

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jan 29 2026

Certiorari to Berkeley County

S.C. SUPREME COURT

Honorable Michael G. Nettles, Circuit Court Judge

TELLY MCCLAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001993

APPENDIX

WANDA H. CARTER
Interim Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DANIELLE E. DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED FEBRUARY 29-MARCH 3, 2016	1
APPLICATION FOR POST-CONVICTION RELIEF	718
RETURN.....	727
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	733
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 10, 2022	737
POST CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 9, 2024.....	799
COURT’S EXHIBIT NO. 1 (ACKNOWLEDGEMENT OF SERVICE).....	837
COURT’S EXHIBIT NO. 2 (CERTIFIED MAIL RECEIPT)	838
COURT’S EXHIBIT NO. 3 (OFFER LETTER).....	840
ORDER OF DISMISSAL.....	841
MOTION TO ALTER OR AMEND JUDGEMENT	856
ORDER DENYING MOTION TO ALTER OR AMEND JUDGEMENT	860
INDICTMENTS	861

1 (Whereupon, the following proceedings
2 were had in the Court of General Sessions, March 2,
3 2016, Berkeley County, at 9:34 a.m.)

4 THE COURT: State ready to proceed?

5 MS. WILLIAMS: I have a couple of
6 matters to bring to the Court's attention if it's
7 okay. I just want to understand when the Court is
8 going to make a finding under 15-23-500. My
9 understanding is that Mr. Schwacke is not waiving
10 that element of the crime, that you make a finding
11 that he is, that his client has been convicted of
12 the --

13 THE COURT: You haven't completed your
14 case yet, so it's not appropriate for me to make
15 any findings.

16 MS. WILLIAMS: But I just wanted to
17 make sure, because I didn't know when we were
18 supposed to read the stipulation and I didn't want
19 to read it at the end of our case, which is when I
20 would have done it, until the finding is made.

21 THE COURT: Why would I make a finding
22 before you have met your elements?

23 MS. WILLIAMS: I think you can --

24 THE COURT: I can, but I'm not. You
25 need to make your entire case; you have the burden

1 of proof. And then it's only appropriate for the
2 Court to make findings at that time. Or at the
3 conclusion of his case, either way.

4 MS. WILLIAMS: Well, I can't read my
5 stipulation until the Court has made the finding
6 under that statute and --

7 THE COURT: Why wouldn't you be able to
8 read your stipulation before then?

9 MS. WILLIAMS: Because we haven't -- I
10 think the Court --

11 THE COURT: You have an element of
12 proof and you-all have agreed to it.

13 MS. WILLIAMS: Mr. Schwacke has agreed
14 to how it gets presented to the jury. He's not
15 waiving the element of the fact that his client has
16 to be found by the Court --

17 THE COURT: I understand that, but I'm
18 not going to make a finding until you have finished
19 your case. I don't think it's appropriate that I
20 make a finding.

21 MS. WILLIAMS: That's fine. If you
22 would just let me know when that's going to be so I
23 can read my stipulation before --

24 THE COURT: I think you need to do
25 whatever you need to do to meet your elements of

1 proof.

2 MS. WILLIAMS: In our opinion we have
3 met the elements of proof, except the one that we
4 have no control over, which the Court has to make.
5 We've given you a certified conviction, we've
6 presented evidence about him having the gun. We
7 just need, outside of the presence of the jury, at
8 some point --

9 THE COURT: I've never had a Court make
10 a finding before you complete your case. I've
11 never seen it done that way. You still have to
12 meet your elements of proof, and then at the
13 appropriate time I make any findings of fact. I
14 don't make findings of fact before you've completed
15 your case.

16 And, actually, most times it's not done
17 until the end of the entire totality of the case is
18 presented. But you have an element of proof to
19 meet. So if you already have a stipulation, that
20 means he's already agreed that it's uncontroverted
21 that that comes into evidence. The only way a
22 stipulation comes into evidence is if one of you
23 agrees to read or publish it.

24 MS. WILLIAMS: He's not agreed to that
25 part of the statute.

1 THE COURT: He has agreed to the
2 publication of your stipulation. That's the only
3 thing you need to be concerned about. And you are
4 correct, you cannot control when the Court makes
5 its findings of fact. That is not really for your
6 concern. You need to be concerned about your
7 element of proof and present your case in that
8 regard.

9 MS. WILLIAMS: We will be aware of our
10 own elements of proof that we have control over.

11 The other thing I wanted to just put on
12 the record is that Mr. Schwacke's case and the
13 questions that he's asked and the proof that he's
14 about to present all have to do with the fact that
15 the victims did not run away when they had small
16 windows of time when the gun wasn't directly on
17 them.

18 The evidence that I wanted to proffer
19 during Deadrene's testimony was that five days
20 before, she had reported, she had run to the
21 police --

22 THE COURT: I have already made a
23 contemporaneous ruling on that.

24 MS. WILLIAMS: And I understand that,
25 Your Honor, but I just -- just for possible

1 rebuttal --

2 THE COURT: You don't need to make an
3 additional record. Rule 18 provides that once the
4 Court has -- I've allowed you to make your
5 statement, that's why I record all bench
6 conferences, and I've already ruled
7 contemporaneously on it. And I have reserved
8 whether he opens the door or not. I don't know if
9 that's going to happen. I have no idea.

10 MS. WILLIAMS: The only thing I just
11 wanted to add, because I didn't give you all of the
12 details, if it would come in later or on rebuttal
13 or on cross, is that the police told her she could
14 not -- they didn't believe her --

15 THE COURT: You told me that at bench
16 conference.

17 MS. WILLIAMS: Okay.

18 THE COURT: You said that, I heard you
19 and I made a ruling.

20 MS. WILLIAMS: The other concern we
21 had, we did find the burglary second was based on
22 stealing, but apparently there is a fairly new case
23 called Christopher --

24 THE COURT: Yeah, I'm aware of it, but
25 I still needed to know if it was based on a theft,

1 because there is another case that deals with that
2 as well, that deals with the clarification of the
3 Al-Amin precedent. So all of that is premature
4 until he actually testifies. I needed to know all
5 that information so that I could make a ruling at
6 the appropriate time so that I can advise him as to
7 whether he plans to testify.

8 MS. WILLIAMS: I understand. And I
9 apologize to the Court that we didn't have it handy
10 yesterday, and it's not an excuse but we have had a
11 lot of difficulty with some of his convictions
12 appearing on his rap sheet and the public index.
13 We did finally get the files ordered, and it's
14 certainly not an excuse, it's a three-year old
15 case, but we did find out that he was on probation
16 until March 1, 2012, and then he was on community
17 supervision after that; and that the burglary first
18 was not based on theft, but the burglary second was
19 based on him breaking into the detached garage of a
20 residence without consent, stealing an electric
21 drill, Black and Decker jig saw, a Craftsman
22 compound, miter saw. All items approximately
23 valued at \$680.

24 And he pled guilty to that at the same
25 time as all those other crimes, even though it was

1 two separate victims, and went to prison. At that
2 time the range of burglary, nonviolent, was 0 to
3 15, because it was before 2010. So he went to
4 prison until March 1, 2012.

5 THE COURT: Okay. Is there anything
6 else we need to take up before you proceed with the
7 next witness?

8 MS. WILLIAMS: I think Mr. Schwacke is
9 objecting to our next witness, which is our last
10 witness, Alyssa Rheingold, who is our expert.

11 MR. SCHWACKE: I'm not objecting. I'm
12 going to get to the point where I might have to
13 object, once we get through the qualifications
14 standpoint, she's going to qualify her as an
15 expert; if I don't have any questions after that --

16 THE COURT: State ready to proceed?

17 MS. WILLIAMS: Yes, Your Honor.

18 THE COURT: Is the defense ready to
19 proceed?

20 MR. SCHWACKE: Yes, ma'am.

21 THE COURT: Please bring in the jury.

22 (Jury in, 9:41 a.m.)

23 THE COURT: You may be seated. Good
24 morning, ladies and gentlemen. I hope that you all
25 had a pleasant evening recess. We will now resume

ALYSSA RHEINGOLD - DIRECT EXAM

1 with the presentation of testimony, and I would ask
2 that you give Counsel your undivided attention.

3 You may proceed.

4 MS. WILLIAMS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MS. WILLIAMS: The State would call
7 Alyssa Rheingold.

8 ALYSSA RHEINGOLD,

9 being first duly sworn, testified as follows:

10 THE CLERK: Have a seat, please state
11 your full name for the record and spell your last.

12 THE WITNESS: Alyssa Rheingold,
13 R-H-E-I-N-G-O-L-D.

14 THE COURT: You may proceed.

15 MS. WILLIAMS: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 DIRECT EXAMINATION

18 BY MS. WILLIAMS:

19 Q. Dr. Rheingold, could you tell us a
20 little about your educational background and
21 training?

22 A. Yes. I went to University of
23 Pennsylvania for my undergraduate degree, where I
24 graduated with honors cum laude majoring in
25 psychology in 1996, and then I went on to graduate

ALYSSA RHEINGOLD - DIRECT EXAM

1 studies at M. C. P. Hahnemann University, which is
2 currently known as Drexel University, for clinical
3 psychology. I received my Master's in 1998 and
4 then my PhD in clinical psychology in 2001.

5 Q. And what is your position now?

6 A. I'm currently a professor and licensed
7 clinical psychologist at the National Crime Victims
8 Research and Treatment Center at the Medical
9 University of South Carolina.

10 Q. How long have you been there?

11 A. I have been at MUSC since 2000. I
12 completed a psychology internship there as part of
13 my graduate program for a year and then I stayed on
14 for two years as a postdoctoral fellow specializing
15 in adult and child trauma research. And then I've
16 been a faculty member since 2003.

17 Q. What did your postdoctoral fellowship
18 involve?

19 A. It was a two-year fellowship where I
20 mainly focused on research in the area of trauma
21 and traumatic response for adults and children. I
22 also did some clinical -- work in the clinical area
23 of trauma and treating mental health reactions to
24 traumatic events.

25 Q. Have you gotten any awards or

ALYSSA RHEINGOLD - DIRECT EXAM

1 commendations during your tenure?

2 A. Yes. I received the MUSC Foundation
3 Outstanding Clinician Award, which is given to two
4 out of I think it's about 1500 clinicians at MUSC,
5 for my work working with victims of crime.

6 Q. Have you presented any presentations?

7 A. I have. Part of my academic work, I
8 present at national and international conferences,
9 as well as regional, state, local type of
10 conferences, and I have presented probably over
11 about a hundred different presentations.

12 Q. How about any publications?

13 A. I've published about 50 articles and
14 chapters, 35 of those are peer review journals,
15 predominantly in the area of trauma.

16 Q. And in your present position, do you
17 still see patients?

18 A. Yes.

19 Q. Go ahead.

20 A. So I direct the clinical operation at
21 the Crime Victims Center. I'm in charge of both
22 our office-based adult and child clinics, as well
23 as our outreach -- community outreach program. We
24 provide services in the community for victims of
25 crime. As part of my duties, I do see patients

ALYSSA RHEINGOLD - DIRECT EXAM

1 myself, and I also supervise psychology interns,
2 psychiatry residents, and several full-time
3 clinicians.

4 Q. You said you supervise other
5 clinicians?

6 A. Yes.

7 MS. WILLIAMS: Your Honor, at this time
8 we would offer Dr. Rheingold as an expert in the
9 field of psychology, in the field of impact trauma.

10 THE COURT: I'm sorry, I didn't hear
11 you.

12 MS. WILLIAMS: We would offer her as an
13 expert in the field of psychology, specifically in
14 the field of impact of trauma and domestic
15 violence.

16 MR. SCHWACKE: Your Honor --

17 THE COURT: Any questions or
18 objections?

19 MR. SCHWACKE: I do have an objection.

20 THE COURT: Please approach.

21 (Bench conference.)

22 THE COURT: What is your objection?

23 MR. SCHWACKE: Just to the --

24 THE COURT: I think she can talk about
25 trauma, but there's no evidence of CDV in the

ALYSSA RHEINGOLD - DIRECT EXAM

1 record, so it wouldn't be relevant or appropriate
2 until such time that it's raised.

3 Now, if they raise it in their
4 presentation of the case, then you may be able to
5 call her back and rebut it, but at this point, it's
6 not relevant.

7 MS. WILLIAMS: Okay.

8 THE COURT: It's not probative on any
9 issue.

10 MS. WILLIAMS: Okay.

11 (End of bench conference.)

12 THE COURT: Now, with that ruling, is
13 there any exception to her admission in the area of
14 impact of trauma?

15 MR. SCHWACKE: No, Your Honor.

16 THE COURT: You may proceed with that
17 qualification.

18 MS. WILLIAMS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 BY MS. WILLIAMS:

21 Q. Now, Dr. Rheingold, have you had an
22 opportunity to treat patients that have been
23 through traumatic events?

24 A. Yes.

25 Q. And have some of those patients been

ALYSSA RHEINGOLD - DIRECT EXAM

1 sexually assaulted?

2 A. Yes.

3 Q. And have you had an opportunity to deal
4 with some of the symptoms that they deal with on an
5 ongoing basis?

6 A. Yes.

7 Q. And have you been able to then in your
8 work do research and get an understanding of what
9 the field of psychology wisdom is about what people
10 go through after they've been through a traumatic
11 event?

12 A. Yes.

13 Q. And if someone had hypothetically just
14 been raped, and in the hours after the rape, is it
15 possible that they would go through what some
16 people refer to as a freeze state?

17 A. Yes. And may I clarify? So some
18 victims of trauma right after a traumatic event
19 could have a host of reactions. So there isn't one
20 set sort of immediate reaction that anyone
21 experiences; however, a lot of victims of trauma
22 experience what is called sort of fight, flight, or
23 freeze reaction, where they're either just -- in a
24 survival type of behavioral response to protect
25 themselves, either by fighting, getting out, or

ALYSSA RHEINGOLD - DIRECT EXAM

1 freezing. Sort of -- in sort of a playing possum,
2 if you will, type of response, where it's a
3 survival mechanism to do what you can in that
4 moment to protect yourself and to emotionally cope
5 through it as well.

6 THE COURT: Doctor, could you pull the
7 microphone closer to you so we can hear you?

8 You may continue, Ms. Williams.

9 BY MS. WILLIAMS:

10 Q. And what does emotionally numb mean?

11 A. It's a term used to describe some
12 victims' response to trauma as a way of coping. So
13 if someone experiences a horrific traumatic event,
14 it could be very difficult to manage some reactions
15 to that and so they may as a way to try to avoid or
16 cope and deal with it, sort of avoid the emotions
17 and -- to the point where they report feeling numb.
18 They don't feel any sort of emotions tied to that
19 or tied to other sorts of emotions as well.

20 Q. Is it fair to say that someone just
21 kind of goes through the motions?

22 A. Yes. So some victims will report kind
23 of like going through the motions, feeling inside
24 kind of like a zombie, not experiencing any emotion
25 at all. Sort of going through their routine as a

ALYSSA RHEINGOLD - DIRECT EXAM

1 way to cope.

2 Q. And hypothetically, if there was a
3 victim that was sexually assaulted and in such fear
4 of her rapist that she urinated on herself and was
5 just terrified of him and remained with him all
6 day, would it be unusual that she would just do
7 everything that he said?

8 A. So it wouldn't be unusual if someone
9 has just experienced a traumatic event and perhaps
10 if they've been exposed to -- especially if they
11 were exposed to ongoing violence, that they would
12 try to continue to do what they feel like they need
13 to do in order to protect themselves. And that
14 might be out of fear or threat of future harm.

15 Most often, sexual assault victims
16 don't go immediately running and disclose that
17 they've been sexually assaulted. Most actually
18 don't even report to authorities shortly after.

19 Q. And if you add to that hypothetical
20 that intermittently the assailant had a gun, she
21 knew he had a gun, would that then heighten her
22 sense of wanting to survive and doing everything
23 that he said, even when he didn't have the gun
24 directly on her?

25 A. I would assume, if somebody has been

ALYSSA RHEINGOLD - DIRECT EXAM

1 threatened with a gun, it would increase the
2 potential risk for their safety and interpretation
3 of future safety.

4 Q. So have you come across cases where
5 someone has been in a situation where their freedom
6 has been restricted, they're not allowed to go
7 where they want to go because someone is holding
8 them by force, but then there's windows of
9 opportunity where, looking in as a person that
10 hasn't been through the traumatic event, looking in
11 from a different perspective like us, that it seems
12 like maybe they would have a window to run away or
13 to tell somebody?

14 You know, how is that explainable, if
15 you've been through a traumatic event just hours
16 before? How is that to be understood in terms of
17 their psyche?

18 A. You know, every case is sort of unique
19 and different, and so trauma victims -- when
20 someone has just experienced a trauma, it impacts
21 their thought process, it impacts their
22 concentration, their ability to sometimes think
23 clearly.

24 They're also still concerned about the
25 potential threat of harm, and there is a concern,

ALYSSA RHEINGOLD - DIRECT EXAM

1 even if they do potentially reach out for help,
2 that they're not going to be believed or helped,
3 and if so, then they potentially have put
4 themselves at greater risk, so...

5 Q. What about if you had a victim who was
6 in fear of a family member for a child's safety and
7 knew what the defendant was capable of, like what
8 had -- already was afraid of him, and yet did not
9 run away at periods of time when the average person
10 might look and say, well, you know, why didn't you
11 run away?

12 How does that play into it, fear for
13 family members, particularly children, and
14 historical knowledge of and fear of the defendant?

15 A. It definitely plays a role. So if --
16 if you're a victim of trauma and it's perpetrated
17 -- especially by someone that you know, and there
18 has been ongoing violence either to yourself or
19 children or family members or even just threats, in
20 the sense of coercion and threats by that
21 individual, that it definitely impacts your
22 willingness to report and to seek help.

23 A lot of trauma victims in those
24 instances report feeling concerned that they're not
25 going to be believed, they're scared, frightened in

ALYSSA RHEINGOLD - DIRECT EXAM

1 these instances.

2 Q. And I'm assuming in your practice you
3 see that different patients cope with hostage
4 situations and trauma situations and sexual assault
5 situations in many different ways?

6 A. Yes. So there isn't one set way a
7 victim sort of should respond. There is a wide
8 variety of reactions.

9 Q. And everybody is different?

10 A. Correct.

11 Q. And have you ever seen victims who take
12 the approach to just try to go along with the
13 person that is holding them, hoping that they can
14 convince them to let them go? Have you ever seen
15 that kind of situation when the two people know
16 each other?

17 A. So if the perpetrator is somebody that
18 the victim knows, they are much more likely not to
19 report and much more likely to stay in that
20 relationship longer, than if it was a stranger or
21 an acquaintance. They are much more likely to --
22 to stay in the relationship. Some of it is out of
23 fear. Some of it is out of shame and guilt,
24 especially if it's violence within a family. There
25 is some -- folks believe it's a personal matter to

ALYSSA RHEINGOLD - DIRECT EXAM

1 manage and deal with, and sometimes they just feel
2 like no one is going to help or believe them.

3 Q. What would be some of the reasons why
4 someone in a relationship like that wouldn't tell
5 family members on either side about what's going
6 on? Maybe family members wouldn't even know there
7 was anything wrong in their relationship.

8 A. That's actually very common. So a lot
9 of victims who are being abused within a
10 relationship feel shame, they feel -- still feel a
11 lot of threats. So if they've been threatened or
12 coerced or intimidated by the perpetrator, that
13 might increase their unwillingness to want to talk
14 to others or to seek help.

15 Q. And I'm not really sure how to phrase
16 this because it's not a scientific question, but
17 some victims in a relationship where trauma occurs
18 run away and others think they can sort of talk the
19 guy out of it. Is that just a difference in
20 personalities or is that impacted by how long
21 they've been in the relationship, economic
22 dependence, education levels? What are some of the
23 factors that make one woman think -- like a family
24 member might come in and go, you need to get out.
25 And she's like, no, no, sometimes he's nice. I can

ALYSSA RHEINGOLD - DIRECT EXAM

1 talk him out of this. Does that occur and is there
2 something clinical that you see in your practice?

3 A. So, yes, a lot of victims that I work
4 with, if violence is occurring within a
5 relationship, there's more than just the violence
6 that's occurring. Often there is other sort of
7 power/control type of behaviors that are occurring,
8 so that victims then feel obligated to remain in
9 the relationship: Intimidation, minimizing the
10 victimization, using finances as a -- feeling
11 financially tied to the perpetrator, using
12 children, threatening to harm individuals, social
13 isolations of keeping that person perhaps from
14 others. Those are all sort of dynamics that often
15 sometimes keep the individuals in those
16 relationship.

17 Q. Have you found in your practice that
18 family members of the victims often figure it out a
19 lot sooner than the victims?

20 A. Yes. So sometimes in these
21 relationships, folks become isolated, sometimes or
22 often because family members see that abuse is
23 occurring or see that violence is occurring and
24 they try to seek them out and say, you need help,
25 and the victim sometimes does not -- doesn't do

ALYSSA RHEINGOLD - DIRECT EXAM

1 that for reasons that I mentioned, and sometimes
2 that can then make them feel isolated, that they
3 have the support or that those individuals then
4 sometimes pull away.

5 Q. Now, you talked a little bit about
6 flight, fight, or freeze. Do you sometimes in your
7 practice collaborate with other doctors that need
8 to treat the physiological symptoms that these
9 victims are having so that you have an
10 understanding of what's actually going on when they
11 experience these reactions to trauma?

12 A. So I collaborate with psychiatrists who
13 also provide treatment for physiological symptoms
14 that are associated with traumas. And I treat --
15 through more evidence-based intervention --
16 evidence-based psychotherapy intervention, treat
17 trauma reactions as well.

18 So folks can develop posttraumatic
19 stress disorder, which is being very overwhelmed by
20 intrusive thoughts and images, a lot of
21 hyperarousal, feeling like you're on guard and on
22 edge all the time, being easily startled by loud
23 noises. All those sort of -- are within the
24 context of posttraumatic stress disorder, which we
25 often attribute to war veterans, but folks who

ALYSSA RHEINGOLD - DIRECT EXAM

1 experience sexual assault, domestic violence, can
2 experience the same type of symptoms.

3 Q. When you were talking about how someone
4 might act right after a sexual assault or the
5 threat of a child and being in that traumatic event
6 and you talked about freeze and going through the
7 motions and being emotionally numb, what is
8 actually going on that causes them to have that
9 kind of demeanor where they're sort of robotic or
10 going through the motions?

11 A. Some of it is our body's sort of
12 natural response to danger. So some folks are more
13 in tuned to kind of kick into more fight mode and
14 others are more in tuned to go more into the
15 emotional numbing sort of freeze response.
16 Behaviorally it is demonstrated in somebody sort of
17 kind of going through the motions, to kind of
18 protect themselves, not create waves, do what they
19 can to hopefully not endure future harm. And that
20 might not be reaching out for help.

21 It might just be keeping quiet and
22 doing what you need to do so that you're not going
23 to be potentially harmed again.

24 Q. Hoping that it ends?

25 A. Correct.

ALYSSA RHEINGOLD - CROSS EXAM

1 MS. WILLIAMS: Nothing further.

2 THE COURT: Any questions for the
3 witness?

4 MR. SCHWACKE: Yes, Your Honor.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. SCHWACKE:

8 Q. Good morning.

9 A. Morning.

10 Q. Dr. Rheingold, you work at MUSC in the
11 Crime Victims Center?

12 A. Correct.

13 Q. And you've been there since when?

14 A. I've been a faculty member since 2003.

15 Q. Do you get paid to come here and
16 testify in these types of cases?

17 A. I do get paid for my time here, as this
18 is not part of my general duties at MUSC.

19 Q. So you will bill the State at some
20 point for this time?

21 A. Correct.

22 Q. And how many times have you testified
23 for the State in these types of cases?

24 A. Twice.

25 Q. I'm sorry?

ALYSSA RHEINGOLD - CROSS EXAM

1 A. Twice.

2 Q. And you indicated that your training
3 and kind of area of work deals with patients
4 suffering traumatic criminal offenses essentially?

5 A. I treat folks who have experienced all
6 types of trauma, including victimization.

7 Q. And when you say, you treat, what is
8 involved in the treatment of a patient?

9 A. Sure. So sometimes folks can
10 experience traumatic reactions, like posttraumatic
11 stress disorder or depression or anxiety, as a
12 result of victimization, and they are seeking
13 assistance with that; it can be very debilitating
14 and chronic. And so they will come to my center,
15 myself, to get appropriate care.

16 So there's various evidence-based types
17 of treatment, interventions that are demonstrated
18 to be fairly effective for treatment.

19 Q. And the people that -- or the
20 individuals that you see as patients, you would
21 then be able to actually form and state an opinion
22 about them and some idea as to what has happened
23 and how they're dealing with what has happened to
24 them?

25 A. Correct.

ALYSSA RHEINGOLD - CROSS EXAM

1 Q. And you have not treated as a patient
2 anyone in connection with this case?

3 A. Correct.

4 Q. So you can't form or express any
5 opinions to the jury about how a specific
6 individual involved in this case deals with
7 anything?

8 A. Correct. I can only provide general
9 information about how trauma victims as a whole
10 often respond.

11 Q. So dealing generally with trauma
12 victims, what are some of the ways they respond?
13 You mentioned some, but if you could just -- we
14 could one through one -- one at a time?

15 A. Well, there's -- I think one of the
16 most important comments to make is that there is no
17 specific response that all victims react in the
18 same exact way. So there is a variety of
19 responses.

20 Q. And how big is that variety?

21 A. I mean, it can range. So some folks
22 can be very resilient after trauma and not
23 experience a whole lot of reactions, where others
24 can be extraordinarily debilitated that they need
25 to seek inpatient hospitalization. So there is a

ALYSSA RHEINGOLD - CROSS EXAM

1 wide variety of response.

2 Q. You mentioned coping is one kind of a
3 response?

4 A. So there are behaviors that one can
5 engage in that they can be used as a way to cope
6 and manage with negative reactions.

7 Q. You mentioned emotional numbness?

8 A. Yes.

9 Q. What are people who are not emotionally
10 numb -- are there people who have suffered an
11 injury such as you were talking about and not be
12 emotionally numb?

13 A. Yes.

14 Q. Is that sort of true of everything,
15 that -- because everyone acts differently to a
16 situation, that means while one person can be over
17 here and one can be totally over here, in the way
18 they're managing?

19 A. Correct.

20 Q. So it's as if a person might have
21 experienced that type of situation and, again, have
22 a diagnosis, where another person -- or not a
23 diagnosis, but you're claiming that would be a
24 reaction to that injury to themselves. Someone
25 could be over here and have a totally different --

ALYSSA RHEINGOLD - CROSS EXAM

1 again, different reaction?

2 A. There's a wide variety of reactions,
3 yes.

4 Q. And there's no way for you or anyone to
5 predict how a given person is going to react in
6 that situation?

7 A. No. There are some risk factors for
8 the likelihood that somebody might have
9 posttraumatic reactions. So I can't 100 percent
10 predict, but there are risk factors, so the extent
11 of physical injury -- the greater physical injury,
12 the perceived threat of harm in an instance; the
13 past victimization history might increase their
14 likelihood if they'd experienced a more traumatic
15 response to a situation.

16 Q. My kids used to play a game called
17 Opposite Day. And that's sort of true here, right?
18 A person could very well be victimized of a crime
19 and display these characteristics, where another
20 one would play a completely different set of
21 characteristics?

22 A. Correct.

23 Q. So the jury in hearing that from you
24 knows that not only could it be A, it could also be
25 Z, in terms of that?

ALYSSA RHEINGOLD - REDIRECT EXAM

1 A. In response?

2 Q. In response, yes.

3 A. Correct.

4 Q. And I guess we have been using a term a
5 little bit generically, I guess; when you're
6 dealing with trauma, it doesn't necessarily have to
7 have been a crime or a physical injury to a person?

8 A. That I've directly worked with or just
9 trauma in general?

10 Q. Trauma in general.

11 A. Trauma -- correct. So somebody can
12 experience traumatic reactions as a result of a
13 non-victim-related type of injury.

14 Q. Or non-physical situation?

15 A. Correct.

16 MR. SCHWACKE: That's all the questions
17 I have.

18 THE COURT: Any redirect?

19 MS. WILLIAMS: Just briefly.

20 REDIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. You haven't met these victims, have
23 you?

24 A. No, ma'am.

25 Q. And when you're talking about these

ALYSSA RHEINGOLD - REDIRECT EXAM

1 reactions that people have to trauma, these are
2 common reactions that people have to trauma?

3 A. Correct.

4 Q. And isn't it true that, even though
5 there's a wide range of how people react to trauma,
6 like a Navy vet might react differently than a
7 17-year-old girl that was taken from her bedroom,
8 there are some common reactions, because you have
9 literature and there is research that has been done
10 about flight, fight, and freeze; isn't that
11 correct?

12 A. Yes.

13 Q. And emotional numbing, you know, that
14 term comes from the fact that people have been
15 studied and that's a common reaction for some
16 people?

17 A. Yes.

18 Q. So the whole Opposite Day thing, it's
19 not as if -- it's a little misleading, would you
20 agree, that just because one person has a reaction
21 where they freeze, that doesn't mean that there's a
22 person -- there's an opposite reaction for every
23 single person in the population? Everybody does
24 react differently, but it depends, as you said, on
25 risk factors?

ALYSSA RHEINGOLD - REDIRECT EXAM

1 A. Yes. So there's a wide variety of
2 reactions that they can have to trauma. There is
3 -- often I think as lay people we try to interpret
4 a trauma based on how a victim may have reacted to
5 that, but that might not be accurate because
6 victims can react differently one to the other.
7 That being said, there are some reactions that
8 victims can demonstrate as a response to trauma.
9 So a numbing -- about a third of the population do
10 end up with posttraumatic stress disorder, a third
11 do develop depression. So -- though not everybody
12 experiences that, those are -- trauma increases the
13 risk for those having those sort of reactions.

14 Q. So might you expect, hypothetically, a
15 17-year-old-girl, taken from her house at gun point
16 and raped in the dark in a desolate area, to react
17 differently than, I don't know, a man Mr.
18 Schwacke's size and someone attacking him and maybe
19 him being able to fight them off --

20 MR. SCHWACKE: Your Honor, I have to
21 object.

22 THE COURT: Rephrase the question.

23 BY MS. WILLIAMS:

24 Q. A grown man who maybe was already out,
25 someone tries to attack him, he's able to --

1 because of his size and experience and age, able to
2 handle that situation differently. Would you
3 expect that those two people, in separate
4 situations, with different histories, different
5 ages, might react differently to trauma?

6 A. Yes.

7 MS. WILLIAMS: Thank you.

8 THE COURT: Any objection to the
9 witness being excused? From the State?

10 MS. WILLIAMS: Not the State.

11 THE COURT: From the defense?

12 MR. SCHWACKE: No, Your Honor.

13 THE COURT: Ma'am, you're excused.

14 THE WITNESS: Thank you very much.

15 THE COURT: You're welcome.

16 State may proceed.

17 MS. WILLIAMS: Your Honor, the State
18 rests.

19 THE COURT: Madame Forelady, ladies and
20 gentlemen, the State has rested their case. I have
21 some brief matters of law to take up with the
22 attorneys. During the break, please do not discuss
23 the case --

24 MS. WILLIAMS: Actually, Your Honor, I
25 think we need to read our stipulation.

1 THE COURT: You may proceed.

2 MS. WILLIAMS: I apologize.

3 THE COURT: The State may proceed.

4 MS. WILLIAMS: Thank you. For the
5 charges of unlawful possession of a firearm by a
6 person convicted of a violent offense, both the
7 defense counsel and the State have agreed to a
8 stipulation.

9 The stipulation is that the State and
10 the defense have stipulated that the defendant has
11 previously been convicted of a violent felony, as
12 classified by section 16-1-60, and as required by
13 section 16-23-500 of the South Carolina Code of
14 Laws. This law is unlawful possession of a firearm
15 by a person convicted of a violent offense.

16 THE COURT: Anything further from the
17 State?

18 MS. WILLIAMS: No. Thank you, Your
19 Honor.

20 THE COURT: Does the State rest?

21 MS. WILLIAMS: The State now rests.

22 THE COURT: Ladies and gentlemen, I
23 have some matters of law to take up with the
24 attorneys. During the break, please do not discuss
25 the case and please leave your notepads in your

1 seats. We appreciate your patience.

2 (Jury out, 10:14 a.m.)

3 THE COURT: You may be seated.

4 The State has rested. Are there any
5 motions?

6 MR. SCHWACKE: Your Honor, for the
7 record, the defense would move for a directed
8 verdict of acquittal on the basis that the evidence
9 presented by the State, in the most favorable light
10 to the State, is insufficient for conviction of...

11 THE COURT: I can barely hear you, Mr.
12 Schwacke. If you could speak up for me, please.

13 MR. SCHWACKE: Yes, ma'am. The State
14 would move -- the defense would move for a directed
15 verdict of acquittal, for the record, based upon
16 the evidence presented by the State does not meet
17 their burden of guilt beyond a reasonable doubt.

18 THE COURT: Would the State like to
19 respond?

20 MS. WILLIAMS: Yes, Your Honor. Would
21 you like me to go through each charge?

22 THE COURT: It's up to you.

23 MS. WILLIAMS: With regard to -- we
24 feel that the State has met our burden. As the
25 Court knows, the Court is concerned with evidence,

1 not the weight of the evidence. And with regard to
2 criminal sexual conduct in the first degree, the
3 defendant, Telly McClam, took [REDACTED] L. J. [REDACTED] out
4 of her home, took her to a desolate place, forced
5 her at gunpoint to perform fellatio and forced her
6 at gunpoint to have sex with him.

7 There is DNA evidence with his semen on
8 the vaginal and rectal swabs that showed that that
9 occurred, and that happened in Berkeley County.
10 She testified they used to live over by Matilda
11 Circle. And the Captain pointed to Matilda Circle,
12 which was also near Fairview Court, both in
13 Berkeley County.

14 With regard to burglary in the first
15 degree, the defendant broke into a residence, armed
16 with a deadly weapon, displayed a knife and a
17 revolver, and with a crime -- with the intent to
18 commit a crime, and that was kidnapping and
19 criminal sexual conduct in the first degree.

20 With regard to commission of a crime
21 while possessing a firearm, or knife, or a weapon,
22 he broke into the house, he kidnapped her at
23 gunpoint, he displayed the knife, he kidnapped
24 Deadrene at gunpoint, he used the gun to sexually
25 assault her by holding the gun on her while he

1 forced her to do sex acts, and he held the gun on
2 for the ongoing offense of kidnapping during the
3 whole day.

4 With regard to unlawful possession of a
5 firearm by a person convicted of a violent offense,
6 once the Court makes a finding that he's been
7 convicted of a violent offense, we have provided
8 the Court with two certified convictions, one for
9 -- actually three, burglary first, burglary second,
10 and CSC second. And those are violent offenses
11 under the statute, as defined by 16-1-60.

12 There has been ample evidence that he
13 had a gun all day. The victims described the
14 revolver that he had when he kidnapped them.

15 **L. J.** had described it in detail to the
16 detectives the day after the event occurred. We
17 showed it to her in court. She identified it as
18 the revolver.

19 We had SLED officers say that while he
20 was being apprehended, he was reaching around for a
21 gun that presumably had fallen from his person,
22 then they kept an eye on that gun and that gun was
23 taken and put into the box and the serial number
24 was recorded and the chain of evidence was kept all
25 the way to SLED. That was the same gun that

1 **L. J.** had identified as the same gun that he had
2 when he came into her place.

3 With regard to the kidnapping, he
4 carried **L. J.** away from her home after he broke
5 into her home. He confined her -- he abducted her,
6 he confined her all day, at one point -- he tied
7 her with duct tape at one point. The only time
8 they were able to go was when he fled from the car
9 after a high-speed chase.

10 With regard to Deadrene McHoney, he
11 tricked her into getting in the car. He inveigled
12 her; I would also say that decoy as a term in that
13 statute would also apply. She only got into the
14 vehicle because he said, I've got your daughter,
15 I'm not going to hurt her. And the suggestion was,
16 if you get into the vehicle. As soon as she got
17 into the vehicle, he showed her the gun and said,
18 this is what I got, and it was right under his leg.

19 He continued to hold her, confine her
20 all day long, until the police engaged in a
21 high-speed chase. He displayed the knife, he
22 displayed the gun on at least two occasions. He
23 said, this is where you die, I could kill you right
24 now. He took them to a remote area in the woods
25 and would not let them go.

1 So we feel that we have met our burden,
2 Your Honor, especially in light of the favor --
3 most favorable to the State and we would ask that
4 you deny the defense's directed verdict motion.

5 THE COURT: Anything further from the
6 defense?

7 MR. SCHWACKE: No, Your Honor.

8 THE COURT: The Court, when considering
9 a motion for directed verdict, is only concerned
10 with the existence or non-existence of evidence and
11 not its weight. The State is required to prove by
12 direct or substantial circumstantial evidence the
13 guilt of the defendant. They are not required to
14 meet this burden by showing proof or evidence that
15 infers guilt to the exclusion of any other
16 reasonable hypothesis.

17 The Court finds that there is both
18 direct and substantial circumstantial evidence
19 reasonably tending to prove the defendant's guilt;
20 that being the direct testimony of the victim on
21 both criminal sexual conduct charges, as well as
22 both victims on the kidnapping charge -- kidnapping
23 charges, as well as the testimony regarding the
24 burglary in the first degree and possession of a
25 weapon during the commission of a violent crime and

1 unlawful possession of a firearm by a person
2 convicted of a violent offense; therefore, the
3 motion for directed verdict is denied.

4 Just for clarity of the record,
5 16-23-500 requires the Court to make an affirmative
6 finding, but that is regarding the sufficiency of
7 the charge. That does not go to the jury, it's not
8 required to be published to the jury. That's a
9 legal sufficiency finding and the statute does not
10 require when the Judge should make that finding of
11 fact.

12 The fact that you all have entered into
13 a stipulation and the fact that he has clearly been
14 convicted of criminal sexual conduct in the second
15 degree, which is most serious and violent, really
16 makes that finding a formality. He clearly has
17 been convicted of the crime. You still are
18 required to prove that he was in fact in possession
19 of a weapon at the time of this offense, but that's
20 a question of legal sufficiency for us. That's not
21 for the jury; it doesn't get published to the jury.

22 And you all have entered into a
23 stipulation, which does not require any further
24 proof, which is, quite frankly, astute on the
25 defense's part, because then I would have had to

1 give a long curative instruction if you had
2 actually published what the offense was that he had
3 been convicted of.

4 MS. WILLIAMS: We understand.

5 Can we make a Court exhibit of his
6 violent offenses? I have a certified copy.

7 THE COURT: If you want to. I think
8 it's attached to the stipulation which is already a
9 Court exhibit.

10 MS. WILLIAMS: It is not, Your Honor.

11 THE COURT: Why didn't you all give the
12 stipulation to the Curt Reporter as I instructed
13 earlier? It should have been made a Court's
14 exhibit because stipulations don't go back to the
15 jury. It should have been made a part of the
16 record a long time ago.

17 THE COURT REPORTER: The stipulation
18 was made an exhibit, but there's nothing attached.

19 MS. WILLIAMS: It just doesn't have
20 the --

21 THE COURT: Oh, well, you all need to
22 attach it. I thought it was, as you attached it to
23 mine.

24 MS. WILLIAMS: And to Mr. Schwacke's
25 was attached a certified copy of the burglar first

1 conviction.

2 THE COURT: Well, you need to attach
3 the criminal sexual conduct as well, because what I
4 was given was the CSC second, which he was
5 convicted of 6/16/99.

6 MS. WILLIAMS: This is the same
7 conviction date of the CSC second --

8 THE COURT: I think you need to give
9 them both, because what I relied on was the CSC
10 second.

11 MS. WILLIAMS: Okay. Do you still
12 have, Your Honor, a copy of the CSC second for the
13 purpose of the LWOP?

14 THE COURT: What I have is attached to
15 the stipulation. It is not attached to the LWOP.

16 MS. WILLIAMS: But you have one
17 attached to the LWOP, I think. You should.

18 Thank you, Your Honor.

19 THE COURT: You're welcome.

20 Sir, if you would stand for me, please.
21 I'll remind you that you're still under oath.

22 We have not reached the state of the
23 trial where you may present your defense. I have
24 explained to you on yesterday evening your rights
25 according to the Constitution and your right

1 against self-incrimination and your right to remain
2 silent.

3 As I understand it, there are several
4 offenses that you have been convicted of, those
5 being CSC second in 1999, which would not be
6 admissible. Considering the balancing test, it
7 would be more prejudicial than probative as --
8 because of its similarities to the offenses you are
9 now charged with.

10 Burglary in the first degree, where you
11 were released from confinement. These are all '99
12 convictions, but you were released from confinement
13 in 2012, which would bring them within the ten
14 years contemplated by Rule 609. Burglary in the
15 first degree, burglary in the second degree, the
16 assault and battery of a high and aggravated
17 nature, which was pled down from a criminal sexual
18 conduct, would not be admissible; the breaking and
19 entering of a motor vehicle, I was never made clear
20 as to when you were released from confinement to
21 know if that came within the ten years, so that
22 leaves me at a bit of a loss, but as regards to the
23 burglary in the first degree and the burglary in
24 the second degree, I've now been advised that they
25 involved thefts.

1 There is a recent case that the State
2 has made reference to, the Court was well aware of,
3 and that's why I asked the questions I asked on
4 yesterday, which reversed the Al-Amin precedent.
5 It does not mean that these offenses are not
6 admissible, it just means that it corrects a
7 misapprehension on the Court's part that they were
8 not required to perform a balancing of whether
9 these offenses are more prejudicial than probative
10 on the issue of your truthfulness.

11 And I would have to think about that a
12 little bit more now that I've been told the
13 circumstance of this actual incident.

14 And as I understand it, Ms. Williams,
15 you're saying from the burglary first degree, he
16 stole items valued at \$630, correct?

17 MS. WILLIAMS: That's the burglary
18 second.

19 THE COURT: That's the second.

20 MS. WILLIAMS: The burglary first
21 degree is not based on theft. It's based on
22 breaking into someone's house and attacking a
23 woman.

24 THE COURT: Okay. That would not be
25 admissible.

1 MS. WILLIAMS: We were just asking for
2 the burglary second.

3 THE COURT: And I will have to look at
4 that a little bit more and determine whether that
5 would be admissible to impeach her credibility
6 based on the balancing test required by Rule 609.

7 When was he released from confinement
8 on the breaking and entering of a motor vehicle?

9 MS. WILLIAMS: The breaking and
10 entering of a motor vehicle, there's like 14 of
11 them, and it looks like most of them were
12 dismissed. And the other -- the only one that I
13 could find, I don't think he went to prison on it,
14 so we're not offering those because I don't have
15 clarification as to whether there are convictions.

16 THE COURT: Well, it would be more than
17 ten years old.

18 MS. WILLIAMS: It would be.

19 Your Honor, would you like a copy of
20 the Affidavit and Warrant for the burglary second?

21 THE COURT: Is it any different than
22 what you've represented, that he broke into --

23 MS. WILLIAMS: No, ma'am.

24 THE COURT: The only thing that would
25 be additionally helpful for me would be the actual

1 -- either evidence presented at the trial or what
2 he allocuted to at a guilty plea because then I
3 would know exactly what elements of the offense he
4 was admitting to, but it would seem to me that what
5 he would have admitted to is breaking into the
6 structure and stealing these items. Is that the
7 essence of it?

8 MS. WILLIAMS: That is.

9 THE COURT: In the nighttime? Well,
10 not in the nighttime, because it's burglary second.

11 Q. Sir, have you understood your rights as
12 I have explained them to you?

13 A. Yes, ma'am.

14 Q. Have you had an opportunity -- do you
15 have any questions about what I have explained to
16 you?

17 A. No, ma'am.

18 Q. Have you had an opportunity to discuss
19 with your lawyers whether you should or should not
20 testify?

21 A. Yes, ma'am.

22 Q. Do you need to speak with them any more
23 at this time?

24 A. Yes.

25 Q. I can't hear you.

1 A. Yes.

2 Q. Okay. We'll take a brief recess for
3 you to discuss that with them.

4 THE COURT: In the meantime, Mr.
5 Schwacke, I need to know -- you provided the Court
6 with a list of eight potential witnesses. And I
7 need to know of those witnesses who you intend to
8 call. Well, I guess more likely, who do you not
9 intend to call?

10 I know you told me the other day you
11 were not calling Mr. Patel.

12 MR. SCHWACKE: Number 7 is off. Number
13 6 is probably off.

14 THE COURT: Okay.

15 MR. SCHWACKE: Number 5 is probably
16 off, depending upon the testimony here. Margaret
17 McClam we are not going to use and we would ask
18 that she now be allowed to be present in the
19 courtroom.

20 THE COURT: I would assume that the
21 State has no exception to that since she is not
22 going to be called?

23 MS. WILLIAMS: No.

24 MR. SCHWACKE: Samantha Cooper is
25 medically not available to us. She would not be

1 called. Ms. Cooper and Ms. Jones are expected to
2 testify.

3 THE COURT: Okay. And those are his
4 aunts?

5 MS. WILLIAMS: Who is Charlie?

6 MR. SCHWACKE: Charlie is really
7 Shirley.

8 THE COURT: Shirley Wilson?

9 MR. SCHWACKE: It is, Your Honor. Not
10 Charlie.

11 THE COURT: So basically, at the most,
12 we have four witnesses, if your client decides to
13 testify. So we should be able to probably complete
14 testimony close to lunchtime? And then deal with
15 any rebuttal? I can't imagine any of these
16 witnesses are going to be particularly long, other
17 than your client, if he intended to testify.

18 MR. SCHWACKE: That's correct.

19 THE COURT: We'll be at ease for ten
20 minutes. I have 10:24. I'll give you to 10:35 to
21 talk with your client. Let me know if you need
22 more time than that. That clock isn't right.

23 MR. SCHWACKE: We have one issue we're
24 trying to agree on.

25 THE COURT: Yes, sir.

1 MR. SCHWACKE: Whether or not a disk
2 goes into --

3 MS. WILLIAMS: Mr. Schwacke edited a
4 disk and I just want to watch it.

5 THE COURT: Okay. You can talk about
6 that during the break.

7 MR. SCHWACKE: I'll need to line it up
8 for them.

9 THE COURT: What disk are you referring
10 to?

11 MS. WILLIAMS: It's a disk where she
12 goes into the gas station.

13 THE COURT: Oh, okay. Have you had --
14 you need to look at it and if you agree on it, have
15 the Court Reporter mark it and we'll deal with it
16 after the break.

17 MS. LITTLEJOHN: Sounds like we might
18 need a little bit more than ten minutes.

19 THE COURT: You only need ten minutes
20 to talk with him. That's why I gave you overnight.
21 You've had more than ample opportunity to discuss
22 with him that issue. It is now 10:25. You have
23 until 10:35 to talk with him. Let me know at that
24 point if you need additional time to talk with him
25 about that limited issue and then we'll deal with

1 everything else.

2 (A recess transpired.)

3 (DFT. EXH. 5, CD, was marked for
4 identification.)

5 THE COURT: You may be seated.

6 Sir, if you will stand. I will remind
7 you that you're still under oath. Have you had a
8 full opportunity to discuss with your lawyers
9 whether you should or should not testify?

10 THE WITNESS: Yes.

11 THE COURT: Do you have any questions
12 for the Court regarding your right to testify?

13 THE DEFENDANT: No.

14 THE COURT: Do you wish to testify?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: You may take your seat.

17 The record should reflect that I gave the defendant
18 the opportunity from 10:25 and it is now 11:05 to
19 discuss -- in addition to last evening, the
20 additional time to discuss with his lawyers whether
21 he should or should not testify. And I assume, Mr.
22 Schwacke and Ms. Littlejohn, that you have fully
23 explained his right to testify?

24 MR. SCHWACKE: Yes, ma'am.

25 THE COURT: And that he understood

1 those conversations?

2 MR. SCHWACKE: I believe he did.

3 MS. LITTLEJOHN: Yes.

4 THE COURT: Sir, if you will stand for
5 me. I'll remind you you're still under oath.

6 BY THE COURT:

7 Q. Have you fully discussed with your
8 lawyers if you should testify?

9 A. Yes, ma'am.

10 Q. Have you understood those discussions?

11 A. Yes.

12 Q. And they have fully discussed with you
13 all of those pros and cons, so to speak, of the
14 decision to testify or not to testify?

15 A. Yes, ma'am.

16 Q. Thank you, sir. You may take your
17 seat.

18 THE COURT: Does the defense have its
19 first witness ready and available?

20 MR. SCHWACKE: We do, Your Honor.

21 THE COURT: And who is that?

22 MR. SCHWACKE: It would be Ms. Emma
23 Cooper.

24 THE COURT: If you would go ahead and
25 get her, please.

EMMA RUTH COOPER - DIRECT EXAM

1 (Jury in, 11:05 a.m.)

2 THE COURT: You may be seated.

3 Ladies and gentlemen, we appreciate
4 your patience. Those matters of law took a little
5 longer than we anticipated. We are now going to
6 resume testimony. I would ask that you give the
7 attorneys your attention.

8 You may proceed.

9 MR. SCHWACKE: Thank you. The defense
10 calls Emma Cooper.

11 THE COURT: Ma'am, if you would come to
12 the stand to be sworn.

13 EMMA RUTH COOPER,
14 being first duly sworn, testified as follows:

15 THE CLERK: State your full name for
16 the record and spell your last name.

17 THE WITNESS: Emma Ruth Cooper,
18 E-M-M-A, R-U-T-H, C-O-O-P-E-R.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. SCHWACKE:

22 Q. And, Ms. Cooper, you live in
23 Williamsburg County?

24 A. I do.

25 Q. Where at?

EMMA RUTH COOPER - DIRECT EXAM

1 A. Salters, South Carolina, [REDACTED]
2 Avenue.

3 Q. [REDACTED] Avenue?

4 A. That's correct.

5 Q. And who all lives there with you?

6 A. Nobody but my grandson lives there now.

7 Q. Are there neighbors close to your
8 house? What is the area like?

9 A. The area is houses all around.

10 Q. Uh-huh. You can get around pretty easy
11 out that way?

12 A. Yes, country.

13 Q. How old are you?

14 A. I'm 65 years old.

15 Q. And have you lived there all your life?

16 A. All my life.

17 Q. And you are related to Telly McClam?

18 A. That's my nephew.

19 Q. And you were home on the day of
20 October 28, 2013; is that correct?

21 A. Yes.

22 Q. And you remember that, because the
23 police talked to you?

24 A. No. I remember that because he came to
25 my house that day and the investigator or whatever,

EMMA RUTH COOPER - DIRECT EXAM

1 he was from St. Stephens, came to my house that
2 morning.

3 Q. So what time did you get started that
4 morning?

5 A. Well, I was on the outside with my
6 friend. He was out there fixing the -- the -- what
7 you call it? It come from under the house. I
8 usually go up there and reach and turn the water
9 on. He was down there pulling that through the
10 under pan so I wouldn't have to go -- so I wouldn't
11 have to go underneath the house to get to the
12 faucet.

13 Q. That's at your house?

14 A. At my residence, uh-huh.

15 Q. Who was that that was out there with
16 you?

17 A. Herbert Milton.

18 Q. Anybody else with him?

19 A. No.

20 Q. So what happens while you're outside
21 that morning?

22 A. Telly and a young lady and her daughter
23 came up during that time.

24 Q. Okay. And how did they get there?

25 A. They were driving my sister's car.

EMMA RUTH COOPER - DIRECT EXAM

- 1 Q. The blue Hyundai?
- 2 A. Yes.
- 3 Q. Had you had seen Telly in that car
- 4 before?
- 5 A. Oh, yes.
- 6 Q. How many times?
- 7 A. I can't count them, so many.
- 8 Q. How about the people in the car with
- 9 him, had you seen them before?
- 10 A. Yes.
- 11 Q. How many times before that day had you
- 12 seen them?
- 13 A. Several times.
- 14 Q. Where at?
- 15 A. At my house.
- 16 Q. At your house?
- 17 A. Yes.
- 18 Q. How would they get there?
- 19 A. With him.
- 20 Q. Was it always the blue car?
- 21 A. No. They would come in the truck
- 22 sometimes.
- 23 Q. And so they pulled up. What did --
- 24 what were they stopping by for?
- 25 A. He just come to see me because I'm his

EMMA RUTH COOPER - DIRECT EXAM

1 aunt.

2 Q. Okay. And how long did he stay?

3 A. Sometime he stay maybe 15 minutes,
4 sometimes 30 minutes. If my other children, young
5 men is at the house, they associate with each other
6 and he'd stay a little longer.

7 Q. So that day, how long did he stay?

8 A. Well, they didn't stay long. He just
9 came -- I can't point to minutes, but he didn't
10 stay about maybe -- it wasn't maybe ten minutes or
11 so. Maybe less than that. I don't know, but he
12 didn't stay.

13 Q. Did they get out of the car?

14 A. No, she didn't get out that day.

15 Q. Nobody got out?

16 A. No. She was -- when he came up I was
17 in the back.

18 Q. Okay.

19 A. And we was around there. Like I said,
20 I was with my friend. And he got out and he came
21 up and I met him. He got out of the car and he met
22 me. He had on a pair of blue jeans, a T-shirt, and
23 I greet him. And -- well, I give him \$5 that
24 morning. He asked me for it and I give it to him.

25 Q. When did he ask you for that?

EMMA RUTH COOPER - DIRECT EXAM

1 A. Well, he came -- he called and asked
2 me.

3 Q. About what time did he call; do you
4 remember?

5 A. He got at the house between 8:30 and
6 9:00. It was more closer to 9:00 than 8:30, and I
7 give it to him. Before I give it to him, I went in
8 the house to get it and I speak to them. And when
9 I came out, when I give it to him, then he said,
10 well, auntie, I can't stay. I got to go to my
11 sister's house before I leave. And I said, well,
12 okay. He said, I would have stayed longer, but I
13 got them in the car.

14 Q. You said you greeted them?

15 A. Yeah. Like we'd meet each other, we
16 always hug.

17 Q. Did you know their names?

18 A. I don't know. I know the young lady
19 name is Reese or something, I can't remember.
20 Trese or Reese, or something.

21 Q. Okay.

22 A. But she had been to my house several
23 times. I talked to her and held a conversation
24 with her.

25 Q. And how close to the car did you get

EMMA RUTH COOPER - DIRECT EXAM

1 that morning?

2 A. All the way to the car.

3 Q. Up to which door?

4 A. The driver door.

5 Q. At the driver's door?

6 A. Uh-huh.

7 Q. And was -- did any of them -- any of
8 the females say anything to you?

9 A. No. I spoke to them like always.

10 Q. And how did they act back to you?

11 A. The same way. The young lady that was
12 in the back was over the seat -- with her arms over
13 the back of the seat when I approached the car and
14 I spoke to them.

15 Q. And you didn't see them again after
16 that?

17 A. Not that night. I haven't seen them
18 since.

19 Q. But you would talk to the police later
20 and told them --

21 A. I told them the same thing I'm telling
22 you right now. During the time they used to come
23 to my house, they act the same way they always act.
24 It wasn't no different.

25 MR. SCHWACKE: One moment. Thank you,

EMMA RUTH COOPER - CROSS EXAM

1 Ms. Cooper. Answer any questions that Ms.
2 Williams or Mr. Poulos has.

3 THE COURT: Any questions?

4 MR. POULOS: Yes, Your Honor.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. POULOS:

8 Q. Morning, Ms. Cooper.

9 A. Morning.

10 Q. Thank you for being here today. Thank
11 you for meeting with Ms. Williams and I at your
12 home last week. I appreciate that.

13 I want to talk to you a little bit
14 about the things we talked about at your house.

15 A. Uh-huh.

16 Q. First of all, how well do you know your
17 nephew, Mr. McClam?

18 A. Well, I know him. I never knew him
19 when he was a child because we didn't see each
20 other very much then, but after he grown up and he
21 used to come around to see me and we would talk and
22 I would tell him, you know, like how any aunt who
23 cared about and loved their niece and nephew, they
24 would tell them right from wrong, you know.

25 Q. How old was he when he started coming

EMMA RUTH COOPER - CROSS EXAM

1 around more?

2 A. He was -- I don't know. I can't tell
3 how old he was because I didn't know. He was a
4 young man, I know.

5 Q. Okay. Approximately, when did he start
6 coming around? The last couple of years?

7 A. The last time was when he got out of
8 prison.

9 Q. The last couple of years, he started
10 coming around?

11 A. Yes, uh-huh.

12 Q. How many times would you say he's come
13 to your house in the past three or four years?

14 A. I can't count them. Most of the time
15 he come -- sometimes he come himself. The majority
16 of time he came, he brought her and the children,
17 but they would never get out. She would get out
18 sometimes, but they stayed in the car, whoever they
19 was in the car, but I never went outside to see who
20 they were.

21 Q. Do you know Deadrene? Do you know her
22 well?

23 A. Who?

24 Q. Deadrene? Trese?

25 A. No, I don't know her that well.

EMMA RUTH COOPER - CROSS EXAM

1 Q. How many times would you say you have
2 met her?

3 A. Oh, I can't count them on my hand,
4 because he would always come and they would
5 sometimes sit on the porch with my other boys and
6 talk with them and I would tell her about herself.
7 Do you understand?

8 Q. How many conversations would you say
9 you've had directly with Trese?

10 A. Two or three real conversations.

11 Q. You've had about two or three
12 conversations with her?

13 A. Yes.

14 Q. How long do you think the conversations
15 were?

16 A. How what?

17 Q. How long do you think the conversations
18 were that you had with Trese? Were they long
19 conversations?

20 A. No, not that long. When Telly would
21 come to the house and he would go outside and talk
22 to my boys or whoever was there, my niece and my
23 daughter and they was outside and she was in there
24 with me and I would tell her -- I asked her one
25 day, I said, baby, you need to -- you're over there

EMMA RUTH COOPER - CROSS EXAM

1 living with Telly and my sister is taking care of
2 him, providing you with a home, shelter and
3 whatever you needed. You're there using whatever
4 he use. So you, young lady, you've got children
5 and you need to find yourself someplace to live, a
6 job, and support your children.

7 Q. You didn't think very highly of Trese?

8 A. I don't know anything about her to be
9 thinking that highly about her. I heard about her,
10 but I don't know her.

11 Q. You don't know her?

12 A. No, I don't.

13 Q. So you've had two or three
14 conversations with her and they were each a few
15 minutes long you'd say?

16 A. Yes.

17 Q. That was over the past --

18 A. Behind Telly's back. I never talked to
19 him before his face telling her that, you know,
20 because how I feel about it, I respect her that
21 much.

22 Q. Do you remember telling us you didn't
23 like the way she carried herself?

24 A. That's right.

25 Q. Okay. So you didn't approve of Trese

EMMA RUTH COOPER - CROSS EXAM

1 being with Telly?

2 A. That's right.

3 Q. Okay. And that's based on the two or
4 three conversations that you had --

5 A. No, by seeing her and how she take care
6 of herself. Any young lady who think anything of
7 themselves and got young ladies, bringing them up,
8 they would be home with their children, plus they
9 would have them behind them everywhere she goes.

10 Q. How many daughters does she have?

11 A. I don't know, because like I told you,
12 I never went to the car to see who they was.

13 Q. You've never met **L. J.** then;
14 is that right?

15 A. Who is that?

16 Q. The other young girl in the car that
17 day that Telly came to your house.

18 A. I don't know. Like I told you, I don't
19 know them. That day he, she, whoever was in the
20 car, I told you she was sitting in the back seat
21 and I assumed that was her daughter because when --
22 later on they said that -- my niece told me, said
23 that was her daughter, because they came to their
24 house and eat breakfast there.

25 Q. But you've never met her before?

EMMA RUTH COOPER - CROSS EXAM

1 A. Met who?

2 Q. The young girl --

3 A. No. I told you, they were never in my
4 house before.

5 Q. But you've never even talked to her?

6 A. No.

7 Q. Besides from the ten minutes they were
8 at your house, you don't know what happened earlier
9 in the day?

10 A. No.

11 Q. Both Trese and her daughter stayed in
12 the car the whole time, right?

13 A. Yes.

14 Q. Now, you've described your house as
15 having a lot of other houses around it?

16 A. You were there, you seen them.

17 Q. Right, I was there. That's mostly your
18 family, right?

19 A. No.

20 Q. That lives in the vicinity?

21 A. They're just in the community but we
22 take each other as family.

23 Q. Okay. But in the immediate houses,
24 aren't there other relatives that live there around
25 you?

EMMA RUTH COOPER - CROSS EXAM

1 A. In the what?

2 Q. Aren't there other relatives of Mr.
3 McClam that live by you?

4 A. Yes.

5 Q. State's Exhibit 105. Ms. Cooper, I'm
6 going to put up -- a map up on the screen right
7 behind you. It's going to show your house and some
8 other things.

9 A. Uh-huh.

10 Q. Now, this right here, does it look
11 familiar?

12 A. Uh-huh.

13 Q. Okay. This is your house?
14 (Indicating)

15 A. Uh-huh.

16 THE COURT: Ma'am, if you could say
17 yes or no for us.

18 THE WITNESS: Okay.

19 THE COURT: I know it's a habit. I do
20 it myself, but if you could say yes or no. Thank
21 you.

22 THE WITNESS: Okay. Thank you.

23 BY MR. POULOS:

24 Q. Now, this is all woods, right?

25 A. Yes.

EMMA RUTH COOPER - CROSS EXAM

1 Q. And this is fields?

2 A. Yes.

3 Q. And this is a field. And the only way
4 into your house is either up this road or up this
5 road?

6 A. Yes.

7 Q. Okay. Who lives all in here?

8 A. Well, that's my first cousin; my
9 sister's house right next to me. The one you
10 passed to come to me and the one on the left is my
11 first cousin and the one in front is my first
12 cousin and ones in the back behind the trees right
13 back there, well, they just --

14 Q. Back here?

15 A. No, right here.

16 Q. Right here? (Indicating)

17 A. Yes. And all over there behind me in
18 the little blue section --

19 Q. Right there? (Indicating)

20 A. Right there. They live behind me.

21 Q. Who lives right here? Do you know
22 these people?

23 A. Behind me is right here. You came in
24 right here.

25 Q. Who lives up in here?

EMMA RUTH COOPER - CROSS EXAM

1 A. Those are neighbors.

2 Q. So everybody that lives right through
3 here are related to you and Mr. McClam?

4 A. No, not related to -- yeah, a little.
5 At least family, you know, just family.

6 Q. Okay. Ms. Cooper, how well do you
7 think you remember that day here today? Do you
8 think you have a clear memory of what happened?

9 A. All I know is he came to me and asked
10 me -- he wanted -- I told him I didn't have but \$5,
11 and I give it to him.

12 Q. You gave him \$5?

13 A. Yes.

14 Q. Do you remember giving a statement to
15 Detective Riser, a written statement?

16 A. Yes, I remember.

17 Q. Do you remember telling him that you
18 did not give Telly any money?

19 A. Yes, I remember.

20 Q. Okay. So why did you tell him that day
21 you did not give --

22 A. I figured it wasn't his business.

23 Q. Okay. Do you remember telling
24 Detective Riser that when Telly got out, he pulled
25 his shirt down when he got --

EMMA RUTH COOPER - CROSS EXAM

1 A. No. I told him when he got out -- he
2 asked me how he got out of the car. I told him,
3 when he got out, he pulled like -- like I'd get out
4 of the car, I'd pull my blouse down over my coat.

5 Q. You told him he pulled his shirt down
6 when he got out?

7 A. Yes, I did.

8 Q. Do you know what, if anything, he had
9 in his waistband --

10 A. I had my arm around him. I didn't felt
11 anything.

12 Q. And he came around 9:00 a.m.?

13 A. Between 8:30 and 9:00.

14 Q. Is that typical? Does he usually come
15 to your house in the morning?

16 A. He asked me what time he came. And
17 that's the only time I can remember, because when
18 my friend came up, it was something to eight.

19 Q. Okay.

20 A. And shortly after that, we was in the
21 back yard.

22 Q. But when Mr. McClam comes to visit you
23 normally, does he come --

24 A. No.

25 Q. -- early in the morning?

EMMA RUTH COOPER - REDIRECT EXAM

1 A. No. Because I asked him what they was
2 doing. And he said, just riding there and he was
3 going to his sister's.

4 MR. POULOS: No further questions,
5 Judge.

6 Thank you, Ms. Cooper.

7 THE COURT: Any redirect?

8 MR. SCHWACKE: Just a few.

9 THE COURT: You may proceed.

10 REDIRECT EXAMINATION

11 BY MR. SCHWACKE:

12 Q. Ms. Cooper, the State asked you about
13 what you had told the police that day?

14 A. Yes, sir.

15 Q. And you were cooperative with them; is
16 that right?

17 A. I did.

18 Q. And did they know where to go next,
19 based on what you gave --

20 A. He told me that day, and he said, Ms.
21 Cooper, I know it was on the TV, about the red
22 alert and everything. So I called my daughter and
23 I asked her if she had heard about it, and she told
24 me, she said, no, Mom, I haven't heard about it.
25 And then during that time he said -- but when I'm

EMMA RUTH COOPER - REDIRECT EXAM

1 about to leave here --

2 MR. POULOS: Objection, Your Honor.

3 BY MR. SCHWACKE:

4 Q. Based on that, you gave information to
5 the police --

6 A. Yes.

7 Q. -- about going to Beatrice's house?

8 A. I did what?

9 Q. The police asked you where they went?

10 A. I told them where he was going.

11 Q. And that was to Beatrice's?

12 A. That's right.

13 Q. And so you were cooperative?

14 A. Yes, sir.

15 MR. SCHWACKE: Thank you.

16 THE COURT: Any objection to the
17 witness being excused? From the State?

18 MR. POULOS: Not from the State.

19 THE COURT: From the defense?

20 MR. SCHWACKE: None, Your Honor.

21 THE COURT: Ma'am, you're excused.

22 Call your next witness.

23 MR. SCHWACKE: Beatrice Jones.

24 BEATRICE JONES,

25 being first duly sworn, testified as follows:

BEATRICE JONES - DIRECT EXAM

1 THE CLERK: Have a seat, state your
2 full name for the record and spell your last name
3 for the record.

4 THE WITNESS: Good morning. My name is
5 Beatrice C. Jones.

6 THE COURT: Spell your last name,
7 ma'am.

8 THE WITNESS: I'm sorry.

9 THE COURT: That's okay.

10 THE WITNESS: J as in Jones, O as in
11 owner, N as in Nancy, E as in eggplant and S as in
12 Sam.

13 THE COURT: Thank you. You may
14 proceed.

15 DIRECT EXAMINATION

16 BY MR. SCHWACKE:

17 Q. Ms. Jones, how old are you?

18 A. I'm 56.

19 Q. 56. And where do you live?

20 A. I live in Lane, South Carolina.

21 Q. How long have you been in that area?

22 A. About approximately 30 years because my
23 house is soon to be paid off. Sorry.

24 Q. Does anyone live there with you?

25 A. Just me and my daughter Taylor.

BEATRICE JONES - DIRECT EXAM

1 Q. And how old is she?

2 A. Taylor is 20.

3 Q. And do you work?

4 A. I work two jobs.

5 Q. Where do you work?

6 A. I work at the school district in
7 Berkeley and in Williamsburg County, but I don't
8 work in Berkeley County anymore, and I work as an
9 AT&T customer service representative.

10 Q. And you are related to Mr. Telly
11 McClam?

12 A. Telly is my brother. He's my only
13 brother.

14 Q. And you have had occasion to see him or
15 he's come to your house?

16 A. Let me rephrase that, Telly is my worry
17 brother.

18 Q. He's what?

19 A. Telly worries me all the time. Telly
20 is my brother. He comes and sees me. He come and
21 see me quite often. He come and see me all the
22 time. He come and see me sometimes twice a week.
23 He come and see me quite often.

24 Q. So what do you for the school district?

25 A. I am a substitute teacher. Now -- I

BEATRICE JONES - DIRECT EXAM

1 passed my practice test. Now I'm a certified
2 teacher. I can teach business education, computer
3 programming, from seventh through twelfth grade.

4 Q. And do you have a number of degrees; is
5 that right?

6 A. Yes, I do.

7 Q. What are they?

8 A. I have two associate's, two BS's and a
9 master's.

10 Q. And your daughter is looking to go into
11 school?

12 A. I have -- my daughter Taylor is 20.
13 She attends Winthrop University, but right now
14 she's out. I'm trying to pay her tuition, that's
15 why I work two jobs. Taylor is trying to get a
16 golf scholarship. She's majoring in golf.

17 Q. I wish her luck on that. On the day of
18 June 30th -- October 28th of 2013 --

19 A. Yes, sir.

20 Q. -- you were home on that day; is that
21 right?

22 A. Yes, sir. I was supposed to go to work
23 that day, but I didn't go to work.

24 Q. And did you have occasion -- did
25 somebody stop by that day?

BEATRICE JONES - DIRECT EXAM

1 A. Yes, around about 10:00 there was a
2 knock on the door. And I was sleeping, I didn't
3 feel too well. My husband had just died. I'm a
4 widower and so I didn't feel like it. So I got up
5 and it was Telly. And I said, wait a minute. I
6 wasn't dressed.

7 So I looked out the door and he was out
8 there, and he was out there with Trese and her
9 daughter. And they were on the -- they were on --
10 near the -- I have a porch and they were standing
11 -- he was standing there on the porch and they were
12 all up on the porch on the step. And I said, wait
13 a minute. So I went back in the house and I put
14 some clothes on. I put my attire on. And I came
15 to the door and opened the door.

16 And he said, Bee, you got any money or
17 something to eat?

18 Q. Is that unusual for him to show up at
19 your house asking for money?

20 A. No, that's common. That's normal.

21 Q. And you tried to help him out the best
22 way you could?

23 A. I always give him money. I give him
24 money for gas, cigarettes, or whatever he asked me
25 for. If I have it, I give it to him.

BEATRICE JONES - DIRECT EXAM

1 Q. So who -- you said Trese or --

2 A. Yeah, that's --

3 Q. -- was there?

4 A. That's his friend.

5 Q. Was anyone else --

6 A. Yeah, the daughter. I don't know her
7 name.

8 Q. Had you seen her before?

9 A. I think I had, because they come to the
10 house with him several times. They come in a truck
11 or come in a car and sometimes when Telly and his
12 friend come, sometimes they don't get out. They be
13 in the car, or whatever. So I can't say I seen her
14 before.

15 Q. And your front door is not that far
16 away from the road?

17 A. No, it's right there.

18 Q. So they came inside?

19 A. They came inside.

20 Q. And what happened?

21 A. And we went into the kitchen, and I
22 give them -- and I said, all I have to eat is some
23 potato salad, a roll, and I put out some Red Velvet
24 cupcakes and I gave it to them. I forgot the meat.
25 I gave them some meat.

BEATRICE JONES - DIRECT EXAM

1 Q. Sloppy Joe's?

2 A. No Sloppy Joe's. I can't remember what
3 meat it was, and they sat down at the table.

4 Q. Did you fix that or you just -- it was
5 already made and you got it out --

6 A. I got it out of the refrigerator and I
7 warmed it up.

8 Q. And made plates?

9 A. I made a plate for everyone.

10 Q. And where was everybody when you were
11 doing that?

12 A. In the kitchen.

13 Q. And where is your kitchen?

14 A. As you walk in the front area, walk
15 right to the kitchen. There is no hallway, you
16 walk into the front room to the kitchen.

17 Q. Is there a place to sit and eat?

18 A. Yeah. I have a table and six chairs.

19 Q. At a table right there in the kitchen?

20 A. Right there in the kitchen.

21 Q. Who all went into the kitchen area?

22 A. Trese, Telly, and the girl, and me.

23 Q. And how long were you all in there?

24 A. About ten minutes in the kitchen. And
25 then Telly say, hey, Bee, with the money.

BEATRICE JONES - DIRECT EXAM

1 And so I went down the hall to my
2 daughter's. She was in her bedroom, she was
3 actually sleeping. I woke her up and asked her for
4 the money. And Telly came down the hall behind me.
5 And I went in my room -- because really what
6 happened, all my daughter had was a 20, and I was
7 only going to give Telly 10. And I said, well,
8 I'll give you 10. I don't have any more change.

9 So I went in the room. He came in the
10 room with me --

11 Q. Which room are we talking about?

12 A. My daughter's is the last room in my
13 house. Then my room is right next to hers, but her
14 door was closed. She never saw Telly, she never
15 saw Trese, she never saw anyone. She was asleep
16 and I woke her up.

17 Q. But you and Telly were in your room?

18 A. Yes, sir.

19 Q. Where were Trese and her daughter?

20 A. Down the -- down the hall in the
21 kitchen. And Trese went to the bathroom. They
22 were down the hall. Me and Telly was down there in
23 the room, I give him the money, and that was in the
24 pocketbook, searching. And I said, that's all I
25 have. I didn't want to give him the 20. That's

BEATRICE JONES - DIRECT EXAM

1 all I had.

2 So I give him the 20, then we came back
3 down the hall -- we came down the hall; Trese was
4 in the bathroom still. She was in the bathroom.
5 And he said, got something to drink. And I said,
6 well, I got Kool-aid. He likes Kool-aid. I give
7 everybody some Kool-aid -- I was actually the
8 server. I gave everybody Kool-aid, gave everybody
9 a drink, I never sat down with them.

10 Q. And how long did they stay?

11 A. They stayed about 20, 30 minutes.

12 Q. Was anybody -- any conversation going
13 on?

14 A. They were talking. They were talking.
15 They were talking at the table.

16 Q. Who is they?

17 A. Telly and Trese were talking.

18 Q. And the daughter?

19 A. Yeah, the daughter was talking. They
20 was doing a conversation, yes.

21 Q. So when did they leave your house?

22 A. They left my house around about 10:30;
23 10:30, quarter to 11, or something like that. They
24 didn't stay that long, because --

25 Q. And you don't wear a watch?

BEATRICE JONES - DIRECT EXAM

1 A. No, I do not.

2 Q. So you're guessing on times?

3 A. Yes.

4 Q. Did you hear from them again?

5 A. No. I walked outside in the yard -- I
6 walked outside in the yard and I came back inside.
7 And I was watching -- I think it was the "Price Is
8 Right", or something. I don't know what was on.
9 "Young and Restless" -- something was on. And I
10 saw an Amber Alert, and then I started screaming.

11 And I started screaming and I said, oh,
12 my God, that's Telly, that's Telly, that's Telly.
13 I called my momma, and I said, Momma, something
14 happened, something happened, something happened.
15 And I kept saying, they just left here, they just
16 left here, they just left here, they just left
17 here.

18 Q. So how were they acting when they were
19 at your house?

20 A. They were acting the same way -- they
21 were acting the same way. They were eating, they
22 were talking to Telly, they were having
23 conversation. Nothing -- nothing -- normal, they
24 were just --

25 Q. So after that, the police at one point

BEATRICE JONES - DIRECT EXAM

1 come by your house and you give them information?

2 A. Yes.

3 Q. And you're cooperative with them?

4 A. Yes, I did. I talked to the police. I
5 talked to the investigators.

6 Q. And, in fact, you called the police or
7 attempted to call the police when the SLED
8 bloodhounds catch him?

9 A. I never talked to my brother -- I
10 haven't seen my brother since that day. The police
11 came to my house that afternoon and he said --
12 well, I got home around about seven. He said,
13 thank you, ma'am.

14 He said, if your brother attempt to
15 come to this house or call you in any way or
16 contact you in any way, I want you to call me. He
17 give me his card. He was Lane's Police, in my
18 town.

19 Q. And you did what you were supposed to?

20 A. I tell you what happened. Around about
21 10, 10:30 that night, my daughter said, Momma,
22 somebody at my window. And he knocked on my
23 daughter's window, the back window. And then he
24 came around the house, he came to the -- her window
25 on the side of the house, he came to the kitchen

BEATRICE JONES - DIRECT EXAM

1 window. He said, Bee, this is Telly.

2 And me and my daughter got on the floor
3 in the hall because she was scared and I was
4 scared, because there was so much police that day
5 and we were so scared. So I called the police -- I
6 called the police on my brother. I called the
7 police on my brother. I called the police on my
8 brother. There wasn't no neighbor, it was me. It
9 was me. I called them. I called the police on my
10 brother. No neighbor. It was me. Bee Jones
11 called the police on my brother.

12 And he said, Bee. And I said, I can't
13 open the door for him. I can't open the door. He
14 came to me for protection and I can't even protect
15 him. So -- and I called the police and then the
16 police didn't answer. So I called my neighbor. My
17 neighbor is Lulabelle Conyers. It was me. That
18 number that called was 5559. She called the police
19 for me.

20 In the next three minutes, next -- I
21 don't know how long. I know less than five
22 minutes, they were there. It was -- I heard the
23 dogs, I heard the lights, I heard the dogs and the
24 lights coming. And then my brother -- my
25 brother-in-law work with the -- with the Caycee

BEATRICE JONES - DIRECT EXAM

1 Police Department. He said, Bee, we got him. We
2 got Telly. And I said, good, as long as he's not
3 hurt.

4 And I haven't seen my brother since
5 that day. Since that day he left my house, I
6 haven't seen my brother since that day until this
7 morning.

8 Q. And, again, that morning you had Trese
9 and her daughter --

10 A. Yes.

11 Q. -- in your house?

12 A. I treat them nice.

13 Q. And was there anything signaling you
14 that something bad was going on?

15 A. No, sir. No, sir.

16 Q. And you have already told us about your
17 education and your jobs as a teacher?

18 A. Yes, sir.

19 Q. You would have participated in DSS
20 classes --

21 A. Yes, sir.

22 Q. -- in reporting requirements?

23 A. Yes, sir.

24 Q. And, in fact, did you participate in
25 those?

BEATRICE JONES - CROSS EXAM

1 A. Yes, sir.

2 Q. And you've been certified in that
3 regard?

4 A. Yes, sir. I'm certified, but I haven't
5 had the job yet. But even when you work for Kelly,
6 you have to go through classes and education.
7 Kelly -- you have to go through that. And they
8 tell us what we should do and we have to report
9 things, we have to do things as a teacher, an
10 educator.

11 Q. And so you would have reported
12 something if you had seen it?

13 A. Yes, sir.

14 MR. SCHWACKE: Okay. Thank you.
15 That's all the questions I have.

16 THE COURT: Any questions for the
17 witness?

18 MS. WILLIAMS: Yes, Your Honor.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Thank you for being here, Mrs. Jones.
23 I know this is hard for you. Do you need to take a
24 break?

25 A. No, ma'am.

BEATRICE JONES - CROSS EXAM

1 Q. You have a duty to report child abuse?

2 A. Yes.

3 THE COURT: Ms. Williams, can you speak
4 up, please? With the air conditioner, I know it's
5 hard for the court reporter.

6 MS. WILLIAMS: I'm not usually so soft
7 spoken, I apologize. I will step it up.

8 BY MS. WILLIAMS:

9 Q. You have to have report child abuse,
10 right?

11 A. Yes.

12 Q. If you had known that a
13 17-year-old-child was raped earlier that day, you
14 would have reported it, right?

15 A. Yes, ma'am. I have three daughters.

16 Q. Right.

17 A. I would --

18 Q. Absolutely would have reported it?

19 A. Yes, ma'am.

20 Q. If you would have known that a
21 17-year-old was taken from her home at gunpoint and
22 taken to an area and forced to perform oral sex,
23 you would have reported that?

24 A. I would have reported that.

25 Q. Absolutely. Did you know anything

BEATRICE JONES - CROSS EXAM

1 about that?

2 A. , I did not know anything about that.

3 Q. So at that time when you saw your
4 brother --

5 A. Yes.

6 Q. -- and the victims, you didn't know
7 anything --

8 A. I didn't know anything.

9 Q. -- that happened before?

10 A. I didn't know anything.

11 Q. So had you known that all that had
12 happened, you certainly would have reported?

13 A. The same way that I reported it -- the
14 same way I turned him in, I would have reported it.

15 Q. Exactly, but you didn't have any idea
16 that all that had happened, did you?

17 A. No, ma'am.

18 Q. So nobody faults you. I mean, you just
19 didn't know.

20 A. I did not know.

21 Q. Now, it seems like you have been
22 through a lot of anguish over this situation, as is
23 evidenced by your emotion here today. And I don't
24 think that anybody can look at you and not
25 understand that. You called Telly your worry

BEATRICE JONES - CROSS EXAM

1 brother; tell us why.

2 A. Because he always worry you for money.
3 He worry you for that; Bee, go do that; Bee, go do
4 this.

5 Q. Does he have a way to make money
6 himself? Like why does he not ever have any money?

7 A. Well, he just -- he just got out of
8 prison. He got out and he was on probation, it was
9 hard for him to get a job.

10 Q. Okay. And so you had not been around
11 **L. J.** at all, the younger girl; you didn't know
12 her name?

13 A. No. I mean, when they come, I don't
14 know if she came, because, see, I don't want to say
15 that I had been around, I don't know. They come in
16 different groups. Sometimes it may be one or two
17 or -- so I cannot say that.

18 Q. You might have never met **L. J.**?

19 A. I might have not, because all of them
20 don't come at the same time. She has four
21 daughters, I believe.

22 Q. And how many times would you say you
23 had met Deadrene, or Trese? Is that what you call
24 her? Trese?

25 A. I met Trese several times.

BEATRICE JONES - CROSS EXAM

1 Q. Okay. Several?

2 A. Yeah. We talked -- not talked. She
3 comes with Telly.

4 Q. Okay. And so when you say they were
5 acting the same way as they always acted --

6 A. Yes.

7 Q. -- you would not have known how **L. J.**
8 acted because you had never met her before?

9 A. I can't say that I never met her
10 before. She could have came with them too.
11 Because they came into my house and they were in
12 the den. There were three of them been in the den,
13 been in my den. I have given them books. We were
14 on the porch one day, I give them all three books.
15 So she could have actually came too.

16 Q. **L. J.** may not have ever been there?

17 A. She might not have. She may have.

18 Q. You may not know how she acted?

19 A. All I know is that there are two
20 light-skinned ones and two dark-skinned ones. I
21 don't know their names personally.

22 Q. Now, at some point they go into your
23 bathroom, right?

24 A. No, it was only Trese.

25 Q. Okay. Do you know, when you were in

BEATRICE JONES - CROSS EXAM

1 the back bedroom with Telly, if anybody went in the
2 bathroom?

3 A. Trese went in there.

4 Q. How did you know that **L. J.** didn't go
5 into the bathroom?

6 A. I don't know; because she -- when I
7 went down the hall, I came back and Trese was in
8 the rest room and the girl was sitting right there
9 where she was at.

10 Q. You don't know what happened when you
11 weren't there?

12 A. No.

13 Q. So they could have been in the
14 bathroom?

15 A. I don't -- no. I don't think she
16 moved. Only one person moved, because we weren't
17 down there that long.

18 Q. And you gave your brother \$20?

19 A. Yes.

20 Q. Did he tell you he had no money?

21 A. No, he didn't say that. He said did I
22 have any money.

23 Q. Did you know that he had already been
24 somewhere else and got money?

25 A. No.

BEATRICE JONES - CROSS EXAM

1 Q. He didn't tell you that?

2 A. Huh-uh.

3 Q. And when they were talking at the
4 table, do you remember what they were talking
5 about?

6 A. They were talking about I think getting
7 back together and whatever, working on it.

8 Q. She was trying to tell him she was
9 going to get back together with him?

10 A. He was doing most of the talking.

11 Q. He was?

12 A. He was talking and she was listening.

13 Q. He was wanting to get back together
14 with her?

15 A. Yes.

16 Q. You said -- you made a statement in
17 your statement about something he told you. It's
18 difficult to read, and I was just wondering if you
19 could take a look at it. Have you looked at your
20 statement any time recently?

21 A. Yes.

22 Q. Did you look at it with Mr. Schwacke?

23 A. No.

24 Q. When did you look at it?

25 A. I think about a week ago, I glanced

BEATRICE JONES - CROSS EXAM

1 over it.

2 MS. WILLIAMS: Okay. I'm going to mark
3 this just for identification purposes.

4 (STATE'S EXH. 165, Statement, was
5 marked for identification.)

6 BY MS. WILLIAMS:

7 Q. What are you saying that Telly said to
8 you here? He said something about not wanting to
9 get into this, something going wrong?

10 A. Yes.

11 Q. Tell me what it is that you said there.

12 A. Let me explain.

13 Q. What do the words say?

14 A. I'm going -- he said, Bee, I'm going.
15 I'm going. I said, where are you going? And he
16 said, I'm -- I said, where are you going? He said,
17 I'm just going.

18 THE COURT: Ma'am, you can review the
19 statement and use it to refresh your memory. Read
20 it and then you need to ask her a question.

21 BY MS. WILLIAMS:

22 Q. If the statement refreshes your memory,
23 then tell us what it says.

24 A. Okay.

25 THE COURT: Ma'am, take a few minutes

BEATRICE JONES - CROSS EXAM

1 to read it to yourself.

2 THE WITNESS: Okay.

3 BY MS. WILLIAMS:

4 Q. Does that refresh your memory?

5 A. Yes.

6 Q. What is it that he told you?

7 A. My brother stayed with me that
8 Wednesday night. He stayed with me that Wednesday
9 night. He said someone had broken into his house.
10 His house was torn up. He said his house was torn
11 up. And I said, what's wrong? He said, I don't
12 want you to get into this. And that's what I was
13 referring to, we were talking through it.

14 We were talking about somebody had
15 ransacked his house. And I said, Telly, are you
16 all right? He said, yeah, I'm all right. I don't
17 want you getting into this. He stayed with me that
18 Wednesday night -- that Wednesday night. And I
19 think I saw him again that Friday. That's what
20 that was about.

21 Q. Okay. But you were asking him right
22 then where he's going?

23 A. I asked, where are you going? I asked
24 him where they were going. And he said they were
25 going, just riding out to talk.

BEATRICE JONES - CROSS EXAM

1 Q. Well, actually what he said is,
2 something is wrong, but I don't want to get into
3 it. And then he starts talking about the house?

4 A. It wasn't -- it wasn't like -- he was
5 just talking about -- me and him was just talking
6 about general conversation. And then we were
7 talking about -- that was -- we were in the room
8 talking and I said, are you all right? And he
9 said, yes, don't get into this.

10 It wasn't anything about -- it was
11 about his -- I was concerned about him being safe.
12 My main concern was Telly being safe. I didn't
13 have any concern about anything else. I was
14 thinking about him, because he had stayed with me
15 that Wednesday night and he was jumpy.

16 Q. But this statement was taken because
17 they came to you after he was captured -- or right
18 before he was captured. So this was in the context
19 of the October 28th situation, not the Wednesday
20 night. This was taken because they were asking you
21 questions about him allegedly kidnapping the two
22 women.

23 A. They didn't say all that. The only
24 thing they asked me is what happened and the
25 conversation we had. And I tell them the

BEATRICE JONES - CROSS EXAM

1 conversation we had was about me and Telly, about
2 -- I think it was about -- about -- was he safe.
3 It wasn't anything about them more likely. He
4 didn't tell they me they were kidnapped. They
5 didn't say anything about that.

6 Q. Your testimony is that when you're
7 saying he said something was wrong, he didn't want
8 to get into it, it was about his house?

9 A. It was about -- I was concerned about
10 him. I mean, it wasn't any concern about anything
11 else. I was concerned about him and he said, I
12 don't want you getting into this, I'm all right.

13 Q. Okay. And then you said that he came
14 back to your home at like 10:30 p.m. and knocked on
15 the window?

16 A. That was at night.

17 Q. At night. Are you sure about the time?
18 I know it was three years ago. Could it have been
19 earlier?

20 A. No. Because we got -- we left for down
21 there around about like 7:00, 7:30 from down --
22 went and had -- the police hang-out, where the
23 police were parked at. So, no. We were home for a
24 good while. It had to have been I know around 9:00
25 or 10.

BEATRICE JONES - REDIRECT EXAM

1 Q. Okay. You're as sure about that as
2 everything else that you testified about?

3 A. I can't be sure about the time. I can
4 not be sure about the time. All I know is, he came
5 to my house, knocked on the window, knocked on the
6 doors, and I called the police.

7 Q. It might not have been 10:30 p.m.?

8 A. I can't know exactly. It happened that
9 night. It happened that night.

10 MS. WILLIAMS: Okay. Thank you very
11 much, Mrs. Jones.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. SCHWACKE:

15 Q. Beatrice, did some of these people come
16 to your house as well?

17 A. No. A man came -- well, they called
18 me.

19 Q. I mean recently, to talk to you about
20 this case?

21 A. No.

22 Q. And did you write your own statement?

23 A. Yes, I think I did.

24 Q. In your own writing?

25 A. Yes.

BEATRICE JONES - REDIRECT EXAM

1 Q. And you were talking about something --

2 A. I was talking --

3 Q. -- totally different?

4 A. He was -- okay. Let me see the part
5 that I omitted. Let me see what I omitted. When
6 we were coming out the door, that's the part right
7 there. The part, when we were coming out, Telly
8 called me on the side of the house. I show you, he
9 called me on the side of the house.

10 Q. Closest to the woods or the house next
11 door?

12 A. Close to the clothes line. And I asked
13 him, I said, Telly, are you all right? I was
14 asking him about what happened at -- are you safe?
15 I asked him, are you safe? That's what I asked
16 him. Telly, are you safe? He said the house was
17 all ram up, he was sleeping in his car. That's
18 what he told me, he was sleeping in the car. And I
19 said, are you all right?

20 He said, I'll handle this. And he
21 said, don't get into this. And I said, well, call
22 Momma. And that's what that was referring about.
23 They -- they were standing right there at the step,
24 and Telly said -- he told Trese and -- I don't know
25 her name. I don't know her name, the girl, I'm

BEATRICE JONES - REDIRECT EXAM

1 going to say the young lady because she's a young
2 lady. That's how I see her, as a young lady.

3 And he said, wait a minute. They were
4 on the step right there. He came around the house
5 on the side of the house. And I said, Telly are
6 you all right? And he said, I'm all right. I'm
7 safe. He said, don't get into this.

8 I said, well, call Momma and let them
9 know the house was -- that's my mom and dad's house
10 -- let them know the house was -- that's all it
11 was.

12 MR. SCHWACKE: Thank you for your time.

13 THE COURT: Any objection to the
14 witness being excused?

15 MS. WILLIAMS: No, Your Honor.

16 THE COURT: From the defense?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: Ma'am, you're excused.

19 THE WITNESS: Okay.

20 MR. SCHWACKE: Shirley Wilson.

21 SHIRLEY WILSON,

22 being first duly sworn, testified as follows:

23 THE CLERK: Have a seat, state your
24 full name for the record and spell your last name.

25 THE WITNESS: Shirley Wilson.

SHIRLEY WILSON - DIRECT EXAM

1 MR. SCHWACKE: You can look this way.

2 THE WITNESS: S-H-I-R-L-E-Y,

3 W-I-L-S-O-N.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. SCHWACKE:

7 Q. And you live where?

8 A. I live in Summerton, South Carolina.

9 Q. And you're employed at?

10 A. 52 Station in Greeleyville.

11 Q. And you are here today with regard to
12 some cameras that were operable in that store?

13 A. Yes.

14 Q. And you're familiar with that system?

15 A. Yes.

16 Q. It has multiple cameras?

17 A. Yes.

18 Q. And you've had occasion to review video
19 made from those cameras?

20 A. Yes.

21 Q. And it fairly represents what you --
22 which happened at that store on the morning of
23 October 28th --

24 A. Yes.

25 Q. -- 2013?

SHIRLEY WILSON - DIRECT EXAM

1 A. Yes.

2 Q. And you, in fact, were shown in that
3 video?

4 A. Yes.

5 Q. You're the cashier?

6 A. Yes.

7 MR. SCHWACKE: Your Honor, I think
8 we've agreed --

9 MS. WILLIAMS: State has no objection
10 to the tape coming in.

11 THE COURT: What number is that?

12 MR. SCHWACKE: That would be
13 Defendant's Number 5.

14 THE COURT: It will be marked and
15 admitted without objection.

16 (DFT. EXH. 5 in evidence.)

17 THE COURT: You may proceed.

18 (Video played.)

19 MR. SCHWACKE: Go back to the very
20 beginning and pause it for a second.

21 BY MR. SCHWACKE:

22 Q. Ms. Wilson, that fairly and accurately
23 depicted what you saw that day?

24 A. Yes.

25 Q. And there is a date and time on here.

SHIRLEY WILSON - DIRECT EXAM

1 Is that -- that's from the camera itself?

2 A. Yes, sir.

3 Q. And that indicates October 28, 2013,
4 9:54 a.m.?

5 A. Yes, sir.

6 Q. And that was you inside -- you can turn
7 around. Turn the lights back up. That was you as
8 the clerk inside?

9 A. Yes, sir.

10 Q. And the woman who paid the money, had
11 you seen her in the store?

12 A. From time to time she comes in. She's
13 not a regular customer, but she comes in from time
14 to time.

15 Q. And you don't know her by name?

16 A. I don't.

17 Q. You just recognized her?

18 A. Yes.

19 Q. And you volunteered while you were
20 watching that that you had seen her before?

21 A. Yes.

22 Q. What is -- is what was shown, is that
23 typical or not typical of how you would normally
24 have observed her?

25 A. She normally acts that same way.

SHIRLEY WILSON - DIRECT EXAM

1 Q. Just that way?

2 A. It's her regular behavior.

3 Q. And no effort -- no one said anything
4 to you while you were there?

5 A. No.

6 Q. No one made any hand signals?

7 A. No, sir.

8 MR. SCHWACKE: One moment, Your Honor.

9 THE COURT: Uh-huh.

10 BY MR. SCHWACKE:

11 Q. And where is that store located?

12 A. Greeleyville, South Carolina.

13 Q. And what -- you can see a roadway in
14 the picture when you had the outside shot camera.
15 There was like a highway in front of this?

16 A. It's straight down 521. You can go to
17 Salters, Andrews. If you go straight through the
18 light, it takes you back to Kingstree. If you take
19 the left, 521 takes you to Manning.

20 Q. Is it a pretty busy roadway?

21 A. Yes.

22 MR. SCHWACKE: That's all the questions
23 I have.

24 THE COURT: Any questions for the
25 witness?

SHIRLEY WILSON - CROSS EXAM

1 CROSS-EXAMINATION

2 BY MS. WILLIAMS:

3 Q. Ms. Wilson, now, I counted two seconds
4 that she was at your counter before she left. Is
5 that the typical amount of time that she would come
6 in?

7 A. Yes.

8 Q. How many times do you think that you
9 have seen her for about two seconds?

10 A. Normally, she comes in there, she's in
11 and out.

12 Q. Okay. Like more than five times? More
13 than ten?

14 A. Within a month, maybe five times.

15 Q. So you've seen her about five times for
16 about two seconds?

17 A. Yes.

18 Q. And did you know who was in the car
19 that she came up in?

20 A. I didn't.

21 Q. Did you know who was pumping gas?

22 A. I didn't.

23 Q. Did you have any idea what happened
24 before any of this happened?

25 A. I didn't.

SHIRLEY WILSON - CROSS EXAM

1 Q. And did you have any idea what anybody
2 in the car had on their person?

3 A. I didn't.

4 MS. WILLIAMS: Thank you.

5 THE COURT: Any redirect?

6 MR. SCHWACKE: No, Your Honor.

7 THE COURT: Any objection to the
8 witness being excused? From the State?

9 MS. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. SCHWACKE: No, Your Honor.

12 THE COURT: Ma'am, you're excused.
13 Defense may proceed.

14 MR. SCHWACKE: Your Honor, may we
15 approach?

16 THE COURT: Sure.

17 (Bench conference.)

18 MR. SCHWACKE: I don't at this point
19 intend to call any more witnesses, but at this
20 point I just want to make sure he hasn't changed
21 his mind.

22 THE COURT: Sure. I'll do that for
23 you.

24 (End of bench conference.)

25 THE COURT: Madame Forelady, ladies and

1 gentlemen, we need to take up a brief matter of
2 law. During the break, please do not discuss the
3 case and please leave your notepads in your seats.
4 We appreciate your patience.

5 (Jury out, 12:07 p.m.)

6 THE COURT: You can take your seats.

7 Sir, stand for me, please. I'm
8 referring to the defendant. I remind you that you
9 are still under oath.

10 Sir, your defense has presented all the
11 witnesses they intend to call before resting. I
12 need to inquire once again, have you fully
13 discussed with your lawyers whether you should or
14 should not testify?

15 A. Yes.

16 Q. Do you understand your rights regarding
17 your right to testify?

18 A. Yes, ma'am.

19 Q. And do you need to speak with your
20 attorneys any more at this time?

21 A. No, ma'am.

22 Q. Sir, do you have any questions of the
23 Court regarding your right to testify?

24 A. No, ma'am.

25 Q. And, sir, do you wish to testify?

1 A. No, ma'am.

2 THE COURT: Thank you. You may take
3 your seat.

4 MR. SCHWACKE: Your Honor, based --

5 THE COURT: Give me one second.

6 Yes, sir.

7 MR. SCHWACKE: Your Honor, based on
8 that, when the jury is back and present, we will
9 then rest our case.

10 THE COURT: Okay. And while we have
11 this break, does the State intend to call any
12 rebuttal witnesses?

13 MS. WILLIAMS: No, Your Honor.

14 THE COURT: Let's take a rest room
15 break and come back, Mr. Schwacke can rest in the
16 presence of the jury, and we'll go from there.

17 MR. SCHWACKE: Okay.

18 (A recess transpired.)

19 THE COURT: State ready to proceed?

20 MS. WILLIAMS: Yes, Your Honor.

21 THE COURT: Defense ready to proceed?

22 MR. SCHWACKE: Yes, Your Honor.

23 THE COURT: We'll bring the jury in
24 and, Mr. Schwacke, you need to rest in the presence
25 of the jury, and we'll proceed from there. And

1 then I'm going to let the jury go to lunch and then
2 we'll have charge conference, closing arguments and
3 instruction.

4 Please bring in the jury.

5 (Jury in, 12:28 p.m.)

6 THE COURT: You may be seated.

7 The defense may proceed.

8 MR. SCHWACKE: Your Honor, at this time
9 the defense rests.

10 THE COURT: Madame Forelady -- well,
11 we'll reserve motions. Anything further from the
12 State?

13 MS. WILLIAMS: No, Your Honor. Nothing
14 from the State.

15 THE COURT: Madame Forelady, ladies and
16 gentlemen, both the State and the defense have
17 rested their cases. We have now reached the stage
18 of the trial where we will have closing argument
19 and instruction; however, I have some matters of
20 law that I need to go over with the attorneys that
21 will probably take us another 30 minutes or so. I
22 will allow you to go to lunch and we're going to
23 resume at 2:00 with closing argument and
24 instruction. That gives us the 30 minutes we need
25 to deal with what we need to deal with and then

1 gives us an hour for lunch as well.

2 During this break, please do not
3 discuss this case in any manner whatsoever. Please
4 do not have any contact with anyone in or about the
5 courthouse that you do not recognize to be a fellow
6 juror. Do not watch, read, or listen to any media
7 accounts about this case if there are any. And you
8 are strictly instructed not to do any independent
9 research of any type on the Internet regarding any
10 issue or matter involved in this case.

11 As soon as you all have returned to
12 your jury room, we will begin closing argument and
13 instruction. Have a good lunch. Please leave your
14 notepads in your seats.

15 (Jury out, 12:31 p.m.)

16 THE COURT: You may be seated. The
17 defense has rested. Any motions?

18 MS. WILLIAMS: No, Your Honor.

19 MR. SCHWACKE: Just to renew our
20 previous motions. Other than that, no, Your Honor.

21 THE COURT: Does the State wish to
22 state anything further on the record regarding the
23 renewal of the motions?

24 MS. WILLIAMS: We stand by our earlier
25 arguments, Your Honor.

1 THE COURT: The Court will stand by its
2 earlier ruling and deny the motion and incorporate
3 those findings and conclusions of law for this
4 portion of the record.

5 MR. SCHWACKE: Thank you, Your Honor.

6 THE COURT: I assume the State will
7 open and close?

8 MS. WILLIAMS: Yes, Your Honor.

9 THE COURT: How long do you anticipate
10 your argument will be?

11 MS. WILLIAMS: I would say on opening,
12 probably about 15 minutes --

13 THE COURT: I need to know the total.

14 MS. WILLIAMS: Total would be, I would
15 say, an hour at the most.

16 THE COURT: How long will the defense's
17 closing be?

18 MR. SCHWACKE: Shorter than an hour.

19 THE COURT: I need you to give me a
20 time frame.

21 MR. SCHWACKE: I would guess
22 30 minutes.

23 THE COURT: I will give the jury a
24 general instruction regarding their responsibility
25 and my responsibility, how they are to judge

1 witness credibility and believability. Give them a
2 general instruction regarding expert witness
3 testimony.

4 I will give them a general instruction
5 regarding direct and circumstantial evidence, as
6 well as a general instruction on the presumption of
7 innocence. I will charge Victor v. Nebraska on
8 reasonable doubt, as well as the defendant not
9 testifying, as well as the charge, the arrest, and
10 the indictment not being evidence. And that would
11 come before the presumption of innocence.

12 I will charge them and instruct the
13 elements of 16-3-652, which is criminal sexual
14 conduct in the first degree. I think we know the
15 elements that apply in this case. And subsection 3
16 would not be applicable as there is no evidence
17 that there is any incapacity.

18 I will then instruct, when there are
19 multiple counts of criminal sexual conduct, that
20 each act is a separate count of the alleged crime.
21 I will then instruct the elements of kidnapping,
22 which is 16-3-910, and then the elements of first
23 degree burglary, which are 16-11-311, those which
24 apply, which would be unlawful entry.

25 The second element would be that he

1 intended to commit a crime therein; and that while
2 entering or while in the dwelling, he was armed
3 with a deadly weapon or explosive; or when
4 entering, while in the dwelling or when fleeing,
5 the defendant or an accomplice used or threatened
6 to use a dangerous object; when entering, while in
7 the dwelling, or when fleeing, the defendant or an
8 accomplice displayed what was or appeared to be a
9 knife, pistol, revolver, rifle, shotgun, machine
10 gun, or other firearm.

11 I don't know that the sixth element of
12 the statute would really apply, because the
13 testimony was that this happened at 5 in the
14 morning, but there is no test- -- or around
15 thereabout, but there is no testimony as to whether
16 it was sunset or sunrise.

17 MS. WILLIAMS: I don't think we alleged
18 it in the Indictment either, so...

19 THE COURT: I was not going to instruct
20 that. Then I will instruct the elements of
21 16-23-490, which is possession of a weapon during
22 the commission of or an attempt to commit a violent
23 crime, defining what a firearm and/or a knife is
24 defined as by statute; and instructing that
25 criminal sexual conduct in the first degree and

1 kidnapping are defined as violent crimes.

2 MS. WILLIAMS: I think we only alleged
3 kidnapping.

4 THE COURT: Then I will only instruct
5 kidnapping. Then I will instruct 16-23-500, which
6 is unlawful possession of a firearm by a person
7 convicted of a violent offense. I will instruct
8 that he is charged with that offense, but the State
9 must first prove beyond a reasonable doubt that the
10 defendant was convicted of a violent crime as
11 defined by 16-160, and that the parties have
12 stipulated that the defendant has previously been
13 convicted of a violent felony as classified by
14 section 16-160 of the Code of Laws as Amended.

15 I will instruct the jury that a
16 stipulation is an agreement and it requires no
17 further proof, but I will do that earlier on in the
18 instructions.

19 Next, the State must prove beyond a
20 reasonable doubt that the defendant had possession
21 of a firearm. I'll instruct them that a firearm
22 means any machine gun, automatic rifle, revolver,
23 pistol, or any weapon which will, is designed to,
24 or may be readily converted to expel a projectile.

25 I will then instruct them that the

1 prior conviction for a violent offense may only be
2 considered by them for the purpose of determining
3 whether or not it satisfies that element of the
4 offense that makes it a violation to possess a
5 firearm by a person convicted of a violent offense
6 and for no other purpose; and that the prior
7 offense cannot be considered by them as evidence of
8 guilt of the other crimes the defendant is charged
9 with or is evidence of his character, and that
10 before they can even consider the evidence of the
11 defendant's prior violent crime conviction, they
12 must first find that the State has proven beyond a
13 reasonable doubt that the defendant had possession
14 of a firearm.

15 Then they may consider the evidence of
16 his conviction for a violent offense as evidence of
17 one of the elements of the crime, making this an
18 unlawful possession of a firearm by a person
19 convicted of a violent offense.

20 I will then instruct them that he has
21 multiple charges and that he may be convicted or
22 acquitted on any or all and that they are to
23 consider each crime independently, with the law
24 applicable to it, uninfluenced by any of their
25 other decisions. I will then give them a general

1 instruction regarding being fair and impartial.

2 Now, while we're dealing with -- well,
3 I'll go back and deal with that in a moment.

4 Are there any exceptions to the charges
5 proposed, from the State?

6 MS. WILLIAMS: No exceptions.

7 THE COURT: From the defense?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Okay. Now, there was a
10 motion filed by the defense regarding the ability
11 to present evidence of the victim's sexual conduct,
12 but that is moot because there was no evidence of
13 that kind presented.

14 THE COURT: Is that accurate? From the
15 State?

16 MS. WILLIAMS: Yes, ma'am.

17 THE COURT: From the defense?

18 MR. SCHWACKE: Yes, Your Honor.

19 THE COURT: Anything else? And I
20 assume there are no requests for any lesser
21 includes, because I haven't heard any. So I will
22 just do a straight form on each of the Indictments,
23 which is guilty or not guilty. And we will have
24 those after lunch for you to review.

25 MS. WILLIAMS: Thank you.

1 THE COURT: I don't think there's
2 anything else to take up except to make sure that
3 you have all -- that the Court Reporter has all of
4 the evidence.

5 MS. WILLIAMS: We just would request an
6 additional one, 16-3-657, which is --

7 THE COURT: No corroboration? I'm
8 going to have to think about that. A recent
9 decision came down regarding me instructing that in
10 a case and it was a split decision and I need to
11 ruminate a little bit before I decide. That case
12 really stands for the proposition regarding the
13 legal sufficiency, that there not be corroboration.

14 I have instructed it in some instances.
15 Usually there is no exception to it, but it usually
16 depends on the way the case is going to be argued.
17 And if -- if Mr. Schwacke is going to argue that
18 she has to corroborate her testimony in some way, I
19 will probably be more inclined to instruct that
20 than if he is not going to argue his case that way.

21 MS. WILLIAMS: So we won't know until
22 after closing?

23 THE COURT: You won't know until we
24 resume after lunch, because I'm going to think
25 about it. I guess I need to ask, does the defense

1 have any exception to me instructing that?

2 MR. SCHWACKE: Yes, we would.

3 THE COURT: Are you going to argue that
4 she has to in some way -- that her testimony has to
5 be corroborated that she was sexually assaulted?

6 MR. SCHWACKE: I'm not going to be
7 making that argument.

8 THE COURT: I'll think about it over
9 lunch.

10 MR. SCHWACKE: Your Honor, the only
11 other thing --

12 THE COURT: Let me make sure that Ms.
13 Williams is done.

14 MS. WILLIAMS: I am, Your Honor.

15 THE COURT: Yes, sir?

16 MR. SCHWACKE: The unlawful possession
17 of a weapon during the commission of a violent
18 crime, I guess my request would be that the jury is
19 instructed not to consider that until they first
20 determine --

21 THE COURT: I think the charge says
22 that in and of itself: He has to have been
23 convicted of something that is violent in order for
24 him to have possession of a weapon during the
25 commission of a violent crime.

1 MR. SCHWACKE: Thank you.

2 THE COURT: Anything further before we
3 adjourn for lunch? From the State?

4 MS. WILLIAMS: No, Your Honor.

5 THE COURT: From the defense?

6 MR. SCHWACKE: No, Your Honor.

7 THE COURT: Before you go, make sure
8 that the Court Reporter has all of the exhibits.

9 (A luncheon recess transpired.)

10 THE COURT: State ready to proceed?

11 MS. WILLIAMS: We're waiting on
12 Mr. Poulos. He was just here. He may have gone to
13 the rest room.

14 THE COURT: While we're waiting on him,
15 would you all approach so you can look at the
16 verdict forms?

17 (Counsel for the State and defense
18 complied.)

19 THE COURT: State ready to proceed?

20 MS. WILLIAMS: Yes.

21 THE COURT: Defense ready to proceed?

22 MR. SCHWACKE: Yes, ma'am.

23 THE COURT: Bear with us one second. I
24 need to get one thing that I left in my office.

25 (A recess transpired.)

1 THE COURT: If Counsel would approach
2 for me, please, to view the verdict forms.

3 Any exception from the State?

4 MS. WILLIAMS: No, Your Honor.

5 THE COURT: Any exception to the forms
6 of the verdict from the State?

7 MS. WILLIAMS: Not from the State.

8 THE COURT: From the defense?

9 MR. SCHWACKE: No, Your Honor.

10 THE COURT: State ready to proceed with
11 closing argument?

12 MS. WILLIAMS: The State is ready, Your
13 Honor.

14 THE COURT: Is the defense ready to
15 proceed with closing argument?

16 MR. SCHWACKE: Yes, Your Honor.

17 THE COURT: Please bring in the jury.

18 (Jury in, 2:20 p.m.)

19 THE COURT: Oh, and, Counsel, approach
20 for me, please.

21 You all may be seated.

22 (Bench conference)

23 THE COURT: I'm not going to instruct
24 16-36-51; however, you need to be very careful
25 about your argument, because I may review that

CLOSING ARGUMENT - STATE

1 decision again if you argue in any way that her
2 testimony has to be corroborated.

3 MS. WILLIAMS: Thank you, Judge.

4 THE COURT: Thank you.

5 (End of bench conference.)

6 THE COURT: Ladies and gentlemen, both
7 the State and the defense have rested their cases.
8 We have now reached the stage of the trial where we
9 will have closing argument and instruction. I
10 would ask that you give the attorneys your
11 undivided attention. We will take breaks as
12 necessary.

13 And just so that you know for planning
14 purposes, if it comes to an appropriate time to
15 break for the evening, we will do that as well.
16 I'm not going to hold you captive at the courthouse
17 all night. We'll resume proceedings in the morning
18 if that becomes necessary. I would ask that you
19 give the attorneys your undivided attention.

20 MR. POULOS: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 MR. POULOS: Thank you, ladies and
23 gentlemen, for your time this week and your
24 commitment as we worked through this trial. We've
25 reached the stage of the trial where all the

CLOSING ARGUMENT - STATE

1 evidence has been presented and the only thing left
2 to do is for the attorneys to talk to you and the
3 Judge to instruct you on the law.

4 The way the law works in our State for
5 this particular trial gives the State a chance to
6 talk to you first about the law, about the charges,
7 like we did in the opening. Then Mr. Schwacke will
8 stand up here and talk to you about the law and
9 about the charges and about all of the facts and
10 all the circumstances and he will make his full
11 argument. And then Ms. Williams gets to come back
12 up for the State and talk about all of the facts
13 and circumstances and give her full argument.

14 So what I'm going to do right now is
15 talk briefly about the law. We have two counts of
16 kidnapping. And kidnapping is any time a person
17 unlawfully seizes, confines, inveigles, decoys,
18 kidnaps, abducts or otherwise carries away
19 unlawfully, another person.

20 And here, ladies and gentlemen, the
21 evidence has shown you that **L. J.** was kidnapped
22 when she was abducted from her home and confined in
23 the vehicle. Her mother was kidnapped when she was
24 inveigled or coerced into the vehicle for her
25 daughter's safety, and once inside that vehicle,

CLOSING ARGUMENT - STATE

1 the defendant showed her the gun and thereby
2 confining her as well.

3 We have one charge of burglary in the
4 first degree, and that is when a person enters a
5 dwelling without consent and with the intent to
6 commit a crime inside, either while armed with a
7 deadly weapon or displaying what appears to be a
8 knife, pistol, revolver, et cetera. That's an
9 either/or, ladies and gentlemen.

10 And the evidence here has shown you
11 that the defendant, Telly McClam, entered the
12 residence of Johnnie Jenkins, where [L. J.] was
13 staying, on [REDACTED] Way, and he did so while he
14 was armed both with a knife and a 22-caliber
15 revolver, and his intent in that crime can be
16 inferred from the facts and circumstances. He
17 entered after he saw the grandparents leave, he
18 broke in the front door and he took [L. J.] out
19 against her will.

20 The next charge, unlawful possession of
21 a firearm by a person convicted of a violent felony
22 offense. We have proven that Mr. McClam was in
23 possession of a firearm. There's been testimony by
24 numerous witnesses that he had a 22-caliber
25 revolver, that it was recovered from him by law

CLOSING ARGUMENT - STATE

1 enforcement agents when he was arrested.

2 The Judge will instruct you that the
3 crime of kidnapping is a violent offense. Excuse
4 me, we have stipulated -- the parties have
5 stipulated that the defendant has previously been
6 convicted of a violent felony offense. We have
7 satisfied the statute.

8 Possession of a weapon during the
9 commission of a violent crime; again, we have
10 proven that the defendant possessed the firearm and
11 the Judge will instruct you that kidnapping is by
12 the laws of our state considered a violence
13 offense.

14 Lastly, we have criminal sexual conduct
15 in the first degree, and that is when an individual
16 engages in a sexual battery with a victim and
17 either uses aggravated force to accomplish the
18 battery or the victim of the battery is also a
19 victim of confinement, kidnapping, burglary, et
20 cetera.

21 Again, ladies and gentlemen, that is an
22 either/or. In this case we happened to have proven
23 both; Telly McClam committed sexual battery on
24 **L. J.**, and we have two counts, one for oral sex and
25 one for sexual intercourse, and he committed that

CLOSING ARGUMENT - STATE

1 battery on her by use of aggravated force and she
2 was the victim of a kidnapping and a burglary and
3 forcible confinement.

4 What is a sexual battery? It can be
5 sexual intercourse, it can be fellatio, it can be
6 oral sex. And the testimony has established that
7 the defendant not only forced her to perform oral
8 sex, he forced her to engage in sexual intercourse.
9 And you heard that the sexual assault kit taken
10 from **L. J.** had the defendant's DNA in it.

11 And what is aggravated force? It can
12 include the threat of using a deadly weapon, and
13 you heard **L. J.** tell you from the stand that Telly
14 McClam -- when she refused his advances, said,
15 well, this is where you die. So that satisfies
16 that element of the statute.

17 Lastly, we have the burden of proof.
18 The State must prove our case beyond a reasonable
19 doubt. The Judge will go into great detail about
20 the law, the burdens, but essentially we don't have
21 to prove to you beyond all possible doubt. It's
22 proof beyond a reasonable doubt. And when you go
23 back to your chambers to deliberate, I ask you,
24 when you consider all of the evidence, ask
25 yourself, what is reasonable? From all the

CLOSING ARGUMENT - DEFENSE

1 evidence, what is reasonable? And I'm convinced,
2 ladies and gentlemen, that you will find the
3 defendant guilty on every count. Thank you.

4 THE COURT: Mr. Schwacke, you may
5 proceed.

6 MR. SCHWACKE: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MR. SCHWACKE: Ladies and gentlemen of
9 the jury, again we thank you for your patience and
10 your attention during the course of this trial. It
11 began on Monday. It's been a case that has a lot
12 of information that you're going to have to
13 process, as this material is going to go back into
14 the jury room with you and you will need to review
15 it in making a determination as to what your
16 verdict should be.

17 As the State has told you, they bear
18 the burden of proof. The defendant -- we don't
19 have to prove anything. There's no requirement on
20 us, because it's nearly impossible for somebody to
21 prove a negative. And that's why our law has long
22 established the responsibility of the prosecution
23 to convince you beyond a reasonable doubt that the
24 person may have committed an offense.

25 So with that burden, it's been very

CLOSING ARGUMENT - DEFENSE

1 important in terms of you paying attention to it
2 and it's some of what I wish to discuss with you
3 sort of now. Exactly what is a reasonable doubt?
4 The Judge is going to be the one to instruct you on
5 that at the appropriate time, but it sort of
6 translates into a doubt that you could give a
7 reason for.

8 And as you make that determination, it
9 could start out with something rather small. It
10 doesn't have to be a big thing, it -- it could
11 start with a small thing and grow from there. So,
12 for instance, it could even start right at the fact
13 that Deadrene has a prior conviction for forgery.
14 That allows you to place that against her testimony
15 and make a determination as to whether or not it's
16 credible. So that could be a reasonable doubt.

17 Another reasonable doubt could be that
18 during the course of the testimony, there was
19 evidence as to how many cars (sic) were in the
20 vehicle at the time. You will recall that Deadrene
21 said she had left her phone at home and yet that's
22 contrary to what **L. J.** testified to, that her
23 mother had her phone with her. In fact, there were
24 two phones in this car.

25 Another thing you might consider,

CLOSING ARGUMENT - DEFENSE

1 another possible determination of a doubt that you
2 can give a reason for, were the phone records that
3 were obtained by the State. Well, they didn't go
4 the full route. They didn't take the search
5 warrant/Subpoena route. They just plugged the
6 phone into some machine, that they really don't
7 know how it works, but it spits out a report. And
8 in that report, as he told you, if it's deleted off
9 of that phone, it may not show in that report,
10 because of how it moves things in descending order
11 of importance and out of the system.

12 So as you go back into your jury room,
13 you're going to have State's Exhibit 160 to sit at
14 and look through and see where are the responses,
15 because that is the nature of what's going on
16 text-wise on those phones.

17 At one point, another doubt that you
18 might provide was -- Deadrene was asked if she was
19 familiar with the area where they were in the
20 woods. And she said, no, she wasn't familiar with
21 that area. Yet, later, she testified that she
22 lived in that area three years ago. So another
23 reason to be concerned about any information that
24 you're getting from Deadrene during the course of
25 the trial.

CLOSING ARGUMENT - DEFENSE

1 Let's talk about fingerprints. During
2 the testimony, one of the things that we discussed
3 with Agent Darnell was the fact that he can't
4 determine exactly when something was left or
5 deposited, a fingerprint was left or deposited.
6 All he can say is that it's a fingerprint and he
7 can attempt to match.

8 The other part of his testimony, he --
9 I'll remind you of his testimony that he really
10 wasn't trained in taking DNA evidence, but he knew
11 how to do it. He indicated at that point that he
12 had swabbed both sides of the tape, sticky side and
13 the non-sticky side. And what he didn't do is
14 (Indicating) check for hair. He didn't send this
15 on the road up to the DNA lab.

16 The other thing is they're going to
17 show a picture, I'm guessing, of duct tape in the
18 car in the trunk. Duct tape is a pretty
19 generic-looking thing. I'm betting in 50 percent
20 or more of this county, somebody's got it in their
21 car to repair a hose or maybe a cracked fender or
22 something. It's a multi-purpose tool.

23 But among these other items that you
24 can -- when you do this, is make comparisons.
25 Because there are tool mark examiners at SLED that

CLOSING ARGUMENT - DEFENSE

1 would look at perhaps where it was torn on the roll
2 versus where it's torn on the tape to make a
3 comparison. They also can make a comparison based
4 on the manufacturer and the components used in
5 making the different sticky material, the different
6 tape material. So that was not done at all by the
7 document examiner -- I mean, by the print examiner.

8 During the testimony there was an
9 explanation by the SANE nurse as to how they went
10 about the process of collecting evidence. And one
11 of the things that should have become abundantly
12 clear was the testimony from the SLED agents, that
13 during the course of their receiving this type of
14 information, that they are expecting it to be given
15 to them in a pristine state, not contaminated, with
16 every measure being taken to save that material for
17 testing. They don't want to have a bad result.

18 So they're dependent upon everybody up
19 the line doing the right thing, doing the correct
20 thing, not making a mistake. So how many law
21 enforcement officers testified in here during the
22 course of this trial and touched these materials
23 and never put on gloves? Use your own recollection
24 of that.

25 The other thing about the DNA is that

CLOSING ARGUMENT - DEFENSE

1 the SANE examiner testified that, if there was
2 blood that was found, we would have taken a
3 photograph of it. And then she gets embarrassed by
4 the fact that there was some blood on the material
5 that they didn't test. In fact, in this bag of
6 clothing, nothing got tested. Not the sports bras,
7 not the pair of pants, not the shirts, nothing.

8 And you remember from Deadrene's
9 statement that she ended up wearing clothes that
10 belonged to my client, Mr. McClam. And none of
11 that got tested. In fact, none of the other
12 clothes that were found in the trunk of this car
13 and photographed got tested. So if they are
14 Telly's clothes, you're going to expect Telly's
15 genetic material would be on the clothes. And the
16 forensic people testified about transfer or touch
17 DNA and how things can move from one surface to
18 another.

19 Another item that is going to be in
20 evidence to you is the gun. The K9 handler of the
21 bloodhound testified to the extent and to the steps
22 that he took to make sure nobody touched that gun.
23 And you have the officer from Williamsburg County
24 in here and he was one of the ones that used
25 gloves. Took that into evidence, put it in a box

CLOSING ARGUMENT - DEFENSE

1 and preserved it, and they sent it on to SLED. But
2 for what? The only expert that looked at the gun
3 up there was one to check and see if the gun
4 worked. No one looked at it to see if there were
5 any fingerprints on it, any DNA on it. No one
6 looked at the bullets that have smooth surfaces to
7 see whether or not the person that loaded them into
8 the weapon had fingerprints on it. Nobody looked
9 at it for the reason that you're here.

10 Now, the gun is on a list of several
11 things that are just odd that they got sent to be
12 examined. Another one would be the cigarette pack
13 that was found on the floor of Mr. Telly McClam's
14 mother's car and that proves nothing.

15 What else wasn't sent? We know the gun
16 wasn't sent for fingerprints. It wasn't sent for
17 DNA. We know the clothing, none of it was sent at
18 all, and we know the knife didn't go anywhere at
19 all for any type of fingerprinting or DNA.

20 Finally, you have to look at some of
21 the actions that were being taken both by Deadrene
22 and **L. J.**. There were numerous times they were
23 on the phone with their family during the course of
24 this; they never said anything. They went to homes
25 of people that I believe showed to you from the

CLOSING ARGUMENT - DEFENSE

1 stand that, despite the fact they were relatives of
2 Telly, that they were going to do the right thing
3 and call the police and they're going to turn
4 somebody in.

5 It was clear that they were going to
6 accept that responsibility as good citizens and
7 they did it. But at the time they went to Emma
8 Cooper's house or Beatrice Jones' house, nobody
9 said anything. Nobody tried to get anybody's
10 attention. Nobody made any chance to escape.
11 Nobody.

12 Agatha Christie said, a mother's love
13 for her child is like nothing else in the world.
14 It knows no law, no pity. It dares all things and
15 crushes down remorsefully on all that stands in its
16 path.

17 Before you reach a verdict, I ask you
18 again to look at the video from inside the 52
19 Station and see if that's the concern of somebody
20 who has been kidnapped, see if that's somebody who
21 is scared. Because if they ever had an opportunity
22 to tell someone, it was right here. Not only the
23 clerk, but the gentleman who walks in ahead of her
24 and holds the door, and she mouths nothing, says
25 nothing, does nothing.

CLOSING ARGUMENT - STATE

1 I told you at the beginning of the
2 trial that with great power comes responsibility.
3 As he sits there right now, Telly is still
4 innocent. He's presumed innocent, and that exists
5 right now. You now have the power to make a
6 determination as to whether or not any number of
7 factors that were said, or even a few I might have
8 missed that you heard, serve as a reasonable doubt,
9 that you find Telly McClam not guilty, and I ask
10 you to do that. Thank you.

11 THE COURT: You may proceed.

12 MS. WILLIAMS: May it please the Court?

13 THE COURT: Yes, ma'am.

14 MS. WILLIAMS: Mr. Schwacke.

15 Mr. Schwacke wants you to judge
16 Deadrene McHoney because she walked into the 52 and
17 she didn't act the right way. You watch that
18 video, you look at that picture. Absolutely. She
19 walked right to the counter, she can't get out of
20 there fast enough and get back to the car. She
21 looks like a zombie.

22 I just wonder in your personal
23 experience if you can think -- because common sense
24 is your biggest asset here today -- if you can
25 think of how different people in your life might

CLOSING ARGUMENT - STATE

1 act after waking up at 7 in the morning, finding
2 out that the man that you left, that you were
3 trying to get away from, has your daughter, your
4 beloved daughter, being forced into the car, being
5 shown a gun, being taken to a cabin, tied up and
6 being told this might be where you die.

7 And then, oh, by the way, your
8 daughter's got good pussy and good mouth. I hate
9 even saying those words, but can you imagine how
10 she felt.

11 Then being taken to the woods, then
12 being taken to his relatives, who they're supposed
13 to tell the relatives -- you saw the relatives.
14 The aunt cannot stand her. At first he asked the
15 aunt, well, who lives around you? None of our
16 relatives live around us. They're all their
17 people. They live in the middle of nowhere, with
18 their relatives around there. Deadrene has met her
19 maybe three times. **L. J.** has met her no times.
20 They are his people.

21 They're in the car and he's there with
22 the gun and yet somehow they are supposed to have
23 the presence of mind to make some grand escape.
24 And even Mr. McClam's sister, who seems like a very
25 nice lady, she has no idea what had happened before

CLOSING ARGUMENT - STATE

1 this. And Deadrene and [L. J.] don't know her very
2 well either. She admitted she met her like two or
3 three times. So the fact that we're going to get
4 up here and say, this is how she should have acted,
5 is just not reasonable. It's not reasonable.

6 Clearly, she loved her daughter,
7 because she did not want to be with this man. She
8 was trying to get away from this man. She moved
9 into a home with her brother, him and his wife,
10 their five children, her and her two girls. Can
11 you imagine how crowded that trailer was? She was
12 desperate to get away from Mr. McClam.

13 And the other thing Mr. Schwacke tells
14 you, he played a little funny game with words,
15 reasonable doubt is if you have a reason for a
16 doubt. That's not what reasonable doubt is.
17 Reasonable doubt is what the Judge tells you
18 reasonable doubt is. And I suspect she will tell
19 you it's not all doubt. You can't know anything
20 beyond all doubt.

21 And he talked to you about all the
22 different evidence that we didn't test. Let's talk
23 about what we did test. His DNA is in the rape
24 kit, people. His fingerprints are on the pieces of
25 duct tape that are found at the cabin, right where

CLOSING ARGUMENT - STATE

1 they said they were tied up. Now, we tested the
2 cigarette package found at the driver's side of the
3 car because that shows that he was the one driving
4 the car, but I promise you, had we not tested it,
5 probably he would have gotten up here and said,
6 they could have tested the cigarette package.

7 Why would we need to test the clothing
8 to find Mr. McClam's DNA on the clothing when we
9 have his DNA in the rape kit? I mean, you can
10 always do more, but this gun, the victim identified
11 the gun: This is the gun he came in and held me up
12 with. The SLED agent said, this is the gun he was
13 apprehended with. The Williamsburg Investigator,
14 Ballard, said, this is the gun I went and picked up
15 by where he was apprehended and this is the gun we
16 brought to SLED. It's pretty clear that was the
17 gun.

18 The knife is kind of unique looking.
19 This is the knife that the two women identified and
20 he had with him all day, and this is the knife that
21 was found in the driver's side pocket of the car
22 that he was driving. So, yeah, I'm sure that we
23 could have done a lot more testing, but there's
24 plenty of evidence in this case that ties Mr.
25 McClam to this crime and proves that he committed

CLOSING ARGUMENT - STATE

1 it.

2 He also wants you to think that this
3 could have never happened because Deadrene has a
4 ten-year old forgery. She's not perfect. She
5 committed forgery ten years ago. What that has to
6 do with what happened this day, I don't know. I
7 don't know. Absolutely nothing. It's a red
8 herring and it's a sneaky little trick.

9 I'm going to go into the evidence in
10 this case. Using your real commonsense
11 perspective, I want to present it to you. Why in
12 the world would anybody want to spend the day like
13 they all spent the day? Why would Deadrene and
14 **L. J.** want to go through the day in this man's car
15 all day with him?

16 **L. J.** was supposed to go to school.
17 Instead of going to school, she leaves her house at
18 5 a.m., goes to all these places, goes and gets her
19 mother at 7 a.m., and by about 9:22 they're at the
20 cabin, in and out of the woods. And, incidentally,
21 Deadrene didn't say that she didn't know where the
22 woods were. She said she didn't know where the
23 woods were where he took her.

24 She did know where the woods were where
25 he raped her daughter, because they used to live up

CLOSING ARGUMENT - STATE

1 there. So it is confusing, there's a lot of
2 different areas that he takes these people and
3 there are a lot of wooded areas, but she did not
4 say that she didn't know where the woods were where
5 he took her daughter. She said she wasn't sure
6 where he took her, in and out of the woods in
7 between Berkeley County and Williamsburg County.

8 But think about this day. If you're to
9 believe they did this voluntarily, why would anyone
10 want to have a day like this? **L. J.** has her period
11 and she has no feminine products with her. She has
12 left her phone at home. Use your common sense.
13 Anybody with a child over the age of 12, 13, 14,
14 they would rather have their arm taken off than not
15 bring their phone. For you to believe that she
16 left with him voluntarily, you would have to
17 believe that even though she's on her period, she
18 leaves without any feminine products, she leaves in
19 her pajamas, and she leaves her phone at home and
20 goes with this guy. Doesn't go to school, even
21 though she's been studying for the ACT, so she
22 decides to go on this fun day with Mr. McClam,
23 where they pick up her mother, who, incidentally,
24 has just left him and has been ignoring his text
25 messages all night, but, miraculously, she wants to

CLOSING ARGUMENT - STATE

1 get into the car with him and spend the day with
2 him, which is a fun-filled day where they have
3 between the three of them \$5, maybe 25, we're not
4 sure because the relatives give different stories,
5 but they have very little money. They barely have
6 enough money for gas, they had no money for food
7 and they're just going to go in and out of the
8 woods so he can talk to her. Does this sound like
9 the kind of day that they would want to engage in?
10 I don't think so. And that's not even considering
11 all of the evidence that ties into the scene and to
12 this crime.

13 Let's go through very briefly some of
14 the witnesses that you've heard from. I know it's
15 only Wednesday, but it does seem like it's been a
16 long week. **L. J.**; as I said before, she is whisked
17 from her home at 5:00 a.m. Ladies and gentlemen,
18 this is the bed that this child was sleeping in.
19 Okay. Twin-sized bed with a teddy bear. He comes
20 into her house under the cover of dark with a gun
21 and a knife and makes her leave. She had no phone.
22 We saw the picture of her phone on her desk. She
23 is in her pajamas. As I said before, I'm sorry to
24 keep bringing this up, it's not very nice things to
25 talk about, but she's on her period and she doesn't

CLOSING ARGUMENT - STATE

1 even bother to get any feminine products, and
2 you're to believe that she left voluntarily?

3 He tells her to call her mom, but don't
4 call the police. If he's not doing anything wrong,
5 why do we have to keep the police out of it? And
6 look through the text messaging. These come from
7 his phone. He says it and he makes **L. J.** say it.
8 This girl is so terrified of this man that she
9 urinates on herself, and that's heartbreaking. I
10 don't know if any of us can imagine what it would
11 be like.

12 She told her story where she is taken
13 to this remote area with her mother's boyfriend,
14 and she knows her mother has just left him, and is
15 forced into sexual acts in the middle of nowhere,
16 on the hood of a car, while she has her period.
17 Does that sound like something somebody would want
18 to do.

19 She doesn't even have any underwear
20 with her. Because her clothes are soiled, she has
21 to wear his clothing. Think about **L. J.**'s demeanor
22 when she testified. You are the sole judges of
23 credibility. And that's one of the reasons that
24 our judicial system is so perfect. It's so good.
25 It is the best judicial system in the world because

CLOSING ARGUMENT - STATE

1 we allow people to use common sense.

2 Judge the things that she was telling
3 you, judge the way she was telling you, based on
4 how you evaluate things in your everyday life.

5 This child told you what happened to her. And if
6 you believe her, it's because you're basing it on
7 what you know about life and what you know about
8 your own experiences. So think about her own
9 demeanor on the stand. As I said before, she had
10 school that day. She's a good student. She was
11 studying for the ACT. Why in the world would she
12 want to leave with him?

13 Deadrene: She gets all these text
14 messages. She said she was sleeping. She never
15 ever answers his text messages. He is infuriated.
16 And in a little bit I'm going to read his text
17 messages, because he is building and building and
18 building and he's getting angrier and angrier and
19 angrier. **L. J.** tells you that he told her himself
20 he was waiting out there from 8:00 p.m. the night
21 before. And he's getting angry because she just
22 won't respond.

23 And so he's sitting there, he lures her
24 into the car with **L. J.**. One of the words that's
25 used for the kidnapping statute is inveigle, which

CLOSING ARGUMENT - STATE

1 means to trick; decoy -- you know, try to -- I
2 always think about hunting, but you're trying to
3 basically use something to get someone to do
4 something else, trick them. He tells her in the
5 cabin, this is where she might die.

6 At some point when they're in the
7 woods, he tells her he might just kill **L. J.** and
8 the two of them can go on some kind of crime spree.
9 I would point to her demeanor at the gas station as
10 a strength of the State's case. You watch her go
11 into the gas station and watch the way she -- she
12 looks like a zombie. She goes right there and she
13 gives it to her and she goes right back and she
14 goes right back to the car where her child is.
15 Because she knows he's already raped her child.
16 She doesn't want to leave this man alone with her
17 child.

18 Christopher: I don't know if you
19 remember, he was Deadrene's brother who testified.
20 I thought what was very, very interesting about his
21 testimony is that he's at work, he just gets to
22 work, all he hears is that **L. J.** is with Telly. He
23 leaves work and goes home. That's how alarming
24 that piece of information is to him, that he goes
25 all the way back home. He's really frightened of

CLOSING ARGUMENT - STATE

1 the fact that Telly has [L. J.]. They -- they call
2 later; he lets them call their family members.
3 Because of course he's afraid they're going to call
4 the police, which they do, he puts them on
5 speakerphone and says, don't worry about it, I'm
6 going to bring them back, I'm going to bring them
7 back.

8 And Deadrene tells her mother, he says
9 he's going to bring us back at dark. I think he
10 tells Chris he's going to bring them back some time
11 that morning, but he doesn't. He doesn't bring
12 them back. He never brings them back. Chris says
13 that he just knows from [L. J.]'s voice that she's in
14 trouble.

15 The SANE nurse testified. There is
16 absolutely no evidence that the way that she
17 packaged this sexual assault kit was anything but
18 up to code. SLED testified that when they got it,
19 it was sealed. You had two gentlemen testify that
20 one of them picked it up as soon as she was
21 finished with it, put it in the refrigerator in the
22 locked police station at MUSC, and then another
23 person took it out of the refrigerator and handed
24 it to Sergeant Alteri, who then took it to Evidence
25 and then it was taken up to SLED. It remained

CLOSING ARGUMENT - STATE

1 sealed the whole time. The SLED people take out
2 different parts and put it in a heat-sealed
3 envelope and then it goes on to the scientists.

4 That testimony is so boring and it's so
5 difficult to listen to, but we went through that to
6 show you just how careful these people are with the
7 evidence.

8 She talked about injury. And one of
9 the things that we clarified is that you can have a
10 physical injury with consensual sex. You can have
11 no injury with sexual assault. It depends on a lot
12 of different things. One of the things that she
13 said was possible was bleeding -- again, these are
14 horrible things I have to talk to you about -- but
15 blood from your menstrual period, she said that
16 it's possible that can act as a lubricant. And you
17 saw when he took out the clothing that **L. J.** was
18 wearing, that the pants were blood soaked because
19 of the fact that she didn't have underwear on when
20 she had her period.

21 One thing that is notable, is they will
22 swab anywhere where there are body fluids. So if
23 there is a hickey, in slang words, hickey or a kiss
24 or licking somewhere on the body, they will swab
25 that to try to get DNA. None of that happens,

CLOSING ARGUMENT - STATE

1 because this was not a consensual act. This was
2 not the kind of sexual act where there's kissing,
3 sucking on someone's neck, licking them. This was
4 rape and that's why none of that existed. The only
5 fluids that they were going to find were in her
6 vagina here he raped her and possibly in her mouth,
7 but she had eaten and she'd had something to drink
8 and they probably weren't going to find something
9 there.

10 Her other role is that she collects the
11 evidence, she puts it in this box and she sends it
12 to SLED.

13 Let's talk about the SLED serology and
14 DNA. Ms. Littlejohn certainly did challenge the
15 scientists that came in. And they gave you a very
16 lengthy explanation of how that science works.
17 Bottom line is, and they can't get around it, it
18 matches Mr. McClam's DNA. His DNA is in the rape
19 kit and there is no way to get around that
20 evidence. None. He went through all of the
21 different markers. He explained to you why it's a
22 match. He went through all the different
23 identifiers on the chart, and his DNA is in the
24 rape kit, and that explains the rape.

25 Another thing he said to you is, they

CLOSING ARGUMENT - STATE

1 tried to get touch DNA off of the tape and they
2 couldn't get any DNA, and I think they checked for
3 Deadrene's DNA. If you listened to the fingerprint
4 evidence expert, I think Mr. Schwacke is mistaken;
5 he took a swab from the smooth side and then he
6 fingerprinted on the sticky side, because he said
7 in his experience it was easier to get a
8 fingerprint on the sticky side.

9 And if he swabbed the smooth side --
10 there's really no reason why Deadrene's DNA would
11 be on the smooth side. I don't even know if her
12 DNA would be on the sticky side. It would have to
13 be right where he put it on her and I have no idea
14 what would have had to have happened to get her DNA
15 on it. But certainly she didn't touch the smooth
16 side of the tape.

17 You heard about the fingerprint
18 analysis and, you know, I do not know why Mr.
19 McClam's fingerprints would be on the pieces of
20 duct tape that were in the cabin right by the chair
21 or the couch thing that the victims say he tied
22 them up in. That doesn't make any sense.
23 Obviously, he was there because the fingerprints
24 were there. It wasn't a roll of tape, it was
25 pieces of tape and they were right where the

CLOSING ARGUMENT - STATE

1 victims said that he bound them with tape. And
2 they can't get around that either, because the
3 fingerprints are on that piece of evidence, which
4 places them in the cabin, which places them with
5 the tape that they said he tied them up with.

6 The gas station, we've kind of beaten
7 that to death. Think about that evidence and think
8 how quickly she goes into that gas station to give
9 the money and she gets right back to that car where
10 her child is.

11 The relatives, again, they don't know
12 **L. J.** They've rarely been around Deadrene. One
13 of them, at least, admitted that she really didn't
14 like Deadrene. They don't know what happened
15 before. So are these people that you're going to
16 go to for help? I mean, they're his people. I
17 don't think it's all that unreasonable to
18 understand why these were not the people that
19 Deadrene and **L. J.** thought would help them.

20 Another interesting thing that came out
21 on cross-examination is this whole thing about what
22 Telly told his sister. I mean, they're getting a
23 statement from her about the day that this event
24 occurred and she finally said, wait a minute, wait
25 a minute, now I remember. We were on the side of

CLOSING ARGUMENT - STATE

1 the house and she asked him some questions, and she
2 said, what's going on, are you in trouble? And he
3 said, I'll handle it, I'll handle it. So he knows
4 something is wrong and she knows something is
5 wrong, and he's starting to get stressed about it.

6 The high-speed chase: There is one
7 thing that common sense should tell you, that if
8 you're not doing anything wrong, you really don't
9 need to go on a high-speed chase with the police.
10 Why in the world are you running from the place,
11 racing down dirt roads and everything else, if
12 you're not doing anything wrong?

13 If these people are here in your car
14 voluntarily and you're just talking, why are you
15 running from the police? It just doesn't make any
16 sense. I can't think of any reason. Why not just
17 pull over and go, hey, yeah, we're all here, having
18 a good day, going to the 52, going to visit my
19 relatives? Why are you racing away? And then when
20 you get to the cabin, you run into the woods with
21 the gun. Does that sound like someone that wasn't
22 doing anything wrong?

23 At the end of the high-speed chase, the
24 victims' demeanor is that they were crying and
25 finally found somebody that can help them. An

CLOSING ARGUMENT - STATE

1 interesting thing that I thought about what both
2 victims said, that wasn't apparent to me before
3 they started testifying is, the officers, when the
4 victims are flailing their arms out the window,
5 assumed, and I think it's a fair assumption,
6 they're trying to flag the officers down to help
7 them.

8 Both of them said exactly the same
9 thing, that Mr. McClam says, try to tell them to
10 stop, tell them to stop. And they didn't have to
11 tell you that, because it doesn't really help their
12 whole narrative if they were lying. It doesn't fit
13 with the narrative, but it was the truth and that's
14 what they told you. I don't know why they listened
15 to him and waved their arms out the window when he
16 told them to stop the police, except that maybe
17 they were scared to death because they were going
18 80 miles an hour down a dirt road.

19 But they both said that and they both
20 told the truth about that. Instead of saying, no,
21 no, no, we wanted your help, no, he told us to put
22 our arms out the window and to try to get you to
23 stop.

24 That's one more interesting thing and
25 you should takes things like into account when

CLOSING ARGUMENT - STATE

1 you're evaluating people's credibility. If they
2 tell the truth about little things, they tell the
3 truth about big things.

4 The bloodhound tracking: He runs into
5 the woods -- I think it was seven hours. He stays
6 at large for seven hours. Again, this guy who has
7 done nothing wrong, for some reason is running
8 around the woods with his gun, running from police.
9 If he didn't do anything wrong, why didn't he tell
10 them what really happened?

11 Dr. Rheingold talked a little bit about
12 trauma. And I think Mr. Schwacke is right to an
13 extent, because people react so differently to
14 trauma; you know, one person may act normal, one
15 person may fall down and cry and be a puddle on the
16 floor, but it is important to know that a lot of
17 people do freeze and a lot of people might act like
18 Deadrene acts when she walked into the 52 Station.

19 There is just no telling how somebody
20 is going to react to a traumatic event. And if you
21 think about your life experiences and imagine a
22 person finding out that their daughter had just
23 been raped by the man that they just left, it's
24 difficult to imagine the range of emotions that
25 person would be going through, let alone the person

CLOSING ARGUMENT - STATE

1 that had just been raped. So it's difficult to
2 judge how they're supposed to act.

3 Text messages: These text messages are
4 really great evidence and I invite you to read them
5 over and over, straight from the horse's mouth.
6 You don't get better evidence than that. They show
7 threats, they show planning, they show deception,
8 and they show his building anger. She left him and
9 he doesn't like it.

10 Let's talk about -- let's sum it up.
11 What is the evidence of guilt? We have the duct
12 tape with his fingerprints on it. We have text
13 messages. He also tells [L. J.] to change the
14 number. He has her call like some number and
15 change the phone number because he thinks maybe
16 then she'll take his calls. For some reason he
17 thinks, and this may be true, I don't know, if you
18 take the phone back off and battery out of your
19 phone, that maybe the police can't track you. So
20 he's doing that.

21 He's driving all around. When you look
22 at these maps, it's kind of astounding. It starts
23 at 5 a.m. and doesn't end until sometime around 3,
24 and for him even later. It's all over. I mean, he
25 goes from [REDACTED] Road, where she's kidnapped, all

CLOSING ARGUMENT - STATE

1 over Berkeley County, all over Williamsburg County,
2 then back into the woods, and then to his sister's
3 house and back into the woods, and then the aunt's
4 house and then back into the woods, then to the 52
5 Station. He never stays any place for long because
6 he's so afraid that he's going to get caught.

7 The chase: The chase speaks for
8 itself. Once again, why are we running from the
9 police if we didn't do anything wrong? The
10 messages that say, don't call the police, the phone
11 call, please don't call the police, he starts that
12 from the very, very beginning.

13 The gun and knife: If you're just
14 inviting people for a drive for the day, why do you
15 need a gun and a knife.

16 And there's a few messages that really
17 tell the story. This one says -- and you'll get
18 this back in the jury room. This is one of the
19 last messages that Mr. McClam sends before he waits
20 and kidnaps this woman's daughter. Are you trying
21 to make me lose my mind and snap? Must be.

22 And he did snap. That's exactly what
23 happened. This is a picture of **L. J.**'s phone.
24 Again, use your common sense and your common
25 experience. How many 17-year-old girls would leave

CLOSING ARGUMENT - STATE

1 their home voluntarily to spend the day with
2 somebody and leave their phone at home? And then
3 there's this message, Momma, Telly got me. This is
4 **L. J.** Please no police or any other family. And
5 I'm not reading the DHA slang. That is
6 heartbreaking to me. Because after these messages
7 were building and building and building, and then
8 she gets this sweet message from her daughter,
9 Telly got me.

10 The knife: You will have this knife to
11 look at, but it's folded up. This is a very scary
12 knife. When you take it back there, take a look at
13 the blade and how sharp it is and think about how
14 you might feel if you were 17 and somebody
15 brandished that knife to you.

16 The gun: You will have the gun. It
17 has a lock on it, but this gun was clearly in the
18 defendant's possession all day and he's apprehended
19 with it. This is a picture of where he got into
20 where **L. J.** was staying and you can still see the
21 damage from whatever he used to leverage the door
22 open. And it is just so scary that he sits and
23 waits for her grandmother to leave and then he
24 takes his opportunity because he knows that she's
25 gone.

CLOSING ARGUMENT - STATE

1 I find this evidence to be so
2 interesting. I guess Mr. McClam is not a hunter
3 and doesn't realize that people put deer cams in
4 the woods. And this deer camera caught his car at
5 the cabin almost exactly when the victims say it
6 was there. Talk about objective corroboration.
7 There's two pictures I want you to look at, and you
8 can tell it's the deer cam picture because it's got
9 this little emblem that shows clearly his car at
10 9:22 a.m. 10/28/2013. He had no idea that he was
11 being photographed. None.

12 And then his trunk. Yes, it is true
13 that lots of us have duct tape in our trunks, but
14 it's a pretty big coincidence that the duct tape
15 that looks just like that duct tape that was in his
16 trunk is found in pieces in the cabin right where
17 the victims say they were bound. And you can see
18 that tape right there, and it's also in evidence in
19 a bag.

20 The cigarettes that show he's driving.
21 His fingerprints are on the cigarettes. This is
22 the other picture. When he goes to run into the
23 woods, I think that the call report showed it was
24 sometime around 2:43 or close to 3:00. And he just
25 leaves the car and runs into the woods, and while

CLOSING ARGUMENT - STATE

1 the car is sitting there, you see another picture
2 with that emblem, at 3:22 p.m., and he's back at
3 the house. That's where he dumped the car. This
4 is all some of the evidence that corroborates what
5 the victims say. DNA, I don't have to say any
6 more. You cannot get past that. The DNA and
7 fingerprints are compelling.

8 What I want to ask you to do is think
9 about this: If you are to believe that he's
10 innocent, you have to believe certain facts are
11 true. Okay? For him to be innocent of the
12 burglary, you have to believe that **L. J.** left her
13 home voluntarily. For you to believe that, you
14 have to believe that she wanted to get up at
15 5:00 a.m., without any sanitary products, without
16 her phone, skip school, in the middle of the night,
17 in her pajamas, walk through the woods, and get in
18 the car with the man that her mother had just left.

19 That's how far you have to go to
20 believe that the burglary didn't occur and the
21 kidnapping didn't occur. That's the only way he's
22 not guilty of kidnapping and burglary. You have to
23 believe that she left her house voluntarily. And
24 all of the facts contradict that.

25 For you to believe that she wasn't

CLOSING ARGUMENT - STATE

1 raped, you have to believe that she had consensual
2 sex with the defendant. That's what you have to
3 believe; otherwise, he's guilty. For you to
4 believe that, you have to believe that she wanted
5 to leave her room at 5:00 a.m., where she slept
6 with this teddy bear, leave at 5:00 a.m. with this
7 man who is 37 years old and she's 17, in the middle
8 of the night -- I don't even think she had shoes
9 on; no shoes are recorded -- in her pajamas, no
10 shoes, no feminine products, wants to have sex
11 while she's on her period, she wants to be driven
12 to a remote area and have sex with him, while he
13 has a gun, on the hood of a car. And then walk
14 around all day, with no underwear and no feminine
15 products, in his clothing.

16 That's what you have to believe to find
17 him not guilty of criminal sexual conduct in the
18 first degree, because his DNA is in the rape kit.
19 You have to believe that she wanted to do that;
20 otherwise, he's guilty of CSC first.

21 Also you have to believe that he didn't
22 have a gun or a knife. For you to believe that he
23 didn't have a gun or a knife, you would have to
24 believe that **L. J.** is lying about the gun, Deadrene
25 is lying about the gun, they're both lying about

CLOSING ARGUMENT - STATE

1 the knife, that the knife wasn't actually found in
2 his car, and that they didn't describe exactly what
3 the knife looked like. You would have to believe
4 that the SLED agent is lying about the knife being
5 found with him, and that Detective Ballard is lying
6 about picking up the gun that was found with him.
7 All of those people have to not be believed for you
8 to believe that he didn't have a gun. Otherwise,
9 he's guilty of having the gun, which goes to the
10 burglary, which goes to the aggravated force with
11 the criminal sexual conduct. So if you break down
12 the facts, it makes it a little bit easier to
13 analyze.

14 If you want to believe that Deadrene
15 wasn't kidnapped, you would have to believe that
16 not only did she get in the car voluntarily, but
17 that she stayed in the car voluntarily. So you
18 have to believe that this woman, who is ignoring
19 his text messages all night, who takes the
20 extraordinary step of moving in with her two kids
21 into a trailer that already has seven people in it,
22 just to get away from him. She testified that he
23 hurt her before, and yet she gets in there just to
24 spend the day with him. You have to completely
25 ignore the text messages that say that, this is

CLOSING ARGUMENT - STATE

1 **L. J.**, Telly got me, and him saying, I'm not going
2 to hurt her, but you need to come; and you have to
3 not believe that he still had the gun.

4 You have to discard all of that
5 evidence to believe that he's not guilty of
6 kidnapping Deadrene. You also have to not believe
7 that he tied her up in the cabin, even though they
8 both testified to that and his fingerprints are on
9 the tape. You have to ignore all of that evidence
10 to get to the fact that he's not guilty of
11 kidnapping Deadrene, because kidnapping isn't just
12 when she first gets in the car. It's when he keeps
13 her in the car, because part of that confine. It's
14 inveigle, decoy, confine and abduct.

15 Part of this you have to believe, if
16 they're not confined in the car, it's because he
17 just wants to talk. That's what he said; I just
18 want to talk. If he just wants to talk, why
19 doesn't he bring them back? If he just wants to
20 talk, why can't the police be involved? Talking is
21 not against the law. If he just wants to talk, why
22 the high-speed chase? And, again, you have to
23 believe, if you find him not guilty of kidnapping,
24 that these two women wanted to stay with him all
25 day for the fun-filled day of police chases and

CLOSING ARGUMENT - STATE

1 very little food and very little money, going in
2 and out of the woods; that's what you have to
3 believe.

4 This is what he told -- this is what he
5 told **L. J.**. I told your mom I ain't playing. Now,
6 when Mr. Poulos got up here, he said that this case
7 is about fear and power and control. That's
8 exactly what this case is about. Telly McClam was
9 mad because she left him. She did not want him
10 anymore. She didn't want him anymore. She was
11 ignoring him. He wanted her attention, she wasn't
12 giving it to him. And he was having none of it; I
13 told your mom I ain't playing. Listen to these
14 messages.

15 These text messages go from -- and you
16 will have this back there -- from basically
17 11:26 p.m. until 1:00. Okay. And I apologize for
18 the profanity. I'm just going to read them
19 verbatim. Either you're going to call or you're
20 not. Stop fucking playing and call me now. Fuck
21 you then. I'm asking you, please don't do this.
22 Please, Trese, please call me. So I mean totally
23 nothing to you? That's what you're saying? Call
24 me. Prove it. So I guess not. Oh, you with a
25 nigga? Oh, you trying to make me lose my mind and

CLOSING ARGUMENT - STATE

1 snap. Must be. Don't do this, Trese. I'm
2 sincerely begging you to give me what I need. I'm
3 at my breaking point. All I want is you and that's
4 all I have to say. Now call me. I can't this time
5 and have some true love and understanding. Then I
6 don't know what else to tell you. Are you with me
7 or not? I give you five minutes to prove to me
8 what it is and that word is my bond. No more games
9 for you, fuck it. I was just going to give up on
10 everything and throw my life away and run away
11 forever, and I mean that. No probation or Clark,
12 and that is that. Fucking call me. Keep it real.
13 Call me back. Your choice. Your choice. You got
14 until 1:00 to make this right. And that's it. I
15 do love you very much.

16 And that's at 1:00 -- no, it's at 1:00
17 and 1 minute.

18 The next message is, Mom, this is
19 **L. J.**. I'm with Telly. He said for you not to
20 call the police. All he wants to do is talk to
21 you.

22 That's how that went down. That's a
23 real time version of what happened that night. So,
24 by all means, look at all the evidence, consider
25 all the facts, judge the credibility of the

CLOSING ARGUMENT - STATE

1 evidence, but go back to the beginning. Go back
2 and imagine this kid who did nothing. She wasn't
3 in a relationship with him. She's just lying in
4 bed trying to get ready for school. There are
5 pictures of her ACT books in her room.

6 He wants attention; he's not playing.
7 Give him attention. You speak the truth; you are
8 the truth. You speak justice; speak justice in
9 this case. Please take this case seriously. I'm
10 asking you to have the courage of your convictions
11 and not give in when you get back there. If you
12 know he did this, hold him responsible and let
13 justice speak.

14 Thank you.

15 THE COURT: Madame Forelady, ladies and
16 gentlemen, I'm going to let you take a brief rest
17 room break before I give instructions because those
18 will last about 30 minutes. During the break, do
19 not discuss the case and please leave your notepads
20 in your seats. As soon as you're done using the
21 rest room, we'll resume with the Court's
22 instructions.

23 (Jury out, 3:20 p.m.)

24 (A recess transpired.)

25 THE COURT: State ready to proceed?

1 MS. WILLIAMS: The State is ready to
2 proceed.

3 THE COURT: Defense ready to proceed?

4 MR. SCHWACKE: Defense is ready.

5 THE COURT: What I think we should do
6 with the Indictment for 2014-659, right now it is
7 entitled, Felon in possession of a firearm, and it
8 says the same in the heading, is that I could
9 simply white out, the felon in, on both sides of
10 it, and write in -- or I guess we could find a
11 typewriter somewhere -- the words, unlawful
12 possession. I could just put unlawful where felon
13 is and then after firearm, write in, by a person
14 convicted of a violent offense. It's up to you
15 all.

16 MS. WILLIAMS: That would be fine.

17 THE COURT: Because I think it would be
18 odd to send in all the other Indictments and not
19 send in this Indictment.

20 MR. SCHWACKE: I guess I understand
21 what you intend to do --

22 THE COURT: They would never see felon;
23 it would be completely whited out.

24 MR. SCHWACKE: I don't know if it would
25 make that one stand out more --

1 THE COURT: I don't think so because we
2 have to do it all the time on other Indictments.

3 MR. SCHWACKE: Can I reserve whether I
4 object or not until I see how you do it?

5 THE COURT: Sure, but I'm going to do
6 it on the original. I'm going to use White-Out
7 tape and white out felon in, and I'm simply going
8 to write, unlawful, over the top of that. And then
9 the rest of the words will remain typed in, and
10 after that I will write in, by a person convicted
11 of a violent offense.

12 And then I would do it on the outer
13 part of the Indictment and also on the interior
14 portion of the Indictment.

15 MR. SCHWACKE: I guess I want to see
16 what it would look like in the body of it.

17 THE COURT: And then I would not
18 initial it because I wouldn't want to draw
19 attention to, but we write on Indictments all the
20 time.

21 MS. WILLIAMS: Yeah, we amend them --

22 THE COURT: As matter of fact, I don't
23 usually white out, I just strike thru it and write
24 above it. I don't know that it really matters much
25 to a jury, but since it says, felon, I would white

1 over -- the White-Out tape we have, you can't read
2 through it. It's not like traditional White Out.
3 So you wouldn't be able to see the words at all.

4 MR. SCHWACKE: So on the one side it's
5 going to say --

6 THE COURT: I would simply white out
7 right here where it says, felon in, and write
8 unlawful over the top of that. And then right next
9 to where it says, possession of a firearm, I would
10 simply continue with, by a person convicted of a
11 violent offense. And I would do the same thing on
12 the other said where it has, felon in, I would
13 simply white out over top of that with the tape and
14 write, unlawful, on top of that, and right behind
15 the word, possession of a firearm, continue with,
16 by a person convicted of a violent offense.

17 Because in the body of the Indictment,
18 it does not make any reference to felon, except the
19 words feloniously, which is a part of the wording
20 of the statute. And I don't think any jury would
21 think felon from felonously. We would because
22 we're lawyers.

23 MS. WILLIAMS: I don't think
24 feloniously is prejudicial because it has to be a
25 felony.

1 THE COURT: It's in the statute,
2 Uh-huh. All right. And of course I would let you
3 see it before I do it, but once I do it, it's done.
4 You can't sort of unpeal the tape off of it.

5 I pride myself on having pretty good
6 penmanship as the years go on.

7 MS. LITTLEJOHN: Do you want me to
8 write it?

9 THE COURT: No. We would not be able
10 to read it Ms. Littlejohn. But I don't think we
11 have -- I can't even imagine -- I don't know. Do
12 we have a typewriter in the bailiff's room?

13 I don't think so, not anymore. I have
14 an old one at my office, but, you know, I don't
15 have one here. I don't think we have a typewriter
16 available to us. In any event the wording would be
17 different. Unless you all agree to -- but that
18 would be weird too, that you would have one that's
19 not true billed. Because you could simply do
20 another one the same way you do with the waiver and
21 simply put the correct title on it.

22 I think my solution is easier. And I
23 don't see how it prejudices him.

24 All right. Are we read to proceed?
25 From the State?

JURY CHARGE

1 MS. WILLIAMS: The State is ready.

2 THE COURT: From the defense?

3 MR. SCHWACKE: Yes, ma'am.

4 THE COURT: Please bring in the jury.

5 Also, I'm going to instruct prior
6 record of a witness. I had inadvertently
7 overlooked it when I was constructing the charge
8 which deals with it only affecting a person's
9 credibility.

10 (Jury in, 3:48 p.m.)

11 You may be seated. Ladies and
12 gentlemen, during this trial, you and I have
13 certain duties to perform. As the trial Judge, it
14 is my responsibility to preside over the trial of
15 this case and I also have the duty to rule upon or
16 pass upon the admissibility of evidence offered
17 during this trial.

18 You are to consider only the competent
19 evidence that is before you. You are to consider
20 only the testimony which has been presented from
21 the witness stand, together with any exhibits which
22 have been made a part of the record in this case,
23 and any stipulation of Counsel which have been
24 placed in the record.

25 I instruct you, ladies and gentlemen,

JURY CHARGE

1 that when the parties refer to a stipulation, that
2 means they have reached an agreement and that
3 agreement does not require any further proof.

4 I have the additional duty to charge or
5 instruct you on the law applicable to this case.
6 As the presiding judge, I'm the sole judge of the
7 law of this case and it is your duty as jurors to
8 accept and apply the law as I now state it to you.
9 If you have a preconceived idea as to what the law
10 is or what the law ought to be in a case, or in
11 this case, and it should not agree with what I now
12 tell you the law is, you are obligated under your
13 oath to abandon this preconception on your part,
14 because you were sworn to accept the law and apply
15 the law precisely as I now state it to you.

16 In every case tried in this court
17 before a jury, the jury becomes the sole and
18 exclusive judges of the facts. You the jury are
19 the judges of the facts in this case. This Court
20 is the judge of the law. The Constitution of our
21 state has declared that a trial Judge shall not
22 intimate, state, comment upon or make any statement
23 to a trial jury about the facts in a case.

24 Since you the jury are the sole judges
25 of the facts in this case, you are not to infer

JURY CHARGE

1 anything from what I've said during the progress of
2 this trial in ruling upon the admissibility of
3 evidence or otherwise, or anything that I say now
4 to you during the course of this instruction, that
5 I have any opinion about the facts of this case.
6 The law does not allow me to have an opinion about
7 the facts. This is a matter solely for you the
8 jury to determine.

9 As jurors, then, it is your duty, as I
10 have instructed, to determine the effect, value and
11 weight of the -- and truth of the evidence
12 presented during this trial. Necessarily, you must
13 assess the credibility of witnesses who have
14 testified in this case. Credibility is simply a
15 legalistic term that means believability. It
16 becomes your duty as jurors to analyze and to
17 evaluate the evidence and determine that evidence
18 which convinces you of its truth.

19 Some of the things you may consider as
20 you decide whether or not to believe a witness's
21 testimony about a particular matter includes, what
22 was the manner and appearance of the witness who
23 testified? Was he or she straightforward or
24 hesitant in answering? Was the testimony of a
25 witness consistent or inconsistent? How did the

JURY CHARGE

1 witness come to know the facts that he or she
2 testified to or what was his or her ability to know
3 these facts? Is there some reason a witness would
4 want to give testimony that would help or hurt one
5 side or the other; in other words, was the witness
6 biased or prejudiced and was the testimony of a
7 witness strengthened or weakened by other testimony
8 or evidence?

9 I further instruct you that in
10 determining the question of the credibility or
11 believability of witnesses who have testified, you
12 may believe one witness as against several
13 witnesses or several witnesses as against one
14 witness. You may believe a part of the testimony
15 of a witness and reject the remaining part of the
16 testimony of that same witness.

17 If you have a good and sound reason,
18 you may believe the testimony of a witness in its
19 entirety or reject the testimony of a witness in
20 its entirety. You may consider the demeanor of a
21 witness; that is, the appearance and manner of the
22 witness from the witness stand.

23 Ladies and gentlemen, you can believe
24 as much or as little of each witness's testimony as
25 you think proper. Of course you do not determine

JURY CHARGE

1 the truth by counting witnesses. Throughout this
2 process, ladies and gentlemen, you have but one
3 objective, to seek the truth regardless of its
4 source.

5 Our rules of evidence do not ordinarily
6 permit a witness to testify to opinions or
7 conclusions. An exception to this rule exists for
8 witnesses we call expert witnesses; a witness who,
9 by their education, training and experience has
10 become an expert in some art, science, profession,
11 or calling, may state an opinion as to relevant and
12 material matters in which the witness claims to be
13 an expert and may also state the reasons for the
14 opinion.

15 You should consider any expert opinion
16 received in evidence in this case like any other
17 evidence. Give it the weight you think it
18 deserves. If you decide the opinion of an expert
19 witness is not based on sufficient education,
20 training and experience, or if you conclude that
21 the reasons given in support of the opinion are not
22 sound, or that the opinion is outweighed by other
23 testimony in evidence, you may disregard the
24 opinion entirely.

25 An expert witness's testimony is to be

JURY CHARGE

1 given no greater weight than that of other
2 witnesses simply because the witness is an expert.
3 Further, you are not required to accept an expert's
4 opinion even though it is not contradicted.

5 I further instruct you, ladies and
6 gentlemen, that a person who has a past criminal
7 record is competent to testify during a trial. A
8 past record does not affect the ability of that
9 witness to testify. The past record may only be
10 considered by you, if at all, in determining the
11 witness's believability. Remember, ladies and
12 gentlemen, you are the sole judges of the facts in
13 this case and of the believability of any and all
14 of the witnesses.

15 There are two types of evidence which
16 are generally presented during a trial, direct
17 evidence and circumstantial evidence. Direct
18 evidence is the testimony of a person who asserts
19 or claims to have actual knowledge of a fact, such
20 as an eyewitness. Circumstantial evidence is proof
21 of a chain of facts and circumstances indicating
22 the existence of a fact.

23 The law makes absolutely no distinction
24 between the weight or value to be given to either
25 direct or circumstantial evidence, nor is a greater

JURY CHARGE

1 degree of certainty required of circumstantial
2 evidence than of direct evidence. Crimes may be
3 proven by circumstantial evidence. The law makes
4 no distinction between the weight or value to be
5 given to either direct or circumstantial evidence;
6 however, to the extent the State relies on
7 circumstantial evidence, all of the circumstances
8 must be consistent with each other and when taken
9 together point conclusively to the guilt of the
10 accused beyond a reasonable doubt. If these
11 circumstances merely portray the defendant's
12 behavior as suspicious, the proof has failed.

13 The State has the burden of proving the
14 defendant guilty beyond a reasonable doubt. This
15 burden rests with the State regardless of whether
16 the State relies on direct evidence, circumstantial
17 evidence, or some combination of the two.

18 Ladies and gentlemen, you should weigh
19 all of the evidence in this case. After weighing
20 all of the evidence in this case, if you are not
21 convinced of the guilt of the defendant beyond a
22 reasonable doubt, you must find the defendant not
23 guilty. Conversely, if you are convinced of the
24 guilt of the defendant beyond a reasonable doubt,
25 then you must find him guilty.

JURY CHARGE

1 I instruct you that the fact that the
2 defendant was arrested, charged, and indicted is
3 not evidence in this case and cannot be considered
4 by you as evidence of guilt in this case, nor does
5 it create any presumption or inference of guilt.

6 This documentation, ladies and gentlemen, is -- are
7 simply the formal written instruments which contain
8 the charge or charges made against a defendant.
9 They simply serve as the formal documents by which
10 this case is processed or brought into the Court.

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

17 I instruct you, Madame Forelady, ladies
18 and gentlemen, that it is a cardinal and important
19 rule of the law of evidence that the defendant in a
20 criminal trial, no matter what the seriousness of
21 the charge or charges made against him may be, will
22 always be presumed to be innocent of the crimes for
23 which he is indicted unless his guilt has been
24 proven by evidence satisfying you of that guilt
25 beyond a reasonable doubt.

JURY CHARGE

1 This presumption of innocence does not
2 cease when you retire to deliberate, but it
3 accompanies the defendant from the time of his
4 appearance throughout the trial until you reach a
5 verdict in this case. Our Supreme Court has said
6 the presumption of innocence is like a robe of
7 righteousness placed about the shoulders of the
8 defendant, and it remains with him and assigns him
9 to that class, the innocent, until that presumptive
10 robe of righteousness has been stripped from his
11 person by evidence satisfying you of that guilt
12 beyond a reasonable doubt.

13 The presumption of innocence is not
14 mere legal theory; it is not just a legal phrase.
15 It is a substantial right to which every defendant
16 is entitled, unless you, the jury, are satisfied
17 from the evidence of his guilt beyond a reasonable
18 doubt.

19 The State has the burden of proving the
20 defendant guilty beyond a reasonable doubt. Some
21 of you may have served as jurors in the past in
22 civil cases where you were told that it is only
23 necessary to prove that a fact is more likely true
24 than not true. In criminal cases, the State's
25 proof must be more powerful than that. It must be

JURY CHARGE

1 beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is proof that leaves you firmly
3 convinced of the defendant's guilt. There are very
4 few things in this world that we know with absolute
5 certainty and in criminal cases the law does not
6 require proof that overcomes every possible doubt.

7 If, based on your consideration of the
8 evidence, you are firmly convinced that the
9 defendant is guilty of the crime charged, you must
10 find him guilty. If, on the other hand, you think
11 there is a real possibility that he is not guilty,
12 you must give him the benefit of that doubt and
13 find him not guilty.

14 I instruct you and emphasize that the
15 fact that the defendant did not testify is not a
16 factor to be considered by you in any manner
17 whatsoever in your deliberation and in your
18 consideration on the question of the guilt or
19 innocence of the defendant. It must not be
20 considered by you in any manner whatsoever. A
21 defendant has the Constitutional right to remain
22 silent, and the assertion of this right must not be
23 considered by you in your deliberations.

24 I repeat, ladies and gentlemen, under
25 your oath, you are to draw no conclusion whatsoever

JURY CHARGE

1 from the fact that the defendant in this case did
2 not testify. The fact that this defendant did not
3 testify should not be discussed in any manner
4 whatsoever in the jury room.

5 The burden of proof, as I have stated
6 to you, is on the State. The defendant is not
7 required to prove his innocence. The burden of
8 proof remains on the State to prove guilt beyond a
9 reasonable doubt.

10 The defendant is charged with criminal
11 sexual conduct in the first degree. The first
12 element which the State must prove beyond a
13 reasonable doubt is that the defendant engaged in a
14 sexual battery with the victim. A sexual battery
15 is sexual intercourse, cunnilingus, fellatio, anal
16 intercourse or any intrusion, however slight, of
17 any part of a person's body, or of any object into
18 the genital or anal openings of another person's
19 body, except when the intrusion is accomplished for
20 medically recognized treatment or diagnostic
21 purposes.

22 If you find that the State has not
23 shown beyond a reasonable doubt that a sexual
24 battery occurred, you would stop deliberating and
25 your verdict would have to be not guilty. If you

JURY CHARGE

1 find that a sexual battery did occur, you must then
2 decide whether the State has proven beyond a
3 reasonable doubt one or more of the following
4 circumstances:

5 That the defendant used aggravated
6 force to accomplish the sexual battery. Aggravated
7 force is the use of physical force or physical
8 violence of a high and aggravated nature to
9 overcome the victim. This includes the threat of
10 using a deadly weapon, threat of using a deadly
11 weapon, or the victim submitted to sexual battery
12 while the victim was also the victim of forcible
13 confinement, kidnapping, robbery, extortion,
14 burglary, house-breaking or any other similar acts
15 or offenses.

16 I instruct you, ladies and gentlemen,
17 that the defendant is charged with two counts of
18 criminal sexual conduct, first degree. When two or
19 more acts of criminal sexual conduct occur at or
20 about the same time, each act alleged is a separate
21 crime rather than one continuing crime.

22 The defendant is charged with
23 kidnapping. The State must prove beyond a
24 reasonable doubt that the defendant knowingly and
25 unlawfully seized, confined, inveigled, decoyed,

JURY CHARGE

1 kidnapped, abducted, or carried away another person
2 without authority of law. To do a thing unlawfully
3 is to do it willfully against the law. Knowingly
4 means with knowledge, consciously, not
5 accidentally.

6 Seized means to take hold of suddenly
7 or forcibly. Confined means to limit, restrict or
8 enclose within bounds, imprison or shut or keep in.
9 Inveigle means to lure, entice or lead astray by
10 false representations, promises or other deceitful
11 means.

12 Decoy means to lure by or as if by
13 decoy. A decoy is something to entice a person
14 into a trap.

15 Kidnap is to remove a person against
16 his will by unlawful force or by fraud.

17 Abduct means to carry off secretly or
18 by force for an illegal purpose.

19 Carry away means to remove.

20 The State does not have to prove that
21 the defendant did all of these things. Instead, if
22 you find, beyond a reasonable doubt, that the
23 defendant did any of these things, you may find the
24 defendant guilty of kidnapping.

25 Something done without authority of law

JURY CHARGE

1 is something which the law does not sanction,
2 permit, allow, condone or provide justification
3 for. The kidnapping does not have to be for any
4 personal or monetary gain, for any illegal purpose,
5 but may be for any reason whatsoever.

6 The defendant is charged with first
7 degree burglary. The State must first prove,
8 beyond a reasonable doubt, that the defendant
9 entered a dwelling without consent. A dwelling is
10 any building or portion of a building in which a
11 person ordinarily sleeps. A building constructed
12 as a dwelling that has never been occupied cannot
13 be considered a dwelling for purposes of burglary.
14 But a building is a dwelling even if the residents
15 are temporarily absent from the building.

16 In order to prove that the defendant
17 entered the dwelling, the State does not have to
18 show that the defendant's entire body entered the
19 dwelling. The smallest entry is sufficient. It
20 may be any part of the body, such as a hand or foot
21 or even an instrument, such as a hook or other
22 instruments. In addition, the State does not have
23 to prove that force was used to gain entry.

24 If a person enters a building by using
25 deception, artifice, trick, or misrepresentation to

JURY CHARGE

1 get consent to enter, this is an entry without
2 consent.

3 Next, the State must prove beyond a
4 reasonable doubt that the defendant intended to
5 commit a crime, either a felony or a misdemeanor,
6 at the time of the entry. The mere entry into a
7 dwelling without consent is not burglary. If the
8 intent to commit a crime is formed after the entry,
9 it is not burglary. On the other hand, if the
10 defendant intended to commit a crime at the time of
11 the entry, it is a burglary, even if the intent was
12 abandoned after the entry. It does not matter that
13 the intended crime was not completed.

14 Intent may be shown by acts and conduct
15 of the defendant in other circumstances from which
16 you may naturally and reasonably infer intent.

17 Finally, ladies and gentlemen, the
18 State must prove beyond a reasonable doubt one or
19 more of the following circumstances:

20 When entering, while in the dwelling,
21 or when fleeing, the defendant or an accomplice was
22 armed with a deadly weapon or explosive. A deadly
23 weapon is any article, instrument or substance
24 which is likely to cause death or great bodily
25 harm. Whether an instrument has been used as a

JURY CHARGE

1 deadly weapon depends on the facts and
2 circumstances of each case.

3 The following are examples of
4 instruments which may be deadly weapons: A pistol,
5 a shotgun, a rifle, a dirk, a dagger, a knife, a
6 slingshot, metal knuckles, a razor, gasoline, a
7 firebomb or Molotov cocktail, lighter fluid. A gun
8 may be a deadly weapon even if it is not operating.

9 Ladies and gentlemen, these are simply
10 evidentiary facts to be taken into consideration by
11 you, along with the other evidence in this case,
12 and to be given the weight, value and effect you
13 decide it should receive; or when entering, while
14 in the dwelling, or when fleeing, the defendant or
15 accomplice used or threatened to use a dangerous
16 object, or when entering, while in the dwelling, or
17 when fleeing, the defendant or an accomplice
18 displayed what was or appeared to be a knife,
19 pistol, revolver, rifle, shotgun, machine gun, or
20 other firearm.

21 The defendant is charged with
22 possession of a weapon during the commission of or
23 attempt to commit a violent crime. The State must
24 prove beyond a reasonable doubt that the defendant
25 was in possession of a firearm or visibly displayed

JURY CHARGE

1 what appeared to be a firearm and/or visibly
2 displayed a knife during the commission of a
3 violent crime.

4 A firearm means any machine gun,
5 automatic rifle, revolver, pistol, or any weapon
6 which will, is designed to, or may be readily
7 converted to expel a projectile. A knife means an
8 instrument or tool with a sharp cutting blade,
9 whether or not fastened to a handle, which can be
10 used to inflict a cut, slash, or wound.

11 In order to find the defendant guilty
12 of possession of a weapon during the commission of
13 a violent crime, you must first find the defendant
14 guilty of either committing a violent crime or
15 attempting to commit a violent crime. I instruct
16 you that kidnapping is a violent crime as defined
17 by South Carolina Code Section 16-1-60. I further
18 instruct you that the State must also prove beyond
19 a reasonable doubt that the weapon furthered,
20 advanced or helped in the commission of the crime.

21 The defendant is charged with unlawful
22 possession of a firearm by a person convicted of a
23 violent offense. The State must prove beyond a
24 reasonable doubt that the defendant was convicted
25 of a violent crime, as defined by section 16-1-60

JURY CHARGE

1 of the South Carolina Code of Laws.

2 The parties have stipulated that the
3 defendant has previously been convicted of a
4 violent felony, as classified by section 16-1-60 of
5 the South Carolina Code of Laws, and as I
6 previously instructed, a stipulation is an
7 agreement and it requires no further proof.

8 Next, the State must prove beyond a
9 reasonable doubt that the defendant had possession
10 of a firearm. A firearm means any machine gun,
11 automatic rifle, revolver, pistol, or any weapon
12 which will, is designed to, or may be readily
13 converted to expel a projectile. I instruct you
14 the prior conviction for a violent offense may only
15 be considered by you for the purpose of determining
16 whether or not it satisfies that element of the
17 offense that makes it a violation to possess a
18 firearm by a person convicted of a violent offense,
19 and for no other purpose. The prior offense cannot
20 be considered by you as evidence of guilt of the
21 other crimes the defendant is charged with or as
22 evidence of his character.

23 Before you can even consider the
24 evidence of the defendant's prior violent crime
25 conviction, you must first find that the State has

JURY CHARGE

1 proven beyond a reasonable doubt that the defendant
2 had possession of a firearm; then you may consider
3 the evidence of his conviction for a violent
4 offense as evidence of one of the elements of the
5 crime, making this an unlawful possession of a
6 firearm by a person convicted of a violent offense.

7 Ladies and gentlemen, the Indictments
8 in this case alleged different offenses against the
9 defendant. These charges are as follows:

10 Indictment 2014-839, criminal sexual conduct first
11 degree; 2014-840, criminal sexual conduct first
12 degree; 2014-653 and 654, each kidnapping;
13 2014-655, burglary in the first degree; 2014-658,
14 possession of a weapon during the commission of a
15 violent crime; and 2014-659, unlawful possession of
16 a firearm by a person convicted of a violent
17 offense.

18 Each Indictment charges a separate and
19 distinct offense. You must decide each Indictment
20 separately on the evidence and the law applicable
21 to it, uninfluenced by your decision as to any
22 other Indictment. The defendant may be convicted
23 or acquitted on any or all of the offenses charged.
24 You will be asked to write a separate verdict of
25 guilty or not guilty for each Indictment.

JURY CHARGE

1 Ladies and gentlemen, you have been
2 selected as fair and impartial jurors, sworn to
3 impartially try the fact of this case, and when you
4 comply with your oath to do so, then no one will
5 have the right to criticize your verdict and you
6 will have fully discharged your duty as jurors in
7 this case. You should not be influenced by
8 opinions or expressions of opinions, if any, or
9 what you may have heard outside of the evidence of
10 this case, but you are to decide this case
11 according to the sworn testimony that you have
12 heard, along with the other evidence introduced.

13 There are two possible verdicts for
14 each Indictments and I will go through those with
15 you. These verdict forms go into the jury room
16 with you, so you don't have to try to write them
17 down. And they are as follows: As to the
18 Indictment 2014658 -- well, I'm going to go in the
19 opposite order, I apologize. 2014-839, criminal
20 sexual conduct in the first degree, and it is the
21 exact same for 840, which is the same offense.
22 Those verdict forms read as follows: We, the jury,
23 by unanimous consent, find the defendant guilty of
24 criminal sexual conduct first degree, or not
25 guilty.

JURY CHARGE

1 2014-653 and 654, again, those read
2 exactly the same. We, the jury, by unanimous
3 consent, find the defendant guilty of kidnapping,
4 or not guilty.

5 Burglary in the first degree. We, the
6 jury, by unanimous consent, find the defendant
7 guilty of burglary first degree, or not guilty.

8 Possession of a weapon during the
9 commission of a violent crime: We, the jury, by
10 unanimous consent, find the defendant guilty of
11 possession of a firearm during the commission of a
12 violent crime, or not guilty.

13 And the last Indictment, 2014-659: We,
14 the jury, by unanimous consent, find the defendant
15 guilty of unlawful possession of a firearm by a
16 person convicted of a violent offense, or not
17 guilty.

18 Ladies and gentlemen, there is
19 absolutely no significance whatsoever to the order
20 in which -- ladies and gentlemen, there is no --
21 absolutely no significance whatsoever to the order
22 in which I state these potential verdicts. It is
23 simply that one must be stated first.

24 Ladies and gentlemen, your verdict must
25 be a unanimous one, which means that all 12 of you

JURY CHARGE

1 must agree in order to reach a verdict.

2 Madame Forelady, when the jury has
3 reached the unanimous verdict on each Indictment,
4 it is your responsibility to fill out the verdict
5 form and sign and date the form. Once the jury has
6 reached a verdict on all of the Indictments, you
7 should knock on the door and advise the bailiff
8 that the jury has concluded its deliberations and
9 reached a unanimous verdict.

10 If the jury has any questions during
11 its deliberations, it is your responsibility to
12 write out those questions, to sign and date the
13 note and, again, follow the same procedure by
14 knocking on the door and advising the bailiff that
15 the juror has a question.

16 Also, any notes that you provide to the
17 Court should never make any reference to any
18 numerical breakdown. The jury's deliberations are
19 completely secret, they are confidential, and so no
20 numerical breakdown should be disclosed outside of
21 your deliberative process.

22 Ladies and gentlemen, if you have any
23 questions during deliberations, please know that
24 there will be a delay in our response and that is
25 because there is a process that we must follow in

JURY CHARGE

1 answering your questions. So know that if you have
2 a question, there would be a delay because we are
3 following that process.

4 Ladies and gentlemen, again, your
5 verdict must be unanimous, which means that all 12
6 of you must agree in order to reach a verdict in
7 this case. I'm going to ask that you return to
8 your jury room, but do not yet begin your
9 deliberations. I have some very brief matters of
10 law to take up with the attorneys that may require
11 further instruction or clarification of an
12 instruction.

13 If there's no further instruction, we
14 will send in the evidence, the notepads and your
15 verdict forms, and at that time you will be allowed
16 to begin your deliberations, and at that time we
17 will excuse the alternates. So, again, do not yet
18 begin your deliberations. If you would go with the
19 bailiffs and please leave your notepads in your
20 seats.

21 (Jury out, 4:17 p.m.)

22 THE COURT: You may be seated. Any
23 exception from the State?

24 MS. WILLIAMS: None from the State.

25 THE COURT: From the defense?

1 MR. SCHWACKE: No, Your Honor.

2 THE COURT: If you all could make sure
3 that all the evidence is in place for me. And Mr.
4 Schwacke, I need to know if you have a problem with
5 me doing what I'm going to do before I start using
6 the tape, because I can't remove it once I do it.

7 MR. SCHWACKE: I thought you had
8 already done it and I was just going to ask to look
9 at it.

10 THE COURT: I'm going to let you look
11 at it, but I just wanted to make sure. Once I put
12 the tape in here, you can't take it off.

13 I need to place on the record -- I need
14 your attention, please. We're still in session.
15 We're still in session. I need to put on the
16 record that there is no exception to the amendment
17 of Indictment 2014-659 to correctly reflect the way
18 the offense is entitled. Is that correct from the
19 State?

20 MS. WILLIAMS: It is from the State,
21 Your Honor.

22 THE COURT: From the defense?

23 MR. SCHWACKE: Yes, ma'am.

24 THE COURT: I'm about to dismiss the
25 alternatives, so I need you to stay in place for

1 me, and then we'll take up anything else once I do
2 that.

3 (Alternates in the courtroom.)

4 THE COURT: You may be seated.
5 Gentlemen, we want to thank you for your time and
6 attention to this case. We know that being an
7 alternate can seem so incredibly thankless, but
8 it's so very necessary in the event that we have a
9 juror who is incapacitated or unable to proceed
10 with their jury service.

11 I've watched you both, you've been
12 timely and attentive, and we truly appreciate your
13 service. I hope it's been educational for you. I
14 hope you've learned that it's nothing like what you
15 see on TV. And I hope that in some small way it's
16 reinstalled your faith in the system and that it
17 works because of your willingness to donate your
18 time to us.

19 You are welcome to stay if you would
20 like, but you don't have to. You're excused for
21 the remainder of the week. I would ask that you,
22 however, not discuss your jury service until the
23 entire panel is dismissed.

24 Sometimes lawyers will contact you just
25 to get your take on how the case went, just to have

1 another perspective. That's not unusual.

2 You're welcome to discuss the case if
3 you would like, but if you don't want to, you don't
4 have to. If you need your work excuse, we can get
5 it for you before you leave today; otherwise we
6 will mail those to you along with your -- your
7 other checks. So I hope that you all had a
8 wonderful, educational week on jury service. We
9 truly profoundly appreciate your service. You will
10 be able to go and -- I was worried about you being
11 in the doghouse all week. He forgot that
12 appointment and his wife is going to kill him if
13 she has to reschedule that appointment. But I was
14 hopeful that we would be able to excuse you so that
15 you would be able to meet that obligation.

16 I hope that you have a wonderful week.
17 You are excused with the Court's profound thanks.
18 If you want to stay, please let the bailiff know
19 and we'll put you in a separate area so that you
20 can stay with us if you would like to.

21 Thank you, have a wonderful evening.

22 (Alternates out, 4:28 p.m.)

23 THE COURT: The record should reflect
24 that the alternates were excused at 4:25 and the
25 jury began its deliberations at 4:25.

1 Now, what did you want to tell me, Mr.
2 Schwacke? Did you forget? I'm sorry.

3 MR. SCHWACKE: I think just for the
4 record, I'm not sure, we would have renewed our
5 motion for a directed verdict.

6 THE COURT: Yeah. You did that at the
7 close of the State's. I asked for you to do it
8 when you rested.

9 MR. SCHWACKE: Thank you.

10 THE COURT: You're welcome. Is there
11 anything else we need to take up before we're at
12 ease? I have indicated to the deputies that I'm
13 going to give the jury until about 6:00 or 5:30ish,
14 and let them know they have the option to go home
15 -- because we really don't have any options for
16 dinner for them -- and that they can resume their
17 deliberations in the morning, and give them the
18 option of what they want to do.

19 I may bring the foreperson out and tell
20 her that before they really get into any deep
21 deliberative process. If they tell us they want to
22 stay, we will be here. If they want to go home, we
23 will allow them to go home.

24 So if you all would hang tight for me
25 so I can get --

1 Can you get the foreperson for me right
2 quick?

3 (Foreperson in, 4:30 p.m.)

4 THE COURT: Madame Forelady, if the
5 jury decides -- and I meant to say this earlier, I
6 did sort of say it, but not as completely as I
7 intended. Around 5:30 or 6:00, or whatever time
8 you would like to break for the evening, you can
9 let me know and you can go home and then resume
10 your deliberations in the morning if you desire.
11 We don't have any real viable options for dinner
12 for you.

13 FOREPERSON: Okay.

14 THE COURT: So if you want to go home
15 at 5, you can. If you want to go at 5:30, you can.
16 If you want to go home at 6 -- whatever you decide,
17 we will abide by, just let us know.

18 FOREPERSON: Thank you.

19 THE COURT: Thank you.

20 (Foreperson out, 4:31 p.m.)

21 THE COURT: Any exceptions from the
22 State?

23 MS. WILLIAMS: No, Your Honor.

24 THE COURT: From the defense?

25 MR. SCHWACKE: No, Your Honor.

1 THE COURT: We'll be at ease until we
2 get further instructions from our jury.

3 (A recess transpired.)

4 THE COURT: You may be seated. We need
5 the defendant.

6 Where is the defendant?

7 THE CLERK: They went to get him, Your
8 Honor.

9 THE COURT: The jury sent me a note at
10 4:30. They wanted to go home at five and we resume
11 at 930 in. The morning I'm going to have the note
12 marked as a Court's exhibit. As soon as we get the
13 defendant I'm going to let them go
14 home.

15 (DFT. EXH. 4, Jury note, was marked for
16 identification.)

17 (Jury in, 5:11 p.m.)

18 THE COURT: You may be seated, ladies
19 and gentlemen. I received your note that you would
20 like to go home at 5:00 and resume in the morning
21 at 9:30, so I'm going to excuse you at this time
22 for the evening recess.

23 During the break, please do not discuss
24 the case among yourselves or with anyone else. As
25 I have indicated, your deliberations can only take

1 place among the 12 of you in the jury room. Do not
2 watch, read, or listen to any media accounts about
3 this case, do not do any independent research on
4 the Internet.

5 In the morning when you return, come to
6 the point that has been designated by the bailiff
7 by 9:30. As soon as all 12 of you arrive, you will
8 be brought back up to resume your deliberations.
9 When you go back into the jury room to leave for
10 the evening, leave all of your notepads and the
11 evidence, so we can secure it all during the
12 recess.

13 I hope that you have a great evening
14 and we will see you in the morning at 9:30.

15 (Jury out, 5:12 p.m.)

16 You may seated. Any exception from the
17 State?

18 MS. WILLIAMS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. SCHWACKE: No, Your Honor.

21 THE COURT: All right. Guys, be here
22 at 9:30 in the morning.

23 (These proceedings were recessed at
24 5:16 p.m. to be continued, 3/3/16 at 9:30 a.m.)

25

1 (The following proceedings were had in
2 the Court of General Sessions, March 3, 2016,
3 Berkeley County, South Carolina at 9:37 a.m.)

4 THE COURT: Let the record reflect that
5 the jury resumed their deliberations at 9:30. So
6 we will await any further communication with them
7 whether it be a question or a verdict.

8 (Whereupon, there was a break in these
9 proceedings.)

10 THE COURT: Are the lawyers here for
11 Mr. McClam? I don't know that we need to bring
12 Mr. McClam out for this because it's really
13 insignificant. The jurors sent a note asking is it
14 proper to sign the verdict sheet in pencil. And I
15 instructed Marvin to get them a pen. And I will
16 have the note marked as a Court's Exhibit. I would
17 imagine there is no exception from the State.

18 MS. WILLIAMS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. SCHWACKE: No, Your Honor.

21 THE COURT: All right.

22 (COURT 5, Jury Note, was marked for
23 identification.)

24 (Whereupon, there was a break in these
25 proceedings.)

1 THE COURT: We have a verdict. So I
2 need the lawyers and I also need the defendant.

3 (Defendant in 10:19 a.m.)

4 All right. The jury has reached a
5 verdict. Is there anything before we bring in the
6 jury? From the State?

7 MS. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. SCHWACKE: No, Your Honor.

10 THE COURT: Are there people that plan
11 to come into the courtroom? If they do, they need
12 to come now because I'm about to close those doors.

13 THE DEPUTY: We're doing a security
14 scan.

15 THE COURT: Thank you. Let me know
16 when you're done. I don't want to interfere with
17 what you're doing.

18 Now, for those who are present in the
19 gallery, I need to advise that there should be no
20 audible responses or reactions to the jury's
21 verdict. This is a courtroom; it is entitled to a
22 certain amount of decorum and respect. Whether you
23 agree or disagree with the verdict, I don't expect
24 there to be any outbursts.

25 If there are any, I have instructed

VERDICT

1 security to handle it without my intervention,
2 which means you could be removed or arrested. So I
3 would suggest that you honor the Court's
4 instructions.

5 Please bring in the jury.

6 (Jury in, 10:21 a.m.)

7 THE COURT: You may be seated.

8 Madame Forelady, is it correct that the
9 jury has reached a verdict?

10 MADAME FORELADY: Yes.

11 THE COURT: Give the verdict form to
12 the bailiff, please.

13 Sir, if you would stand for publication
14 of the verdict. Bear with me one moment.

15 Madame Clerk, would you publish the
16 verdict?

17 THE CLERK: In the Court of General
18 Sessions, State of South Carolina v. Telly Darnell
19 McClam, Indictment No. 2014-GS-08-839, we, the
20 jury, by unanimous consent, find the defendant
21 guilty of criminal sexual conduct in the first
22 degree; Indictment No. 2014-GS-08-840, we, the
23 jury, by unanimous consent, find the defendant
24 guilty of criminal sexual conduct in the first
25 degree; Indictment No. 2014-GS-08-653, we, the

VERDICT

1 jury, by unanimous consent, find the defendant
2 guilty of kidnapping; Indictment No.
3 2014-GS-08-654, we, the jury, by unanimous consent,
4 find the defendant guilty of kidnapping; Indictment
5 No. 2014-GS-08-655, we, the jury, by unanimous
6 consent, find the defendant guilty of burglary in
7 the first degree; Indictment No. 2014-GS-08-658,
8 we, the jury, by unanimous consent, find the
9 defendant guilty of possession of a firearm during
10 the commission of a violent crime; Indictment No.
11 2014-GS-08-659, we, the jury, by unanimous consent,
12 find the defendant guilty of unlawful possession of
13 a firearm by a felon -- I'm sorry, by a person
14 convicted of a violent offense.

15 Ladies and gentlemen of the jury, if
16 this is your verdict, please signify by raising
17 your right hands.

18 THE JURY: (Raised hands)

19 THE COURT: Thank you. You can put
20 them down.

21 Is there any request to poll the jury?
22 From the State?

23 MS. WILLIAMS: No, Your Honor.

24 THE COURT: From the defense?

25 MR. SCHWACKE: Yes, Your Honor.

1 THE COURT: You can take your seats.

2 Ladies and gentlemen, if you would give
3 the clerk your attention, she's going to ask you
4 two questions as she announces your juror number;
5 is this your verdict and is this still your
6 verdict?

7 You may proceed.

8 THE CLERK: Juror No. 173, is this your
9 verdict?

10 THE COURT: I need you to raise your
11 right hand when she calls your number.

12 JUROR NO. 173: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NO. 173: Yes.

15 THE CLERK: Thank you.

16 Juror No. 12, is this your verdict?

17 JUROR NO. 12: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NO. 12: Yes.

20 THE CLERK: Thank you.

21 Jury No. 57, is this your verdict?

22 JUROR NO. 57: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NO. 157: Yes.

25 THE CLERK: Juror No. 46, is this your

1 verdict?
2 JUROR NO. 46: Yes.
3 THE CLERK: Is this still your verdict?
4 JUROR NO. 46: Yes.
5 THE CLERK: Juror No. 122, is this your
6 verdict?
7 JUROR NO. 122: Yes.
8 THE CLERK: Is this still your verdict?
9 JUROR NO. 122: Yes.
10 THE CLERK: Juror No. 119, is this your
11 verdict?
12 JUROR NO. 119: Yes.
13 THE CLERK: Is this still your verdict?
14 JUROR NO. 119: Yes.
15 THE CLERK: Juror No. 117, is this your
16 verdict?
17 JUROR NO. 117: Yes.
18 THE CLERK: Is this still your verdict?
19 JUROR NO. 117: Yes.
20 THE CLERK: Juror No. 9, is this your
21 verdict?
22 JUROR NO. 9: Yes.
23 THE CLERK: Is this still your verdict?
24 JUROR NO. 9: Yes.
25 THE CLERK: Juror No. 75, is this your

1 verdict?

2 JUROR NO. 75: Yes.

3 THE CLERK: Is this still your verdict?

4 JUROR NO. 75: Yes.

5 THE CLERK: Juror No. 112, is this your

6 verdict?

7 JUROR NO. 112: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR NO. 112: Yes.

10 THE CLERK: Juror No. 56, is this your

11 verdict?

12 JUROR NO. 56: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NO. 56: Yes.

15 THE CLERK: Juror No. 82, is this your

16 verdict?

17 JUROR NO. 82: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NO. 82: Yes.

20 THE CLERK: Your Honor, the jury has

21 been polled and the verdict stands.

22 THE COURT: Thank you. Ladies and

23 gentlemen of the jury, we thank you for your time

24 and your attention to this case. We know that jury

25 service is thankless. And when I say this during

1 jury qualification, people chuckle, but I really
2 mean it very sincerely that you learn that real
3 court is nothing like what you see on television.

4 Our system is the only kind in the
5 world where 12 ordinary citizens listen to the
6 facts of a case, apply the law to those facts, and
7 render verdicts.

8 I hope that it has been educational for
9 you and I hope that you know how very much we value
10 your service. South Carolina has one of the
11 largest case filings per capita in the nation at
12 over 5,0000 per judge. We have 49 -- I think now
13 probably about 51 circuit judges that travel
14 throughout the state and hear both civil and
15 criminal cases.

16 If you would like to remain for
17 sentencing, you're welcome to do that. Please just
18 let the bailiffs know and we will allow you to
19 remain in the jury box for that purpose.

20 You are welcome to discuss this case if
21 you would like. Lawyers will often contact you to
22 find out how they can do things better, sometimes
23 just to get your perspective on the proceedings.
24 So if you desire to discuss the case you can. If
25 you don't want to, you are not obligated to.

1 If you need a work excuse, we will
2 provide those for you today. Mr. Marvin has them
3 in his hand and he will provide those to you, and
4 we will mail your checks -- or do we have those
5 today too? They will be mailed to you for your
6 service.

7 Is there anyone that desires to remain
8 for sentencing, if you will raise your hands for
9 me? That's the whole jury. Okay. We will remain
10 -- and I will excuse you after sentencing.

11 Are there any posttrial motions?

12 MR. SCHWACKE: Yes, Your Honor. Just
13 on behalf of the client, we would renew our
14 motions, at this point make a motion for a new
15 trial based on insufficient evidence to support the
16 verdict. That would include the information that
17 we provided to the Court in our earlier motion at
18 the close of the State's case and the close of all
19 evidence.

20 THE COURT: Would the State like to
21 respond?

22 MS. WILLIAMS: We stand with the
23 evidence that we presented, Your Honor, and the
24 arguments that we have made.

25 THE COURT: Okay. The Court would

1 incorporate any previous rulings that it has made,
2 that being any findings of facts and conclusions of
3 law and incorporate them into this portion of the
4 record as there's no necessity to repeat those as
5 they were fully articulated at the time.

6 There is no basis for a motion for a
7 new trial and that motion is denied. There is more
8 than ample evidence in the record, that being
9 direct and substantial circumstantial evidence to
10 amply support the jury's verdicts in this matter,
11 and the Court is not in a posture to substitute its
12 judgment for that of a jury; but in this instance,
13 the evidence is so replete in the record to support
14 the verdict, I would not sit as a 13th juror and
15 substitute my judgment in any event as there is no
16 basis to have vacate this verdict where it is more
17 than amply supported both by the facts and the law
18 as the State beyond a reasonable doubt has met each
19 and every element of the offenses.

20 Now, as I recollect, Mr. McClam was
21 made a pretrial offer in this case, correct?

22 MS. WILLIAMS: Yes, Your Honor.

23 THE COURT: And what was that offer?

24 MS. WILLIAMS: A range of 15 to 25
25 years.

1 THE COURT: And he rejected that on the
2 record, correct?

3 MS. WILLIAMS: He did.

4 THE COURT: And then subsequently the
5 State served him with life without parole notice,
6 correct?

7 MS. WILLIAMS: That's correct.

8 THE COURT: Which was based on 17-21-45
9 and based on a previous most serious conviction of
10 criminal sexual conduct second degree, which was on
11 6/16/99; is that correct?

12 MS. WILLIAMS: That is correct. He
13 also had a --

14 THE COURT: I'm going to go through his
15 record in just a moment.

16 But the only one that was attached to
17 this motion and articulated in the motion was the
18 CSC.

19 MS. WILLIAMS: That's true. Just to be
20 clear, the only reason we offered him 15 to 25 was
21 to spare these victims from going through this
22 trial.

23 THE COURT: I'm going to hear argument
24 on sentencing. I'm just doing some preliminary
25 matters.

1 As I understand it from pretrial
2 proceedings, his criminal record consists of a
3 criminal sexual conduct second degree, which he was
4 released from confinement March 1 2012, a burglary
5 in the first degree with the same confinement
6 release, a burglary in the second degree with the
7 same confinement release, an assault and battery of
8 a high and aggravated nature which was pled down
9 from a criminal sexual conduct, which was the same
10 release date, and a breaking and entering a motor
11 vehicle from 1999, correct?

12 MS. WILLIAMS: That's correct, Your
13 Honor.

14 THE COURT: Does he have any other
15 record that I have not been made aware of?

16 MS. WILLIAMS: No, Your Honor.

17 THE COURT: Okay. Be glad to hear from
18 the State on sentencing.

19 MS. WILLIAMS: Your Honor, you have a
20 copy of our life without parole --

21 THE COURT: Do you have the sentence
22 sheets?

23 MS. WILLIAMS: They went to get them.
24 And I know that the family would like to address
25 the Court. If we just could have two minutes, we

1 could figure out which ones want to address the
2 Court, if I could just turn and ask them --

3 THE COURT: Uh-huh.

4 MS. WILLIAMS: -- if that is
5 appropriate.

6 (Pause)

7 They are happy with me addressing the
8 Court.

9 THE COURT: You may proceed.

10 MS. WILLIAMS: Okay. Mr. McClam and
11 his attorneys were served with the life without
12 parole notice, both signed and understood what that
13 meant. We provided them with a certified copy of
14 the previous convictions, and that was all done
15 January 5, 2016.

16 The family never really wanted to go
17 through a trial. They wanted Mr. McClam to take
18 responsibility for his actions. They have been
19 terrorized by this man. They have shown tremendous
20 courage in going through this trial and I'm so very
21 proud of them for doing it. I pray that now that
22 he will be locked up that they will have some peace
23 in their life and that they would move on.

24 We would just respectfully ask the
25 Court to impose the life without parole sentence on

1 Mr. McClam. And the sentencing sheet should be
2 here in just a second, Your Honor.

3 THE COURT: The only ones he would be
4 eligible on would be the CSC first --

5 MS. WILLIAMS: The two counts of CSC
6 first, two counts of kidnapping --

7 THE COURT: I think there's some case
8 law that restricts them to imposition regarding
9 kidnapping charges. The possession of a weapon
10 during the commission of a violent crime carries
11 five years, the unlawful possession of the gun
12 carries two years, the burg first carries 15 to
13 life which that can be imposed as well, but I think
14 there is some case law that restricts imposition of
15 a life sentence on the kidnapping.

16 MS. WILLIAMS: Okay. Well, I'm going
17 to leave that to the wisdom of the Court. We would
18 ask for the maximum amount of time.

19 THE COURT: Well, life is life and they
20 are concurrent, so I don't know that it really
21 makes a difference.

22 MS. WILLIAMS: We would also ask that
23 he be placed on a sex offender registry for both
24 kidnapping and --

25 THE COURT: I think that is automatic.

1 With the CSCs he'll be placed on the sex offender
2 registry. I think it's a bit of a duplication. Do
3 you really need on -- I mean, on the CSC he has a
4 life without parole. Life in South Carolina means
5 life, so he's never going to have a chance to
6 register. And the CSCs require registration, so I
7 don't --

8 MS. WILLIAMS: It matters in terms of
9 his incarceration, and we would just ask that those
10 be correctly assigned to sex offenses for each of
11 the ones that he actually committed sex offenses.

12 THE COURT: Well, it would be the
13 kidnapping on Ms. **L. J.**.

14 MS. WILLIAMS: Correct.

15 THE COURT: But not Ms. McHoney.

16 MS. WILLIAMS: I agree. We would just
17 ask for the maximum sentences on the gun charges,
18 which I believe one is ten and one is five.

19 THE COURT: Actually, one is five and
20 one is two, based on the statute, if I'm accurate.
21 Five and five, I misread the note. The felon is
22 five years and a \$2,000, and the possession of a
23 weapon during the commission of a violent crime is
24 five years.

25 MS. WILLIAMS: We would ask the Court

1 to impose the maximum.

2 THE COURT: Be glad to hear from you
3 Mr. Schwacke.

4 Is he on probation for anything
5 Mr. Fashion? Or community supervision?

6 MR. FASHION: Yes, ma'am.

7 THE COURT: He was released from
8 confinement in 2012, correct?

9 MR. FASHION: Yes, ma'am.

10 THE COURT: Did they release him on
11 community supervision or did he have probation?

12 MR. FASHION: He was released on
13 community supervision. A warrant was issued in
14 2013 because of a community safety violation. I
15 checked with SCDC, and even though he was in
16 incarcerated, he has no time to --

17 THE COURT: He maxed out his sentence.

18 MR. FASHION: Yes, ma'am.

19 THE COURT: On a community supervision
20 revocation, he could be extended to another year,
21 couldn't he?

22 MR. FASHION: No, ma'am. They said he
23 maxed out, so we will request that his warrant be
24 withdrawn.

25 THE COURT: Okay.

1 MR. FASHION: And let the case expire.

2 THE COURT: Okay. Be glad to hear from
3 you, Mr. Schwacke.

4 MR. SCHWACKE: Thank you, Your Honor.
5 First, with regard to the sentencing statute
6 17-25-45, for the record, we would like to place on
7 the record -- we would like to state to the Court
8 that it is our position that 17-25-45 results in
9 cruel and unusual punishment --

10 THE COURT: The Supreme Court of South
11 Carolina has already addressed -- haven't they
12 already addressed the validity of the two, three
13 strike law? Because that's what this is.

14 MR. SCHWACKE: They have, Your Honor.

15 THE COURT: Hasn't the United states
16 Supreme Court also addressed it?

17 MR. SCHWACKE: They have, Your Honor.
18 I'm just covering myself on the record.

19 THE COURT: Yeah.

20 MR. SCHWACKE: But also that there --
21 and I don't believe this argument has ever been
22 addressed, that this results in an unconstitutional
23 separation of powers, as this statute is a creation
24 of the legislative branch which enables the
25 executive branch, in this case the Solicitor, to

1 exercise control over the judicial branch and
2 infringe upon their sentencing discretion and
3 authority.

4 THE COURT: I think that has been
5 addressed by the South Carolina Supreme Court and
6 the US Supreme Court. I'll find a case on point.
7 I think all of those arguments have been made
8 regarding the sentencing scheme for the two/three
9 strike law.

10 MR. SCHWACKE: And, again, just for the
11 record.

12 THE COURT: Anything that you would
13 like to say in the nature of sentencing?

14 MR. SCHWACKE: Your Honor, Mr. McClam
15 is a lifetime resident of the area. His family has
16 been present throughout the trial. I need to check
17 in a minute to see if any of them wish to address
18 Your Honor. It's honorable on their part that at
19 every stage of this they were acting in the
20 interest of society and not with any particular
21 assistance at all to Mr. McClam.

22 He attended St. Stephen High School
23 through 12th. He has worked in the past doing car
24 detailing work. Your Honor, I believe he wishes to
25 address the Court.

1 THE COURT: Sure. I would be glad to
2 hear from him.

3 Yes, sir.

4 THE DEFENDANT: Good morning.

5 THE COURT: Good morning.

6 THE DEFENDANT: First of all, I would
7 like to say, thank you to the jurors for coming to
8 witness this gruesome movie they made of me where I
9 was the star, you know. I mean, I'd like to also
10 say that -- like they said earlier, you know, as
11 far as with the tape, everyone handled it without
12 gloves, you know, so -- and they are professionals.
13 No one knows where this tape went and what happened
14 in the middle or what happened in the end. All
15 they know is they received it.

16 It's just like, the State, they don't
17 know what happened before, in the middle, or in the
18 end. And you say that you-all are protective of
19 the state. Well, from my point of view, you only
20 looked at one side, you didn't look at my side.
21 So, therefore, you was not a protector for me. You
22 know what I mean?

23 So the next time when someone come into
24 the courtroom and they are faced with life
25 sentence, or any of these things, think about the

1 middle part. Think about all around. Don't stay
2 in a box. Be within -- without -- I mean, don't be
3 within that one box. Look outside the box for all
4 options.

5 You know, you have a job to do, but at
6 the same time, you're human and I'm human and it's
7 not right to judge one that you don't have no
8 knowledge of.

9 I would like to say thank you.

10 THE COURT: You're welcome.

11 Anything further from the defense?

12 MR. SCHWACKE: His mother may wish to
13 address you.

14 THE COURT: Sure. Be glad to hear from
15 her.

16 Ma'am, tell us your name for the
17 record.

18 THE WITNESS: Margaret C. McClam.

19 THE COURT: Yes, ma'am, be glad to hear
20 from you.

21 THE WITNESS: Giving honor to all of
22 yo-all in the courtroom. Judge.

23 THE COURT: Yes, ma'am.

24 THE WITNESS: I'm a Christian. I
25 raised my son, three girls. This is my baby. No

1 one knows how it feels when a mother have to come
2 and present before the child, their baby. I thank
3 you-all for everything that you-all have done. But
4 you know whose hands it's in? It's in God's hands.
5 Jesus, it's in his hands.

6 He knew from the time he give me this
7 son, the time he was sent in my womb and he was
8 born, the Lord knows just what was ahead, and that
9 goes for all of us. And I just want to thank you
10 for whatever you decide. I can still love him
11 until he dies until he leaves here, but he's still
12 my baby.

13 And I'm asking you-all to please,
14 please have mercy on him. We all have done wrong,
15 and fall short from the glory, and as we live we
16 still go forward short. And remember you-all got
17 some children too. And then you have some grands
18 coming along, and then you're going to have some
19 nieces and nephews. Think about what they've got
20 to face.

21 Before you go into a trial, I have to
22 say, think about if he done this here wilfully or
23 he didn't. Think about it. Think about when your
24 children come before this time here like me. I
25 pray hard, I teach him. We work hard, me and my

1 husband. We work, give him all that we could give
2 him.

3 Also, I turned around and help their
4 family, helped the family there. I was mother for
5 the whole family. When they said, I need a pack of
6 chicken, I done it. When my son couldn't pay the
7 light bill, me and my husband paid the light bill,
8 water bill. Go around all these churches in Moncks
9 Corner and begged them to help me pay the light
10 bill because he wasn't able to pay.

11 Every time he go for a job they say,
12 can't get a job. We take our Social Security money
13 and pay the light bill, water bill, buy washing
14 powder -- I want you-all to listen to me. Please,
15 give me this time -- washing powder, Clorox, teeth
16 paste, soap, towels, sheets, pillow cases for those
17 family that I take in. I take in, in my house. Me
18 and my husband, we give them a place to stay. He
19 is something like me. If people is not as
20 fortunate as him, he would take off his shirt and
21 give it to him and that's why he take these people
22 into this house. We told him, you are in trouble.
23 Why are you doing this to you? He said this word,
24 because I love her. They was out in the street.

25 But I'm going to say this here and I'm

1 going to sit down. Remember this rhyme, a man pick
2 up a snake and he bring him in out of the cold and
3 put him by the fire. After the snake done warm up
4 and stretch out into a warm place, he turned around
5 and bite the man. The man said, why did you bite
6 me? Do you know what the snake said? You knew I
7 was a snake before you -- when you bring me in
8 here. And this is what this is, a rattle snake.
9 But I thank you all for whatever decision you make.

10 THE COURT: Thank you, ma'am.

11 MR. SCHWACKE: Nothing further, Your
12 Honor.

13 THE COURT: Thank you.

14 Anything further from the State?

15 MS. WILLIAMS: No, Your Honor.

16 THE COURT: As regards to
17 Mr. Schwacke's argument that 17-25-45 constitutes
18 cruel and unusual punishment, as well as the
19 violation of the separation of powers, as I've
20 indicated, the South Carolina Supreme Court has
21 addressed both of those issues and found that they
22 are not -- that they were without merit and they
23 are not valid arguments and that our statute is
24 proportionate, that other states that have struck
25 the statutes down have dealt with the enhancement

1 based on petty offenses that were not traditionally
2 felonies, but South Carolina's scheme does not
3 proportion it in that way.

4 Each offense generally that you can
5 receive two-three strikes on is an offense that you
6 could face life for in any event and that it is
7 proportionate -- the offense is proportionate not
8 only in the nature of the elements of the offense
9 but in punishment. It has also addressed the
10 separation of powers argument and found that it is
11 likewise not an argument of merit.

12 I'm relying on the record for State v.
13 White, which is found at 349 SC 33, which is a 2002
14 Supreme Court Opinion, and State v. Standard, which
15 is 351 SC 199, which is a 2002 South Carolina
16 Supreme Court Opinion.

17 The latter addresses the separation of
18 powers and the former addresses the cruel and
19 unusual punishment argument.

20 Based on the fact, sir, that you
21 received a life without parole notice, it is
22 appropriate that that punishment be imposed
23 regarding those offenses that you were served
24 notice on, which would be the criminal sexual
25 conduct offenses, which would constitute -- and

SENTENCE

1 these are not on here, so I'm going to have to fill
2 them in, but the CSC first is most serious and
3 violent, burglary first is violent and most
4 serious, and kidnapping is also most serious and
5 violent. But the notice gave him notice predicated
6 on the CSC charge I believe, and I will look back
7 at that in a moment.

8 But, in any haven't, certainly it is
9 appropriate that it be imposed in light of his
10 having been given a much more favorable offer and
11 having turned that down where he could have far
12 gone a life without parole exposure. Not that he's
13 being penalized for a trial because I'm a great
14 believer in the trial system. I think people
15 should exercise it.

16 I've never seen a verdict that I felt
17 was wrong or felt needed to be vacated. I think
18 jurors have an inordinate amount of common sense
19 and they listen objectively. They have no one to
20 punish and no one to reward, and I have never even
21 a verdict that I questioned yet. Certainly, this
22 verdict is more than amply supported by the record
23 and the evidence that has been presented.

24 As such, sir, you are sentenced to the
25 State Department of Correction as follows: On

1 Indictment 2014-659, possession of a firearm by a
2 person convicted of a violent offense, you're
3 sentenced to five years; possession of a weapon
4 during the commission of a violent crime, 2014-658,
5 you are sentenced to five years; burglary in the
6 first degree, you are sentenced to life;
7 kidnapping, you are sentenced to 30 years; and the
8 Court will find as regards the indictment involving
9 **L. J.**, which is 2014-653, that it is --
10 that it does involve an offense involving a
11 criminal sexual conduct and, therefore, requires
12 registration; and both criminal sexual conduct
13 first degree offenses, life without the possibility
14 of parole.

15 You'll get credit for any time pursuant
16 to 24-13-40 to be calculated and applied by the
17 Department of Corrections.

18 Ladies and gentlemen, we thank you for
19 your time and your attention to this case. You are
20 excused with the Court's profound thanks.

21 (Jury out, 10:50 a.m.)

22 (These proceedings were concluded at
23 10:50 a.m.)

24

25

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

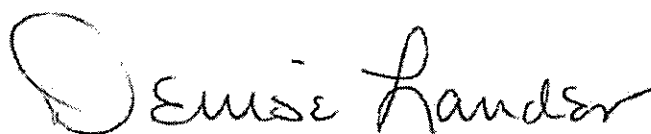
11 Witness my hand, I have hereunto affixed my
12 official seal this 11th day of May, 2016 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17



18

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

19

20

21

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Telly Darnell McClam, #232709)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20-CP-08-504

APPLICATION FOR

POST-CONVICTION RELIEF

20 FEB 20 PM 2:34
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kikland Correctional Institution
2. Name and location of Court which imposed sentence Berkley County General Sessions, 300-B California Avenue, Moncks Corner, SC 29461
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 14GS0800653 - Kidnapping
 - (b) 14GS0800655 - Burglary 1st degree
 - (c) 14GS0800659 - Possession of a firearm by a felon
 - (d) 14GS0800839 - Criminal sexual conduct with a minor, 1st degree
 - (e) 14GS0800658 - Firearms provision

Revised 3/2003

cc: W.C. Yarbrough
(W.C.) 2/24/2020

5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Life Sentence
 - (b) Life Sentence
 - (c) Five (5) years concurrent
 - (d) Life Sentence
 - (e) Five (5) years concurrent
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 "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals (App. Case No. 2016-000793)
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. 02/20/2019 (Decision), 03/13/2019 (Remittur)
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. State v. McClam, 2019-UP-088 (February 20, 2019)
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:

- (a)
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel, in violation of the Applicant's rights guaranteed by the Sixth Amendment as applied through the Fourteenth Amendment
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Counsel failed to object to prejudicial hearsay testimony
 - (b) Trial Counsel failed to move to exclude carious prejudicial evidence relating to either irrelevant or prior bad acts
 - (c) Trial counsel failed to present mitigating evidence at sentencing
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The grounds raised herein are not cognizable on appeal
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. David P. Schwacke, Esq., Ninth Circuit Public Defender's Office, 219 Highway 52, Suite E, Moncks Corner, SC 29461
 - ii. Deborah Littlejohn, Esq., Ninth Circuit Public Defender's Office, 219 Highway 52, Suite E, Moncks Corner, SC 29461
 - iii. William G. Yarborough, Esq., 308 West Stone Avenue, Greenville, SC 29609
 - (b) the proceedings at which each such attorney represented you:
 - i. Through trial and sentencing
 - ii. Appeal
 - iii. _____
19. State clearly the relief you seek in filing this application:
New trial and/or new sentencing
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of BERKELEY)

VERIFICATION

I, Telly Darnell McClam, 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.

s/ Telly D. McClam
by with

SWORN to and subscribed before me this 18th
day of February, 2020.

Chigabli S. Davis (L.S.)
Notary Public

My Commission Expires: 10/21/2029

FILED
20 FEB 20 PM 12:34
CLERK OF COURT
BERKELEY COUNTY, SC

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

I, Telly Darnell McClam, 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.

s/ Telly D. McClam
Applicant

SWORN or affirmed to and subscribed before me this
18th day of February, 2020.

[Signature]
Notary Public

My Commission Expires: 10/21/2029

FILED
20 FEB 20 PM 12:34
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Telly Darnell McClam, #232709,

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

20 20-CP-08-

504

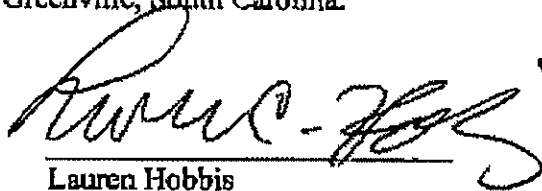
CERTIFICATE OF SERVICE
BY MAILCLERK OF COURT
BERKELEY COUNTY, SC

20 FEB 20 PM 12:33

FILED

The undersigned hereby certifies that she is employed in the Law Office of William G. Yarbrough, III, 308 W. Stone Avenue, Greenville, South Carolina, and is a person of such age and discretion as to be competent to serve papers.

That on the 19th day of February 2020, she served a copy of the attached **APPLICATION FOR POST-COVICTION RELIEF**, by placing said copy in a postpaid envelope, addressed to the person hereinafter named, at the place and address stated below, by depositing said envelope and contents in the United States Mail at Greenville, South Carolina.



Lauren Hobbis

The South Carolina Attorney General's Office
Attn: PCR Division
PO Box 11549
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Telly Darnell McClam, #232709,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-08-504

RETURN

FILED
21 FEB 22 PM 12:30
LEAH GUERRY DUPRE
CLERK OF COURT
BERKELEY COUNTY, SC

Respondent, making its Return to the Application for Post-Conviction Relief ("POR") filed on February 20, 2020, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Berkeley County Grand Jury indicted Applicant for Criminal Sexual Conduct, First Degree (2014-GS-08-839), Criminal Sexual Conduct, First Degree (2014-GS-08-840), Kidnapping (2014-GS-08-653), Kidnapping (2014-GS-08-654), Burglary, First Degree (2014-GS-08-655), Possession of a Weapon During the Commission of a Violent Crime (2014-GS-08-658), and Unlawful Possession of a Firearm by a Person Convicted of a Violent Offense (2014-GS-08-659). David Schwacke, Esquire and Deborah Littlejohn, Esquire represented Applicant. Assistant Solicitor Anne Williams and Assistant Solicitor Daniel Poulos prosecuted the case. On February 29, 2016, Applicant proceeded to trial before the Honorable Deadra Jefferson. Judge Jefferson sentenced Applicant to imprisonment for five years for possession of a weapon during the commission of a violent crime, five years for possession of a firearm by a person convicted of a violent crime, life for first degree burglary, thirty years for kidnapping, life for both first degree criminal sexual conduct charges, and

registration on the sex offender registry. Applicant was given credit for time served. Applicant filed a timely notice of appeal. Applicant's conviction was affirmed by unpublished opinion No. 2019-UP-088. The Remittitur was issued to the lower court on March 13, 2019.

Attached to this Return and incorporated by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the trial transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
 - a. Trial counsel failed to object to prejudicial hearsay testimony
 - b. Trial counsel failed to move to exclude carious prejudicial evidence relating to either irrelevant or prior bad acts
 - c. Trial counsel failed to present mitigating evidence at sentencing

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon

which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: s/ Benjamin Limbaugh
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 18, 2021

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Telly McClam, #232709

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

2020-CP-08-504

CERTIFICATE OF SERVICE BY MAIL

21 FEB 22 PM 12:30
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

William G. Yarborough, III, Esquire
William G. Yarborough III, Attorney at Law, LLC
308 W. Stone Avenue
Greenville, SC 29609

DATED this 18th day of February, 2021.


Jennifer Jernison, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON S
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	
	)	2020CP0800504
Telly Darnell McClam,	)	
SCDC# 00232709,	)	
Applicant,	)	MOTION TO AMEND APPLICATION
v.	)	FOR POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

NOW COMES the Applicant, Telly Darnell McClam, by and through undersigned counsel, and moves this Honorable Court for leave to amend his post-conviction relief application and in response to Respondent's Motion for More Definite Statement. Applicant respectfully submits the following grounds and supporting facts to supplement or add to his PCR application:

I. Trial Counsel rendered ineffective assistance of counsel, in violation of Applicant's Sixth Amendment rights, by failing to object to prejudicial hearsay testimony.

Karlayne Dufault testified without objection to what the victim told her about the assault beyond what is permissible under Rule 801 (the time and place of assault, excluding any particulars). Ms. Dufault testified that a condom was not used and that it occurred on the hood of a car. Trial counsel even improperly elicited specific details of what physically went on during the sexual assault as told to Ms. Dufault by the victim.

II. Trial Counsel was ineffective for failing to object or moving to exclude various prejudicial evidence relating to either irrelevant or prior bad acts, including:

Deadrene McHoney testified without to objection to the following: (1) Applicant had "physically harmed" her in the past; (2) Applicant had been abusive to her in the months prior to the alleged offenses; (3) Applicant had physically hurt her before; and (4) that she knew what Applicant was capable of, in reference to his potential for violence.

III. Trial Counsel was ineffective for failing to object to the State expert qualification of Alyssa Rheingold in the area of impact trauma.

The State had failed to present sufficient evidence of the foundational requirements of qualifications and reliability for non-scientific evidence and expert testimony pursuant to *State v. Chavis*, 412 S.C. 101, 108, 771 S.E.2d 336, 339 (2015) (holding that because there was no evidence as to the State expert's ability to draw reliable results, the threshold reliability requirement of Rule 702 was not met); *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 688 (2009); *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010).

III. Trial Counsel failed to object to prejudicial questions and testimony elicited by the State on direct examination of expert witness Alyssa Rheingold, particularly improper hypothetical questions and responses thereto.

The hypothetical questions and responses were partially based on facts unsupported by the record. *State v. Evans*, 316 S.C. 303, 311, 450 S.E.2d 47, 52 (1994) ("An expert may give an opinion based upon personal observations or in answer to a properly framed hypothetical question that is *based on facts supported by the record*.") (italics added). The testimony elicited in response also improperly bolstered the victim's claims that the sexual assault did indeed occur and improperly corroborated the assault. *See e.g. Chappell v. State*, 429 S.C. 68, 837 S.E.2d 496 (Ct. App. 2019) (cert. denied) (holding that the testimony of an independent expert, like the testimony of any witness, is improper bolstering if (1) the witness directly states an opinion about the victim's credibility, (2) the sole purpose of the testimony is to convey the witness's opinion about the victim's credibility, or (3) there is no way to interpret the testimony other than to mean the witness believes the victim is telling the truth.) (italics added); *Smith v. State*, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010); *State v. Dempsey*, 340 S.C. 565, 569–71, 532 S.E.2d 306, 308–09 (Ct. App. 2000). Although Trial Counsel did object to one such question on re-direct examination,

numerous improper questions and responses had already been elicited without objection by the State on direct examination.

- IV. **Trial counsel failed to present mitigating evidence at sentencing, such as Applicant's history of mental illness, learning disability, and troubled/abuse childhood and upbringing.**
- V. **Trial Counsel failed inform Applicant or sufficiently advise him about a prior plea offer of 15 to 25 years or ensure that Applicant understood the implications of rejecting the plea offer relative to the strength of the State's evidence that would be presented against him at trial and the relative risks and disadvantages of proceeding to trial.**

Therefore, Applicant respectfully urges this Court to permit Applicant to proceed on the foregoing amendments. The amended allegations are not expected or intended to cause Respondent undue delay, surprise, or prejudice. *See Love v. State*, 428 S.C. 231, 238-43, 834 S.E.2d 196, 199-202 (2019). The amendments are largely based upon the trial court record and should not result in substantial need for additional investigation or the subpoena of witnesses. *See Id.* Counsel also respectfully submits that the amended allegations are meritorious and will ensure the Applicant is provided a full and fair opportunity to pursue relief.

WHEREFORE, Applicant respectfully requests this Court permit Applicant to proceed on the foregoing amendments at the upcoming evidentiary hearing.

Respectfully submitted,

William G. Yarborough III

Lauren C. Hobbis

By: /s/ Lauren C. Hobbis, SC Bar #103190

William G. Yarborough III, Attorney at Law, LLC
308 West Stone Avenue
Greenville, South Carolina 29609
(864) 331-1612

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Applicant's Motion to Amend PCR Application was served upon Counsel for Respondent, Assistant Attorney General Sammie Weidauer, by email to her AIS email address sammieweidauer@scag.gov.

This day, the 9th day of March, 2022.

Respectfully Submitted,

William G. Yarborough III

Lauren C. Hobbis

By: /s/ Lauren C. Hobbis, SC Bar No. 103190

William G. Yarborough III, Attorney at Law, LLC

308 West Stone Avenue

Greenville, South Carolina 29609

(864) 331-1612

COUNSEL FOR APPLICANT

STATE OF SOUTH CAROLINA

DOCKET NUMBER
2020-CP-08-00504

COMMON PLEAS

COUNTY OF BERKELEY

TELLY DARNELL MCCLAM,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA,

Defendant.

MARCH 10, 2022

POST-CONVICTION RELIEF

B E F O R E:

The Honorable R. Dennis Markley, Jr., Presiding Judge.

C O U R T:

South Carolina Circuit Court 9

T R A N S C R I B E D B Y:

Barbie Teboe, Transcriber

Legal Eagle
107 LeGrand Blvd.
Greenville, SC 29607
864-467-1373
transcripts@legaleagleinc.com

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

WILLIAM G. YARBOROUGH, Esq.
William G. Yarborough III, Attorney at Law, LLC
308 West Stone Avenue
Greenville, SC 29609

Attorney for the Plaintiff

MEGAN HARRIGAN JAMESON, Esq.
S.C. Commission on Prosecution Coordination
1200 Senate Street, Suite B-03
Wade Hampton Building
Columbia, SC 29201

Attorney for the Defendant

INDEX

<u>DESCRIPTION</u>	<u>PAGE</u>
<u>THURSDAY, MARCH 10, 2022</u>	<u>4</u>
DEFENDANT'S WITNESS - DAVID SCHWACKE	
Direct by Mr. Yarborough	8
Cross by Ms. Jameson	28
Redirect by Mr. Yarborough	41
DEFENDANT'S WITNESS - TELLY DARNELL MCCLAM	
Direct by Mr. Yarborough	44
Cross by Ms. Jameson	58
PLAINTIFF RESTS	59
RECESS	61
CERTIFICATE OF TRANSCRIBER	62

P R O C E E D I N G S

(Whereupon, the following proceedings started at 0:12:21.)

THE COURT: You've talked with Mr. McClam about this case, I'm sure?

MR. YARBOROUGH: Yes, sir. And he understands it -- the best I can -- I say it this way because it really is putting correctly, because I understand. I've looked at the outcome as well. He just won't -- he goes back to square one and he starts over.

He understands that?

MR. YARBOROUGH: He does. We've talked at least three times the last couple of weeks, and he understands that.

THE COURT: And frankly, given the sentences, I don't fault him at all. I understand his application. And we're ready to go if you're ready to go, sir.

MR. YARBOROUGH: I am. I wanted to make sure. I think we had alerted the AG's office that they wanted us to file a more definite statement. And I think we sent that to them. And I wanted to make sure the Court had it as well. I think the initial PCR was just kind of a little bit vague. And so we just --

THE COURT: I'm fine with it. I'm from the -- when I started practicing law, pleadings mattered. And I remember --

MR. YARBOROUGH: And so --

THE COURT: -- my father making all the -- writing, all

1 those -- flowery stuff and everything because they went to the
2 jury. But then all of a sudden, we got into the what it is
3 and pleadings are just forming the basis. And I don't fault
4 the motions. I understand all of that. But clearly that --
5 you -- we'll sort it out. This isn't foreign territory, so
6 I'll be happy to -- be ready to go.

7 So you want you to call your first witness?

8 MR. YARBOROUGH: Yes, sir.

9 I'd like to call --

10 MS. JAMESON: Your Honor?

11 THE COURT: Yes.

12 MS. JAMESON: Before we start, I would just like to make
13 sure that Applicant is apprised -- let me back up.

14 Counsel was appellate counsel. And so I would like to
15 make sure Applicant knows that by moving forward, he's waving
16 that conflict, alleging any ineffective assistance of
17 appellate counsel claims, as he -- Mr. Yarborough was
18 appellate counsel.

19 THE COURT: All right.

20 Mr. McClam, is that your understanding?

21 (No audible response.)

22 THE COURT: Hold on second. I need to unmute you, I
23 think. Yeah. Hold on.

24 Is that your understanding, Mr. McClam?

25 THE DEFENDANT: I want to make sure I'm understanding

1 what you're saying. I'm not understanding at this point.

2 THE COURT: Well, Mr. Yarborough was your attorney on
3 appeal; correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And --

6 THE DEFENDANT: I started out with -- I started
7 originally with Schwacke, and then Mr. Yarborough took over.

8 THE COURT: No. Mr. Schwacke represented you in the
9 trial below, but Mr. Yarborough handled the case on appeal.
10 I hope he understands that.

11 And he's now your attorney for your application. But
12 you've also filed claiming a problem, some defects in the
13 appeal. Of course, I don't know what -- the appeal was heard.
14 It was not -- it was --

15 MR. YARBOROUGH: No. He wasn't --- he didn't allege any
16 allegations of ineffective assistance of counsel, but I would
17 say that's probably because Yarborough was appellate counsel.

18 And just so that he waives that conflict and knows he
19 can't bring them later, is what I would hope (indiscernible).

20 THE COURT: You understand that, sir?

21 THE DEFENDANT: Now I (indiscernible).

22 THE COURT: Mr. Yarborough, have you discussed that with
23 him?

24 MR. YARBOROUGH: Your Honor, I believe I'd phrase it like
25 this:

1 Mr. McClam, we discussed the (indiscernible) not a whole
2 lot of issues available for you on appeal and that you wanted
3 to go forward with the post-conviction; correct?

4 THE DEFENDANT: Yes, sir.

5 MR. YARBOROUGH: Okay.

6 THE COURT: And -- all right. That's clear. We're going
7 forward with his trial below. That's the basis of his
8 complaint?

9 MR. YARBOROUGH: That's correct.

10 THE COURT: Nothing above on it.

11 Okay. That's fine.

12 We're on the same page, Mr. McClam. I'm with you. I
13 understand it. Okay. That's good. Thank you, sir.

14 All right, Mr. Yarborough.

15 Excuse me, any other statements from the Attorney
16 General? I'm sorry. I didn't mean to preclude you.

17 MS. JAMESON: No, you didn't, Your Honor. I'm fine.

18 THE COURT: Well, okay.

19 You can call your first witness.

20 MR. YARBOROUGH: Okay. I -- you know, Mr. -- I'll just
21 go ahead and call Mr. Schwacke. Schwacke so he can get in
22 or --

23 THE COURT: All right.

24 MR. YARBOROUGH: -- out and --

25 THE COURT: That'd be fine.

1 MR. YARBOROUGH: Okay.

2 THE COURT: David, if you'll raise your right hand.

3 DAVID SCHWACKE,

4 having been called as a witness for the Defendant at 0:16:53,

5 was sworn and testified as follows:

6 THE COURT: If you'll state your full name for the
7 record, Mr. Schwacke.

8 THE WITNESS: David Price Schwacke, S-c-h-w-a-c-k-e.

9 THE COURT: Very well.

10 You may proceed. Mr. Yarborough.

11 MR. YARBOROUGH: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MR. YARBOROUGH:

13 Q Mr. Schwacke, you were Mr. Mcclam's trial counsel?

14 A I was.

15 Q Can you tell the Court a little bit about -- I guess you
16 were the public defender at that point, I think you still are
17 and were appointed to represent him?

18 A Actually, at the time, I was an assistant public
19 defender. I did have the -- this trial that I handled for the
20 Berkeley Public Defender's Office.

21 Q Okay. And so did you have an opportunity to represent
22 him?

23 A I did.

24 Q Okay. And for what period of time was -- was he
25 incarcerated the whole time?

1 A He -- I believe he was, because he -- yes, he was.

2 Q Okay. And did you meet with him often? Do you have your
3 file with you?

4 A I have it all over this room.

5 Q Okay.

6 A I can get to it if you ask for it, but I'm not sure how
7 long it'll take to find. But --

8 Q Yeah. No -- I mean, do -- I mean, do you have a general
9 idea about how often you met with him?

10 A I would say I will -- probably met with him a total of 10
11 to 11 times while he was waiting for his trial.

12 Q Okay. And let me ask you this, did you have trouble with
13 him understanding the nature of the charges and -- against
14 him?

15 A I did not have that experience with him.

16 Q Okay. Did you did you have any question about his
17 competency or --

18 A No. I did not have any question about that, as well.

19 Q Okay. Did you have -- did you ever have a history with
20 him in the past? Had you represented him before?

21 A Actually, Ms. Littlejohn, who sat second chair with me on
22 that trial, seems to think that there was an earlier case.

23 He was, though, I believe, in SCDC and had just gotten
24 out slightly before this happened.

25 Q Okay. And --

1 A So, I mean, those are on documents that I could get to
2 them.

3 Q Yeah. Well, let me ask you this: Was it -- was he in
4 jail for a pretty extended period of time before his trial
5 came up?

6 (Pause.)

7 A He was arrested on October the 28th of 2013. And it
8 looks like the first contact with him would have been on
9 December the 11th. And that looks like Ms. Patty Kennedy's
10 handwriting, who was the public defender for a period of time.

11 Q Okay. so you picked up that file from her at some point,
12 you think?

13 A I'm sorry?

14 Q You picked up that file from her at some point?

15 A Yeah. I was assigned the case.

16 Q Okay. Well, I mean, the charges were pretty aggravated.
17 Did you do a pretty extensive background and -- can you
18 tell me about your investigation of the case?

19 A We would have -- and as we obtained the discovery
20 materials, we would have made copies and gotten it to
21 Mr. McClam. Any time we had some information regarding -- in
22 one of these cases, I guess, a plea offer that was sent to us.

23 That --

24 (Pause.)

25 A Ann Williamson was the assistant solicitor for this case,

1 sent an offer -- a plea offer to us on June the 20th of 2014.

2 Q Okay. And that offer was for what?

3 A All right. So it was for a plea to some of the charges
4 and not all of them. So he was charged with criminal sexual
5 conduct in the first degree. He was charged with
6 (indiscernible) felon in possession of a firearm. He had two
7 counts of kidnapping. He had a possession of a weapon during
8 a violent crime, and then possession of contraband, and then a
9 burglary in the first degree.

10 Q Okay.

11 A And all that was the charge. Those were the charges.
12 And the offer was for a plea to one count of kidnapping, with
13 the sex offender registry, one count of burglary in the first
14 degree, possession of contraband, and all of that with a
15 negotiated sentencing range of 15 to 25 years.

16 Q Okay. Now, let me ask you about that. Did you feel like
17 Mr. McClam understood the gravity of the situation when you
18 made that offer to him of 15 to 25 years?

19 A I believe he did. Yes.

20 Q Okay. You didn't -- you didn't have any trouble talking
21 to him about it or anything along those lines?

22 A No. I believe we were -- he understood -- when we had
23 conversations, he was understanding what we were talking
24 about.

25 Q Okay. And did you have him sign anything? Because I'll

1 tell you, Mr. McClam's testimony -- he's going to say he was
2 not aware of that offer.

3 A Well, I think some of that is explained in -- at that the
4 time of sentencing after the trial, when Judge Jefferson asked
5 some questions about different things and, sort of,
6 reinforced, I believe, what the recommendation was and --

7 Q Okay. And at that point, he's been LWOP-ed; right?

8 A He was noticed for LWOP. Yes.

9 Q All right. And were you able to explain to him what LWOP
10 meant as far as his life was concerned?

11 A We had a understanding that that LWOP stands for life
12 without parole, and that would mean that you would be in
13 prison until you came out deceased.

14 Q All right. Did you have him sign anything -- or what --
15 did he sign anything life without parole?

16 A He didn't -- he -- I don't believe he did. But -- and I
17 want to believe that we actually had a hearing that Judge
18 Young was in charge of as to whether he was accepting or
19 rejecting the plea offer. I would need to double-check on
20 that.

21 Q Okay. Because I don't believe we've seen anything like
22 that at this point.

23 Are you sure about that? I mean, because this is one of
24 the grounds in our PCR, that we haven't been told anything
25 about that. Mr. McClam doesn't recall something like that.

1 Are you --

2 A Sure. As I recall, there's some emails on -- in our
3 system that have dates and times for things to be set up. And
4 one of those, I think, included setting the date for Judge
5 Young to accept or reject the offer.

6 Q Okay. Do you know, was there ever reference made to that
7 in the trial transcript?

8 A I don't know that it was. I believe it was.

9 Q And you're -- you think that was at the end of the
10 sentencing part?

11 A I believe that Judge Jefferson, in the sentencing part,
12 goes into what the plea offer was -- had been at that point,
13 because of -- the notice had been served for the LWOP.

14 Q Okay.

15 A That doesn't apparently -- that doesn't require you to
16 serve it. It has -- I mean, in terms of it being served on
17 him where he acknowledges getting it. But there are documents
18 within the copy of the transcript that I saw which had --
19 would have been the date that we had set to go into some of
20 that notification, including the LWOP, where I signed for --
21 on his behalf.

22 Q Okay. That -- okay. Okay. We're at the same place. So
23 that's what I was asking you. So if you were signing on his
24 behalf, it wasn't that he signed for it; is that correct?

25 A Correct.

1 Q Okay.

2 A It's my signature in court before the judge, for the
3 notification.

4 Q Okay. And did you explain to him that that took -- that
5 necessarily took the 15 to 25 off the table?

6 A Yes. I -- there is no way in explaining LWOP that it can
7 ever sound very good for the person you're talking to. And
8 again, LWOP means life without parole, and if you are
9 convicted of these crimes, that is what is going to happen to
10 you. You're going to be sentenced to life without parole.

11 Q Okay. And do you know what kind of educational
12 background Mr. McClam has?

13 A He went through the 12th grade at -- in high school. And
14 I'm trying to remember which school. I believe it was at St.
15 Stephen.

16 Q Do you know if he does an kind of special ed classes or
17 anything?

18 A I'm sorry I was rattling that --

19 Q Yeah. Are you aware, was he in any kind of special ed
20 classes or anything along those lines?

21 A Not that I was aware of. No.

22 Q Okay. And you're pretty confident you didn't have any
23 trouble discussing this with him?

24 A Yes. I did not have any difficulties.

25 (Pause.)

1 Q Do you know the circumstances under which he was -- the
2 three strikes were presented against him? Do you know what
3 those were for?

4 A Those documents are also in the transcript. It includes
5 the charges that form the basis, I guess, of what would be
6 sentenced to life if that was a conviction. And it also,
7 apparently in those papers, has where the State, for whatever
8 reason, only chose a prior criminal sexual conduct conviction
9 that he had for the enhancement feature there.

10 So they -- he has, I believe, a total of three charges --
11 three convictions that could have been. But all that does is
12 add another LWOP. So this -- the State only chose the one.

13 Q Okay. And what was your understanding of the law on
14 that? Does that -- is that consistent with your understanding
15 that they only needed to have one?

16 A They had to have -- yeah, I need to probably double-check
17 that, but, yeah, there's a total of three charges. But -- and
18 again, I point to what's happening at the end of the trial --

19 Q Okay.

20 A -- while Judge Jefferson is going through some documents
21 and it being explained to her exactly what the charges were
22 that made it into an LWOP.

23 Q Right. And that's my concern is I think that the
24 transcript's clear at the end. What is there before the trial
25 and hearing or what do you have in your notes to show that Mr.

1 McClam knew that what he was getting into?

2 A I can tell you, because we explained it to him, and he
3 appeared to understand it.

4 Q Okay. But I mean, you got life without parole and 15 to
5 25. That's a pretty big swing. He took a pretty big roll of
6 the dice; right?

7 A He did.

8 Q And did -- was there -- could he explain to you a reason
9 why he would do that?

10 MS. JAMESON: Your Honor --

11 A I --

12 MS. JAMESON: -- I feel like this line of questioning has
13 been asked and answered at this point.

14 (No audible response.)

15 You're on. You're on.

16 (Pause.)

17 THE COURT: I'm going to allow the line of question.

18 But, Mr. Yarborough, I understand your examination and
19 certainly respect that. But I can't tell you how many times
20 I, as a trial judge, accepted an -- a rejection of an offer
21 and made the same statement. I can't speak for Judge Young or
22 anybody else, but, yeah, they -- people do that all the time.
23 It's not as shocking -- it doesn't shock me.

24 MR. YARBOROUGH: Yes, sir.

25 THE COURT: I tell you that just from my own experience.

1 MR. YARBOROUGH: (Indiscernible.)

2 THE COURT: I couldn't agree with your assessment any
3 more. It makes no sense. But --

4 MR. YARBOROUGH: Yes, sir.

5 THE COURT: -- as you, and I know he's innocent until
6 he's proven guilty, and he has every right to have the State
7 make and prove that. So -- and that's generally what I end up
8 saying.

9 But you're right about the -- your assessment of it. I
10 don't have a bit of problem with it.

11 MR. YARBOROUGH: Okay.

12 Q (By Mr. Yarborough) And, David, that's the last thing
13 I'll ask you about it is, what was your assessment of it at
14 the time?

15 A The assessment of --

16 Q Of his rejection of this offer. What was going on with
17 the defense as to why he rejected this offer? That's my
18 concern, because he had been in jail at that point for several
19 years; right?

20 A Yes. Which, I think that probably -- just as he's
21 deciding right now to -- the only challenge he can do to this,
22 to make this no longer a life sentence -- is to go forward
23 with this hearing today. And that was the same choice, I
24 guess, he'd felt he was facing at trial when these were going
25 to also be a life in prison sort of option.

1 So I don't know that I understand it. I know it was a
2 great deal. I know we communicated to him. I have not asked
3 Ms. Littlejohn -- who sat with me since -- since rescheduled
4 this. So I'm not sure exactly what she remembers, because
5 then she would be another person to contact about that.

6 Q Okay. Well -- okay. Do you recall -- let's go to the
7 trial, and I'll try to move through that.

8 And do you recall any issues with the DNA at trial?

9 (No audible response.)

10 Q Any issues with --

11 A I'm sorry --

12 Q -- with the DNA at trial?

13 A The DNA?

14 Q Yeah. Do you recall any issues with the DNA at trial?
15 Do you remember the substance of the DNA at trial?

16 A This trial has been about 10 years ago now. And I'm
17 quick-tasking my brain to get to where we're going. So I --
18 if you've got something you could show me, I could answer a
19 question.

20 Q Well, my question is this: Your -- do you remember there
21 being a swab of DNA where there was some kind of question
22 about, you know -- some kind of question about whether or not
23 it had some type of protein in it? Does that ring a bell?

24 A It doesn't because I know -- I don't -- well, no, it -- I
25 still don't recall that particular aspect.

1 Q Now, during the trial, you-all stipulated that he had
2 prior felonies; isn't that correct?

3 A Yes, because of the weapons' charges, had to have prior
4 convictions for them. So we were trying to limit, I believe,
5 the specific charge, so that the jury wasn't aware of those
6 types of convictions on this record.

7 Q Okay. And were you trying to keep out that information
8 to the jury -- his prior conditions?

9 A Yes. That's ---

10 Q Okay. Do you remember the testimony of Emma Ruth Cooper?

11 A (Indiscernible) could look at it, and it might help
12 refresh me.

13 Q Could you look at Page 558 of the trial transcript?

14 A You said five-hundred and ---

15 Q Fifty-eight.

16 A All right.

17 Q Do you see where you were asking her, "Okay,
18 approximately, when did he start coming around the last couple
19 of years?"

20 Do you see that?

21 A (Indiscernible) that -- it says the last time was when he
22 got out of prison.

23 Q Yep. Did that answer surprise you?

24 MS. JAMESON: Your Honor, I object. I'm not sure what
25 allegation this is in reference to even or that this was

1 formally alleged.

2 THE COURT: I understand your objection. I'm overruling
3 this. It's (indiscernible).

4 Q Yeah. And did you ask the court, at that point, for a
5 curative instruction?

6 A I --

7 (Pause.)

8 A I -- there is not an objection

9 Q Okay. Now that you look at it, you wish you would have
10 objected at that point?

11 A It would be there -- there are probably several things in
12 here, having been asked to review them, that they aren't what
13 I would do right now.

14 Q Right. right?

15 A So, yes, I could very well have entered an objection for
16 that. I don't know what attention it would have drawn to the
17 jury about it. And that's often the concern that I have on
18 making objections. And what's the benefit that I'm getting,
19 or is this just something I'm pointing out to the jury and
20 emphasizing.

21 Q Right. Well, let it -- let's -- what's your trial
22 strategy to try to keep out some of the allegations about
23 Mr. McClam's (indiscernible) -- or hurting some of these
24 witnesses in the past?

25 A Correct. I mean, you had prior convictions that had not

1 yet been concluded. So yeah, we tried to kind of keep it as
2 clean as we could in some arguments that we had pretrial
3 dealing with some former evidence about his character. So,
4 you know, we tried to keep a lot of that out. I can't say we
5 succeeded. Some things slipped past.

6 Q Are you familiar with the testimony of -- and I don't
7 want to butcher this name -- Dedream Machony (phonetic)?

8 A It's Dedreane.

9 Q Yeah. Dedream Machoni?

10 A McHoney.

11 Q Yeah. Did you find that that her testimony had several
12 references to past physical abuse. And did you try to keep
13 that out in advance?

14 A Yes. And one of the things you can tell about that is
15 actually the State was trying to rein their witnesses in.
16 But -- yeah, those would be things that prefer to have not
17 come in, because we had actually made the motion pretrial to
18 keep it out.

19 Q Right. But -- I mean, my point is this, David, we both
20 try a lot of cases. I mean, this one seemed to have piled up
21 a lot of outside stuff against Mr. McClam. Would you agree
22 with that?

23 A What do you mean, "piled up some stuff?"

24 Q Well, you got -- well, I just told you -- just pointed
25 out to you, where the witness discussed that he had just

1 gotten out of prison.

2 If you look at Ms. McHoney's statement, she'd been
3 physically harmed, applicant had been abusive to her in months
4 prior to the alleged offense, applicant had physically hurt
5 her before, and that she knew what applicant was capable of.
6 All that information came out in her testimony; right?

7 A All of those were ones that, yes, I was asked to look at,
8 and they were in the transcript.

9 Q And yeah -- and they should have -- that would have
10 polluted the jury against the client; right?

11 A I'm sorry?

12 Q Don't you think that pollutes a jury against Mr. McClam?

13 A You know, I've never been a juror. I'm curious, so I'm
14 dying to find out.

15 But obviously, if they heard it and it matters because of
16 the other types of evidence that are there, then it would have
17 been better to not have that go in.

18 Q Right. And so you could have done that through pretrial
19 motions; correct?

20 A We did. Apparently, we didn't pick every single witness
21 that the State was going to put up, that they were going to
22 throw out something that (indiscernible), like "hurt me
23 before;" you were talking about "knew he was capable of doing
24 certain things." So it would have been better for that,
25 not -- it would have been a cleaner presentation. And when I

1 say that, it makes it sound like it's awfully funny, because
2 you're doing that also to help the State, because they're also
3 looking for clean slate.

4 Q Right. And those three examples, plus the prison
5 examples, all came in during the trial that -- hindsight's
6 20/20 -- should not have been admissible; right?

7 A They would be objectionable. Yes.

8 Q Okay. And then let me finish, I'm -- and then I'm going
9 to move on. I'm going to hit on one more area here in this --
10 Did you feel like that his 6th Amendment rights may have
11 been violated by some of the testimony, without objection,
12 about what the victim had told other people about the assault?
13 That's hearsay; right?

14 A Correct.

15 Q Okay. And --

16 A It depends who they're telling.

17 Q Sir?

18 A I guess it can depend on who they're calling.

19 Q Well, it's -- and it --

20 A Who they're telling it to.

21 Q Right. I'm talking about the testimony of Carlane
22 Dufault (phonetic). I can't pronounce these names. Default?

23 Have you referred reviewed her testimony?

24 A Yeah. I kind of -- that -- I mean, she's a SANE nurse,
25 so in a way, I thought this was covered by, sort of, the

1 medical exemption in hearsay that, if you're actually -- or
2 planning to have these statements for purposes of medical
3 diagnosis. And that's what she was being used as a witness
4 for the State.

5 Q Okay. Well, I mean, if -- I get on time, place and
6 manner. But let me ask you this, when she testified that a
7 condom was not used and it -- and that the attack had occurred
8 on the hood of the car, on a dirt road, doesn't that go a
9 little bit past what a SANE testimony could go to?

10 A I had -- I think that the, kind of, work that they do and
11 the information they need to do it in, that it is not
12 something -- that it is something that I believe the SANE
13 nurse would want to have in making a determination about what
14 they're going to do to handle her. Because they mentioned
15 specific types of swabs that you do, or if there's a condom
16 there, there's one thing that you do.

17 Q How about -- well, they don't have any way of showing
18 oral sex or kissing or, for that matter, licking. Would you
19 agree with that? .

20 A And you said they don't mention those things?

21 Q No, that -- didn't she testified to that, and a SANE test
22 would not pick that up? If there had been sex, right?

23 A If -- try that again on me.

24 Q Okay. Well, I'm -- and we're probably beating a dead
25 horse, David. But let me just ask you this: Did you think --

1 going back to then, do you think testimony of Ms. Default,
2 where she's talking about oral sex and kissing, licking, and
3 even biting, is that -- you think that as part of your SANE
4 investigate -- or SANE testimony?

5 A Yes. And it's also what --

6 Q Do you think that should have been excluded?

7 A It's also what the victim testified to prior to the --

8 Q Okay. And that becomes my next point. Doesn't that
9 just -- isn't that done in order to back up or to vouch for
10 what the victim said?

11 A That that is why I believe they try to use nurses for
12 that. But --

13 Q And I know you're familiar with the number of cases that
14 have come out in South Carolina since then, that vouching is
15 not the preferred way for us to try these cases; isn't that
16 correct?

17 A That's correct.

18 Q Okay. And so, hindsight's 20/20, you probably should
19 have been objecting to; right?

20 A Hindsight plus 10 years would help me a lot.

21 Q All right, let's -- we'll move past that.

22 MR. YARBOROUGH: Getting through my outline, Judge, give
23 me a minute.

24 THE COURT: (Indiscernible). Take your time.

25 Q All right. I'll just ask you real quickly. Going back,

1 we're looking at -- there were some -- but you'd agree,
2 there's some prior bad acts that you wish you had objected to
3 now, that under (indiscernible), since you didn't object to
4 it; would that be correct?

5 A Yes.

6 Q Okay. And --

7 A I'd say there would be (indiscernible).

8 Q I think the record speaks to itself, and the judge can
9 obviously look at those.

10 THE COURT: (Indiscernible).

11 Q Okay. And do you recall at all this expert that was,
12 that was called by this by the State, Alyssa Rheingold, who
13 talked about impact trauma? Do you remember that?

14 A I do, Your Honor -- I mean, I do. I'm sorry.

15 Q They're never going to let me be a judge. I promise you
16 that.

17 A So yes, she was one of those, kind of, blind-testing
18 expert witnesses that State often tries to use to really say
19 something about nothing. They -- as we get her to point out
20 in the transcript, she pretty much admits that she -- she's
21 not really giving any helpful information to the jury. And so
22 in that particular case after we go through her examination --
23 cross-examination, it's pretty clear that she really had no
24 information. And that probably should just all been
25 completely struck.

1 Q Okay. And that probably was -- do you wish you would
2 have objected to that, pre- her testimony?

3 A Probably would have had to do that where it was on
4 this -- the jury would have heard it all.

5 Q But you wish you would have done that in camera?

6 A Yes.

7 Q Thank you.

8 Were --

9 MR. YARBOROUGH: The last thing, Your Honor.

10 Q Can you tell me a little bit about -- and if you recall,
11 just, any of the mitigating evidence you may have put together
12 on behalf of Mr. McClam, thinking that it -- there was a
13 potential of him being convicted?

14 A Unfortunately, the -- there -- we did not have anything
15 prepared along that those lines, because everywhere you, sort
16 of, turned with him, there were a number of kind of criminal
17 offenses that you would just be running a very long of things
18 that would not have been helpful to him at sentencing.

19 And he -- because of that, there -- Ms. Littlejohn's in
20 here, and she always says, "But his mama loved him," is all
21 you can say sometimes, with some of our clients. He would
22 have made it difficult for us to put forth a very good
23 presentation and mitigation.

24 So at that point, we relied on what you could rely on,
25 which is the basic information that we did to show the times

1 he had served the community, been in school. We had done
2 those things. So without that, we turn to family members.
3 And Telly's mother testified, and I think that did not help us
4 out, as well.

5 But of course, at this time, none of this would have
6 mattered, because we had gotten to the end point, which was a
7 life-without-parole sentence. So any of that, sort of, talk
8 of whether or not he had gone to a particular school for a
9 particular trade and used to work for someone who would vouch
10 for him, so we really were short there with the type of
11 information that we would have had to present.

12 Q Okay.

13 Thank you, David.

14 MR. YARBOROUGH: I don't have any further questions, Your
15 Honor.

16 THE COURT: Very well.

17 You can cross-examine.

18 MS. JAMESON: Thank you, Your Honor.

19 THE COURT: Uh-huh.

20 CROSS-EXAMINATION BY MS. JAMESON:

21 Q Good afternoon, Mr. Schwacke. How are you?

22 A Hey. I'm fine. Thanks.

23 Q All right. I'd like to go through some -- back to the
24 beginning a little bit and when you first were appointed to
25 this case.

1 You said that there were 10 or 11 meetings that you can
2 recall meeting with applicant, prior to trial; correct?

3 A Yes.

4 Q Okay. Can you explain some of the substance of those
5 meetings, what you would have discussed with him?

6 A All right. So he was in detention at the Berkeley Jail.
7 And as the bits and pieces of the discovery started to come
8 in, I made it a promise to my clients that whenever we got
9 discovery, they were going to get discovery. So as soon as we
10 got to the point that the things came in that we could present
11 copies to him, we would present him copies.

12 And so that was off and on. There -- again, the file is
13 quite large, and so we would discuss things, such as what he's
14 charged with, who were the witnesses that would be for him --
15 because we would want to try to start chasing that down if
16 there were names of people.

17 We went to Ron L.'s, who is -- was an investigator for
18 the office at the time. And she drove me all over
19 (indiscernible) up there, where the car situation had happened
20 in the woods and the trees and the gas station and all of
21 those things. We started where we knew they started, and we
22 went to the end. We talked to the family that had the food
23 for them, didn't -- so they didn't give them money for gas.
24 We went to the gas station to check out what you could see or
25 not see from different angles. There were recordings that had

1 information. So we did everything we could to follow up every
2 bit of evidence to see who we would try to present.

3 And so that's kind of what we did.

4 Q Okay. And after you had fully investigated, did you
5 discuss with applicant the State's burden of proof?

6 A Yes.

7 Q And what was your advice with that conversation with
8 applicant?

9 A As to the burden of proof?

10 Q Yes. It was a longer explanation, but it starts with --
11 you know, it's almost like you talk to them about these -- the
12 sentencing sheets, so it has the same information on.

13 So you know, if you have a trial, we had a jury. The
14 jury of 12 will -- and he already knew the jury of 12. He had
15 said that, that he wanted 12, at one of those points.

16 I think I've just, kind of, walked that out.

17 Which -- what was the rest of that question?

18 Q No. That's fine. Did you develop an opinion or have a
19 discussion with you regarding the State's ability to prove
20 that burden of proof -- or that "beyond a reasonable doubt"
21 standard?

22 A We talked about it. I'm not sure I ever said anything
23 about whether we would win if we went to a trial, other than,
24 it would be difficult. And the fact that once we get the
25 process started, you know, and get where they perhaps make a

1 plea offer to us, and once we do that, we'll have to talk
2 about that and the different kind of concepts of, do you go
3 plea or do you go trial.

4 Q Okay. I'd like to jump to a plea offer.

5 Do you have a copy of the transcript in front of you?

6 A The transcript?

7 Q Yes, sir.

8 A It's around me. Some of it's here, some of it's there.

9 Which page are we talking about?

10 Q Page 701. And you're actually going to start at the
11 bottom of Page 700. I apologize. Go ahead and look at Line
12 20 on the bottom of Page 700.

13 A Line 20?

14 Q Yes. So the court, at this point in time, is stating
15 that Mr. McClam did receive a pretrial offer in this case. Is
16 that where you're at?

17 A Yes.

18 Q Okay. And you see that the solicitor confirms that that
19 was a range of 15 to 25 years, as you previously stated;
20 correct?

21 A Yes.

22 It goes, "Yes, Your Honor? What was the offer? A range
23 of 15 to 25 years?"

24 Q Okay. The court proceeds to say that he rejected that on
25 the record. And then the solicitor says he did.

1 A Yes, ma'am.

2 Q And that's your memory?

3 A Yes.

4 Q That you were discussing before?

5 A Yes.

6 Q Okay. All right.

7 MS. JAMESON: I beg the Court's indulgence for one
8 moment, Your Honor.

9 THE COURT: Certainly. Take your time.

10 Q All right. We'll go through the bottom of Page 701
11 because you're there. You couldn't remember before what the
12 predicate offenses were for LWOP.

13 If you would refresh your memory on Page 701 it's Line 8,
14 and it's going to continue on to Page 702, about halfway down.

15 A So which was the court -- which was, "And then
16 subsequently the State served him with life without parole."

17 And I was correct.

18 That's correct. Which was based upon a 17-21-45 and
19 based on a previous, most serious conviction of criminal
20 sexual conduct, second-degree, which was on June 16th, '99; is
21 that correct?"

22 "Ms. Williams: That's correct. He also had a --

23 "The Court: I'm going to go through this record in just
24 a moment. But the only one that was attached to this motion
25 and articulated in the motion was the CFC.

1 "Ms. Williams: That's true. Just to be clear, the only
2 reason we offered him 15 to 25 was to spare these victims from
3 going through his trial.

4 "The Court: I'm going to hear argument on sentencing.
5 I'm just doing some preliminary matters."

6 Keep going?

7 Q No, that's enough. But on the top of Page, 702 you see
8 there where those are the other --

9 A As he understood --

10 Q -- (indiscernible)?

11 A "As I understand it from pretrial proceedings, his
12 criminal record consists of a criminal sexual conduct,
13 second-degree, which he was released from confinement March
14 the 1st, 20-- I'm sorry -- March the 1st, 2012; a burglary
15 in the first-degree with the same confinement release; a
16 burglary in the second-degree with the same confinement
17 release; an assault and battery of a high and aggravated
18 nature, which was pled down from a criminal sexual conduct,
19 which was the same release date; and a breaking and entering a
20 motor vehicle from 1995; correct?

21 "Ms. Williams: That's correct."

22 Q Okay. That is all for the sentencing phase.

23 I'd like to jump back now and start at the -- now that
24 we've got the plea out and the subsequent matters -- what was
25 your overall theory or strategy in this case that you had

1 discussed with Mr. McClam?

2 A I think the discussion was to make the witnesses testify.
3 There's a lot of family here involved in this, and,
4 oftentimes, as the case moves along, the family starts to take
5 a different view of what had happened on certain cases.

6 I believe there was one in particular that actually
7 did -- the victim did ask for dismissal of the charge and the
8 State when I had granted it. But it was -- really, it was to
9 make the State work. There was no way you could rely on some
10 of the standard, kind of, just, defense things like identity.
11 Clearly, his family that knew him. And then it's just an
12 issue between witnesses as to -- and, you know, whether what
13 he says is what she's -- they say. And so that was, kind of,
14 what we had to work with.

15 Q And you would have discussed that with Mr. McClam in
16 full; correct?

17 A Yes, in terms of witnesses, because that also, I think,
18 affects who testifies, whether he testifies or not. So there
19 were lots of discussions along the way of different, kind of,
20 rights and regulations.

21 Q Mr. Yarborough mentioned possible issues with the DNA.

22 Can you go ahead and turn to Page 433 for me in that
23 transcript? And that's on line 15 through 17.

24 A All right. You said 4- --

25 Q Or excuse me, 19 through 22. Yeah. 433.

1 A To --

2 Q 19 to --

3 A 19 through --

4 Q 25.

5 A So starting out the probability of randomly selecting a
6 (indiscernible) DNA profile?

7 Q Yes.

8 A "The DNA profile developed from the sperm fraction of
9 items 2.2 and 2.4 is a mixture of at least two individuals.
10 The DNA profile foreign to victim is present within the
11 mixture and matches the DNA profile of Telly McClam. The
12 probability of selecting -- randomly selecting an unrelated
13 individual, having a DNA profile matching this foreign profile
14 is approximately 1 in 2.2 billion. The chances that it's
15 someone else besides Telly McClam is 1 in 2.2 billion.

16 Q Did you remember there being any issues with the DNA? Or
17 was that your memory, was that that was this lead test
18 provided to you by the State?

19 A Yeah. That's -- I -- yeah. That refreshes my memory.

20 (Pause.)

21 Q And that is -- your memory is that that was the test
22 provided by the State? ,

23 A Yes.

24 Q Okay. Did you -- now that that does refresh your memory,
25 do you think there -- or remember any other issues surrounding

1 the DNA evidence?

2 (Pause.)

3 A See I'm -- I believe Ms. Littlejohn was doing this
4 portion of the case, and that's why my memory is different.

5 THE COURT: Well, the record's there's, so let --

6 Ms. Attorney General, I've just looked at it. I mean --

7 MS. JAMESON: Yes, Your Honor.

8 THE COURT: I have that available to me. So if you could
9 point out something, you can.

10 MS. JAMESON: Nope. That's fine. I'll move on, Your
11 Honor.

12 THE COURT: Okay.

13 Q Regarding Carlane Dufault's testimony, which begins on
14 Page 354 -- you don't have to turn there necessarily. It was
15 mentioned on direct that she testified that a condom was not
16 used and that it occurred on the hood of a car. It was also
17 mentioned that she testified to kissing and licking.

18 You mentioned a hearsay exception. Were you just talking
19 about Rule 8034? Is that the hearsay exception you were
20 referring to?

21 A Yes.

22 Q Okay. And you believe that that applied to all of those
23 statements that were mentioned on direct; correct?

24 A Yes.

25 Q Okay. And just for the record, Page 105 through 106 is

1 where you refer to victim's testimony, where she said that it
2 happened on the hood of a car.

3 A Did they admit any of that?

4 Q You can look it up if you would like.

5 A I'm trying (indiscernible). I need a bigger office. And
6 then it's Page what?

7 Q 105 -- or 106 through 107.

8 (Pause.)

9 A Okay.

10 Q And it's at the bottom of -- the bottom of 106. She
11 discusses, "I got on the hood of the car. I was crying. He
12 told me to get down, et cetera. Performed --

13 A She said --

14 Q -- (indiscernible) then raped me. Is that correct?

15 A Yes. "I got on the hood of the car. I was crying. And
16 I asked, 'Why are you doing this?'

17 "He said, 'I have to have some type of enjoyment out of
18 this.' And he told me to get down. And he made me do oral
19 sex on him, and then after that, he got on the car and told me
20 to get back in the car, and he raped me."

21 Q Moving on to Dedreane McHoney's testimony, which begins
22 on 217, we're actually going to turn to Page 221.

23 (Pause.)

24 Q And I'll ask you first, what is your memory of the
25 State's motion to include 404-B evidence?

1 A Yes. I remember that was one of the pretrial motions
2 that was filed by them.

3 Q Okay. And the court, on Page 221, Line 16 says, "If she
4 said, What made you go with him that day? It's res gestae."
5 Correct?

6 A That's correct. That's res gestae. Correct.

7 Q Okay. On Page 222, that Mr. Yarborough referred to
8 before, and this is Allegation 2-1 in his amended application,
9 it says, "Applicant had physically harmed her in the past,"
10 and that's in response to, "What made you be in the car?" Is
11 that correct?

12 (Pause.)

13 A "What made you get in the car?"

14 "Because he had my daughter."

15 Without going into any specifics, that's -- "Why did that
16 alarm you?"

17 "Because he physically harmed me before, so I was scared
18 for her."

19 Is that state of mind?

20 Q Did you believe at the time it was state of mind?

21 A It's -- obviously, there's not an objection right there.
22 So I believe that does indicate her own state of mind,
23 especially --

24 Q Okay.

25 A -- about getting in the car.

1 Q Okay. As for Allegation 2-2, you previously stated --
2 and that's the one that refers to "Applicant had been abusive
3 to her in the months prior to the offenses."

4 You stated before that you didn't object because the
5 State had cut her own witness off; correct?

6 A That's correct.

7 Q Okay. Allegation 2-3, "Applicant had physically hurt her
8 before." That's on Page 249.

9 (Pause.)

10 Q That's Line 20.

11 A "After that, did you feel like you could leave the car
12 when you first got in with Lala?"

13 "No, ma'am."

14 "Why was that?"

15 "He hurt me physically before."

16 "What else did he have?" (Indiscernible.)

17 Q And --

18 A (Indiscernible) --

19 Q I apologize. Did you believe at the time that that fell
20 under the ruling that Judge --

21 A Judge Jefferson.

22 Q -- Jefferson has made on Page 221, as for res gestae?

23 A Yes.

24 Q Okay. Moving on to Allegation 2-4: "And she knew what
25 applicant was capable of." That's on Page 236. And it's Line

1 17 through 19.

2 A "Why didn't I run?"

3 "Yes."

4 "Because I know what he was capable of."

5 And so -- yeah. I believe that's 8033. Is that --

6 Q All right. Let's move on to Allegation Number 3:

7 "Applicant has alleged that there was ineffective assistance
8 of counsel for failing to object to the State expert
9 qualification of Alyssa Rheingold in the area of impact
10 trauma."

11 Have you reviewed that portion of the trial transcript at
12 this point?

13 A I have.

14 Q Okay. Did you see any reason to object to her
15 qualification as an expert in trauma -- impact trauma?

16 A I did not. And part of what's going on there is the
17 court ultimately finds her qualified to testify as an expert.
18 And the questions that I would have asked were mostly the same
19 as what the State did ask in trying to have her found
20 qualified.

21 Q So you believe the State had laid the proper foundation?

22 A Right.

23 Q All right. The next allegation pertains to "failure to
24 object to prejudicial questions and testimony."

25 Just to clarify, she was a blind witness; correct?

1 A Correct. She was the one that said, I've not seen any of
2 these people; I can only give you my guess or my opinion.

3 Q And have you had a lot of cases with blind experts?

4 A I've only had two.

5 Q Okay. after a review of that direct and cross, do you
6 believe that on cross, you were able to sufficiently prove --
7 or show the jury that she had no background knowledge of this
8 case?

9 A Yes.

10 (Pause.)

11 Q All right.

12 Please -- the answers -- any questions, I guess, on
13 re-direct that Mr. Yarborough has for you.

14 THE COURT: Mr. Yarborough?

15 REDIRECT EXAMINATION BY MR. YARBOROUGH:

16 Q Quickly, David.

17 That expert --

18 THE COURT: Go ahead.

19 MR. YARBOROUGH: I'm sorry, Judge.

20 THE COURT: Oh. That's no problem.

21 Q (By Mr. Yarborough) That expert was basically called to
22 bolster the witnesses that had testified previously?

23 A She was called to try to explain how people react to
24 shock and situations like that differently, so that you could
25 have an event that could trigger it with one person, one way;

1 another person, another way. And so there's no way of saying
2 this particular person is going to do something based on any
3 other testimony you could have presented about who is actually
4 being commented on by the witness in this case, Ms. Rheingold.

5 Q Okay. And would you agree with me, that is bolstering?

6 A It's bolstering in an account that it's bolstering a lot
7 of things and not all helpful to each other.

8 Q Okay. Well --

9 A Yeah. That was the purpose of the State calling that
10 witness, was to bolster why these people testified or the way
11 they reacted differently and in different situations; correct?

12 A Correct.

13 Q All right. So that means you got to --

14 MS. JAMESON: Your Honor?

15 THE COURT: Yes.

16 MS. JAMESON: I'd like to object. That's speculation, as
17 he was the defense.

18 MR. YARBOROUGH: I was asking why he thought they called
19 him.

20 THE COURT: Yeah, let's -- folks -- you-all -- you've --

21 That's a great objection, Mr. Yarborough. And if anybody
22 in the world can answer that question, why they call him --
23 you, me or anybody else.

24 I'm going to allow the question. I don't know that it
25 amounts to hill of beans. But anyway.

1 MR. YARBOROUGH: Thanks, Judge.

2 I don't have any questions -- any further questions for
3 Mr. Schwacke.

4 Thank you.

5 THE COURT: Thank you. Appreciate it. I'm not trying to
6 be (indiscernible).

7 MR. YARBOROUGH: Oh, I know you're not.

8 THE COURT: I --

9 MR. YARBOROUGH: I got you, Judge.

10 THE COURT: I get your point. And I understand that it's
11 just -- it's just the nature of what we do.

12 MR. YARBOROUGH: Yes, sir.

13 THE COURT: All right.

14 Any additional questions?

15 MS. JAMESON: No, Your Honor.

16 MR. YARBOROUGH: No, sir.

17 THE COURT: Okay.

18 Thank you, Mr. Schwacke. You are excused.

19 And you may call your next witness, Mr. Yarborough.

20 MR. YARBOROUGH: I call Mr. McClam.

21 TELLY DARNELL MCCLAM

22 having been called as a witness for the Plaintiff at 1:19:25,
23 was sworn and testified as follows:

24 THE COURT: Thank you, sir. Will you state your full
25 name, please, for the record?

1 (No audible response.)

2 THE COURT: What's your name?

3 UNIDENTIFIED SPEAKER: (Indiscernible) we have somebody
4 acting up in the hallway.

5 THE COURT: All right.

6 State your name, please.

7 THE DEFENDANT: Telly Darnell McClam.

8 THE COURT: Thank you, sir.

9 Okay.

10 DIRECT EXAMINATION BY MR. YARBOROUGH:

11 Q Mr. McClam, you were you represented in this case by Mr.
12 Schwacke?

13 A Yes, sir.

14 Q And did you help me prepare and file this Post-Conviction
15 Relief Application?

16 A Say that again? Repeat it.

17 Q Did you help me prepare and file this Post-Conviction
18 Relief Application?

19 A Yes, sir.

20 Q Okay. And let's talk a little bit about your
21 relationship with Mr. Schwacke.

22 Did you meet with him very often?

23 A No, sir.

24 Q Okay. Can you recall how many times you met with him?

25 A Maybe five, maybe six times, if that.

1 Q Did you understand the evidence they had against you?

2 A No, sir, I wasn't given -- the only thing I was given
3 was, like, a lot of the (indiscernible) work. You know, a lot
4 of things, I didn't get.

5 Q Okay. And did you feel like you had a -- do you remember
6 being told that you had a deal on the table?

7 A Okay. I got like -- he came in with a deal on the table,
8 but this is the way he presented it to me. He came in and he
9 was like -- well, first and foremost -- I fired from first
10 before he even brought the deal. That's the first thing. I
11 didn't even want him to be my attorney.

12 Now the --

13 Q You didn't want him to be your lawyer?

14 A No. I didn't want him to be my lawyer. And --

15 Q Okay.

16 A It is --

17 Q Why didn't you want him to be your lawyer?

18 A Okay. I asked him -- I asked Mr. Schwacke -- I told him
19 that I wanted to change of venue. I told him I wanted to
20 change -- I continued to want my trial. I said I wanted to
21 know -- all my material so that I could use it at the bond
22 hearing. He denied me all these things. You know --

23 Q So you're saying you feel like you-all couldn't
24 communicate.

25 A No, sir. We couldn't. He was like, more so telling me,

1 you know, what to do with this hearing. And I don't think it
2 was in my best interest, because -- along the line of what
3 he's doing, you know -- we have to just talk with each other.
4 We have to communicate. You know, we must have an
5 understanding -- a mutual understanding. So what, basically,
6 what I was getting at with him was, you know, you're coming to
7 me with a plea bargain of 15 to 25. One, I said, "I don't
8 understand this plea."

9 Q Okay. What did you understand about it?

10 A About the plea?

11 Q Yeah.

12 A Okay. I mean, really, a lot of things, like -- because,
13 like I said, he wasn't really coming to see me. So you know,
14 if you're not really coming to see me, you don't even know
15 what I have going on.

16 Like, for instance, the question that was asked earlier,
17 right, about my education. I only went to the ninth grade.
18 How do you like that? I never knew I had another lawyer
19 before Mr. Schwacke. Never. You know, the supervision --
20 man, I would hope that -- like the 10-year (indiscernible), I
21 was knowing on February that -- all that was over with. And
22 my (indiscernible) -- my mother didn't even testify.

23 So, you know, it's things like that, right? We weren't
24 connected, you know, at all.

25 Q Okay. And did you try to fire him?

1 A Yes, sir. And right here, as you can see, this right
2 here with the polygraph guy, eventually --

3 Q That's the what?

4 A With the polygraph. I asked is it actually here in
5 writing where --

6 MS. JAMESON: Your Honor?

7 THE COURT: Yes.

8 MS. JAMESON: The State does not have whatever document
9 the applicant is holding up.

10 THE COURT: It's not in evidence. So --

11 THE DEFENDANT: It was a confidential report. This is
12 based on the polygraph. And like I said, this came from
13 Berkeley County, and it says I wanted a new attorney.

14 Q Okay.

15 A (Indiscernible.)

16 Q Okay. So what you're saying is, you just -- you're
17 telling the judge that so it confirms what you meant was, you
18 didn't have -- you didn't want him to be a lawyer?

19 A At all.

20 Q Okay. All right. And so did you-all -- you-all didn't
21 have a good relationship; right?

22 A No, sir.

23 Q Okay. And so because you-all didn't have a good
24 relationship, you wouldn't listen to the 15 to 25 they brought
25 you; right?

1 A No, not really. Because I was actually seriously
2 thinking about it, you know, but I wanted to know more about
3 it. You know, even though I'm innocent, I was thinking about
4 it. Because no one wants to do a life sentence. Maybe I
5 (indiscernible). You know, it may be possible to get out of
6 here, you know, in some type way.

7 But I also want to take the time --

8 Q Well, let me ask you this, do you think if you-all would
9 have had a better relationship, you would have taken that 15
10 to 25?

11 A If it was explained to me in a proper perspective and --
12 it's a possibility. It's a high possibility. You know, I
13 (indiscernible) -- I would have (indiscernible).

14 Q Did you really want to -- did you want to go to trial?

15 A Sir?

16 Q Did you want to go to trial?

17 A No. No, sir. But like you said, I didn't even sign. I
18 never responded to anything. You know, with that -- I didn't
19 sign that 15 to 25. I didn't accept it. He took it upon
20 himself.

21 Ms. Williams, of course, she said, we have yet to hear
22 anything from Mr. McClam. I didn't say anything, because I
23 still was unaware of, you know, whatever entails with the 15
24 to 25. I didn't know it. He wouldn't speak with me. I even
25 mentioned to him about taking a 15-year, taking it to the

1 solicitor for 15 years.

2 He said, "No, I'm not going to take it to them."

3 He completely denied it.

4 Q Okay. Why did he say he wouldn't take it to him?

5 A He just said he just wasn't. He said, (indiscernible) --
6 I ain't taking it to them. Just like that.

7 Q All right. Let's tell the Court a little bit about
8 these, these victims or alleged victims.

9 Did you know them?

10 A Yes, sir. Dedreane McHoney, maiden name, Jenkins. Me
11 and her grew up together. Her mother and my sister were best
12 friends. Their grandmother and my mother are close friends.
13 So they are like friends and family.

14 Q Right. And when you're talking about that grandmother,
15 that's the house that that you allegedly broke into?

16 A The house I moved into?

17 Q No. That allegedly you broke into that house. It's --
18 that was that grandmother's house. You go in and out of that
19 house all the time; right?

20 A Yes, sir.

21 Q Okay. Tell the Court about that.

22 A They was never no -- there was no anything over there. I
23 mean, they didn't -- there was never evidence from that, at
24 all, period. None. You will find no evidence at all, which
25 is the -- you know, the evidence that got sent ahead, nothing

1 came from Berkeley County. And if you will see in the
2 transcript, everything is from Williamsburg County. Nothing
3 is from Berkeley County. Nothing.

4 Q Okay. And you think that's important because you think
5 they tried you in the wrong county?

6 A If they were going trial -- try me or something, it would
7 have been Williamsburg County, because they had nothing here
8 in Berkeley County. They had nothing.

9 Q Did you tell Mr. Schwacke that?

10 A Yes, sir. He told me that -- and this is what he told
11 me, he said, "You're going to be good. This is how I know I'm
12 right. He was like, you're going to be good, because the way
13 that they're trying to do it, they can't do that. You know,
14 he was like, you can't cross up like that. You know? He was
15 like, oh, there's nothing on you in Berkeley County at all.

16 I said, "I know." And in Williamsburg County, sthey
17 didn't have anything, you know. But the script of this trial
18 was from Williamsburg County, not Berkeley County.

19 Q All right. Well, tell me this, what was your -- you
20 started to tell the Court. What was your relationship with
21 these two people?

22 A Girlfriend.

23 Q What was your girlfriend?

24 A Dedreane McHoney.

25 Q Okay. And why did she say that you did this stuff?

1 A Okay. As they said, I came on in March 1st, 2012. I
2 married another female, and during this marriage, I eventually
3 stepped outside of my marriage. Won't say that that's right.
4 I stepped out outside of my marriage, and I started, you know,
5 a relationship with her.

6 You know, I know signs of things that she would do, like
7 pull the ignition out, climbing the house. Me and my wife go
8 home, she's in the house, you know, a lot of things.

9 So -- but I told her from day one -- I said, "If my wife
10 ever come back, that what we had would cease. I'm going back
11 to my wife."

12 And she said, "Okay."

13 But when this was about to happen and she had full
14 knowledge of it, she didn't agree with it at all.

15 Q But did you try to explain all this to Mr. Schwacke?

16 A I tried. I told him some of these things, because when
17 he come in, he'll speak to me briefly. Then he be like, "I've
18 got court. I'll get back with you."

19 So it's a lot of things he do not know.

20 Q Okay. Well, I mean, but when you're going through trial,
21 why didn't you tell him all that stuff?

22 A I was telling him a lot of things in trial.

23 Q What else do you want the Court to know?

24 A Sir?

25 Q What else do you want the Court to know about what you

1 did -- what Mr. Schwacke should have done?

2 A Okay. I have put together some of the things, and I'm
3 going to go to some things that you-all have. And we'll see
4 where we go from there.

5 Okay. In the beginning, I fired Mr. Schwacke months
6 before the plea bargain or the trial. My reason which I --
7 which I have a right to prove Mr. Schwacke was ineffective
8 counsel. I said (indiscernible), that I wanted a change of
9 venue, continuance on my trial --

10 Q You told him that --

11 A -- a new attorney --

12 Q (indiscernible). Keep going.

13 A -- a bond hearing, and I wanted to press charges on
14 (indiscernible) McHoney --

15 Q You've already mentioned that. Go ahead.

16 A -- prior to this morning.

17 After all of that, he declined to all of those
18 (indiscernible) and later brought me a paper on plea of 15 to
19 25 years.

20 I told him that I did not want him as my attorney, but he
21 kept telling Ms. Williams and Mr. Cullus (phonetic) that I was
22 (indiscernible) by taking a plea of 15 years. He told me,
23 "No." He would not do it.

24 So I told him once again that if I -- I have more than
25 I'm seeing here that's evidence that I shared with the

1 polygraph specialist the day before my trial.

2 Also before trial was taken up, I could either take the
3 plea and make the deal of 15 to 25 years or not. At that
4 point, (indiscernible) prove my words, he forged my signature
5 to the declining of the deal. And as I said, I was
6 contemplating on taking some sort of deal, even though I am
7 innocent.

8 Okay. Moving along. Once we are in trial, one of the
9 juror acknowledged to the Honorable Judge Jefferson, that she
10 knew one of the witnesses -- and that she knew one of the
11 witnessed that will be testifying against me. And that he
12 worked with her. To me, she has a conflict of interest.
13 (indiscernible) --

14 Q And he's not objecting to that?

15 A (Indiscernible) --

16 Q (Indiscernible) sort of objecting to that. Okay.

17 A Yeah. One of the jurors was like -- the other one -- the
18 judge said that -- the guy that (indiscernible) I know him,
19 and we work together every day.

20 The Honorable Judge Jefferson asked her, would it affect
21 her decision-making.

22 She said, "No."

23 They allowed it.

24 I brought it to Mr. Schwacke's attention. He said
25 nothing. Okay. Mr. Schwacke did not object, even after I

1 acknowledged it to him, even though -- even through the
2 pickings of the jury, he denied all my requests, but gladly
3 accepted all that Ms. Williams and Mr. Cullus recommended and
4 vice versa.

5 After that, I noticed that, without my consent, all of my
6 witnesses that had direct contact with me on that list,
7 didn't -- was taken off the witness list. I have that here as
8 well.

9 Okay.

10 MS. JAMESON: Your Honor, is there a question that this
11 is --

12 THE COURT: This is just ramblings. It's not helpful at
13 all, sir.

14 Q Yep. Okay. Let's -- okay. I'm going to structure some
15 more questions for you. Okay, Mr. McClam?

16 Is there anything you thinks important in this that you
17 want to --

18 THE COURT: Mr. Yarborough, you're the lawyer. He
19 doesn't make that call of what's important. You do.

20 MR. YARBOROUGH: Yes, sir, Your Honor. I just know he's
21 told me that --

22 THE COURT: I won't -- Mr. Yarborough, you're the lawyer.
23 He's not. Thank you.

24 MR. YARBOROUGH: Yes, sir.

25 Q (By Mr. Yarborough) Did -- were there different

1 information during the trial that you wanted Mr. Schwacke to
2 object to?

3 A Yes, sir.

4 Q Okay. Did you want him to object when they said you had
5 just gotten back from prison?

6 A Object to what?

7 Q That you had just gotten out and were back from prison?

8 A Yes, sir. I wanted him to object to that.

9 Q Okay. Did you want him to file a motion in limine --
10 MS. JAMESON: Your Honor, objection.

11 THE COURT: Sustained. Sustained. You're leading.

12 Q Okay.

13 THE DEFENDANT: Can I add on something that was very --
14 that's very important that I felt needed an objection?

15 Q Okay. What was that?

16 A Okay. If you-all go to Page 373.

17 Q Okay.

18 MS. JAMESON: Your Honor, there's no hybrid
19 representation. This isn't responsive to --

20 THE COURT: I appreciate your technical injection. Thank
21 you.

22 But I'll allow this one. I'll allow what he wants us to
23 look at. Thank you.

24 THE DEFENDANT: Okay.

25 A When you go to Line 7, it says, "There are pictures that

1 are taken of the physical injury."

2 There are no pictures taken of any of the physical
3 evidence, clothing, or any of that type of thing during
4 examination.

5 It goes along.

6 "Answer: Dr. Norman, if we have clothing that is torn or
7 has blood on it, we take a photo. Otherwise we will not take
8 photos of the clothing. We take photos of any skin injuries,
9 and we do photo document all of our genital exam with the
10 family's consent. We do 100 percent peer review. So as a
11 nurse practitioner, I have a physician that review all my
12 cases (indiscernible).

13 "Question: I went back on my question with regard to
14 clothing. Had there been ever -- "

15 Q What are you complaining about here, Mr. McClam?

16 Mr. McClam, what are you complaining about there? Tell the
17 Court what you're complaining about.

18 A Okay. This same nurse, Ms. (Indiscernible), stated that
19 had there been blood on the clothes, that she would that she
20 was a picture (indiscernible).

21 Q So there was no picture of the blood. And that's what
22 you're trying to say?

23 A Exactly. And Mr. Schwacke and Ms. (indiscernible), they
24 went to look at it and stuff and it's still here too, as well.
25 They looked at it. And it was still Mr. Schwacke said that

1 there's no blood there. But in the middle of court, they
2 presented clothing with blood. He did not object to it.

3 Q Okay. And so you wish he would have objected to that
4 when that was presented that way, right?

5 A Yes, sir. Because I don't feel --

6 Q Because you hadn't had a chance to see that in advance?

7 A Not really -- that I feel like it should even have been
8 presented into evidence, because if it's the same nurse is who
9 gave them all this, and it's no blood -- and she didn't take
10 no photos of it, and now we at point B, and (indiscernible) --

11 THE COURT: Mr. Yarborough, we don't need his recitation
12 as to what should have been done.

13 Thank you very much.

14 MR. YARBOROUGH: Yes, sir.

15 Q (By Mr. Yarborough) Hey, let me ask you this, Telly, you
16 heard me answer -- ask Mr. Schwacke about a bunch of
17 objections that that you had.

18 What -- is it -- well, do you stand by the questions I
19 asked Mr. Schwacke? Those were part of our presentation in
20 your Post-Conviction Relief Application?

21 A Yes, sir.

22 Q Okay. And you don't need -- I don't think the Court
23 needs for me to go back through those. Those are not just
24 mine; they are, they're also his. And so --

25 THE COURT: The point and record.

1 MR. YARBOROUGH: For the record --

2 THE COURT: (Indiscernible), Mr. Yarborough. Yes, sir.

3 MR. YARBOROUGH: Thank you, Your Honor.

4 Q So let me ask you this, did -- is there -- what you feel
5 like is that Mr. Schwacke didn't do the job that you wanted
6 him to do; is that right?

7 A Yes, sir.

8 Q And if you would have trusted him to do that job, you may
9 have discussed that deal that that they were offering you; is
10 that right?

11 MS. JAMESON: Your Honor, objection. This is leading
12 again.

13 THE COURT: I'll sustained the objection. This is
14 improper (indiscernible).

15 MR. YARBOROUGH: Yes, sir.

16 I don't have anything further, Your Honor.

17 THE COURT: Any cross-examination?

18 MS. JAMESON: Beg the Court's indulgence for one moment,
19 Your Honor.

20 (Pause.)

21 CROSS-EXAMINATION BY MS. JAMESON:

22 Q You stated before that you would have accepted a plea of
23 15 years; correct?

24 A Yes, ma'am.

25 Q Did the State ever offer you a deal of 15 years -- a

1 negotiated sentence of 15 years?

2 A Fifteen -- they --

3 Q I apologize. Did the State ever offer you a negotiated
4 plea of 15 years?

5 A They have not on this -- dealing with this situation, but
6 prior. Yes, ma'am.

7 Q Okay. For this situation, they did not offer 15 years?

8 A Fifteen to twenty-five.

9 Q Fifteen to 25, and it was your choice that you did not
10 want to take the 15 to 25; correct?

11 A No, ma'am. It was not my choice at all. I told him I
12 was seriously thinking about taking it, you know.

13 Q And why did you not take it, ultimately?

14 A I wanted more understanding on the stipulations, a lot of
15 things that was attached to it.

16 Q All right.

17 MS. JAMESON: Thank you, Your Honor. That's all.

18 THE COURT: Any re-direct, Mr. Yarborough?

19 MR. YARBOROUGH: I don't have any redirect, Your Honor.

20 THE COURT: Thank you very much.

21 Thank you, Mr. McClam. I appreciate it.

22 THE DEFENDANT: Yes sir.

23 THE COURT: All right.

24 Any additional witnesses, Mr. Yarborough?

25 MR. YARBOROUGH: No, sir.

1 THE COURT: The State have any witnesses?

2 MS. JAMESON: No, Your Honor.

3 THE COURT: Seems to be, I've done it before with closing
4 argument and then rule, but I've also -- it seems to be the
5 thing now is to submit proposal orders, each side and where
6 you can state your positions clearly with reciting the record.

7 I'll do it either way you-all want me to do it. If you
8 want me to sign it without proposals, I understand that too.
9 I'll let you-all know about it.

10 Do you always do any closing remarks, Mr. Yarborough?

11 MR. YARBOROUGH: Your Honor, I think our application
12 outlines pretty directly the problems we have. And I would
13 certainly allow the Court to look at that application and the
14 testimony of Mr. Schwacke and Mr. McClam, and you can roll
15 from those.

16 THE COURT: That'll be fine.

17 And I would agree with you for the benefit of the
18 applicant. I have --

19 Mr. McClam, I have the entire transcript as a part of the
20 record. I've reviewed a lot of it. I haven't reviewed all of
21 it. I've reviewed, certainly, the ones that you-all
22 referenced this morning -- today. And I'll have a chance to
23 look at it in depth after considering the testimony. But it's
24 all part of the record, so your lawyers presented enough for
25 me to consider on your behalf, sir.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Anything you wish to add?

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

4 THE COURT: All right.

5 I'll send you-all an email that requested an order from
6 one of you. Okay?

7 MR. YARBOROUGH: Thank you, Your Honor.

8 THE COURT: Thank you very much. You-all have a good
9 day.

10 Mr. McClam, good luck to you, sir.

11 THE DEFENDANT: All right. And you-all have a nice day,
12 too, as well.

13 THE COURT: Thank you, sir. Appreciate that so much.

14 All right. Thank you for your persistence, Mr.
15 Yarborough, in getting in -- before. I enjoyed talking with
16 you.

17 MR. YARBOROUGH: Good to always see you guys. Thanks.

18

19

20 (At 1:43:09, the hearing concluded.)

21

22

23

24

25

END OF TRANSCRIPT.

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Berkeley

I, BARBIE TEBOE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, in the Court of Common Pleas for Berkeley County, South Carolina, on the 10th day of March, 2022.

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

September 18, 2025



Barbie Teboe,
Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF COMMON PLEAS
2020-CP-08-00504

Telly Darnell McClam)

) TRANSCRIPT OF RECORD

-vs-

)

) September 9, 2024

State of South Carolina)

) Moncks Corner, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

William G. Yarborough, III, Esquire
Attorney for the Applicant

Danielle Dixon, Esquire
Attorney for the State

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
C-1	Acknowledgement of Service	9	9
C-2	Certified Mail Receipt	12	12
C-3	Offer Letter	17	17

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>REDIRECT</u>

Mr. Telly McClam

Mr. Yarborough 8

Ms. Dixon 23

Mr. David Schwacke (Via WebEx)

Ms. Dixon 28

Mr. Yarborough 30

1 THE COURT: Please be seated. All right.
2 Next case is Telly D. McClam, and is Telly a male
3 or a female?

4 MR. YARBOROUGH: That's a male, Your Honor.

5 THE COURT: All right. Let's see if we can
6 get him in here.

7 (Pause.)

8 THE COURT: All right. Mr. McClam, how are
9 you doing?

10 THE APPLICANT: I'm doing all right.
11 How are you?

12 THE COURT: Good. You can have a seat,
13 and I'm going to recognize the attorney general to
14 put the procedural history on the record, and then
15 we'll recognize you and your lawyer.

16 MS. DIXON: May it please the Court.

17 THE COURT: Yes.

18 MS. DIXON: Danielle Dixon, assistant
19 attorney general for the state of South Carolina.
20 This is the case of Telly Darnell McClam v. State,
21 docket No. 2020-CP-08-504. Mr. McClam was indicted
22 by the Berkeley County Grand Jury in 2014 for two counts
23 of criminal -- first degree criminal sexual conduct,
24 two counts of kidnapping, one count of first degree
25 burglary, and one count of possession of a weapon during

1 a violent crime, and then one count of possession
2 of a firearm by a person convicted of a violent offense.
3 Those are indictment Nos. 2014-GS-08-39, 08-40, 653,
4 654, 655, 658, and 659.

5 He proceeded to a jury trial February 29th,
6 2016, before the Honorable Deadra Jefferson. He was
7 represented by David Schwacke and Debra Littlejohn,
8 both of the public defender's office, and this case
9 was prosecuted by Assistant Solicitors Ann Williams
10 and Daniel Poulos.

11 He was convicted, as indicted, and he
12 received sentences of life without parole for the two
13 CSC charges, and then concurrent terms of five years
14 for the weapon -- for the possession of a weapon -- five
15 years for the possession of a firearm, and then I think
16 -- I don't remember the other one. It's not on here --
17 30 years for the kidnappings.

18 He did file a notice of appeal, and it
19 was affirmed on appeal, and the remittitur was sent
20 March 13th, 2019. He timely filed this PCR application
21 February 20th, 2020. Your Honor, there was a hearing
22 held March of 2022 before Judge Dennis on this
23 matter.

24 Unfortunately, Judge Dennis retired before
25 any kind of order was ever issued from that hearing.

1 We did submit it to the chief administrative judge
2 in the Ninth Circuit, and she asked that it be put back
3 for another hearing during the next term, which is where
4 we are today.

5 Your Honor, we have the transcript from
6 the March 10th, 2022, PCR hearing, and we've agreed
7 that it will be part of the record in this case
8 to be considered by Your Honor. And then, I believe
9 Mr. McClam is going testify today.

10 THE COURT: All right. Let me hear from
11 the defense. Is it your agreement that this transcript
12 be made a part of the record for consideration of this
13 hearing and this ruling?

14 MR. YARBOROUGH: Yes, sir, Your Honor.
15 We've had -- we've fleshed out a lot of these issues,
16 and so the transcript is correct. I have a copy if
17 the Court doesn't have one. Mr. McClam is in agreement
18 of that. He did want to supplement the record,
19 and I don't believe the AG's office has any problem
20 with that, and I think -- then, they were going to call
21 some witnesses based on that.

22 THE COURT: All right. Mr. McClam, we're
23 going to take into consideration the testimony in the
24 previous hearing and what you have to say here today.
25 Do you have any questions about that?

1 THE APPLICANT: No, sir.

2 THE COURT: Do you agree to that?

3 THE APPLICANT: Yes, sir.

4 THE COURT: All right. That's indeed
5 what we will do. And I understand Mr. McClam is going
6 to like to take the stand first; is that correct?

7 MR. YARBOROUGH: That's correct, Your Honor.
8 Do you need this copy, Judge, or you've got it?

9 THE COURT: I don't think we have that;
10 I don't think we do.

11 MR. YARBOROUGH: I'll just hand it up
12 to the Court, and the Court can have it. I don't need
13 it, I don't think. Thank you.

14 THE CLERK: Please stand.

15 MR. TELLY D. MCCLAM was called as a witness,
16 being duly sworn, was examined and testified as follows:

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: I'll ask, if you could, pull
19 up real close to that microphone and speak loudly
20 and clearly and slowly.

21 THE APPLICANT: Yes, sir.

22 THE COURT: I want to hear everything
23 that you have to say. Let's start with your full
24 name, please, sir.

25 THE APPLICANT: Telly Darnell McClam.

1 THE COURT: All right. Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. YARBOROUGH:

4 Q. Mr. McClam, you and I have spoken a lot about
5 this case; is that correct?

6 A. Yes, sir.

7 Q. Okay. And you've heard the judge tell you
8 that -- there's already a transcript. You've testified
9 in this case, but you wanted to supplement the record
10 with some more information; isn't that right?

11 A. Yes, sir.

12 Q. Okay. And so you and I have talked, and one
13 of things that you wanted to supplement the record
14 for -- and I'm only asking to have this marked as
15 a court's exhibit to be able to show it to him because
16 I don't believe you've signed this. But this is the
17 original notice of acknowledgement of service for notice
18 of intent to seek without parole. I'm going to have
19 this marked as a court's exhibit, then I'll show it
20 to Mr. Schwacke, if that's okay.

21 A. Yes.

22 MR. YARBOROUGH: Unless the State says
23 it's okay just to move it into evidence.

24 MS. DIXON: You can enter it, yeah.

25 MR. YARBOROUGH: Okay. I'll just move

1 it in, then.

2 THE COURT: Good.

3 MR. YARBOROUGH: Okay.

4 THE COURT: I would like to hang onto this
5 previous PCR transcript. Is there one that we could
6 make a part of the record?

7 MS. DIXON: Yes, Your Honor.

8 MR. YARBOROUGH: She probably ---

9 MS. DIXON: I will probably need to have
10 my assistant email it to Your Honor.

11 THE COURT: Okay. And we'll make this
12 a part of the record.

13 MS. DIXON: Um-huh, yeah.

14 THE COURT: All right.

15 MR. YARBOROUGH: So you want to make that
16 part of the record as well as a court's exhibit?

17 THE COURT: As a court exhibit for appellate
18 review, and you can email my law clerk.

19 MS. DIXON: The transcript?

20 THE COURT: Yes.

21 MS. DIXON: Okay.

22 MR. YARBOROUGH: I'm going to mark this
23 as Exhibit 1, and it's been moved into evidence.

24 (Court's Exhibit No. 1 was marked for identification.)

25 (Court's Exhibit No. 1 was entered into evidence.)

1 BY MR. YARBOROUGH:

2 Q. Mr. McClam, I'm going to show you this. Do you
3 recognize it?

4 A. Not until the date of ---

5 Q. Well, no, I'm asking you now. Do you recognize
6 it ---

7 A. Yes.

8 Q. --- today?

9 A. Yes, sir.

10 Q. Okay. And you recognize it today, and what this
11 is, is an acknowledge of service of a notice of intent
12 to seek a life sentence; is that right?

13 A. Yes, sir.

14 Q. Okay. Now at your previous PCR and at your
15 trial, did they talk about this?

16 A. They did.

17 Q. Okay. And -- were you confused about what they
18 were talking about?

19 A. I was.

20 Q. Okay. Because on this, although, your name
21 is written in, you didn't sign this; is that correct?

22 A. No, actually it's David Schwacke's name there,
23 not mine.

24 Q. Okay. So Mr. Schwacke signed where your name
25 is?

1 A. Yes.

2 Q. Okay. And it's my understanding that your
3 testimony is you never saw it; is that right?

4 A. Never seen it.

5 Q. Okay. Now when was the first time you saw it?

6 A. When he sent me -- he sent it to me. He sent
7 me that letter right there.

8 Q. Okay. When you say that letter right there,
9 I'm going to approach the witness ---

10 A. Okay. He sent it to me in, like, 2021. That's
11 the first time I've ever seen that paper right there.

12 Q. Okay. So in 2021, where were you?

13 A. I was at Lieber Correctional Institution.

14 Q. Okay. And did you get legal mail?

15 A. Yes, from him.

16 Q. Okay. And you got legal mail from him, and you
17 signed for it?

18 A. Yeah.

19 Q. Okay. And can I show you this? Is this what
20 you signed for?

21 A. Yes.

22 Q. Okay. And in that package, was this; is that
23 correct?

24 A. Yes, correct.

25 Q. Okay. So you got this on 3/29/21; is that right?

1 A. Yes, sir, I believe.

2 Q. Okay.

3 MR. YARBOROUGH: And I'm going to move this
4 into evidence, too, as Court's Exhibit 2. Is that okay?

5 THE COURT: In evidence.

6 MR. YARBOROUGH: Thank you, Your Honor.

7 (Court's Exhibit No. 2 was marked for identification.)

8 (Court's Exhibit No. 2 was entered into evidence.)

9 BY MR. YARBOROUGH:

10 Q. Now when you signed for this, did you know what
11 it was?

12 A. Well, I had requested from him an attorney/client
13 file because I have never gotten it from him, and he
14 sent me a whole lot of things.

15 Q. Okay. And so you wrote him a letter, right?

16 A. Yes, sir.

17 Q. And you wrote that letter to him on March 25th,
18 2021, around that time?

19 A. Yes, sir.

20 Q. And you asked him for your file; is that right?

21 A. I asked him for everything he had.

22 Q. Okay. And so when you got that information,
23 were you surprised?

24 A. Very.

25 Q. Okay. And you were surprised because you didn't

1 know that you had been offered -- you had been -- filed
2 notice that they were seeking life without parole ---

3 A. Exactly.

4 Q. --- is that right?

5 A. That's right.

6 Q. Okay. And you testified about that in the
7 previous hearing; is that correct?

8 A. Yes, sir, I did.

9 Q. Okay. And tell the Court now, just like you did
10 last time, would that have made you change your mind
11 about going to trial?

12 A. Yes, sir. I felt like I had no choice.

13 Q. When you made -- now explain that. We're talking
14 about two different issues, okay?

15 A. Okay.

16 Q. So when you say you felt like you had no choice,
17 tell the Court what you're talking about.

18 A. Okay. What I'm saying with that is he didn't
19 come directly to me with the 15 to 25. He told me ---

20 Q. Okay. Now, Mr. McClam, we're jumping way ahead
21 there, okay?

22 A. Okay. All right.

23 Q. I'm asking about those specific documents.
24 Had you ever seen them before?

25 A. No, sir.

1 Q. Okay. And so when you came to the courthouse,
2 did you know what you were facing?

3 A. No, sir.

4 Q. You did not know what you were facing? You never
5 knew you were facing life without parole?

6 A. No, sir.

7 Q. So when you were given notice of life without
8 parole, that was given to your lawyer and not to you;
9 is that correct?

10 A. It was given to him and not me.

11 Q. Okay. And so, the first time that you ever heard
12 that was given to you was during that PCR transcript,
13 right?

14 A. Yes, sir.

15 Q. Okay. And so that's why you went back and got
16 those documents; is that correct?

17 A. Yes, sir.

18 Q. And that -- you didn't sign for them?

19 A. No, sir.

20 Q. Okay. Now let's go to this other issue that
21 you're talking about so it doesn't get confusing for
22 the judge, okay? When you're talking about an offer,
23 did you know you had an offer before you went to trial?

24 A. No, sir, I found out about the offer during --
25 at the end of my trial.

1 Q. Okay. Tell the judge about that so he'll
2 understand. He does have the transcript, so he can
3 read it.

4 A. Yes, sir. At the end of my trial ---

5 Q. And when you're talking about your trial, you're
6 talking about your trial of your original case; is that
7 correct?

8 A. Yes, sir.

9 Q. Okay.

10 A. In my trial, at the end of my trial, Ms. --
11 the Honorable Judge Jefferson, she mentioned it about
12 the deal. And Ms. Williams, she said that I had
13 actually signed for it to go to trial, and I did not.
14 She said that I had full understanding of it; my lawyer
15 had full understanding. We both signed it, and those
16 are the papers right there. I never knew anything;
17 I didn't sign for anything. My name is not on it,
18 only his.

19 Q. Okay. And so when you're talking about
20 Ms. Williams, you're talking about the person that
21 was prosecuting you; is that correct?

22 A. Yes, sir.

23 Q. Okay. And so what you're referring to is
24 Page 546 of the transcript; is that right?

25 A. Yes, sir.

1 Q. Okay. And that's the transcript of the trial,
2 which the judge has a copy of that.

3 A. Yes, sir.

4 Q. And in that, when you heard her say that she
5 had served you notice of life without parole, you said,
6 I never got that, right?

7 A. I never got that.

8 Q. Okay. And then when she said that she had made
9 you an offer of 15 years, what you were talking about
10 was an offer of what?

11 A. I said -- when they -- when she asked me about
12 the 15 -- you're talking about the 15 to 25 in the
13 trial?

14 Q. Yeah. Explain it to the judge so he'll
15 understand it.

16 A. Okay.

17 Q. He knows; he does criminal work.

18 A. Okay. When she asked me about it, like I said,
19 I was very unaware of the plea of the 15 to 25.
20 In the process, I made a statement that, you know,
21 during the trial, you know, well, pretty much to my
22 lawyer that, you know, I would have taken it, you know
23 what I mean. I was really thinking about taking it,
24 you know. I just needed to know a little bit more about
25 it after the fact because it was too late then because

1 we're in trial, you know, so there's nothing I could
2 do about that at that point, you know.

3 Q. Okay. Now, I'm going to show you something
4 else that you were given by Mr. Schwacke, and let me
5 show you this. Had you ever ---

6 MR. YARBOROUGH: Let me -- can I go ahead
7 and mark this as Exhibit 3? I believe without
8 objection, that's the ---

9 MS. DIXON: What is it?

10 MR. YARBOROUGH: That's just the notice
11 from ---

12 MS. DIXON: Okay.

13 MR. YARBOROUGH: Without objection?

14 MS. DIXON: Yeah.

15 MR. YARBOROUGH: Three, without objection,
16 Your Honor.

17 THE COURT: Exhibit No. 3 is in evidence
18 without objection.

19 MR. YARBOROUGH: Thank you, Your Honor.

20 (Court's Exhibit No. 3 was marked for identification.)

21 (Court's Exhibit No. 3 was entered into evidence.)

22 BY MR. YARBOROUGH:

23 Q. Let me show this. Do you recognize this?

24 A. Yeah.

25 Q. Okay. And what is this?

1 A. That was another page that came along with
2 that page from him in 2021.

3 Q. Okay. And in this, does it show you that you
4 signed for offering or rejecting any kind of plea offer?

5 A. Neither.

6 Q. Neither was ---

7 A. Offer accepted or unaccepted.

8 Q. Right. And you never did accept or reject;
9 is that correct?

10 A. No, sir.

11 Q. Okay. Do you want to tell the Court anything
12 more about that because I'm going to move on to
13 something else? I think your testimony is clear.
14 We can ask Mr. Schwacke about the rest of it. Is there
15 anything else you want to say about that offer or that
16 rejection?

17 A. No, sir, other than the fact that I didn't know
18 anything about it.

19 Q. Okay. And that's what you testified to in
20 the first hearing, but you didn't use those documents;
21 is that correct?

22 A. Yes, sir.

23 Q. Okay. Thank you. Now you've also -- you've been
24 concerned from the very beginning about something about
25 blood; is that correct?

1 A. Yes, sir.

2 Q. Can you explain that to the Court? I think
3 you did once before, but would you go and explain
4 it again?

5 A. Okay. The other documents that I provided
6 you with, the SANE nurse, she originally ---

7 Q. Well -- okay.

8 MR. YARBOROUGH: These are not documents.
9 What these are -- and I'll just refer them to the Court
10 for -- that you can look. These are Pages 281 through
11 290 that were part of the trial transcript. Thank you,
12 Your Honor.

13 THE APPLICANT: Okay. So the SANE nurse,
14 Ms. Kellan Defoe [ph.], she said that she didn't take
15 any pictures of the clothes because there was no blood
16 on the clothes. So we got in trial, and once we got
17 in trial, Ms. Williams, she asked Schwacke -- she was,
18 like, well, you know, do you remember that there
19 was blood on the clothes when we was over at forensic?

20 And Schwacke also told her, no, I don't
21 remember that. She said, well, there's blood
22 on the clothes. So, I felt that there should have
23 been an objection to that because -- the simple fact
24 is if there was blood on the clothes, the SANE nurse
25 is who gave it to them.

1 Q. Mr. Schwacke made that objection, too; isn't that
2 correct?

3 A. Well, he didn't object to it; he just said that
4 he didn't remember it.

5 Q. Okay. Go ahead. And so you think that should
6 have been -- your lawyer should have done a better job
7 of handling that issue, right?

8 A. Exactly because that left room to the jury.

9 Q. Okay. But I think -- would you agree
10 Mr. Schwacke at least followed up on some of that stuff;
11 is that right?

12 A. Just based off of what he said right there,
13 just what I said that he said.

14 Q. Okay. And you would have liked for somebody
15 to test that blood if they were going to use it against
16 you, right?

17 A. Yes, sir.

18 Q. Okay.

19 A. Or to acknowledge the fact that -- you know,
20 because the SANE nurse is saying it wasn't there,
21 who gave you the clothes, and now we're here in court
22 in front of the jury, and now it's here. So, I believe
23 that was a big issue there.

24 Q. Okay. And that's Pages 293 and 294 of
25 the original trial transcript; is that right?

1 A. Yes, sir.

2 Q. Okay. Now, I think the last thing you wanted
3 to supplement the record on was you think he should
4 have objected to one of the jurors; is that right?
5 Oh, I'm sorry. There's one more after that, but there
6 was an issue about a juror that you -- you raised
7 it before, but can you tell us about that?

8 A. Yes, sir. In -- before the trial, a juror
9 told the Honorable Judge Jefferson that she knew one
10 of the people that would be testifying against me as
11 an expert witness. She told us, I know him, I trained
12 him, and we work together every day. And the Honorable
13 Judge Jefferson asked her, would that interfere with her
14 judgment? She said, no. The Honorable Judge Jefferson
15 said, then you're good to go. To me, that took away my
16 rights as a fair trial because they have a relationship.

17 Q. Right.

18 A. They actually know each other.

19 Q. And so what you're saying is you wished
20 Mr. Schwacke would have raised that issue for you
21 at that time; is that right?

22 A. Yes, sir.

23 Q. Okay. And I think the last issue that
24 you said you wanted to supplement the record on was
25 that you didn't feel like that you even qualified

1 for the LWOP, right? And you talked about that last
2 time, but go ahead and explain that to the Court.

3 A. Okay. I went to -- I got locked up in 1998;
4 I got sentenced in 1999. They hit me with the LWOP
5 based off of a ten-year impeachment or something,
6 enhancement or something, but from 1998 up until
7 I got locked up in 2013, so that's a lot of time.
8 That's way over the ---

9 Q. Fourteen years.

10 A. --- ten-year mark. Yeah. And then I went
11 to trial in '16 ---

12 Q. That's right.

13 A. --- so that made it almost 17 years prior
14 to that. So the LWOP shouldn't have been implied [sic]
15 on me at all because I was way over the limit.

16 Q. And you wished that Mr. Schwacke would have
17 raised those issues for you?

18 A. Yes, sir.

19 Q. And he didn't?

20 A. He didn't.

21 Q. Okay.

22 A. I was way over the mark.

23 Q. Okay. Well -- and you wouldn't have known
24 what he raised because they didn't serve you any
25 of the dates, right?

1 A. Yes, sir.

2 Q. Okay. Is there anything else you want to tell
3 the Court?

4 A. No, other than the facts I have here.

5 Q. Okay. And those are all supplemental, plus
6 what's in the record, right?

7 A. Yes, sir.

8 Q. Okay. Thank you.

9 MR. YARBOROUGH: I don't have anything
10 further from him, Your Honor.

11 THE COURT: Cross-examination.

12 MS. DIXON: May it please the Court.

13 CROSS-EXAMINATION

14 BY MS. DIXON:

15 Q. Mr. McClam, you were at your trial, correct?

16 A. Yes, ma'am.

17 Q. And your testimony today is that you never heard
18 of this 15-to-25-year offer, correct?

19 A. I heard about it at the end of my trial.

20 Q. At the end of the trial. So your testimony
21 today is that you heard about it for the first time
22 after your trial concluded?

23 A. At the end of my trial.

24 Q. All right. So in the record, Page 44, the
25 solicitor says, "Your Honor, we originally offered

1 him 15 to 25 years, which he turned down on the record
2 in court."

3 A. Um-huh.

4 Q. And your testimony today -- the solicitor says
5 this at the start of trial before opening statements,
6 and your testimony today is that you first learned about
7 this at the end of trial?

8 A. Yes, ma'am.

9 Q. All right. Moving on. This blood issue that
10 you've raised, now the SANE nurse, tell me who did she
11 do the rape kit on?

12 A. Who did she do it on?

13 Q. The rape kit on.

14 A. She did it on L.J. .

15 Q. And how old was L.J. at that time?

16 A. She was 17, with her mother's consent.

17 Q. Seventeen -- so L.J. was 17 years old
18 at the time that the nurse performed this rape kit
19 on her, correct?

20 A. With her mother's consent.

21 Q. L.J. was 17 years old at the time the
22 SANE nurse performed the rape kit on her, correct?

23 A. I believe.

24 Q. And do you recall the expert found your seminal
25 fluid in her -- your DNA in the seminal fluid recovered

1 from that rape kit?

2 A. SLED did, after they transferred it.

3 Q. Correct. All right.

4 A. But you -- I acknowledged that she had my clothes
5 on.

6 Q. And then moving on to the juror issue. What
7 juror number is it that you believe should have been
8 objected to?

9 A. That I wouldn't know because I have not had
10 that in my transcript. That was not ordered nor given
11 to me.

12 MS. DIXON: Do you have a copy of the
13 transcript?

14 THE APPLICANT: There's many pages
15 of my transcript I do not have, never had.

16 MR. YARBOROUGH: He probably only has
17 the record of appeal, because that's all I have.

18 MS. DIXON: I need to know what he's
19 objecting to because there's a lot of jurors in there.

20 MR. YARBOROUGH: The transcript I have does
21 not have the jury selection in there.

22 (Pause.)

23 BY MS. DIXON:

24 Q. Tell me again why this juror should have been
25 object to?

1 A. The juror told the Honorable Judge Jefferson
2 that she knew the person because they worked together
3 at MUSC. One of the people who was the expert witness,
4 she said, I know him, I work with him every day,
5 and I have trained him. And she -- the Honorable
6 Judge Jefferson asked, well, would that interfere with
7 your judgment? She said, no, but that is a conflict
8 of interest.

9 Q. Okay.

10 A. That takes away my right to a fair trial,
11 you know, because she knows him.

12 Q. And this is during voir dire, correct?

13 A. Ma'am?

14 Q. This is during voir dire that this question
15 gets asked?

16 A. Before the trial is actually ---

17 Q. During voir dire, before they select the jury.

18 A. Well, not before they select the jury. The jury
19 is already selected, then she made the statement.
20 She was already on the stand.

21 Q. Okay.

22 A. And then, she read the paper, I guess, which
23 said who all was going to be testifying. I guess
24 they -- acknowledged to that, and she said ---

25 MR. YARBOROUGH: It is in there.

1 MS. DIXON: Gotcha. I see it now.

2 MR. YARBOROUGH: Yeah, it's in there.

3 (Pause.)

4 MS. DIXON: Okay. Judge, just for
5 the record, I will note that's on Page 54 to 58
6 of the transcript. I have nothing further.

7 THE COURT: Anything further?

8 MR. YARBOROUGH: No, sir, Your Honor.

9 THE COURT: All right. You may step down.
10 Who is going to call Mr. Schwacke?

11 MR. YARBOROUGH: I think -- Your Honor,
12 we're not going to call Mr. Schwacke. We think the
13 record will reflect.

14 THE COURT: Okay. I think the State
15 has indicated that they will.

16 MS. DIXON: Yeah. Is he on?

17 THE COURT: He is on.

18 MS. DIXON: Mr. Schwacke, can you hear me?

19 THE COURT: Mr. Schwacke? Hello?

20 (Pause.)

21 THE COURT: All right. Let the record
22 reflect that everybody is ready for Mr. Schwacke
23 to appear by WebEx, and he apparently does not have
24 appropriate internet to power the WebEx. He's going
25 in and out, in and out. Do you have an objection

1 to him testifying by phone?

2 MR. YARBOROUGH: I don't, Your Honor.

3 THE COURT: All right. And, Mr. McClam,
4 do you have an objection?

5 THE APPLICANT: No, sir.

6 THE COURT: Very good. All right.

7 MS. DIXON: Mr. Schwacke, can you hear me?

8 MR. SCHWACKE: I can.

9 MS. DIXON: Just quickly, they've talked
10 a little bit today about an LWOP notice that got served
11 on Mr. McClam ---

12 THE COURT: Mr. Schwacke -- before we start,
13 Mr. Schwacke, do you swear to tell the truth, the whole
14 truth, and nothing but the truth so help you God?

15 MR. SCHWACKE: I do.

16 (Whereupon, MR. DAVID SCHWACKE was duly sworn.)

17 THE COURT: Very good. Go ahead.

18 DIRECT EXAMINATION

19 BY MS. DIXON:

20 Q. Do you recall an LWOP notice getting served
21 in this case?

22 A. I don't believe it was served; I believe
23 it was discussed. It was pretrial and posttrial
24 before sentencing.

25 Q. Okay. Is it something you were aware of?

1 A. Yes.

2 Q. Is it something you discussed with Mr. McClam?

3 A. Well, when you say discussed, what part
4 are we saying did we discuss? Did we discuss the plea
5 offers? Yes. Did we discuss the circumstances
6 and what potential punishments might be involved?
7 That was discussed.

8 Q. Okay.

9 A. If that include offenses that would be
10 enhancements, that was discussed too.

11 Q. So you did discuss with him the enhancements?

12 A. I did.

13 Q. Okay. And you did discuss the plea offers?

14 A. Yes.

15 Q. And, specifically ---

16 A. I never, never wouldn't talk to a client
17 as to discovery or an offer, a plea discussion,
18 any of those things.

19 Q. Gotcha. Okay. So, generally speaking, you would
20 always discuss that. Is that your testimony?

21 A. Yes.

22 Q. And that's what you recall happened here?

23 A. Yes. Now, I don't have the box, so the evidence,
24 I don't know if y'all had a chance to go through that.
25 I haven't because, you know, I'm retired medically.

1 So in terms of that, you know, had gone ahead
2 and discussed everything. I just know that in terms
3 of boxes, there's a lot of things that I know that
4 are in there. I just don't know. I'm assuming,
5 at some point, the PCR attorney has had an opportunity
6 to look through the materials.

7 Q. Okay.

8 MS. DIXON: One moment, Your Honor.
9 Thank you for being here. I don't think I have
10 any other questions for you.

11 MR. SCHWACKE: Thank you.

12 CROSS-EXAMINATION

13 BY MR. YARBOROUGH:

14 Q. Mr. Schwacke, this is Bill Yarborough. How are
15 you doing?

16 A. Hey, good. How old is this case for us now?

17 Q. It's old for us, yes, sir.

18 A. Yes.

19 Q. I moved into evidence the notice of life without
20 parole that was supposed to be served on Mr. McClam.

21 It looks like you signed for him. Do you recall that?

22 A. Yeah, because the material would have been given
23 to Ann Williams. Then, in turn, she serves it on me.

24 And that case, I then make him aware of it. I don't
25 know ---

1 Q. Well ---

2 A. --- exactly what form and whose signature
3 was required on that.

4 Q. Well, on the form that was ---

5 A. That's one thing I also check on.

6 Q. Okay. With the form that was given to you by
7 the State which says acknowledge of service of notice
8 of intent to seek life without parole, it says the
9 service on it, it's a got a bunch of handwriting on it,
10 but it looks like -- where it says Telly Darnell McClam,
11 Defendant, it looks like you signed David Schwacke,
12 Defendant. Would you have done that? You don't have
13 any independent recollection?

14 A. Yeah.

15 Q. Okay. So if your name is there -- I wish I could
16 show it to you, but would you agree that you would have
17 signed it?

18 A. If it's my signature, I'm not sure.

19 Q. Okay. And, I guess, at some point -- you don't
20 have your file, but, at some point, you sent Mr. McClam
21 his file; is that correct?

22 A. He got sent files multiple times.

23 Q. Okay.

24 A. He kept asking for things from our file after
25 the case had already gone beyond the point that we

1 weren't representing him in any of the PCR actions
2 or appeal actions.

3 Q. Okay.

4 A. He just had a hard understanding that you have
5 attorneys now, you need to talk with them on your case,
6 not us.

7 Q. Okay.

8 A. So he was given copies of probably everything
9 in that box, and Alicia in the public defender's office
10 up here in Moncks Corner would probably tell you.

11 Q. Okay. But if you had sent the certified mail
12 from you at 29 North Highway 52, Suite E, that's from
13 the public defender's office?

14 A. Right.

15 Q. And if you had done that on February 29th, 2021,
16 that would be fairly inaccurate; is that correct?

17 A. Yes.

18 Q. Okay. And the last thing I wanted to ask
19 you is that there was a form that was sent to you
20 on June 20th, 2014, and it doesn't say that you --
21 that Mr. McClam accepted or rejected the life without
22 -- the offer; would that be correct?

23 A. Right.

24 Q. Okay.

25 MR. YARBOROUGH: I don't have any further

1 questions of Mr. Schwacke.

2 THE COURT: Mr. Schwacke.

3 MR. SCHWACKE: Yes.

4 THE COURT: Did you indeed talk with
5 Mr. McClam about the fact that if he were convicted,
6 he would be -- could be or would be sentenced to life
7 imprisonment?

8 MR. SCHWACKE: Can you ask -- can you say
9 that again?

10 THE COURT: Did you indeed tell Mr. McClam
11 that he was subject to life without parole?

12 MR. SCHWACKE: Yes.

13 THE COURT: Okay. That's all I need
14 to know. Very good. Thank you.

15 MR. YARBOROUGH: Okay. Thank you.

16 MS. DIXON: I think that's all. Thank you,
17 David.

18 MR. YARBOROUGH: Thank you, Mr. Schwacke.

19 MR. SCHWACKE: Okay. Thank you all.

20 MS. DIXON: Bye.

21 THE COURT: Thank you.

22 MR. SCHWACKE: Take care. Bye.

23 MS. DIXON: Your Honor, the State has
24 nothing further.

25 THE COURT: Okay. Anything further from

1 the defense?

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

3 I mean, I can give you a brief argument, but I think
4 the -- we've submitted three different showings
5 that Mr. McClam didn't get those -- the notice of life
6 without parole. And I would urge the Court to look
7 at the requirements for LWOP, and I know that there's
8 some statement where there was a hearing on the record.
9 I've never been able to find that.

10 I know Mr. Schwacke says he told him,
11 but I think that there needs to be some kind of judicial
12 finding that he was aware of it, and I don't think
13 that that was done prior to trial. And so I would
14 urge the Court to consider that when you're reviewing
15 the transcript.

16 THE COURT: All right. Have you been
17 able to locate that transcript of the offer being put
18 on the record, the rejection being put on the record?

19 MS. DIXON: Judge, it's not -- we generally
20 -- it's a 2016 trial. That would have occurred prior
21 to the 2016 trial. It's not something that would be
22 available. We don't generally -- we request the trial
23 transcript, but we don't always know about pretrial
24 hearings to even know to request them. I don't have
25 a date for it. I'd venture to say at this point

1 it doesn't exist.

2 I mean, we could reach out to the solicitor
3 and see, but I don't know what -- I can tell you
4 on Page 44 of this trial transcript, it is referenced
5 by the solicitor that there was another hearing where
6 he rejected on the record, and trial counsel at that
7 time didn't make any comment to indicate that that
8 was untrue.

9 I do think trial counsel testified today
10 that he did inform him of both the offer and the LWOP
11 notice, and I think that is corroborated by the trial
12 transcript where both of those things were brought
13 out both before the trial began and at the conclusion
14 of trial, the fact that the State had served LWOP
15 and had given this 15 to 25 offer, and no one said
16 anything at that time to indicate that was not -- in
17 fact, not true.

18 And even Mr. McClam himself addressed
19 the Court during sentencing and didn't raise any
20 issue with the fact that I've never been served LWOP,
21 I didn't know. So, I think there was opportunity for
22 him at that time if that were, in fact, true to have
23 raised it. But I believe all that corroborates what
24 trial counsel said today.

25 THE COURT: Anything further from the

1 defense?

2 MR. YARBOROUGH: One thing, Your Honor.
3 I did the appeal in this case, and we always tried
4 to find the LWOP on the record, and I was never able
5 to do it. And I think, at that point, Mr. Schwacke
6 closed his file out, and I was going through the public
7 defender's office here. So, I'm not sure -- I know
8 it says that -- Mr. McClam has always said that
9 it didn't, and -- so anyway, I'll leave that in the
10 Court's hands.

11 THE COURT: What I would like to do and,
12 of course, if you would like to have any closing
13 comments, other than what you've said, you're welcome
14 to do that. Otherwise, I would like for y'all to submit
15 proposed orders.

16 MR. YARBOROUGH: Okay. Thank you,
17 Your Honor.

18 THE COURT: And how much time -- I know
19 this case has been lingering for a while. How much
20 time do you need to prepare proposed orders?

21 MR. YARBOROUGH: Thirty days. I don't know
22 what your schedule is like. I could get you one quick.

23 MS. DIXON: Your Honor, I could -- 30 days
24 should be ---

25 THE COURT: All right, 30 days. If that

1 poses a real difficulty, just let me know, but let's
2 shoot for 30 days.

3 MS. DIXON: Okay.

4 MR. YARBOROUGH: Okay.

5 THE COURT: All right.

6 MR. YARBOROUGH: Thank you, Your Honor.

7 THE COURT: All right. Anything further
8 from the State?

9 MS. DIXON: Nothing further.

10 THE COURT: We'll stand adjourn until
11 9:30 in the morning.

12 MR. YARBOROUGH: Thank you, Your Honor.

13 MS. DIXON: Thank you.

14 (End of Transcript of Record)

15

16

17

18

19

20

21

22

23

24

25

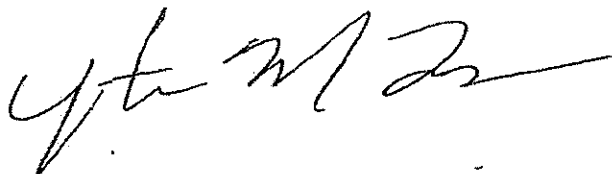
CERTIFICATE OF REPORTER

State of South Carolina)
County of Berkeley)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth 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 case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 9th of September, 2024.

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

April 5, 2025



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

STATE OF SOUTH CAROLINA

VS.

TTELLY DARNELL MCCLAM,
DEFENDANT.

IN THE COURT OF (GENERAL SESSIONS) 4
NINTH JUDICIAL CIRCUIT

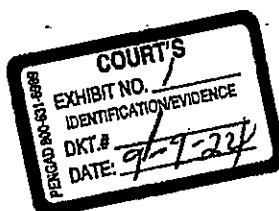
ACKNOWLEDGEMENT OF SERVICE OF
NOTICE OF
INTENTION TO SEEK
SENTENCE OF LIFE WITHOUT PAROLE

Indictment #2014GS0800839
Indictment #2014GS0800840
Indictment #2014GS0800653
Indictment #2014GS0800654
Indictment #2014GS0800655

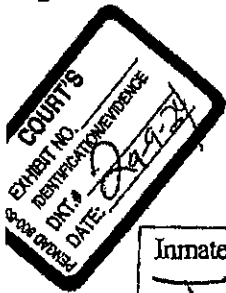
Service of the Notice of Intention to Seek a Sentence of Life Without Parole
acknowledged, and copy retained this 5th day of January, 2016 at Charleston, Berkeley County, South Carolina.

Telly Darnell McClam
Telly Darnell McClam, Defendant

16 JAN - 5 AM 10:28
MARY J. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.



LIFEWO



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name:	SCDC #:	Housing Unit:	Date:
Telly McClam	232709	MA-210 A-Side	3/25/2021

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

To be completed by
SCDC staff:

Item	Amount	Cost
Envelope		
Pen		
Paper		
Postage		
Tape		
Box		
Electronic Repair		
Other		

7019 0160 0000 1748 2972

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee
\$ 3.60

Extra Services & Fees (check box, add to extra fee)
☐ Return Receipt (hardcopy) \$ 2.80
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
\$ 5.10

Total Postage and Fees
\$ 8.70

Postmark Here

Copy to
David Schwacke LLC
219 N. Hwy 52 Suite E
Moncks Corner SC 29461
PS Form 3800, April 2015 PSN 7530-02-100-9057 See Reverse for Instructions

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: David Schwacke LLC 219 N. Hwy 52, Suite E Moncks Corner SC 29461 2. Article Number (transfer from service label) 7019 0160 0000 1748 2972 PS Form 3811, July 2015 PSN 7530-02-003-9053	A. Signature [Signature] ☐ Agent ☒ Addressee B. Received by (Printed Name) DAVID SCHWACKE C. Date of Delivery 3/27/21 D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below: 3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery 01.03(OP), "Inmate Access to the To be completed by SCDC staff: Domestic Return Receipt MAR 25 2021 MAIL ROOM LIEBER CL. TOTAL

Item	Amount
Photocopies	

Received and denied by mailroom lady
msi Brown. 4/9/2021

Get back from committee on 4/23/2021
without crime scene pictures at all... They sent them all to
Property Control against my free will.

(6)

The State of South Carolina



Solicitor, Ninth Judicial Circuit

Solicitor

Scarlett A. Wilson

300-B California Avenue
 Moncks Corner, South Carolina 29461
 Telephone: (843) 719-4496
 Facsimile: (843) 719-4588
 www.scsolicitor9.org



DATE: June 20, 2014

TO: David Schwacke, Esquire

FROM: Anne Williams, Assistant Solicitor

RE: State of South Carolina vs. Telly McClam

CHARGES: Criminal Sexual Conduct ⁰⁻³⁰ 1st Degree, Felon in ⁵ Possession of a firearm, kidnapping ⁰⁻³⁰ (X2); Possession of a weapon ⁵ during a violent Crime; Possession of Contraband; Burglary 1st ¹⁵⁻²⁵

OFFER: Plead to one count of Kidnapping with sex offender registry, one count of Burglary in the 1st degree, possession of contraband with a negotiated range of 15-25 years

EXPIRES: August 26, 2014 Term of General Sessions

PLEASE INDICATE YOUR CLIENTS RESPONSE:

OFFER ACCEPTED _____

OFFER REJECTED _____

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Telly Darnell McClam, #232709,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-08-00504

ORDER OF DISMISSAL

LEAH GUERRY DUPRE
CLERK OF COURT
BERKELEY COUNTY, S.C.

2024 OCT 14 PM 4:45

[Signature]
FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Telly Darnell McClam (Applicant) on February 20, 2020. Respondent made its return requesting an evidentiary hearing. On March 10, 2022, a Web-Ex hearing convened before the Honorable R. Markley Dennis, Jr. However, Judge Dennis retired before any final order was entered. Thereafter, the Honorable Jennifer B. McCoy, acting as Chief Administrative Judge for the Ninth Judicial Circuit, ordered the matter be set for a new hearing. On September 9, 2024, a hearing convened before the Honorable Michael G. Nettles. Applicant was present and represented by William G. Yarborough, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, the parties agreed the transcript of the first PCR hearing would be made part of the record. Additionally, Applicant testified on his behalf, and Respondent called as a witness trial counsel David Schwecke. After reviewing the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections serving a life sentence. In May and June of 2014, the Berkeley County Grand Jury indicted Applicant for two counts of

first-degree criminal sexual conduct (CSC) (2014-GS-08-839, -840), two counts of kidnapping (-653, -654), first-degree burglary (-655), possession of a weapon during a violent crime (-658), and unlawful possession of a firearm by a person convicted of a violent offense (-659). These charges arose from the kidnapping and rape of Applicant's ex-girlfriend's and her seventeen-year-old daughter (Minor Victim). After family members contacted police about the suspected kidnapping, an Amber alert was issued. Law enforcement located the vehicle Applicant was driving, and a car chase ensued. The victims were subsequently rescued from Applicant's vehicle; Applicant fled and was later apprehended by a K-9 unit.

On February 29-March 3, 2016, Applicant proceeded to a jury trial before the Honorable Deadra Jefferson. Public Defenders David Schwacke and Deborah Littlejohn represented Applicant. Assistant Solicitors Anne Williams and Daniel Poulos prosecuted the case. The jury convicted Applicant as indicted, and Judge Jefferson sentenced him to concurrent terms of life for CSC, kidnapping, and first-degree burglary; and five years for each weapon charge.

Applicant filed a direct appeal, which was perfected by William G. Yarborough, III (2016-000793). On appeal, Applicant argued the trial court erred in (1) denying his motion for a directed verdict, (2) finding the mandatory life sentence under section 17-25-45 of the South Carolina Code did not constitute cruel and unusual punishment, and (3) finding the mandatory life sentence did not violate separation of powers. The Court of Appeals affirmed on the merits. State v. McClam, 2019-UP-088 (filed Feb. 20, 2019). The remittitur was sent March 13, 2019.

CURRENT APPLICATION

On February 20, 2020, Applicant filed this PCR application alleging counsel was ineffective in:

- a. Failing to object to prejudicial hearsay testimony;

- b. Failing to move to exclude various prejudicial evidence relating to either irrelevant or prior bad acts;
- c. Failing to present mitigating evidence at sentencing.

On March 9, 2022, Applicant served on Respondent a Motion to Amend Application for Post-Conviction Relief, raising the following grounds of ineffective assistance of counsel:

- I. Counsel failed to object to prejudicial hearsay testimony by Karlayne Dufault;
- II. Counsel failed to object or move to exclude prior bad act evidence by witness Deandrene McHoney;
- III. Counsel failed to object to testimony by expert witness Alyssa Rheingold;
- IV. Counsel failed to present mitigation evidence at sentencing;
- V. Counsel failed to inform Applicant or sufficiently advise him about a prior plea offer.

At the PCR hearing, Applicant proceeded on the allegations of his amended application. Applicant further alleged counsel was ineffective for not objecting to the State's notice of its intent to seek life without parole (LWOP).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Berkeley County Clerk of Court records of the convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records of Applicant's direct appeal; and the records of this PCR application (including the transcript of the March 10, 2022 PCR hearing). This Court has further had the opportunity to observe the witnesses presented at the PCR hearing,

closely pass upon their credibility, and weigh their testimony accordingly.¹ After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. Id.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him 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.

LWOP Notice

Applicant first contends counsel was ineffective for not objecting to the life without parole (LWOP) sentence on the basis he did not receive written notice of the State's intent to seek LWOP ten days prior to trial, in contravention of section 17-25-45(H) of the South Carolina Code. This

¹ This Court will reference PCR testimony where relevant below.

contention lacks merit.

A solicitor must provide at least ten days' notice prior to trial if he or she intends to seek a life sentence under section 17-25-45. S.C. Code Ann. § 17-25-45(H). The purpose of this statutory notice provision is to ensure "a defendant and his counsel have actual notice the State is seeking a sentence under the recidivist statute." James v. State, 372 S.C. 287, 294–95, 641 S.E.2d 899, 903 (2007). The requirements of this statute are satisfied as long as the defendant and his counsel possess actual notice of the State's intention at least ten days prior to trial. Id. "[U]nder such notice statutes, the law only requires actual notice." State v. Washington, 338 S.C. 392, 398, 526 S.E.2d 709, 712 (2000).

Here, the State filed notice of its intent to seek LWOP on December 29, 2015. On January 5, 2016, David Schwacke, acting as counsel for Applicant, signed an acknowledgement of service of the State's notice of intent to seek LWOP. Applicant's trial began on February 29, 2016—more than ten days after Schwacke signed the acknowledgment form. At the PCR hearing, Schwacke explained he signed the form on Applicant's behalf. Schwacke further credibly testified he advised Applicant of the State's intent to seek LWOP. This Court finds, based on the foregoing, that Applicant had actual notice of the State's intent to seek LWOP in advance of trial. Under James, this was sufficient notice of the State's intent to seek LWOP, and the fact that Applicant himself did not sign the acknowledgement form does not provide a basis for granting PCR. See James, 327 S.C. At 287, 641 S.E.2d 899 (reversing Court of Appeals' finding that counsel was ineffective for not objecting to the State's failure to provide the applicant himself written notice of its intent to seek LWOP when section 17-25-45(H) requires only actual notice of the State's intent to seek

LWOP, which the applicant received).² Further, like the applicant in James, this issue was raised on the record at trial prior to the swearing of the jury. (Tr. 44-45, 63-64). Under James, Applicant cannot show prejudice from counsel's failure to object. See id. (finding applicant could not demonstrate prejudice from counsel's failure to assert the applicant himself did not receive written notice of the State's intent to seek LWOP when the issue regarding LWOP notice first arose prior to the swearing of the jury). Ultimately James is controlling, and Applicant's contention that the LWOP notice was insufficient does not set forth a basis for granting PCR.

To the extent Applicant avers he did not have notice of LWOP in time to accept or reject an offer of fifteen to twenty-five years, this Court finds Applicant did not prove counsel was ineffective in this regard. Initially, this Court finds NOT credible Applicant's testimony that he did not learn about the LWOP notice until 2021, and he did not learn about the plea offer until the end of trial. This Court finds credible counsel's testimony that he explained the offer (which was conveyed in June 2014) to Applicant, and he explained LWOP to Applicant. Before trial, the solicitor noted Applicant had previously rejected the offer. (Tr. 44). Prior to sentencing, the trial court noted the State's prior offer and the fact the State subsequently served the LWOP notice. The State filed its LWOP notice in December 2015, and nothing indicates counsel failed to adequately explain the plea offer or the LWOP notice to Applicant. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to object – Hearsay

Applicant next contends counsel was ineffective for not objecting to hearsay. Specifically,

² In James, the South Carolina Supreme Court reiterated its holding in State v. Washington, 338 S.C. 392, 526 S.E.2d 709 (2000) that "Under such notice statutes [such as section 17-25-45], the law only requires actual notice." James, 372 S.C. at 294-95, 641 S.E.2d at 903.

he contends counsel should have objected to hearsay testimony by SANE³ Nurse Karlayne Dufault that a condom was not used and the sexual assault occurred on the hood of a car. This court finds Applicant did not prove this ground.

At trial, Dufault testified Minor Victim told her she was “assaulted in Pineville, down a dirt road, on the top of a car.” This Court finds this testimony was not objectionable because it was limited to the time and place of the alleged assault. See Rule 801(d)(1)(D) (providing a prior statement by a witness is not hearsay if “[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant’s testimony in a criminal sexual conduct case . . . where the declarant is the alleged victim and the statement is limited to the time and place of the incident”). Counsel thus was not deficient for not objecting.

Later, during Dufault’s direct examination, the following exchange occurred:

Q. And would the presence of a condom be important?

A. Yes.

Q. Why?

A. Well, first, if a condom was used, we would want to try to gather that as evidence; and then secondly, it may help us decide on what—what tests to run and what—what medications to administer.

Q. And in this case, was a condom used?

A. No, ma’am.

Q. And would it be important to know where you had to swab on the body to collect evidence?

A. Yes.

³ Sexual Assault Nurse Examiner.

Q. And would it be important to know if there was licking or kissing on the neck or sucking, like what we call a hickey?

A. Yes.

Q. And in this case, did any of that occur?

A. No, ma'am.

(Tr. 361-62). At the PCR hearing, trial counsel testified he did not object to this testimony because he believed it was covered by the medical exemption to hearsay. This Court agrees and finds counsel articulated a valid reason for not objecting. See Rule 803(4) (providing “[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment” are not excluded by the hearsay rule). Applicant thus did not prove deficiency.

Finally, even if an objection would have excluded this testimony (which this Court does NOT find), it is not reasonably probable the outcome would be different had this testimony been excluded. The State presented overwhelming evidence of Applicant’s guilt, which included the testimony and identification of Applicant by both victims (who knew Applicant as the boyfriend of Minor Victim’s mother); Applicant’s DNA recovered from Minor Victim’s rape kit; testimony that the victims’ family members contacted law enforcement after receiving suspicious text messages from the victims, which resulted in an Amber alert, a high-speed car chase, and Applicant’s subsequent apprehension by a K-9 unit; evidence that law enforcement noticed a forced entry to the home from which Minor Victim stated she was apprehended; and Applicant’s fingerprint on duct tape recovered from a cabin where the victims stated he restrained them with duct tape. Ultimately, based on the foregoing, it is not reasonably probable the outcome would be

different had Nurse Dufault's foregoing testimony been excluded. This claim is thus denied.

Failed to Object - Prior Bad Act Evidence

Applicant next contends counsel was ineffective for not objecting to prior bad act testimony by victim Deandre McHoney that (1) Applicant had "physically harmed" her in the past; (2) Applicant had been abusive to her in the months prior to the alleged offenses; (3) Applicant had physically hurt her before; and (4) she knew what Applicant was capable of, in reference to his violence. This Court finds Applicant did not prove this ground.

At trial, McHoney (Minor Victim's mother) testified she had been in a relationship with Applicant and broke up with him about a week before the kidnapping. (Tr. 218-19). She explained Applicant had tried to contact her after the break-up, but she did not take his calls or respond to his texts. (Tr. 220). During direct examination, the following exchange occurred:

Q. And what was the thing that made you go with the defendant that day?

Mr. Schwacke: Your Honor, may we approach?

The Court: You may.

(Bench conference.)

Mr. Schwacke: She's pitting for information.

The Court: If she said, what made you go with him that day, it's *res gestae*. That's a continuum of events. She's entitled to say why she went with him. As long as it's not a reference to something that happened in the past.

Ms. Williams: I've warned them not to say anything about the two prior —

The Court: I need to be sure.

Ms. Williams: I'll do a hearing even when it's not necessary, I promise you. Like yesterday—

The Court: Uh-huh. I need to be sure. I mean, you can't control her. What do you anticipate her response to be?

Ms. Williams: That she got a call from her daughter and—

The Court: That's res gestae.

(End of bench conference.)

The Court: Overruled, you may proceed.

By Ms. Williams:

Q. So at some point you got in a car with Telly McClam that day?

A. I did.

Q. And up until that point, you just testified that you didn't want anything to do with him, you were ignoring the calls?

A. Right.

Q. What made you get in the car?

A. Because he had my daughter.

Q. Without going into any specifics, why did that alarm you?

A. Because he physically harmed me before, so I was scared for her.

(Tr. 221-22, emphasis added). At the PCR hearing, counsel testified the State filed a pretrial motion to include prior bad act evidence under Rule 404(b), SCRE. He testified he objected to the State's line of questioning here, but the Court overruled his objection. The trial transcript shows counsel did in fact object to this testimony, and Applicant did not prove deficiency in this regard.

In addition to the foregoing, Applicant avers counsel should have objected to the following during McHoney's direct examination:

Now, during the course of your relationship with Mr. McClam, there

were times even close to this event where you—how did you feel about him?

A. I started to hate him.

Q. But did you always hate him?

A. I didn't always hate him. The last few months in the relationship, things just totally turned around. **He started being abusive and talking to me all sorts of ways.**

Q. **Without going into those details,** were there times when you expressed different emotions to him, even when things were going wrong? Did you sometimes let him know a different type of emotion? Did you sometimes tell him that you didn't hate him—

A. Yes, ma'am.

Q. —even when things were bad?

A. Yes.

In fact, even after he was arrested, didn't you sometimes tell him you loved him?

A. Yes.

(Tr. 234, emphasis added).

Q. Okay. And you didn't run away?

A. No, ma'am.

Q. Did you tell the sister that you were being held against your will?

A. No, ma'am.

....

Q. And why?

A. **Why didn't I run?**

Q. Yes.

A. Because I knew what he was capable of.

(Tr. 236).

Q. After that, did you feel like you could leave the car when you first got in with [Minor Victim]?

A. No, ma'am.

Q. Why was that?

A. He hurt me physically before.

Q. What else did he have with him?

A. The gun and the knife.

(Tr. 249).

Trial counsel testified he did not object to McHoney's testimony that Applicant "started being abusive" because the solicitor cut her off and reigned in the testimony. He stated he did not object to McHoney's statement that she didn't run because she "knew what he was capable of" because this was part of the *res gestae* of the crime, which the Court had ruled admissible. Finally, counsel stated he did not object to McHoney's testimony that Applicant had hurt her physically before because it explained why she did not leave the car. This Court finds counsel articulated valid reasons for not objecting to the foregoing testimony and thus was not deficient.

Finally, Applicant did not prove prejudice from counsel's failure to object. Initially, this Court finds it unlikely the testimony would have been excluded based on the Court's prior ruling that testimony about why McHoney behaved a certain way was part of the *res gestae* of the crime. Further, and critically, due to the overwhelming evidence presented by the State, it is not reasonably probable the outcome would be different this "bad act" testimony been excluded. As set forth above, the State's evidence included the testimony and identification of Applicant by both

victims (who knew Applicant as the boyfriend of Minor Victim's mother); Applicant's DNA recovered from Minor Victim's rape kit; testimony that the victims' family members contacted law enforcement after receiving suspicious text messages from the victims, which resulted in an Amber alert, a high-speed car chase, and Applicant's subsequent apprehension by a K-9 unit; evidence that law enforcement noticed a forced entry to the home from which Minor Victim stated she was apprehended; and Applicant's fingerprint on duct tape recovered from a cabin where the victims stated he restrained them with duct tape. This claim is thus denied.⁴

Failed to Object - Expert Testimony

Applicant asserts counsel was ineffective for not objecting to expert witness Alyssa Rheingold's responses to hypothetical questions, which improperly bolstered Minor Victim's testimony. Applicant did not prove this ground.

At trial, Rheingold was qualified as an expert in impact trauma, and she testified generally to victims' behavioral responses to trauma, such as fight, flight, or freeze reaction and emotional numbing. She further testified sexual assault victims often don't immediately disclose sexual assault, especially when they know the perpetrator. Finally, she opined fear of the person can prevent a person from running away. (Tr. 513-23). On cross-examination, she clarified she did not meet any of the victims in this case. She further clarified victims display a wide range of responses to trauma, and she cannot predict how an individual would react to trauma. (Tr. 527).

Initially, expert testimony regarding behavioral characteristics of sex abuse victims is generally admissible, and Applicant did not set forth a valid legal objection that would have

⁴ At the PCR hearing, Applicant also asserted counsel should have objected when Emma Ruth Cooper (Applicant's aunt) testified Applicant started visiting her "when he got out of prison." (Tr. 558). This Court finds, due to the overwhelming evidence presented by the State, that it is not reasonably probable the outcome would have been different had counsel objected to this passing statement.

reasonably excluded this testimony. See State v. Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 271 (2018) (“[T]he law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized.”). Further, Applicant did not set forth any improper comment by Rheingold on the victims’ credibility or any hypothetical scenarios that contained facts similar to the case on trial. Thus, Applicant did not prove deficiency or prejudice in this regard. Finally, due to the overwhelming evidence of guilt presented by the State (as recounted above), it is not reasonable probable the outcome would have been different had counsel successfully excluded this testimony. This claim is thus denied.

Mitigation

Applicant asserts counsel was ineffective for not offering further mitigation at sentencing, such as Applicant’s history of mental illness, learning disability, and troubled/abuse childhood and upbringing. This lacks merit. Here, Applicant was properly served with the States’ notice of intent to seek LWOP. In light of that, counsel’s mitigation was reasonable under prevailing professional norms and not deficient. Further, due to the LWOP notice, Applicant cannot prove prejudice from this claim. In other words, there is no reasonable probability that additional mitigation would have led to a lighter sentence when the Court was bound by the LWOP notice. This claim is thus denied.

Plea offer

Finally, Applicant contends counsel was ineffective for not adequately advising him about a prior plea offer of fifteen to twenty-five years or ensuring Applicant understood the implications of rejecting the offer relative to the strength of the State’s evidence. Applicant did not prove this ground. At the hearing, Applicant testified he did not learn about this offer until *after* trial. This Court finds Applicant’s testimony here NOT credible. This Court finds credible counsel’s testimony that he conveyed and discussed this offer with Applicant prior to trial. Counsel’s

testimony that Applicant was aware of this offer is corroborated by the trial transcript, wherein the solicitor indicated *prior to trial* that Applicant had previously turned down this offer. (Tr. 44). Applicant did not set forth what advice counsel provided related to the offer that was deficient and thus did not meet his burden of proving deficiency or prejudice. Thus, this claim is denied.

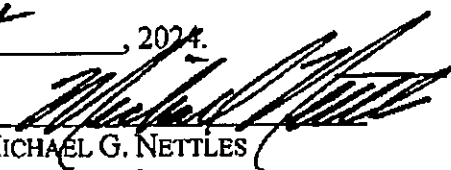
CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 7 day of Oct, 2024.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

 South Carolina

FILED

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Telly McClam, # 00232709,

Applicant,

v.

State of South Carolina,

Respondent.

2024 OCT 29 AM 9:47

LEAH QUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SCIN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No. 2020CP800504

**MOTION TO ALTER OR AMEND
THE JUDGMENT OR GRANT
RELIEF THEREFROM**

The Applicant, Telly McClam, by and through undersigned counsel of record, pursuant to Rules 52(b), 59, and 60 of the SC Rules of Civil Procedure, hereby moves this Honorable Court to alter or amend the Order dismissing the PCR application or grant relief therefrom in the above-captioned case. Applicant therefore requests this Court to amend or vacate the Order of Dismissal and grant post-conviction relief in accordance with the foregoing herein.

This Motion address the dismissal of Applicant's PCR on the ground that there was insufficient evidence regarding Applicant's lack of notice of the State's intent to seek life without the possibility of parole (LWOP) pursuant to S.C. Code Ann. § 17-25-45.

At the PCR hearing, Trial Counsel testified that the State had served written notice on him only and that he signed the service acceptance form on Applicant's behalf. Mr. Schwacke testified he did not believe that the statute required the notice be served upon the defendant personally and confirmed that he instead accepted service on Applicant's behalf on January 5, 2016. He also testified that the signature on the LWOP notice service form under Applicant's place to sign was indeed his signature. This is consistent with Applicant's testimony that he did not sign anything

cc: W.G.Y.
10/24/2024
*[Signature]**[Signature]*

received from the State. Trial Counsel testified that he did advise Applicant about the LWOP notice and its implications and that Applicant appeared to understand this discussion. However, Trial Counsel did not specify at what point during the representation or prior to trial their discussion occurred. Trial Counsel also alluded to a prior hearing where the receipt of the LWOP notice may have been put on the record, but was unsure whether this occurred and instead referred to the record. The trial record, including the portions cited in the Order of Dismissal (Trial Tr. p. 44; pp. 63-64) also do not reveal at which point Trial Counsel communicated the State's intent to seek LWOP to Applicant, and rather only that Applicant had previously turned a plea offer and then thereafter, the State gathered his prior convictions and then served the notice. Thus, there is insufficient evidence to show that Applicant received notice as communicated through Trial Counsel within the 10 days prior to trial as required by statute.

This Court also based its dismissal on Trial Counsel's acknowledgement of receipt of the notice of the State's intent to seek LWOP prior to the jury being sworn pursuant to *James v. State*, 372 S.C. 287, 641 S.E.2d 899 (2007). However, it is because Trial Counsel made this stipulation on behalf of Applicant rather than object that makes his performance both deficient and prejudicial because Applicant could not have been sentenced to LWOP during sentencing otherwise.

In light of the foregoing, Applicant requests this Court to vacate or amend its order on the basis that there is insufficient evidence in the record that Applicant was given actual notice of the State's intent to seek LWOP within 10 days prior to trial.

Respectfully Submitted,

s/ William G. Yarborough III

South Carolina Bar # 10271

WGY Law

308 West Stone Avenue

Greenville, South Carolina 29609

(864) 331-1612 | F: (864) 271-0711

COUNSEL FOR APPLICANT

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Telly McClam, # 00232709,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No. 2020CP800504

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Motion to alter or amend the judgment or grant relief therefrom was served upon Counsel for Respondent, Assistant Attorney General Danielle Dixon, via her AIS email address: DanielleDixon@scag.gov. A copy was also provided to the Honorable Judge Michael G. Nettles via email.

William G. Yarborough, III SC Bar# 10271

This the 22nd day of October, 2024.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Telly McClam, # 00232709,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No. 2020CP800504

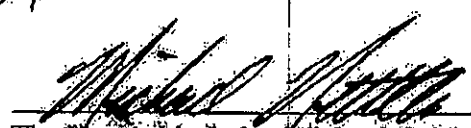
**ORDER DENYING APPLICANT'S
POST-HEARING MOTION TO ALTER
OR AMEND THE JUDGMENT OR
GRANT RELIEF THEREFROM**

This matter came before the Court by way Applicant's post-hearing Motion to Alter or Amend the Judgment or Grant Relief Therefrom pursuant to Rules 52(b), 59, and 60, SCRPC. This Court had issued a written Order of Dismissal on October 14, 2024 following two evidentiary PCR hearings held on March 10, 2022 and September 9, 2024.

Having reviewed the Applicant's Post-Hearing Motion, in conjunction with the PCR pleadings, transcripts, and the trial court record, this Court finds that the Order of Dismissal made sufficient findings of facts and conclusions of law specific to the allegations raised in the PCR application, as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRPC. This Court also finds that no fact, ground, or legal issue requires reconsideration or vacating of the Order of Dismissal. In light of the foregoing findings, the Applicant's Motion is denied.

IT IS THEREFORE ORDERED that Applicant's Post-Hearing Motion to Alter or Amend the Judgment or Grant Relief therefrom is DENIED.

AND IT IS SO ORDERED this 20 day of Nov, 2024.


The Honorable Judge Michael G. Nettles
Presiding Judge, Ninth Judicial Circuit

AMW2013-10-02670

WITNESSES

Berkeley County Sheriff's Office

DET on York JB

AGENCY CASE NUMBER

201310049196

ARREST WARRANT NUMBER

2013A0810401465

DATE OF ARREST

October 29, 2013

ACTION OF GRAND JURY

True Bill

Dorothy Bergin
person of Grand Jury

Date: 5-13-14

VERDICT

Walter White 3.3.16

For person of Petu Jury

Date:

INDICT

DOCKET NO. 2014GS0800653

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2014

THE STATE

vs.

TELLY DARNELL MCCLAM

DOB [REDACTED]

B/M

Indictment for

Kidnapping

MAFV F. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
14 MAY 13 PM 12:56

FILED

off

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on May 13, 2014 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That Telly Darnell McClam did in Berkeley County, South Carolina, on or about October 28, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one **Minor** **██████████** without authority of law, in violation of Section 16-03-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

AMW2013-10-02670

WITNESSES

Berkeley County Sheriff's Office

Det m Gail

AGENCY CASE NUMBER

201310049362

ARREST WARRANT NUMBER

2013A0810401467

DATE OF ARREST

October 29, 2013

ACTION OF GRAND JURY

True Bill

person of Grand Jury

5-13-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0800655

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2014

THE STATE

vs.

TELLY DARNELL MCCLAM

DOB: [REDACTED]

B/M

Indictment for

Burglary, First Degree

MAURY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 MAY 13 PM 12:56

FILED

William H. White 3.3.16

863
1.11.11

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on May 13, 2014 the Grand Jurors of Berkeley County present upon their oath:

Burglary, First Degree

That Telly Darnell McClam did in Berkeley County, South Carolina, on or about October 28, 2013, enter the dwelling of Johnnie Ruth Jenkins, located at [REDACTED], without consent and with the intent to commit a crime therein, to wit: kidnapping. That, in addition, defendant was armed with a .22 caliber revolver; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

AMW2013-10-02670

WITNESSES

Berkeley County Sheriff's Office

Det. M. G. 1st

AGENCY CASE NUMBER

201310049362

ARREST WARRANT NUMBER

2013A0810401470

DATE OF ARREST

October 29, 2013

ACTION OF GRAND JURY

True Bill

Det. M. G. 1st
person of Grand Jury

Date:

5/13/2014

VERDICT

William Andrew Hill
Foreperson of Petit Jury

Date:

INDICT

3.3.16

DOCKET NO. 2014GS0800658

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2014

THE STATE

vs.

TELLY DARNELL MCCLAM

DOB: [REDACTED]

B/M

Indictment for

Possession of a Weapon During the
Commission of a Violent Crime

MARY L. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 MAY 13 PM 12:59

FILED

865

KWm

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on May 13, 2014 the Grand Jurors of Berkeley County present upon their oath:

Possession of a Weapon During the Commission of a Violent Crime

That Telly Darnell McClam did in Berkeley County, South Carolina, on or about October 28, 2013, possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of kidnapping, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

AMW2013-10-02670

WITNESSES

Berkeley County Sheriff's Office

Der m Yields

AGENCY CASE NUMBER

201310049362

ARREST WARRANT NUMBER

2013A0810401471

DATE OF ARREST

October 29, 2013

ACTION OF GRAND JURY

True Bill

Dorothy B. Cyprien
Person of Grand Jury

5-13-14

VERDICT

Walter M. White 3.3.16

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0800659

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2014

THE STATE

vs.

TELLY DARNELL MCCLAM

DOB: [REDACTED]

B/M

Indictment for

*Unlawful Possession of a Firearm by a
Person Convicted of a Violent
offense*

FILED
14 MAY 13 PM 12:56
MARLYN B. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Kwm

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

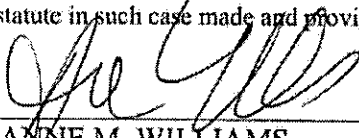
INDICTMENT

At a Court of General Sessions, convened on May 13, 2014 the Grand Jurors of Berkeley County present upon their oath:

Unlawful Possession of a Firearm by A Person
Convicted of A Violent Offense

That Telly Darnell McClam did in Berkeley County, South Carolina, on or about October 28, 2013, did willfully, unlawfully and feloniously have in his possession and under his control a handgun, to wit: .22 caliber revolver. This action is in violation of Section 16-23-0500(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

AMW2013-10-02670

WITNESSES

Berkeley County Sheriff's Office

R. Little

AGENCY CASE NUMBER

201310049362

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

October 29, 2013

ACTION OF GRAND JURY

True Bill

Person of Grand Jury
Date: *06-10-2014*

VERDICT

Foreperson of Petit Jury

Date: *3-3-16*

INDICT

DOCKET NO. 2014GS0800839

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

June Term 2014

THE STATE

vs.

TELLY DARNELL MCCLAM

DOB: [REDACTED]

B/M

Indictment for

Criminal Sexual Conduct, First Degree

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 JUN 10 PM 1:22

FILED

Hum

869
W. J.

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

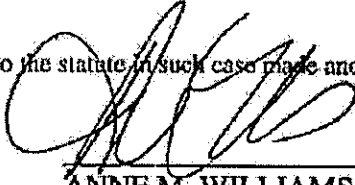
INDICTMENT

At a Court of General Sessions, convened on June 10, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct, First Degree

That Telly Darnell McClam did in Berkeley County, South Carolina, on or about October 28, 2013, commit a sexual battery upon the victim, **Minor Victim** without her consent, and with the use of aggravated force, to wit: fellatio; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR