are you related to Mr. Hemingway?

2 **MS. WANDRA HOLMES:** He's my cousin.

3 **THE COURT:** Cousin. Okay.

4 **MR. PLEXICO:** He does have a large family. He is
5 going to have support, Your Honor, if he's released.

6 He did have a plan. He did have a future, Your
7 Honor.

8 As I've already addressed the sentencing concerns,
9 Your Honor, the defense has, and we'd ask that -- that --
10 that you would sentence him according to what the defense
11 has requested, Your Honor, which is an extremely harsh
12 sentence, Judge. Thank you.

13 **THE COURT:** Any further response by the State?

14 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, while I
15 understand Mr. Hemingway has a large family, Harriett
16 Washington had two sons. They lost their mother and each
17 other and their home.

18 In fact, they -- Patrick came here one day, one day
19 he came here, Your Honor, and he stayed here for about two
20 hours, and in that period of time, I couldn't even really
21 talk to him about his mother, because it is just so raw.
22 His brother is autistic and cannot even speak regarding
23 what he may have witnessed.

24 Your Honor, they have lost more than Mr. Hemingway
25 ever will lose. They've lost the one person who gave

1 birth to them, who raised them, who kept them safe at
2 night, Your Honor.

3 And while I understand the family of Mr. Hemingway
4 are sending out condolences, Harriett Washington's only
5 voice has been the Sheriff, myself, because everyone else
6 believed somehow that this was natural causes, Your Honor.
7 This has been a monumental undertaking of the State of
8 South Carolina.

9 Those two children can't even come here in court and
10 sit. She's got an adopted aunt sitting here, an adopted
11 aunt and a cousin, no mother, no father to speak of, Your
12 Honor, no one crying in the wilderness for Harriett
13 Washington. And at this time, Your Honor, I speak for
14 Harriett Washington, for a Harriett Washington who was
15 about to be buried, dead and buried, but for Michael
16 Williams, a man who stood, stood.

17 Your Honor, I ask the Court, I humbly beg this Court
18 to sentence this man. He took away a life of a young
19 woman who was in her prime, trying to raise her children.

20 They don't get another mother. Maybe they'll see her
21 one day in heaven, perhaps.

22 Your Honor, at this time, I humbly request the Court
23 to sentence Eric Hemingway to the balance of his life for
24 the reprehensible act he did by looking at a woman in her
25 yard, minding her own business, and forming in his mind

1 that he wanted to rape her. I, myself, thought about this
2 last night. I went to the grocery store, and Your Honor,
3 I thought to myself, what if a man is watching me right
4 now, saying the same thing in his mind? We have to guard
5 against this kind of behavior, Your Honor.

6 And I ask that the County of Allendale, the County of
7 Allendale, Your Honor, a message has to be sent that this
8 kind of thing will not be tolerated in Allendale County.
9 You cannot come to Allendale County and do whatever comes
10 to mind, simply because it's Allendale.

11 MS. MARSHA SINGLETON: Your Honor, may I just say one
12 thing in reference to the sentencing, that it not be done
13 through vengeance? Because that's what we're hearing,
14 that he not be used as a scapegoat or as an example to
15 send out that message. That's not what law is supposed to
16 be about.

17 ASSISTANT SOLICITOR LEGETTE: It's not revenge, Your
18 Honor. It's simply justice, and what justice requires
19 here, Your Honor, I believe this is justice.

20 MR. PLEXICO: May I?

21 THE COURT: Yes. Excuse me.

22 MR. PLEXICO: Your Honor, sentencing is a time for
23 level headed coolness, for proper reflection of the
24 jurors, and I believe that emotions have no place in those
25 of the bar and the bench, arguing at a sentencing

1 proceedings, and we would ask that. This is not about
2 emotions. This is not about messages. This is not about
3 solicitorial politics. This is about punishment for my
4 client who was convicted of these crimes, and we believe
5 that there is hope for this young man, and we understand
6 he's going to have a severe punishment, and we would ask
7 that you reflect upon this and sentence him as we have
8 requested, Your Honor, which is an extremely harsh
9 punishment. Thank you, Judge.

10 THE COURT: Okay. I think you had someone indicating
11 they wanted to speak.

12 ASSISTANT SOLICITOR LEGETTE: Did you want to speak?

13 MS. RICHARDEEN MONROE: My name is Richardeen Monroe,
14 and I'm Ms. Harriett um -- um me and her mother were
15 raised together as sisters, but her mother is my first
16 cousin, and she is my second cousin. And so we always was
17 close together. And um anytime when I see her, she would
18 always be laughing and talking and nice and everything.

19 And her little boy, he -- he take her from him. Her
20 little boy couldn't even talk when he -- when he hurt her.
21 He couldn't even talk. He run the children back in the
22 room, and I don't -- and I don't have no mercy on that,
23 because a little baby just ain't even -- just three. I
24 think he was three years old then, you know, and -- and he
25 told her -- and he run the children back in the room.

1 See?

2 And then her son what was up -- what was here the
3 other day, he couldn't talk or tell you exactly how it
4 was, but if he was to sit down and tell you exactly how it
5 was, you would understand what he did. Because if he can
6 identify him, you know he had to see him. Ain't that
7 right?

8 You know he had to see him, because if he didn't see
9 him, he wouldn't have -- he couldn't identify him to us
10 and tell us how it was. See?

11 And -- and as far as concerning he's saying about the
12 rape and stuff like that, he said when they came home to
13 the house, they um didn't see nothin', but the house was
14 all torn up when we came there, when I went there. The
15 house was all torn up. It had um -- I don't know if it
16 came from -- she had a big cat she keep to her door.

17 But I -- I -- I want you to do justice with him. I
18 want justice for those little children, because they don't
19 have no more mother. They don't got no more mother now,
20 nobody but me and the fathers, the two fathers, and my --
21 and my daughter out there, right there. Ain't got nobody
22 else to take care of them.

23 And look -- and I feel like this, I don't know what
24 gave him the idea of that, if he could tell his friend he
25 seen her walking the road, walking the street, and he look

1 at her and say what he's going to do to her and what he
2 can do for her, what -- what kind of gentleman he is? I
3 don't know what kind of gentleman he is if he use those
4 kind of language.

5 THE COURT: Okay. Anything further from either
6 party?

7 ASSISTANT SOLICITOR LEGETTE: No, Your Honor.

8 THE COURT: Okay.

9 Ms. Legette?

10 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor?

11 THE COURT: Get him to sign the sentencing sheet.

12 All right, does Mr. Hemingway wish to state anything
13 to the Court?

14 DEFENDANT, MR. HEMINGWAY: Yes, I would like to say
15 one thing to the Court and to Ms. Washington's family.
16 Regardless of the fact that they found me guilty of murder
17 and criminal sexual conduct, I did not kill or rape your
18 family member. And that's all I have to say, Your Honor.

19 THE COURT: Okay. For the matter of County of
20 Allendale versus Eric Hemingway for criminal sexual
21 conduct in the first degree, Mr. Hemingway, you shall be
22 sentenced to the State Department of Corrections for
23 fifteen years.

24 And for the matter of the murder, you shall be
25 sentenced to the State Department of Corrections for

1 thirty years, and that is to run consecutive to the
2 criminal sexual conduct in the first degree.

3 MR. PLEXICO: Thank you, Your Honor.

4 (WHEREUPON, THE FOLLOWING DOCUMENTS, WHICH ARE
5 DESCRIBED MORE FULLY IN THE INDEX, WERE GIVEN TO THE COURT
6 REPORTER BY THE COURT TO MARK AS COURT'S EXHIBITS IN THE
7 TRIAL OF THIS CASE:)

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

10 (WHEREUPON, Court Exhibit No. 2 was marked for
11 identification and received into evidence.)

12 (WHEREUPON, Court Exhibit No. 3 was marked for
13 identification and received into evidence.)

14 (WHEREUPON, Court Exhibit No. 4 was marked for
15 identification and received into evidence.)

16 (WHEREUPON, Court Exhibit No. 5 was marked for
17 identification and received into evidence.)

18 (WHEREUPON, Court Exhibit No. 6 was marked for
19 identification and received into evidence.)

20 (WHEREUPON, Court Exhibit No. 7 was marked for
21 identification and received into evidence.)

22 (END OF REQUESTED TRANSCRIPT OF RECORD.)
23
24
25

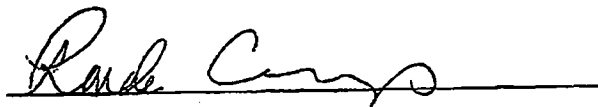
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

I, RONDA T. CUMMINGS, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Allendale County, South Carolina, on the 23-26th day of
April 2007.

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

October 18, 2007



RONDA T. CUMMINGS, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
 County of ALLENDALE)

IN THE COURT OF COMMON PLEAS

2000-CP-03-15

ERIC P. HEMINGWAY)
 Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

ALL
 S.C.
 0-55

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention LIEBER C.I., P.O. BOX 205 RIDGEVILLE S.C.
29472
2. Name and location of Court which imposed sentence ALLENDALE COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2005-GS-03-139 / MURDER

- (b) 2005-GS-03-143 / CRIM. SEX. CONDUCT FIRST DEGREE
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-26-07 / 30 YEARS
- (b) 4-26-07 / 15 YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL (SEE MEMO)
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL (SEE MEMO)
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (SEE SUPPORTING MEMO)
- (b) (SEE SUPPORTING MEMO)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PETITION FOR WRIT OF CERTIORARI
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. SUPREME COURT
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. STEVEN PLEXICO, ALLENDALE PUBLIC DEFENDER

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL AND SENTENCING

APPEAL

ii. _____

iii. _____

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

I WANT MY CONVICTION VACATED

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of ALLENDALE)

VERIFICATION

I, ERIC HEMINGWAY, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Eric Hemingway

SWORN to and subscribed before me this 5th
day of February, 2010.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

ERIC P. HEMINGWAY, #290037
APPLICANT

"VS"

STATE OF SOUTH CAROLINA
RESPONDENT

IN THE COURT OF
COMMON PLEAS

ALLENDALE, S.C.

2010 FEB -9 5:17 PM

C/A. NO: 2010-CP-03-15

MEMORANDUM TO SUPPORT
PCR APPLICATION

COMES NOW, MR. ERIC P. HEMINGWAY AND I WOULD SHOW UNTO THIS COURT
OF COMMON PLEAS RESPECTFULLY THE FOLLOWING:

THIS IS A MEMORANDUM TO SUPPORT MY PCR APPLICATION SUBMITTED TO
THIS COURT PURSUANT THE S.C. CODE ANN. § 17-27-10 DO TO THE
LIMITED SPACE THEREON THE PCR APPLICATION.

THE FACTUAL PREDICATES, AND ARGUMENTATION IN SUPPORT OF ARE FULLY
DEVELOPED HEREIN, AND ARE IN CONFORMITY WITH THE S.C. CODE ANN.
§ 17-27-20, WHEREBY THIS COURT CAN ENTERTAIN THESE ISSUES.

* * * * *

TO SUPPORT SECTION 10 OF MY PCR APPLICATION, I WOULD STATE AS FOLLOWS:

[10-A]

I WOULD CONTEND THAT I RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, THUS VIOLATING MY RIGHTS UNDER ARTICLE IV § 2, AND THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND UNDER ARTICLE I § 3, AND 14 TO THE S.C. CONSTITUTION.

[10-B]

I WOULD CONTEND THAT I RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COURT COUNSEL, THUS VIOLATING MY RIGHTS UNDER ARTICLE IV § 2, AND THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND UNDER ARTICLE I § 3, AND 14 TO THE S.C. CONSTITUTION.

[10-C]

I WOULD CONTEND THAT THE TRIAL COURT HAD NO PERSONAL JURISDICTION OF MY PERSON FOR THE CHARGE OF CSC IN THE FIRST DEGREE, THUS VIOLATING MY RIGHTS UNDER ARTICLE IV § 2, AND THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND UNDER ARTICLE I § 3 OF THE S.C. CONSTITUTION.

[INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL]

* * * * *

[11-A-1]

I WOULD AVER THAT MY TRIAL COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO OBJECT TO THE COURTS JURY INSTRUCTION FOR THE OFFENSE OF CSC IN THE FIRST DEGREE, DO TO THE JURY INSTRUCTION NOT ASSERTING [A]LL THE ELEMENTS OF THE OFFENSE AS REQUIRED BY LAW TO ADHERE TO THE COMMAND OF THE U.S. SUPREME COURT, AND THE 14TH AMENDMENT JURISPRUDENCE.

AS A THRESHOLD MATTER, THE CONSTITUTION GIVES A CRIMINAL DEFENDANT THE RIGHT TO HAVE A JURY DETERMINE BEYOND A REASONABLE DOUBT HIS GUILT OF EVERY ELEMENT OF THE CRIME WITH WHICH HE IS CHARGED,

UNITED STATES "VS" GAUDIN, 115 S.CT. AT 2320 (1995).

IT IS PARAMOUNT THAT THIS COURT RECOGNIZED THAT THE UNITED STATES SUPREME COURT HAS HELD THAT "A CRIMINAL DEFENDANT IS PRESUMED INNOCENT UNLESS AND UNTIL THE GOVERNMENT PROVES BEYOND A REASONABLE DOUBT [E]ACH [E]LEMENT OF THE OFFENSE CHARGED INCLUDING [M]ENTAL [E]LEMENT OR MENS REA,

CLARK "VS" ARIZONA, 126 S.CT. 2709 (2006).

DOMESTIC PRECEDENTS ARE IN CONFORMITY WITH THIS LANGUAGE, THUS REQUIRING KNOWLEDGE FOR OFFENSE OF RAPE OR CSC,

STATE "VS" MOORE, 241 S.C. 487, 129 S.E. 2D. 330;

STATE "VS" THOMAS, 248 S.C. 573, 151 S.E. 2D. 855;

THE RECORD IN THIS CASE IS CLEAR AND UNAMBIGUOUS, AND IT IS WITHOUT DEBATE, DISPUTE, OR QUESTION THAT THE TRIAL COURT DID NOT CHARGE THE JURY ON A MENS REA ELEMENT FOR THE CHARGE OF CSC IN THE FIRST DEGREE, (TR.P. 591 L. 2-23).

STARE DECISIS DICTATE UNEQUIVOCALLY THAT "WHEN A JURY INSTRUCTION OMITS A NECESSARY [E]LEMENT OF THE CRIME, [C]ONSTITUTIONAL ERROR

HAS OCCURRED,

HO "VS" NEWLAND, 322 F.3D. AT 630 (2003).

IN CABANA "VS" BULLOCK, 106 S.CT. AT 696 (1986) THE NATIONS HIGH COURT MADE IT CLEAR THAT "A JURY VERDICT CANNOT STAND IF THE INSTRUCTION PROVIDED TO THE JURY DO NOT REQUIRE IT TO FIND EACH ELEMENT OF THE CRIME UNDER THE PROPER STANDARD OF PROOF".

BRECHT "VS" ABRAHAMSON, 113 S.CT. 1710 (1993) STANDS FOR THE CONCRETE PRINCIPLE OF LAW THAT INSTRUCTIONAL ERRORS CAN BE SO SERIOUS THAT THEY DENY A CRIMINAL DEFENDANT "DUE PROCESS OF THE LAW" AND AMOUNT TO **STRUCTUAL DEFECTS** WHICH DEFY ANALYSIS BY HARMLESS ERROR, ID. AT 133 S.CT. AT 1722.

THE INSTRUCTIONAL ERROR IN THIS CASE QUALIFIES AS A STRUCTUAL DEFECT BASED ON THE RELEVANT FACT THAT THE JURY CONVICTED THE APPLICANT ON THE CHARGE OF CSC IN THE FIRST DEGREE WITHOUT CONSIDERING ALL THE MATERIAL ELEMENTS OF THE CRIME.

IT IS MORE THAN EVIDENT THAT COUNSEL SHOULD HAVE OBJECTED TO THIS INSTRUCTION.

[11-A-2]

I WOULD FURTHER CONTEND THAT MY TRIAL COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT NOT CHARGING THE WHOLE LAW FOR THE OFFENSE OF CSC IN THE FIRST DEGREE.

FOR THE SAKE OF CLARITY, THE TRIAL COURT DID NOT CHARGE THE JURY ON THE LAW AS STATED IN THE S.C. CODE ANN. § 16-3-652(1)(B) OR (C), IN WHICH COULD HAVE BEEN THE DIFFERENCE OF THE APPLICANT GETTING CONVICTED AND AQUITTED OF THE CHARGE IN QUESTION.

SECTION 16-3-652 (1)(B) STATES THAT "THE VICTIM SUBMITS TO SEXUAL BATTERY BY THE ACTOR UNDER CIRCUMSTANCES WHERE THE VICTIM IS ALSO

THE VICTIM OF FORCIBLE CONFINEMENT, KIDNAPPING, ROBBERY, EXTORTION, BURGLARY, HOUSEBREAKING, OR ANY OTHER SIMILAR OFFENSE OR ACT".

IT WAS PARAMOUNT THAT THE COURT INSTRUCTED THE JURY ON THIS LANGUAGE BASED ON THE UNDISPUTED FACT THAT THE APPLICANT WAS AQUITTED OF BURGLARY IN THE FIRST DEGREE, AND THE JURY BEING INSTRUCTED ON THE WHOLE LAW MAY HAVE AQUITTED HIM OF THE CSC CHARGE.

THIS COURT MUST RECOGNIZED THAT CONSTITUTIONAL ERROR OCCURRED WHEN THE COURT FAILED TO INSTRUCT THE JURY ON ALL THE ELEMENT OF THE OFFENSE,

UNITED STATES "VS" GAUDIN, SUPRA;

BRECHT "VS" ABRAHAMSON, SUPRA;

LIKEWISE THERE IS A REASONABLE PROBABILITY THAT IF COUNSEL WOULD HAVE OBJECTED TO THE JURY INSTRUCTION, AND CONVEYED TO THE COURT TO CHARGE THE JURY ON THE LAW IN WHOLE, AND NOT IN PART, THE OUTCOME OF THIS CASE COULD HAVE BEEN DIFFERENT, AND A REASONABLE PROBABILITY IS PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME,

STRICKLAND "VS" WASHINGTON, 466 U.S. 668 (1984).

[11-A-3]

I WOULD FURTHER CONTEND THAT MY TRIAL COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO EFFECTIVELY ARGUE TO THE JURY, AND TO THE COURT DURING THE DIRECT VERDICT STAGE, THAT MY SKIN, HAIR, BLOOD, OR IN THE ALTERNATIVE, MY DNA WAS NOT FOUND UNDER THE FINGERNAILS OF THE DECEASED IN THIS CASE.

THE PROSECUTION IN THIS CASE ELICITED INFORMATION IN THIS CASE THAT APPLICANT HAD FRESH SCRATCHES IN HIS CHEST AREA, THAT WAS ALLEGEDLY WAS CAUSED BY THE DECEASED DURING THE ASSAULT, AT LEAST THAT IS HOW THE PROSECUTION MADE IT LOOK.

(TR.P. 196 L. 21-25. THOUGH TR.P. 197 L. 1-2; TR.P. 199 L. 4-5; TR.P. 218 L. 14-20;

THE TESTIMONY BY THE STATES WITNESSES WAS VERY DAMAGING, PREJUDICIAL, AND CONVINCING, IN WHICH GAVE THE JURY A STRONG INFERENCE THAT APPLICANT COMMITTED THE CRIMES IN QUESTION.

THE RECORD CLEARLY AND UNEQUIVOCALLY SHOWS WITHOUT QUESTION THAT THE DECEASED FINGERNAIL CLIPPINGS WERE TESTED FOR DNA, (TR.P. 303 L. 12-13; TR.P. 317 L. 7-8;).

HOWEVER THE APPLICANTS DNA WAS [N]OT FOUND ON THE DECEASED FINGERNAIL CLIPPINGS OR TOE NAIL CLIPPINGS, WHICH CLEARLY DEMONSTRATES AS A MATTER OF RELIABLE SCIENCE, AND LAW THAT THE DECEASED IS NOT THE PERSON WHO CAUSED THE SCRATCHES IN THE APPLICANTS CHEST AREA.

APPLICANT SPECIFICALLY TOLD COUNSEL TO ALERT THE COURT OF THIS MATTER AND HE DID NOT.

THIS INFORMATION WOULD HAVE UNDER-CUT THE STATES CASE, AND THE JURY SURELY WOULD HAVE RECOGNIZED THIS FLAW IN THE BURDEN OF PROOF.

THE COURT DID NOT EVEN CONSIDER THIS INFORMATION DURING THE DIRECT VERDICT STAGE OF THE TRIAL BECAUSE COUNSEL NEVER AMPLIFIED AND ILLUMINATED THIS INFORMATION.

THERE IS A REASONABLE PROBABILITY THAT IF COUNSEL WOULD HAVE INFORMED THE JURY AND THE COURT OF THIS MATTER DURING TRIAL AND DURING THE DIRECT VERDICT STAGE, THE OUTCOME OF THIS CASE COULD HAVE BEEN DIFFERENT, AND A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME, STRICKLAND "VS" WASHINGTON, SUPRA.

[11-A-4]

I WOULD FURTHER CONTEND THAT MY TRIAL COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO OBJECT TO THE JURY INSTRUCTION FOR THE CRIME OF MURDER.

INASMUCH THE S.C. SUPREME COURT IN THE PRECEDENT STATE "VS" RECTOR, 158 S.C. 212, 155 S.E. 385 (1930) MADE IT CLEAR THAT "THE CRIME OF MURDER IS A COMPOSITE CRIME, IT INCLUDES THE ASSAULT COMMITTED UPON A PERSON WITH INTENT TO KILL AND THE RESULTING DEATH FROM THAT ASSAULT.

THE STATE MUST PROVE NOT ONLY THE ASSAULT AND THE DEATH OCCURRING FROM IT, BUT THE TIME OF THE ASSAULT, AND THE TIME OF THE DEATH AS TIME IS RECOGNIZED IN THE LAW.

IN ADDITION, THE STATE MUST PROVE THE PLACE OF THE ASSAULT, AND THE PLACE OF DEATH. THESE NECESSARY ELEMENTS OF THE CRIME OF MURDER MUST NOT ONLY BE PROVED, BEFORE A PERSON ACCUSED MAY BE LAWFULLY CONVICTED, BUT THEY MUST BE ALLEGED IN THE INDICTMENT RETURNED AGAINST THE ACCUSED BY THE GRAND JURY ID. AT 386.

LIKEWISE THIS LANGUAGE IS INDISPUTABLE, AND THIS COURT MUST TAKE NOTICE THAT THE TRIAL COURT FAILED TO CHARGE THE JURY ON THE NECESSARY ELEMENTS OF MURDER AS STATED ABOVE, (TR.P. 589 L. 11-25 THROUGH TR.P. 591 L. 1-23).

IT IS WITHOUT QUESTION, DEBATE, OR DISPUTE THAT THE JURY IN THIS CASE CONVICTED THE APPLICANT ON THE CHARGE OF MURDER WITHOUT BEING CHARGED ON ALL THE NECESSARY AND CRITICAL ELEMENTS FOR MURDER, IN WHICH IS CONSTITUTIONAL ERROR AND A STRUCTURAL DEFECT. UNITED STATES "VS" GAUDIN, AT 2320, BRETCHE SUPRA. THEREFORE BECUASE THIS IS A STRUCTUAL ERROR, COUNSEL SHOULD HAVE OBJECTED.

[11-A-5]

I WOULD FURTHER CONTEND THAT MY TRIAL COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO ALERT THE COURT THAT I DID NOT WAIVE MY EXTRADITION RIGHTS TO FACE THE CHARGE OF CSC IN THE FIRST DEGREE.

LIKewise TO ADHERE TO THE 6TH AMENDMENT JURISPRUDENCE TO THE UNITED STATES CONSTITUTION, I WAS INFORMED UNEQUIVOCALLY THAT I WAS FACING THE CHARGE OF MURDER IN THE STATE OF SOUTH CAROLINA, (SEE NEXT PAGE).

I WAIVED MY EXTRADITION PROCEEDINGS TO FACE THE CHARGE OF MURDER, HOWEVER THE STATE OF SOUTH CAROLINA TRICKED ME, AND GAVE ME MORE CHARGES ONCE I ARRIVED IN THIS STATE.

IF I KNEW I WAS FACING SEVERAL CHARGES IN THIS STATE, I WOULD NOT HAVE WAIVED MY EXTRADITION RIGHTS.

IN STATE "VS" ADAMS, 354 S.C. 361,580 S.E. 2D. (S.C. APP 2003) THE ACCUSED WAS EXTRADITED TO THIS STATE FOR INDICTMENTS ON BURGLARY, AND GRAND LARCENY, HOWEVER THE ACCUSED INFORMED THE COURT THAT HE WAIVED EXTRADITION ON DIFFERENT INDICTMENTS, AND A PERSONAL JURISDICTION ARGUMENT WAS FORTHWITH.

LIKewise COUNSEL HAS A DUTY TO INVESTIGATE MY CASE BOTH FACTUALLY AND LEGALLY,

SNEED "VS" SMITH, 670 F.2D. 1348 (4TH CIR. 1982):

STRICKLAND "VS" WASHINGTON, SUPRA. AND HE DID NOT.

THERE IS A REASONABLE PROBABILITY THAT IF COUNSEL WOULD HAVE ALERTED THE COURT OF THIS MATTER, I WOULD NOT HAVE BEEN CONVICTED OF THE CSC CHARGE, AND A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME.

[11-A-6]

I WOULD FURTHER CONTEND THAT TRIAL COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO REQUEST A JURY INSTRUCTION PERTAINING TO "IF THE APPLICANT WAS NOT FOUND GUILTY OF THE PREDICATE CHARGE, THEN HE COULD NOT BE FOUND GUILTY OF THE FOLLOWING CHARGES,

LUNCHENBURG "VS" SMITH, 79 F. 3D. 388 (4TH CIR. 1996).

THE PREDICATE CHARGE IN THIS CASE SUB JUDICE WAS BURGLARY IN THE FIRST DEGREE.

INASMUCH THE LANGUAGE IN THE BODY OF THE CHARGING INSTRUMENT FOR BURGLARY STATES IN HAEC VERBA:

APPLICANT DID WILLFULLY AND UNLAWFULLY ENTER THE DWELLING
OF HARRIETT WASHINGTON WITHOUT CONSENT AND WITH
INTENT TO COMMIT A CRIME THEREIN, AND DEFENDANT
OR ANOTHER PARTICIPANT IN THE CRIME DID CAUSE
PHYSICAL INJURY TO HARRIETT WASHINGTON"

IT IS AXIOMATIC FROM THIS LANGUAGE IN THE BODY OF THE INDICTMENT, THAT THE CHARGE OF BURGLARY IS THE PREDICATE OFFENSE, DO TO THIS BEING THE CHARGE THAT STATES (1) THAT APPLICANT ENTERED THE DWELLING OF HARRIETT WASHINGTON WITHOUT CONSENT, (2) WITH INTENT TO COMMIT A CRIME THEREIN, AND (3) AND CAUSED PHYSICAL INJURY TO HARRIETT WASHINGTON.

THE JURY HAS SPOKEN, AND APPLICANT WAS AQUITTED OF ALL THE ELEMENTS HERETO STATED.

IT IS PARAMOUNT THAT THIS COURT RECOGNIZE THAT WITHOUT THE BURGLARY CONVICTION, THE ENTIRE CASE FELL APART.

COUNSEL SHOULD HAVE REQUESTED A JURY INSTRUCTION TO PROTECT THE APPLICANTS RIGHTS IN THIS CASE, AND COUNSELS SHORTCOMINGS WERE PREJUDICIAL TO THE APPLICANT, BECAUSE THERE IS A REASONABLE PROBABILITY THAT IF COUNSEL WOULD HAVE REQUESTED AN INSTRUCTION IN THIS MATTER, THE COURT WOULD HAVE RECOGNIZED THE SIGNIFICANCE OF THE CHARGE FOR THE ELEMENTS BEING BRAIDED TOGETHER IN THIS CASE, AND IF THE COURT WOULD HAVE CHARGED THE JURY, THE WE MUST ASSUME THAT THE JURY WOULD HAVE FOLLOWED THE INSTRUCTION, AND THE OUTCOME COULD HAVE BEEN DIFFERENT, AND A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME, STRICKLAND "VS" WASHINGTON.

[11-A-7]

I WOULD FURTHER CONTEND THAT TRIAL COUNSEL WAS INEPT AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO REQUEST A JURY INSTRUCTION FOR THE JURY NOT TO CONSIDER FALSE EVIDENCE ADDUCED AT TRIAL.

TO REQUEST SUCH AN INSTRUCTION IS DEEPLY ROOTED IN THE 14TH AMENDMENT JURISPRUDENCE AND FEDERAL LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT,

MILLER "VS" PATE, 386 U.S. 1 (1967).

THE MILER COURT HELD THAT "THE 14TH AMENDMENT CANNOT TOLERATE A STATE CRIMINAL CONVICTION OBTAINED BY THE KNOWING USE OF FALSE EVIDENCE, ID. AT 788.

IN THE MILLER CASE THE FALSE EVIDENCE WAS PHYSICAL, OR TANGIBLE, HOWEVER IN THIS CASE THE EVIDENCE IS TESTIMONY ADDUCED AT TRIAL, HOWEVER TESTIMONY IS STILL EVIDENCE AND IT IS CO-EQUAL WITH PHYSICAL EVIDENCE FOR THE PURPOSES OF THE 14TH AMENDMENT.

FOR THE SAKE OF CLARITY, NO FALSE TESTIMONY SHOULD HAVE BEEN CONSIDERED BY THE JURY AT ALL TO PROVE THE INNOCENCE OR GUILT OF APPLICANT.

THE RECORD IN THIS CASE CLEARLY PORTRAY'S THAT THE TRIAL COURT INSTRUCTED THE JURY TO CONSIDER FALSE EVIDENCE, (TR.P. 599 L. 5-10), AND ON THAT IPSO FACTO IT IS EVIDENT THAT COUNSEL SHOULD HAVE REQUESTED AN INSTRUCTION IN THIS MATTER.

IT DEFIES ALL LOGIC UNDER THE AMERICAN JURISPRUDENCE, THAT A COURT WOULD CHARGE A JURY THAT IT COULD CONSIDER FALSE EVIDENCE. THERE IS A REASONABLE PROBABILITY THAT IF COUNSEL WOULD HAVE REQUESTED AN INSTRUCTION TO SUPPRESS FALSE EVIDENCE IN THIS CASE, THE OUTCOME COULD HAVE BEEN DIFFERENT, AND A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME.

[11-A-8]

I WOULD FURTHER CONTEND THAT COUNSEL WAS INEPT, AND
CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO OBJECT TO COURT
CHARGING THE JURY ON THE FACT'S IN THIS CASE,

(TR.P. 598 L.22-24)

IT IS THE CONSTITUTIONAL LAW IN THE STATE OF SOUTH CAROLINA THAT
"JUDGES SHALL NOT CHARGE JURIES IN RESPECT TO MATTERS OF FACT,
BUT SHALL DECLARE THE LAW, (S.C. CONST. ART. V, § 17).

STATE "VS" HARTLEY, 414 S.E. 2d. 182 (S.C.APP.1992)

STATE "VS" ATEs, 297 S.C. 316,377 S.E. 2D. 98 (1989).

ON THIS IPSO FACTO COUNSEL SHOULD HAVE OBJECTED TO THE JURY
INSTRUCTION ON THE FACTS IN THIS CASE.

[11-A-9]

I WOULD FURTHER CONTEND THAT MY TRIAL COUNSEL WAS INEPT AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO EFFECTIVELY ARGUE MY MURDER CASE DURING THE DIRECT VERDICT STAGE AT TRIAL.

FOR THE SAKE OF CLARITY, THE ACTING CORONER FOR ALLENDALE COUNTY TO WIT; "KIMBERLY POSTON STILL" (TR.P. 120 L.10-23) SPECIFICALLY AND UNEQUIVOCALLY TESTIFIED THAT A PATHOLOGIST GIVES HER AN OPINION AS TO HOW A PERSON DIED, NOTWITHSTANDING, THE CORONER IS THE PERSON WHO MAKES THE FINAL DECISION AS TO HOW A PERSON DIED, MOREOVER, AND WHO ACTUALLY SIGNS THE DEATH CERTIFICATE,

(TR.P. 132 L.15-25 THROUGH TR.P. 133 L.1-25).

DURING THE DIRECT VERDICT STAGE, COUNSEL DID INFORM THE TRIAL COURT THAT THE CORONER HAS NOT FORMED AN OPINION AS TO THE CAUSE OF DEATH, (TR.P. 456 L.18-20), HOWEVER TO REBUT THIS LANGUAGE THE PROSECUTOR INJECTED TO THE COURT THE LANGUAGE PER. SE. "THAT THE PATHOLOGIST SAID THE CAUSE OF DEATH WAS STRANGULATION DUE TO ASPHYXIATION (TR.P. 459 L.6-10).

THIS LANGUAGE BY THE PROSECUTOR APPEARS TO UNDER-CUT THE LANGUAGE BY THE CORONER, HOWEVER WHAT MAKES THIS MATTER PROBLEMATIC IS THAT TRIAL COUNSEL DID NOT INFORM THE COURT DURING THE DIRECT VERDICT STAGE THAT THE CORONER IS THE PERSON WHO GIVES THE FINAL DECISIONS IN DEATH MATTERS, NOT THE PATHOLOGIST, AND IF COUNSEL WOULD HAVE EFFECTIVELY ARGUED THIS RELEVANT FACT, IT COULD HAVE ILLUMINATED THAT THIS CASE WAS STILL PENDING IPSO JURE, AND THE TESTIMONY BY THE PATHOLOGIST NOTWITHSTANDING.

APPLICANT WAS PREJUDICED BY COUNSEL SHORTCOMINGS IN THIS MATTER, BECAUSE THERE IS REASONABLE PROBABILITY THAT IF COUNSEL WOULD HAVE EFFECTIVELY ARGUED THIS MATTER TO THE COURT, THE OUTCOME OF THIS CASE COULD HAVE BEEN DIFFERENT.

[11-A-10]

I WOULD FURTHER CONTEND THAT TRIAL COUNSEL WAS INEPT AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO ARGUE THE MOTION TO QUASH THE MURDER INDICTMENT CORRECTLY, (TR.P.10 L.15-25 THROUGH TR.P.15 L.1-2).

COUNSEL DURING THE MOTION HEARING DID NOT ARGUE THE TIME AS TIME IS RECOGNIZED IN THE LAW.

THE CHARGING INSTRUMENT DID CHARGE THAT THE MURDER OCCURRED "ON OR ABOUT MARCH 24TH, 2005.

LIKEWISE TIME IS AN ESSENTIAL ELEMENT OF MURDER, STATE "VS" RECTOR, 158 S.C. 212,155 S.E. 385 (1930), AND FOR AN ELEMENT TO BE SUFFICIENT, IT MUST BE "EXACT".

TO GIVE MY PROPOSITION SUBSTANCE AND WEIGHT, IN THE PRECEDENT UNITED STATES "VS" CINA, 699 F.2d. 853 (1983) THE COURT STATED "AN ESSENTIAL OR MATERIAL ELEMENT OF A CRIME IS ONE WHOSE SPECIFICATION WITH PRECISE ACCURACY IS NECESSARY TO THE VERY ILLEGALITY OF THE BEHAVIOR".

INSOFAR IN UNITED STATES "VS" DUKE, 940 F.2d. 1113 (1991) THE COURT STATED "THE LAW IS CLEAR, THAT THE USE OF ON OR ABOUT IN AN INDICTMENT RELIEVES THE GOVERNMENT OF PROVING THAT THE CRIME CHARGED ON A SPECIFIC DATE, ID. AT 1120.

IN STATE "VS" THOMPSON, 305 S.C. 496,409 S.E. 2D. 420 (S.C.APP.1991) THE COURT STATED: "WHERE THE DATE IS A MATERIAL ELEMENT OF THE OFFENSE, STRICT COMMON LAW PRACTICE REQUIRE AN INDICTMENT TO ALLEGE THE DAY, MONTH, AND YEAR WHEN THE OFFENSE WAS COMMITTED ID. AT 423, MEANING "ON OR ABOUT" SHOULD NOT BE THE LANGUAGE IN AN INDICTMENT FOR MURDER, INSOFAR IN STATE "VS" PIERCE, 207 S.E. 2D. AT 416 THE INDICTMENT FOR MURDER CHARGED THAT THE OFFENSE OCCURRED ON DECEMBER 18TH, 1974 WHICH IS THE CORRECT WAY TO CHARGE A DEFENDANT FOR THE OFFENSE OF MURDER,

THE TIME MUST BE SPECIFIC.

IN THIS CASE COUNSEL LITIGATED THE TIME AS A.M. OR P.M. WHICH IS OFF POINT ON THE LAW.

THERE IS A REASONABLE PROBABILITY THAT IF COUNSEL WOULD HAVE LITIGATED THIS MATTER CORRECTLY, THE OUTCOME COULD HAVE BEEN DIFFERENT, AND A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME.

[11-A-11]

I WOULD FURTHER CONTEND THAT TRIAL COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR MULTIPLE FAILURES TO OBJECT DURING TRIAL,

VELA "VS" ESTELLE, 708 F.2D. 954 (1983).

LIKEWISE THE FAILURES TO OBJECT IN THIS CASE WERE MAJOR AND PREJUDICIAL TO THE APPLICANT, TO WIT;

COUNSEL DID NOT OBJECT TO ME BEING TRIED ON CHARGES THAT I WAS NOT EXTRADICTED ON.

COUNSEL DID NOT OBJECT TO THE JURY INSTRUCTION FOR CSC IN THE FIRST DEGREE, WHEN THE INSTRUCTION DID NOT HAVE A MENS REA ELEMENT.

COUNSEL DID NOT OBJECT TO THE COURT NOT CHARGING THE ENTIRE LAW OF CSC IN THE FIRST DEGREE.

COUNSEL DID NOT OBJECT TO HIS DIRECT VERDICT MOTION BEING DENIED.

COUNSEL DID NOT OBJECT TO THE JURY INSTRUCTION FOR MURDER NOT CHARGING ALL THE ELEMENTS.

COUNSEL DID NOT OBJECT TO THE COURT CHARGING THE JURY THAT THEY COULD USE FALSE EVIDENCE AGAINST THE APPLICANT.

COUNSEL DID NOT OBJECT TO THE COURT CHARGING THE JURY ON THE FACTS OF THIS CASE.

COUNSEL DID NOT OBJECT TO THE COURT WHEN HIS POST TRIAL MOTIONS WERE DENIED.

THE SHORTCOMINGS OF COUNSEL WERE PREJUDICIAL, AND EVIDENT, THEREFORE STARE DESISIS INFORMS THIS COURT THAT COUNSEL WAS INEFFECTIVE.

(INEFFECTIVE ASSISTANCE OF APPELLATE COURT COUNSEL)

* * * * *

[11-B-1]

I WOULD CONTEND THAT MY APPELLATE COURT COUNSEL WAS INEPT AND CONSTITUTIONALLY INEFFECTIVE FOR FILING ME A NO MERIT ANDERS BRIEF ON APPEAL PURSUANT TO ANDERS "VS" CALIFORNIA, 386 U.S. 738 (1967).

LIKewise ACCORDING TO FEDERAL LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT, AN ANDERS BRIEF SHOULD ONLY BE FILED WHEN THE APPEAL IS [W]HOLLY FRIVOLOUS.

INASMUCH IN THIS PARTICULAR CASE THE APPEAL WAS NOT FRIVOLOUS AT ALL, AND THERE WERE SEVERAL ISSUES PRESERVED IN THE RECORD FOR APPELLATE REVIEW, TO WIT;

[A]. COUNSEL MADE A MOTION TO QUASH MY MURDER INDICTMENT (TR.P.10 L.15-25 THROUGH TR.P.15 L.1-2)

[B]. COUNSEL MOVED THE COURT FOR A MISTRIAL IN REGARD TO APPLICANTS TIGHT TO REMAIN SILENT WAS ENCROACHED UPON, (TR.P.273 L.9-25 THROUGH TR.P. 282 L.1).

[C]. COUNSEL HAD A MOTION TO SUPPRESS THE APPLICANTS STATEMENT (TR.P. 384 L.13-25 THROUGH TR.P. 407 L.1-4).

[D]. COUNSEL HAD A MOTION FOR A DIRECT VERDICT ON THE CHARGE OF CSC (TR.P.443 L.5-25 THROUGH TR.P. 452 L.1-7).

[E]. COUNSEL HAD A MOTION FOR A DIRECT VERDICT ON THE CHARGE OF MURDER, (TR.P.456 L.11-25 THROUGH TR.P. 460 L.1-5).

[F]. COUNSEL HAD A MOTION FOR MISTRIAL FOR A JUROR LYING TO GET ON THE PETIT JURY PANEL (TR.P.475 L.12-25 THROUGH TR.P.481 L.1-21).

[G]. COUNSEL OBJECTED TO THE CHAIN OF CUSTODY NOT BEING PROPER AS A MATTER OF LAW, (TR.P. 328 L.15-20).

[H]. COUNSEL MADE A MOTION FOR A DIRECT VERDICT OR MISTRIAL FOR

THE SPLIT VERDICT (TR.P.614 L.1-25 THROUGH TR.P.615 L.1-3).

IT MUST BE AMPLIFIED AND ILLUMINATED THAT ALL OBJECTIONS, AND MOTIONS IN THE CASE WERE RENEWED AT TRIAL FOR APPELLATE REVIEW (TR.P.601 L.23; TR.P.614 L.1-9).

IT IS RIDICULOUS, MOREOVER LUDICROUS THAT APPELLATE COURT COUNSEL FILED A ANDERS BRIEF IN THIS CASE WHEN THE CORONER HAD NO CAUSE OF DEATH FOR THE DECEASED.

LOOKING AT THE FOUR CORNERS OF THE APPEAL PROCESS, IT IS MORE THAT EVIDENT THAT APPELLATE COURT COUNSEL LAID DOWN ON APPEAL. IN JOHN "VS" COUGHLIN, 750 F. SUPP. 76 (1990) APPELLATE COURT COUNSEL WAS FOUND TO BE INEFFECTIVE FOR STATING THE APPEAL HAD NO MERIT, AND IT DID.

THIS COURT IS FACING THE SAME ISSUE IN THIS CASE.

[11-B-2]

I WOULD FURTHER CONTEND THAT APPELLATE COURT COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO INFORM ME THAT I COULD LITIGATE MY CASE ALL THE WAY UP TO THE U.S. SUPREME COURT, UNITED STATES "VS" SCOTT, 243 F.SUPP. 2D. 97 (2003).

[11-B-3]

I WOULD FURTHER CONTEND THAT APPELLATE COURT COUNSEL WAS INEPT, AND CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO COME VISIT ME IN PRISON TO CONSULT WITH ME ABOUT MY CASE.

IN EVERY "VS" ALABAMA, 308 U.S. 444 (1940) THE UNITED STATES SUPREME COURT STATED IN HAEC VERBA:

"THE DENIAL OF OPPORTUNITY FOR APPOINTED
COUNSEL TO CONFER, TO CONSULT WITH THE ACCUSED
AND TO PREPARE HIS DEFENSE, COULD CONVERT
THE APPOINTMENT OF COUNSEL INTO A SHAM, AND
NOTHING MORE THAN A FORMAL COMPLIANCE WITH THE
CONSTITUTIONS REQUIREMENT THAT AN ACCUSED BE
GIVEN THE ASSISTANCE OF COUNSEL"

IN SMITH "VS" ROBBINS, 120 S.CT. 746 (2000) THE COURT HELD THAT
THE PROPER STANDARD FOR ASSESSING THE EFFECTIVENESS OF APPELLATE
COUNSEL IS THE SAME STANDARD ENUNCIATED IN STRICKLAND "VS"
WASHINGTON, SUPRA.

IF THIS IS TRUE APPELLATE COURT COUNSEL MUST MEET WITH THE
APPLICANT TO ELICIT INFORMATION TO PREPARE FOR THE APPEAL.
APPLICANT WAS PREJUDICED BY APPELLATE COUNSELS INEPTITUDE, AND
SHORTCOMINGS OF NOT VISITING THE APPLICANT, BECAUSE COUNSEL FILED
A ANDERS BRIEF IN THIS CASE.

TRANSPORTATION COPY

WAIVER OF EXTRADITION PROCEEDINGS

ROANOKE CITY GENERAL DISTRICT - CRIMINAL [x] General District Court

VA. CODE ANN. § 19.2-114

[] Juvenile and Domestic Relations District Court

I, the undersigned Accused, have been arrested within the Commonwealth of Virginia, and stand charged with the commission of a crime committed in the state of SOUTH CAROLINA

DEMANDING STATE

The nature of the charge against me is as follows:
MURDER

I certify that I was brought this day before this Court, and that the Judge of this Court fully explained my rights concerning the issuance and service of the process of extradition, my right to be represented by a lawyer in extradition proceedings, and my right to petition for a writ of habeas corpus as provided by law.

Having been informed of the nature of the charge against me, and of my rights in extradition proceedings, I nevertheless waive my rights to issuance and service of process of extradition, and all other process or proceedings incidental to extradition, and I voluntarily consent to be extradited and transported from the Commonwealth of Virginia to the demanding state, there to answer the charges against me. I voluntarily submit myself to the custody of the authority designated to transport me to the demanding state.

Seen: (waived) (attorney for accused)

Subscribed and sworn to before me this day.

04/19/2005
DATE

FORM DC-375 (PAGE ONE OF ONE) 7/92 PDF

CASE NO.
GC05002973-00

WAIVER
OF

EXTRADITION PROCEEDINGS

STATE OF SOUTH CAROLINA

V.

ERIC PAUL HEMMINGWAY

ACCUSED

TRANSIENT

ROANOKE, VA

For use by Custodial Officer

AGENT OF DEMANDING STATE DESIGNATED
TO TRANSPORT THE ACCUSED.

NAME

TITLE

GIVEN INTO THE CUSTODY OF DESIGNATED AGENT:

DATE AND TIME

by

NAME

TITLE

2-5-10

DATE

Eric Hemingway
MR. ERIC P. HEMINGWAY, #290037
LIEBER C.I STONO UNIT
P.O. BOX 205
RIDGEVILLE S.C. 29472

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

I, ERIC HEMINGWAY, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Eric Hemingway
Applicant

SWORN or affirmed to and subscribed before me this

5th day of February 2010.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2010

ALLIED BUSINESS SERVICES

2010-02-05 14:12:09

2010-02-05 14:12:09

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Eric P. Hemingway, #290037,	)	2010-CP-03-15
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on February 9, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Allendale County Clerk of Court's orders of commitment. The Applicant was indicted at the December 2005 term of the Allendale County Grand Jury for murder (2005-GS-03-139), criminal sexual conduct (CSC) – 1st degree (2005-GS-03-143), and burglary – 1st degree (2005-GS-07-142). Steve Plexico, Esquire, represented the Applicant. On April 23-26, 2007, the Applicant proceeded to trial, after which a jury found him guilty as indicted. The Honorable J. Michelle Childs sentenced the Applicant to confinement for thirty (30) years for murder and fifteen (15) years for CSC – 1st degree. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Hemingway, Op. No. 2009-UP-563 (S.C. Ct. App. filed November

23, 2009). The Remittitur was issued on December 9, 2009.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to object to court's jury instruction for CSC – 1st degree.
 - b. Failed to object to trial court not charging the whole law for CSC – 1st degree.
 - c. Failed to effectively argue to the jury, and to the court during directed verdict stage, that Applicant's skin, hair, blood, or in the alternative, Applicant's DNA was not found under the fingernails of the deceased.
 - d. Failed to object to jury charge for crime of murder.
 - e. Failed to alert the court that Applicant did not waive his extradition rights to face the charge of CSC – 1st degree.
 - f. Failed to request a jury instruction pertaining to "if Applicant was not found guilty of the predicate charge, then he could not be found guilty of the following charges."
 - g. Failed to request jury instruction for jury not to consider false evidence adduced at trial.
 - h. Failed to object to court charging the jury on the facts in this case.
 - i. Failed to effectively argue murder charge during directed verdict stage.
 - j. Failed to argue the motion to quash the murder indictment correctly.
 - k. Failed to object multiple times during trial.
2. Ineffective assistance of appellate counsel in that counsel\
 - a. Filed an Anders brief.
 - b. Failed to inform Applicant that he could litigate his case all the way up to the U.S. Supreme Court.
 - c. Failed to visit Applicant to consult about the case.

Attached and incorporated herein by reference are the records of the Allendale County Clerk of Court, the records of the South Carolina Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated December 9, 2009.

III.

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

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

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper, 279 S.C. 264, 305 S.E.2d 247.

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

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

VI.

WHEREFORE, the Respondent requests an evidentiary hearing on the foregoing issues.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

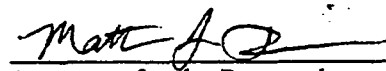
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for the Respondents

6/11, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

ERIC P. HEMINGWAY, 290037,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-03-15

AFFIDAVIT OF SERVICE BY MAIL

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

John J. Pinckney, Esquire
Law Office of Dean B. Bell, LLC
1 Corpus Christie Pl.
Hilton Head Island, SC 29928

DATED this 11th day of June, 2010.


 Molly A. Flowers, Legal Assistant
 For Respondent

State of South Carolina	)	In the Court of General Sessions
	)	Fourteenth Judicial Circuit
County of Beaufort	)	2010-CP-03-00015

Eric Hemingway,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	
	)	

September 1, 2011
Beaufort, South Carolina

B e f o r e:

The Honorable D. Craig Brown, Judge

A p p e a r a n c e s:

John H. Pinckney, Esquire
Attorney for the Plaintiff

Mathew J. Friedman, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>				<u>PAGE NO.</u>
	Direct	Cross	Redirect	Re-cross
		Eric Hemingway		
Mr. Pinckney	4			
		Stephen Plexico		
Mr. Pinckney	9			
Mr. Friedman		19		
Closing Argument/Mr. Pinckney				24
Closing Argument/Mr. Friedman				26
Decision by the Court				26
Certificate Page				28

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

DIRECT EXAMINATION BY MR. PINCKNEY - ERIC HEMINGWAY

4

1 THE COURT: Mr. Pinckney, you ready to proceed?

2 MR. PINCKNEY: Yes, Your Honor.

3 THE COURT: Mr. Friedman, you ready to proceed?

4 MR. FRIEDMAN: Yes, Your Honor.

5 THE COURT: Mr. Pinckney, call your first witness.

6 MR. PINCKNEY: I'd like to call the applicant, Eric
7 Hemingway, to the stand.

8 ERIC HEMINGWAY, having been first
9 duly sworn, testifies as follows:

10 THE COURT: Mr. Pinckney.

11 DIRECT EXAMINATION BY MR. PINCKNEY:

12 Q Good morning, Eric. Where are you currently
13 incarcerated?

14 A Leiber Correctional Institution, in Ridgeville, South
15 Carolina.

16 Q How long have you been there?

17 A Been like four years.

18 Q You filed this PCR application. The original one you
19 wrote yourself, right?

20 A Yes.

21 Q And then we've been to a PCR hearing twice. Once
22 where Judge Buckner was recused, right?

23 A Yes.

24 Q And then the next time, you thought you were going to
25 have private counsel, but for whatever reason, that's not

DIRECT EXAMINATION BY MR. PINCKNEY - ERIC HEMINGWAY

5

1 available today.

2 A Yes.

3 Q And your objective at this hearing is either to get a
4 directed verdict or a new trial.

5 A Yes.

6 Q Which would have been the directed verdict in that
7 case.

8 Who represented you at the trial?

9 A Stephen T. Plexico.

10 Q Is he today?

11 A Yes.

12 Q Now, some of the arguments in your original
13 application, you and I didn't quite agree on some of them.
14 In fact, we researched some of them and pushed some aside,
15 but some remain, right?

16 A Actually I amended my whole PCR application.

17 Q Right. Once. And then I've just submitted it again
18 recently.

19 A Yes.

20 Q Okay. So what -- what was your chief complaint
21 regarding the performance of your attorney at the trial?

22 A I wasn't satisfied with -- with his representation at
23 the trial because certain things he left out, which my
24 case revolved around DNA.

25 Q DNA.

1 A Yes.

2 Q And was -- in this case, was there a murder weapon?

3 A No.

4 Q The DNA -- was DNA test done?

5 A Yes, it was.

6 Q Was it conclusive ---

7 A Yes, it was.

8 Q --- to you?

9 A Yes, it was.

10 Q Conclusive or exclusive of you? Did it match you and
11 place you at the scene?

12 A No. It was no match.

13 Q Wasn't there a burglary charge in this case as well?

14 A Yes.

15 Q It was burglary, CSC, and murder.

16 A Yes.

17 Q What happened to the burglary charge?

18 A I got found not guilty on it.

19 Q Why is that?

20 A Can't ---

21 MR. FRIEDMAN: Objection, Your Honor.

22 THE COURT: He can answer the question if he knows.

23 A They couldn't -- they didn't have enough evidence to
24 prove that I -- I committed burglary.

25 Q And the burglary and the crime scene of murder and

DIRECT EXAMINATION BY MR. PINCKNEY - ERIC HEMINGWAY

7

1 rape was all the same place.

2 A Yes. It was braided together, all these charges.

3 Q All right. Did your attorney make a directed verdict
4 motion during the trial?

5 A No. No.

6 Q Did -- did he argue to the judge that because the
7 burglary case was thrown out --

8 A No, sir.

9 Q He didn't?

10 A No.

11 Q Okay. Did you testify at this trial?

12 A No, sir.

13 Q Who is Michael Williams?

14 A He was the State witness.

15 Q Did your attorney cross-examine him?

16 A Yes, he did.

17 Q If Michael Williams wasn't available, what kind of
18 case would the State have?

19 A No case at all.

20 Q Nothing matched you at the scene and -- and Michael
21 Williams not available, they wouldn't have a case.

22 A Correct.

23 Q Did -- when testifying, did Michael Williams say he
24 saw anything at the crime scene: Did he see a rape? Did
25 he see a murder? Did he see a burglary?

1 A No, sir.

2 Q Any other grounds that -- other than my -- which I'll
3 go through, other than my amended application of your
4 original one and your amended one that you want to bring
5 forward --

6 A No.

7 Q -- at this point?

8 A No.

9 Q Okay.

10 MR. PINCKNEY: That's the questions I have, Your
11 Honor.

12 THE COURT: Mr. Friedman?

13 MR. FRIEDMAN: No questions for this witness.

14 THE COURT: All right, sir. You may step down.

15 (The applicant complies.)

16 THE COURT: Any other witnesses, Mr. Pinckney?

17 MR. PINCKNEY: Stephen Plexico, the trial counselor.

18 STEPHEN PLEXICO, having been first
19 duly sworn, testifies as follows:

20 (Brief pause.)

21 THE COURT: Mr. Plexico.

22 MR. PLEXICO: Yes, Your Honor. How you doing?

23 THE COURT: All right.

24 Go ahead, Mr. Pinckney.

25 MR. PINCKNEY: Has he been sworn or --

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 9

1 THE COURT: He been sworn?

2 CLERK OF COURT: Yes, he has.

3 THE COURT: Okay.

4 DIRECT EXAMINATION BY MR. PINCKNEY:

5 Q Mr. Plexico, are you -- are you currently a public
6 defender?

7 A Yes, sir.

8 Q How long have you been in that role?

9 A January of 1990, about 22 years almost.

10 Q Okay. And at the time of this trial, 2005, you were
11 serving as a public defender for Allendale?

12 A Allendale and Hampton and Jasper.

13 Q And you've continued being a public defender in those
14 places since then.

15 A Yes, sir.

16 Q And during this -- prior to this trial, you had ample
17 opportunity to familiarize yourself with the facts of the
18 case.

19 A Yes, sir.

20 Q You know we're here to -- to find deficiencies in your
21 performance with 20/20 hindsight and some "computerated"
22 capabilities. It's no indictment against you, but I'm
23 going to ask you some questions about your performance.
24 Nobody's perfect. You had a lot of cases to do.

25 Are you familiar with the recent *Bostick* decision?

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 10

1 A I haven't had a chance to read that. No, sir.

2 Q But you're aware of it.

3 A I'm aware of it. Yes. It's out of Jasper County.

4 Q This year.

5 A I don't -- I -- it's recent.

6 Q Okay. And it's a 5-to-0 decision of the South
7 Carolina ---

8 A Yes, I recall.

9 Q --- Supreme Court handed down this year. And was
10 based on three other cases: the Arnold -- *State v.*
11 *Arnold*, *State v. Schrock*, *State v. Mitchell* cases.

12 THE COURT REPORTER: I'm sorry. The second case?

13 MR. PINCKNEY: Oh. *State v. Schrock*, S-c-h-r-o-c-k;
14 *Mitchell* and *Arnold*.

15 Q Which all pre-date the 2005 trial in this case. You
16 familiar with those cases?

17 A I -- not offhand, sir.

18 Q Okay. Now -- you know, this transcript is about 700
19 pages. It's kind of hard to read it at one sitting, but
20 I've looked through it several times and there's a --
21 there's a focus by you on something called "corpus
22 delicti." What is your understanding of that?

23 A Well, they have to show the body of the crime. They
24 have to show, for instance, before you can get a -- a
25 confession in, that the crime actually happened.

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 11

1 Say a crazy person says, "I broke in Mr. Smith's
2 house." Well, you talk to Mr. Smith, he's not missing
3 anything. There are no broken doors, no broken locks, no
4 broken windows, no apparent ability for anyone to have
5 gone in the house and taken anything. And it generally
6 just protects the public from wrongful convictions. They
7 have to show that a crime actually occurred.

8 Q Okay. In this case, you thought the State had a
9 problem with that.

10 A Yes, sir.

11 Q In fact, you focused on it quite a bit. And if I told
12 you you used that 21 times in the transcript, would that
13 be a ...

14 A Yes.

15 Q Do you always do that?

16 A Excuse me?

17 Q Do you always do that in a criminal trial, focus in on
18 that?

19 A No.

20 Q Or it's this kind of case, with circumstantial
21 evidence?

22 A Well, if you took -- if they -- if -- if they
23 discounted Michael Williams's testimony, what was really
24 left?

25 Q Right.

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 12

1 A Everything else was questionable.

2 Q Right. Circumstantial.

3 A And that was -- yeah. Right.

4 Q Circumstantial case.

5 A Right. I mean, there weren't any kicked-in doors. I
6 mean, the -- the police looked at the crime scene, thought
7 everything was okay. They -- they did the -- I mean, they
8 were -- they were on the way to the -- to the -- to the
9 cemetery ---

10 Q Right...

11 A --- with the body. I mean, you know ...

12 Q In fact, they went to Charleston for embalming before
13 they even charged murder. They didn't know it was murder.

14 A Well, they -- they ---

15 Q They didn't ---

16 A --- the jury found it was murder.

17 Q Sure.

18 A Let me put it that way.

19 Q The jury found it was murder. But the focus that I'm
20 going to point to today is your performance in not letting
21 it get to a jury. And that's what the *Bostick* and the
22 line of cases supporting *Bostick* are talking about. Okay.

23 And their facts are very similar in this case, meaning
24 circumstantial evidence, no murder weapon.

25 You know, reasonable suspicion that somebody did it.

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 13

1 Sure. And if you ask a jury to vote, sure, they might say
2 that. But it shouldn't really go to a jury under the
3 cases that I'm talking about.

4 Now, the corpus delicti argument that you use doesn't
5 really focus on the applicant. It focuses on the elements
6 of the crime; is that true?

7 A Yes, sir.

8 Q Okay. The -- the *Bostick* case is and -- and the cases
9 under it, they're related to corpus delicti, but it's
10 really about the circumstantial evidence against the
11 person, you know, the applicant: where he was, what -- in
12 one case it was he smoked the same cigarettes, the butts
13 were in the car, the car was at the crime scene. That
14 kind of thing. His fingerprints were on the lid in the
15 car. There was items in the burn pile at the defendant's
16 mother's house where the scene of the crime was. That
17 kind of stuff.

18 So you think you could have done a -- done a better
19 focus, so to speak, in hindsight? I know it's hindsight.

20 A Well, I mean, anyone can do anything better. But the
21 problem with this case was, "Hey, I -- I just rape her,
22 Dog."

23 When you go up to your buddy and you say, "I just rape
24 her, Dog," that is, you know, direct evidence, that is --
25 that's a statement against interest. That's going to get

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 14

1 it to a jury.

2 You know, if their circumstantial evidence is -- is
3 just -- if they can show evidence of a rape and -- and you
4 know, that's -- that's why I thought it went to corpus
5 delicti. I mean, he -- he -- since the jury believed
6 Michael Williams, I mean, they had direct evidence that he
7 did it. I mean, hey, "I robbed the store. I shot the
8 store clerk. I stole the money."

9 Q Uh-huh.

10 A I mean, you know, store clerk's dead; the money's
11 gone. I mean, that's -- that's -- that's what I thought
12 the killer was in the case.

13 So I thought the focus was on, you know, Michael
14 Williams's credibility and -- and the lack of evidence in
15 how they mislead I thought the -- the jurors, twisting the
16 evidence around that they did. I ---

17 Q But the focus of your ---

18 THE COURT REPORTER: I'm sorry.

19 THE COURT: Hold on a minute.

20 THE COURT REPORTER: I'm sorry. Say that again.

21 MR. PLEXICO: Twisting the evidence around; how they
22 mislead the jury, twisting the evidence around that they
23 did have.

24 Q Okay.

25 THE COURT: Thank you.

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 15

1 Q The focus of -- of my part of this application for PCR
2 is that the 21 references or so that you made to corpus
3 delicti wasn't about his confession or anything like that.
4 It was whether or not the State had a case at all,
5 regardless of what somebody told his buddy.

6 A Well, if I didn't want to remind the judge that --
7 that she had a duty to send it on to the jury, because
8 there was direct evidence that he had -- in fact, had
9 committed the crimes of which -- that which he was charged
10 with.

11 So I would not be good on my part at the directed
12 verdict stage to remind the judge that there was plenty of
13 evidence on the record. That would be the State's duty to
14 -- to do that.

15 I mean, I wouldn't want to emphasize that. I mean,
16 you might want to say it fast and skip over it. I mean,
17 you're not trying to mislead anybody, but I mean, fact is,
18 you know, "I just rape her, Dog," and you know, "Look what
19 she did to me." There were evidence of violence --
20 evidence of violence, rejection, I mean, fresh scratches.
21 That's what he's testifying to. I mean, it's going to the
22 jury. I mean ...

23 Q Do you have a copy of the transcript?

24 A Yes. Right here, sir.

25 Q I think it's two parts?

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 16

1 A Yes, sir.

2 Q Or two volumes. Look at page 458, line 5.

3 A I see -- yes. It's the -- this is the Court -- from
4 457. Okay. Judge Childs.

5 Q 458, line 5.

6 A (As read) "It has to be direct or substantial ---

7 Q Yeah.

8 (Mr. Pinckney and Mr. Plexico speak simultaneously.)

9 A --- "circumstantial evidence as opposed to a mere
10 suspicion of guilt." This is what Judge Childs is saying.

11 Q Okay. Why was he talking about that?

12 A Well, I had those four paragraphs -- one, two, three,
13 four -- could I review these on pages 456 to 457?

14 Q All right. Well, looks like you were talking corpus
15 delicti and he was talking suspicion of guilt, raising
16 suspicion of guilt; and not just circumstantial evidence,
17 but substantial circumstantial evidence. And you don't
18 use those words in this ---

19 A I use "dangerous speculation" it appears. And I'm
20 just glancing over it now.

21 Q Okay. Right. But you don't use the words "suspicion
22 of guilt" or "substantial circumstantial evidence."

23 A And I believe on -- (as read) "And without substantial
24 evidence, as a matter of fact, putting this to the other
25 two, too, which are the other two charges, Judge" -- this

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 17

1 is what I meant, adding that -- "without substantial
2 evidence to go to the jury, they're just speculating,
3 Judge. I believe it would be a failure of" -- should have
4 been -- "or due process violation, Your Honor, and would
5 be unfair to my client. And I think that's all I have to
6 say in regards to murder."

7 Q Okay. Was the DNA in this case conclusive placing ---

8 A Oh. The DNA was 99-point-something, which was
9 absolutely meaningless. The State SLED agent took the --
10 the crime lab testified to that.

11 He was one -- when you apply that to 40 million black
12 males or whatever it is, even though -- this is what I
13 meant and argued to the jury, they were trying to twist
14 everything around to make it look like that evidence, in
15 fact, that they didn't have, he was one -- I forget the
16 exact number and I apologize if I'm wrong -- my client was
17 one of a hundred thousand black males that was not
18 excluded from the possible rape suspects.

19 So -- and we don't know if there were 20,000 living in
20 Allendale or in the surrounding counties or -- or where
21 those other 100,000 suspects lived, because it's all
22 statistical probability. But if -- if my number is
23 correct.

24 I -- I was -- I argued that best I could. I -- I
25 still think it came down to Michael Williams.

DIRECT EXAMINATION BY MR. PINCKNEY - STEPHEN PLEXICO 18

1 Q All right. I agree with you there. And it's a tough
2 job to hand something to a jury and say it's 99 percent.

3 A It wasn't. I mean, it was ---

4 Q But that's what they said.

5 A That's -- that's -- they wanted to say it's -- this is
6 certainty, just completely certain for all practical --
7 not guilt beyond a reasonable doubt, not evidence beyond a
8 reasonable doubt, but certain.

9 Q Right. So it really didn't matter.

10 A Which was misleading, which it was not at all.

11 Q It is. Once you throw this dog to a jury, it's going
12 to get "guilty."

13 A All depends on whether or not they're listening.

14 Q You had a tough job.

15 A No. I mean, no. Not -- not necessarily. If you --
16 if you look at everything they didn't have, what they did
17 have was, "Hey, I rape her, Dog."

18 Q Okay.

19 A So the State went to Michael Williams and the
20 subsequent state -- statement to Michael Williams --

21 Q Yeah.

22 A -- which was not immediately reported. You know,
23 which could be explained in other ways. So if -- it went
24 to his credibility.

25 Q And that has a dramatic effect on the jury ---

CROSS-EXAMINATION BY MR. FRIEDMAN - STEPHEN PLEXICO 19

1 A Yeah. You know, I ---

2 Q --- more than the judge.

3 A I shot the store clerk and stole the money.

4 Q Yeah. And the decision on whether to put the case in
5 front of the jury is not the jury's decision.

6 A It's the judge's.

7 MR. PINCKNEY: And so, Your Honor, to sum -- sum up
8 ...

9 Q My -- my point here is that the -- your performance
10 might have been better allocated to the directed verdict
11 and the line of cases, and not so much the jury.

12 A I could have argued that more on point. You're
13 absolutely correct. I could have.

14 Q Thank you.

15 THE COURT: Mr. Friedman.

16 CROSS-EXAMINATION BY MR. FRIEDMAN:

17 Q Mr. Plexico, how long have you been practicing law?

18 A January of '90, I've been the public defender. I
19 think I was admitted in '89 or something or '88. I don't
20 remember now, actually.

21 Q How much of that time has been in criminal law?

22 A Almost all of it. Since January of '90 I've been the
23 public defender for Allendale, Hampton, and Jasper. I now
24 work for Gene Hood in the Fourteenth Circuit Defender's
25 Office, which now also includes Beaufort and Colleton as -

1 - in addition to the three. And I've -- if they need me
2 for something, I'll go. I was here trying a case -- a
3 state-wide grand jury case in our circuit.

4 Q And prior to this case, did you have any experience
5 with murder trials and criminal sexual conduct trials?

6 A Sure. I've been trying them since -- I think my first
7 one was in '91.

8 Q Do you recall about how many times you met with the
9 applicant?

10 A That I can't tell you. I went over; I talked with
11 him. You know, he had a record. He didn't want to
12 testify. You know, I explained to him that it's -- you
13 know, you have a right to remain silent. In fact, I tell
14 them "not a right to lie."

15 You know -- and you know, he didn't have anything to
16 put forward. It didn't help that his mother testified
17 against him either at trial, for all practical purposes.

18 Q His mother testified at trial?

19 A His mother testified at trial. She had made a
20 statement, denied making statement. She did not
21 unequivocally admit making the statement. Based on that,
22 they got the statement in to take to the jury room with
23 them. Sort of disastrous at the time as far as I was
24 concerned.

25 Q What was the nature of her statement?

CROSS-EXAMINATION BY MR. FRIEDMAN - STEPHEN PLEXICO 21

1 A Well, that he was quiet, he said he had hurt somebody,
2 if I remember the statement correctly -- I don't have it
3 in front of me -- and that he had had injuries. I mean,
4 you know, and he's going home to Orangeburg right after
5 the -- the alleged event.

6 Q Do you recall if you discussed the elements of the
7 charges and what the State is required to prove with the
8 applicant?

9 A Yes, I did. I did all that.

10 Q Did you discuss potential defenses with him?

11 A Yes. Well, I mean, he didn't -- I mean, you know, he
12 didn't have like an alibi, like, I was at the basketball
13 game, and you know, serving snacks and crackers to the --
14 and koolaid or whatever, or Gatoraid to the team. I mean,
15 you know, it's not like that.

16 Q Did you file any *Brady* or Rule 5 motions?

17 A Yes.

18 Q Did you review the discovery with him?

19 A I don't remember that specifically, but I think I had
20 to give him a copy of the file, if I remember right.
21 Don't hold me to that. But I mean, it wasn't anything he
22 was asking for he didn't get.

23 Q Did you tell him what the State's evidence was against
24 him?

25 A Yes. Yeah. He knew he had a right to testify.

1 Q Did he give you any potential witnesses to
2 investigate?

3 A No.

4 Q What kind of investigation did you do then?

5 A Far as I did?

6 Q (No audible response.)

7 A Okay. Well, I mean, I went over the file, and -- and
8 everything was pretty -- I mean, it's not like a -- a
9 whole lot you can do.

10 There wasn't anything to investigate because as far as
11 the -- the scene -- crime scene goes, I think something
12 was turned over, which they assumed when the lady died of
13 an aneurysm or a heart attack, since she was on so much
14 blood pressure medicine -- she had 13 times the amount in
15 her blood that -- that a doctor would normally prescribe
16 is what one witness said. Even though they weren't a
17 medical witness, it was pretty effective on our part.

18 They just assumed she -- she fell out and died, and --
19 to start with.

20 So there weren't any broken locks, broken windows. I
21 mean, there just wasn't anything there. I mean, you know,
22 nobody saw him come; nobody saw him leave. There was a
23 child. The child heard something, came in; the child was
24 told to go back to bed and that was it. That's what he
25 told Michael Williams, as he was choking and raping the

CROSS-EXAMINATION BY MR. FRIEDMAN - STEPHEN PLEXICO 23

1 woman, that the child came in, he said everything's all
2 right; go on back to bed.

3 But I mean, there wasn't a whole lot there. I mean,
4 that -- that was my whole point during the trial: What do
5 you really have, you know, but the statement that he gave
6 Michael Williams? I mean, they probably -- you know, not
7 even sure they would have tried the case.

8 Q Were you able to cross-examine Michael Williams at
9 trial?

10 A Yes.

11 Q Do you think you had enough time to prepare for trial?

12 A Yes.

13 Q And did you hear the applicant testify that you did
14 not file a directed verdict motion?

15 A I thought I argued all that. I did it best I could
16 what I felt the law was and to be effective.

17 Q So you did file a directed verdict motion?

18 A I didn't file one. I argued one.

19 Q I'm sorry. You argued one.

20 A Yes.

21 MR. FRIEDMAN: I have nothing further, Your Honor.

22 THE COURT: Anything further, Mr. Pinckney?

23 MR. PINCKNEY: Nothing further, Your Honor.

24 THE COURT: All right. Mr. Plexico, you may step
25 down.

1 (The witness complies.)

2 THE COURT: Anything further, Mr. Pinckney?

3 MR. PINCKNEY: I need to point out that -- that I did
4 file a memorandum and another supplemental amendment to
5 the application I'd like to --

6 THE COURT: When was that filed with the clerk?

7 MR. PINCKNEY: Two days ago.

8 THE COURT: All right. Because I don't have that.

9 MR. PINCKNEY: Right.

10 THE COURT: I don't think. Do you have one you can
11 hand up?

12 MR. PINCKNEY: I do. Just a moment, Your Honor.

13 THE COURT: Okay.

14 (Mr. Pinckney hands a document to the Court.)

15 (Brief pause as the Court reviews the document.)

16 THE COURT: Anything by way of argument, Mr. Pinckney?

17 MR. PINCKNEY: Yes, sir.

18 THE COURT: Happy to hear from you.

19 MR. PINCKNEY: Your Honor, my -- my focus is to take
20 some of the elements of the applicant's original pleading
21 regarding the predicate case of burglary that was thrown
22 out because they didn't have the evidence there.

23 THE COURT: The jury found him not guilty of that, did
24 they not?

25 MR. PINCKNEY: Yes, sir.

1 THE COURT: I mean, from what I saw in the packet
2 here, I mean, I saw the verdict form and that was ---

3 MR. PINCKNEY: Thrown out by the ---

4 THE COURT: --- either checked or circled "not guilty"
5 on the burglary.

6 MR. PINCKNEY: Okay.

7 THE COURT: Go ahead.

8 MR. PINCKNEY: The DNA inconclusive, but nevertheless
9 given to the jury, the -- the line of cases that I was
10 referencing, I have printed copies of those if Your Honor
11 --

12 THE COURT: Okay.

13 MR. PINCKNEY: That -- that 5-to-0 decision in the
14 *State v. Bostick*, although it came out this year, all the
15 cases which it cites that it stands on were pre-dating
16 this trial that we're talking about. They're very
17 similar. They lacked substantial circumstantial evidence.

18 The counselor in the trial of this case doesn't even
19 use those words. He uses "corpus delicti." He could have
20 used those. They're not magic words, but 5-to-0, those
21 are pretty good as a theory to use in a directed verdict
22 motion.

23 He did argue a directed verdict motion, but he didn't
24 focus on anything but -- well, he focused on corpus
25 delicti many times.

1 I submit to you that that was -- that was deficient in
2 this case, and that the applicant's PCR should be granted.

3 THE COURT: All right. Mr. Friedman, anything you
4 want to argue?

5 MR. FRIEDMAN: Just briefly -- briefly, Your Honor. I
6 would submit that the applicant's failed to meet his
7 burden.

8 Counsel did make a directed verdict motion in which he
9 argued that the State did not have substantial evidence.
10 He argued that the State's evidence was speculative, and
11 the directed verdict motion was denied.

12 He also testified that Michael Williams's testimony --
13 there's no way of getting around that. He was able to
14 cross-examine Mr. Williams, but that testimony came in
15 that the applicant had given a -- given a statement to him
16 that -- that he did the crime, and the jury found him
17 guilty.

18 For those reasons, we would ask the Court to deny and
19 dismiss the application.

20 THE COURT: All right. All right. I want to take a
21 look at what you handed up here.

22 MR. PINCKNEY: Thank you, Your Honor.

23 THE COURT: And I'll let you know. Thank you, Mr.
24 Pinckney.

25 MR. PINCKNEY: Yes, sir.

1 THE COURT: Mr. Friedman, do you have copies of these
2 amendments?

3 MR. FRIEDMAN: I do, Your Honor.

4 THE COURT: Okay. Just wanted to make sure you had a
5 copy.

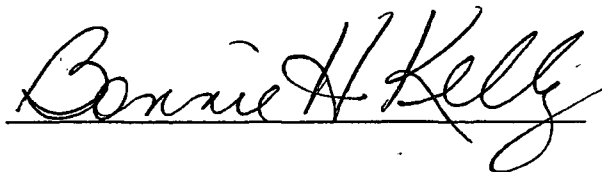
6

7 -- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, 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 all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, and to the best of my ability, in the Fourteenth Circuit Court, for Beaufort County, South Carolina, on the 1st day of September, 2011.

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

A handwritten signature in cursive script, reading "Bonnie H. Kelly", written over a horizontal line.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

September 25, 2013

FILED FOR RECORD)
STATE OF SOUTH CAROLINA)
2011 OCT 13 PM 2:09)
COUNTY OF ALLENDALE)
ELAINE SABB)
Eric Hemingway, #29003 CLERK OF COURT)
ALLENDALE COUNTY, S.C.)
Applicant,)
v.)
State of South Carolina,)
Respondent.)
ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 9, 2010, and amended on August 24, 2010, and August 30, 2011. The Respondent made its Return on June 11, 2010. An evidentiary hearing into the matter was convened on September 1, 2011, at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by John J. Pinckney, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Trial counsel, Stephen Plexico, Esquire, testified at the hearing. This Court had before it the records of the Allendale County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' opinion dismissing the appeal, the Remittitur dated December 9, 2009, the PCR application and amended applications, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Allendale County Clerk of Court's orders of commitment. The Applicant was

indicted at the December 2005 term of the Allendale County Grand Jury for murder (2005-GS-03-139), criminal sexual conduct (CSC) – 1st degree (2005-GS-03-143), and burglary – 1st degree (2005-GS-07-142). Stephen Plexico, Esquire, represented the Applicant. On April 23-26, 2007, the Applicant proceeded to trial, after which a jury found him guilty as indicted. The Honorable J. Michelle Childs sentenced the Applicant to confinement for thirty (30) years for murder and fifteen (15) years for CSC – 1st degree. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Hemingway, Op. No. 2009-UP-563 (S.C. Ct. App. filed November 23, 2009). The Remittitur was issued on December 9, 2009.

ALLEGATIONS

In his application and amended applications, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to object to court's jury instruction for CSC – 1st degree.
 - b. Failed to object to trial court not charging the whole law for CSC – 1st degree.
 - c. Failed to effectively argue to the jury, and to the court during directed verdict stage, that Applicant's skin, hair, blood, or in the alternative, Applicant's DNA was not found under the fingernails of the deceased.
 - d. Failed to object to jury charge for crime of murder.
 - e. Failed to alert the court that Applicant did not waive his extradition rights to face the charge of CSC – 1st degree.
 - f. Failed to request a jury instruction pertaining to "if Applicant was not found guilty of the predicate charge, then he could not be found guilty of the following charges."
 - g. Failed to request jury instruction for jury not to consider false evidence adduced at trial.
 - h. Failed to object to court charging the jury on the facts in this case.
 - i. Failed to effectively argue murder charge during directed verdict stage.

- j. Failed to argue the motion to quash the murder indictment correctly.
 - k. Failed to object multiple times during trial.
 - l. Engaged in improper closing argument that impermissibly invoked the Golden Rule argument.
 - m. Failed to object when the trial judge commented upon the facts of the case during his malice instructions to the jury that used examples directly relating to Applicant's case and in doing so prematurely directed a verdict for the State.
 - n. Failed to object to the burden-shifting jury instructions when the trial court failed to instruct the jury they could "accept or reject" the instructions that "malice is implied from the use of a deadly weapon."
 - o. Failed to argue that the State's evidence only raised a suspicion of guilt and not guilt itself beyond a reasonable doubt and that the State's evidence submitted in the trial of this case did not rise to the level of substantial circumstantial evidence necessary to submit the case to the jury. See State v. Bostick, 703 S.E.2d 774, 392 S.C. 134 (2011).
2. Ineffective assistance of appellate counsel in that counsel
- a. Filed an Anders brief.
 - b. Failed to inform Applicant that he could litigate his case all the way up to the U.S. Supreme Court.
 - c. Failed to visit Applicant to consult about the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant testified that counsel did not make a directed verdict motion. He testified that the State had no case without Michael Williams' testimony. He asserted that he did not testify at trial.

Trial counsel testified that he had enough time to prepare for trial. He asserted that he

explained the right to testify to Applicant, and Applicant indicated that he did not want to testify at trial. Counsel testified that Michael Williams' testimony was damaging to Applicant, but he focused on Mr. Williams' credibility and the State's lack of evidence. He contended that there was no getting around Mr. Williams' testimony that Applicant came over after the incident and told Mr. Williams that he just raped the victim. Counsel testified that the State's DNA evidence was meaningless and he tried to argue to the jury that the State was twisting the evidence around, but he asserted that it came down to Mr. Williams' credibility. Counsel testified that he reviewed the evidence with Applicant, went over the file, and argued that the State lacked sufficient evidence to convict Applicant.

Counsel testified that he made a motion for a directed verdict. He testified that he argued corpus delicti because he thought the State had a problem showing the body and elements of the crimes. He testified that he argued there was not substantial evidence and that the State's evidence was speculative.

Ineffective Assistance of Trial Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCR; 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 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate 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." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that counsel's testimony was credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, reviewed the discovery with Applicant, conducted a proper investigation, and was thoroughly

competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly argued that there was not substantial evidence and that the State's evidence was speculative. The Applicant cites State v. Bostick, 703 S.E.2d 774, 392 S.C. 134 (2011), which was decided after this trial and was from a direct appeal. Here, counsel was not deficient in his presentation of the case. Counsel focused on Mr. Williams' credibility and the State's lack of evidence. Ultimately, the jury found that Mr. Williams was credible and found Applicant guilty of murder and CSC – 1st degree.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of October, 2011.



The Honorable D. Craig Brown
Presiding Judge
14th Judicial Circuit

Florence, South Carolina.

WITNESSES

✓ Sheriff Tom Carter

✓ Inv. Donnie Hutto

ARREST WARRANT #:

D701828

Arrested on April 20, 2005

ACTION OF GRAND JURY

11-18-05

J. Bill

Foreman:

Shirley S. Liberman
Grand Jury

VERDICT

Guilty

Foreman:

Lance McPeters
Petit Jury

Date:

4/26/07

DOCKET #: 05GS03-0139

THE STATE OF SOUTH CAROLINA
County of Allendale

COURT OF GENERAL SESSIONS

Term: December, 2005

THE STATE

vs.

Eric Hemingway

INDICTMENT FOR

0116

MURDER

16-3-20

STATE OF SOUTH CAROLINA)
) **INDICTMENT #05GS03-0139**
County of Allendale)

At a Court of General Sessions, convened on December 12, 2005,
the Grand Jurors of Allendale County present upon their oath:

COUNT: **MURDER**
 16-3-20

That Eric Hemingway did in Allendale County on or about March 24, 2005,
feloniously, wilfully and with malice aforethought, kill one Harriett
Washington by means of choking her and hitting her in the head, and that the
said Harriett Washington did die in Allendale County as a proximate result
thereof on or about the 24th day of March, 2005.

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

SOLICITOR



WITNESSES

Inv. Donnie Hutto

Sheriff Tom Carter

ARREST WARRANT #:

D701845

Arrested on April 26, 2005

ACTION OF GRAND JURY

*11-18-05**True Bill*

Foreman:

Shelby S. Robinson
Grand Jury

VERDICT

Guilty

Foreman:

Leanne M. Anderson
Petit Jury

Date:

4/26/07

DOCKET #: 05GS03-0143

THE STATE OF SOUTH CAROLINA
County of Allendale

COURT OF GENERAL SESSIONS

Term: December, 2005

THE STATE

vs.

Eric Hemingway

INDICTMENT FOR

0160

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

(16-3-652)

STATE OF SOUTH CAROLINA)
)
) **INDICTMENT #05GS03-0143**
County of Allendale)

At a Court of General Sessions, convened on December 12, 2005,
the Grand Jurors of Allendale County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE
(16-3-652)

That Eric Hemingway did in Allendale County on or about March 24, 2005, wilfully and unlawfully engage in criminal sexual conduct in the first degree in that Eric Hemingway, engaged in sexual battery, to wit: did have sexual intercourse with Harriett Washington and did use aggravated force to accomplish such sexual battery.

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

SOLICITOR

SOLICITOR Pamela Munday