

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenwood County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

Petitioner,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

APPENDIX

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The Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2023-001439

THE STATE,

Appellant,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

**RECORD ON APPEAL
VOLUME II OF II**

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1 THE COURT: All right. Step in the jury room real
2 quick.

3 (The following takes place outside the presence of
4 the jury panel)

5 MR. FRAZIER: Your Honor, I would like to object
6 to the evidence being entered into evidence on the grounds
7 of the different amount of weights and it failed to
8 maintain -- maintain custody of equipment.

9 THE COURT: Y'all done with him?

10 MR. MORONEY: We are.

11 THE COURT: Yeah, you can step down.

12 THE WITNESS: Thank you.

13 THE COURT: Go ahead.

14 MR. FRAZIER: Yeah, it failed to maintain -- it
15 failed to maintain custody level.

16 Also the different amounts of weight and different
17 people saying that they found the drugs.

18 Also on grounds that I wasn't provided with this
19 until during trial.

20 And also with the -- with the amount -- the time
21 span in between it being held in evidence, that means that
22 the drugs could have been tampered with any time, and on the
23 evidence report of it being checked in and out of evidence
24 so many times. It was clear that the drugs could have been
25 tampered with.

1 Also from the two different officers stating one
2 found drugs at one place and another officer stating that
3 the other officer found drugs at another place.

4 THE COURT: You got to be more clear on that.
5 What are you talking about?

6 MR. FRAZIER: Okay. Well, from the detective --
7 from Mr. McAllister saying that he assisted Trotter, came to
8 the hospital and assisted Trotter, and Mr. McAllister
9 stating on the warrant that he found drugs on my possession.

10 THE COURT: No. No. That's not -- that's
11 semantics. He didn't testify to that. He testified he went
12 to the hospital, Trotter immediately gave it to him, he was
13 in the hospital less than five minutes, hardly walked in the
14 door of the examination room.

15 MR. FRAZIER: No, he testified and said that he
16 did the warrant.

17 THE COURT: He did. He did, but --

18 Hand me the warrant. I heard you read the warrant
19 to him and I didn't think that was necessary, but he didn't
20 testify he got it off the person. He said it was on your
21 person before you were in constructive possession of it, I
22 believe.

23 MR. FRAZIER: He stated that he found drugs on the
24 person's possession, drug person's possession.

25 THE COURT: Hand me a copy of that warrant. I

1 thought it said drugs were found in possession, not that he
2 found. Let me have a copy of that.

3 The sentence reads "a search of his person
4 revealed a baggy containing crystal-like substance." He
5 didn't say he found it. It didn't say he conducted a
6 search. That a search was conducted.

7 MR. FRAZIER: It states World Finance too.

8 THE COURT: That's fine. This -- this is not
9 going to the jury. It's not -- that's not two different
10 places. It's consistent.

11 MR. FRAZIER: Listen, Your Honor, he states
12 that --

13 I will also make an objection because they didn't
14 introduce it before they started questioning -- well Trotter
15 admitting it into evidence. Okay?

16 THE COURT: No, wait, wait, wait a minute. Let me
17 hear that one more time. I'm not sure I understood what you
18 just said.

19 MR. FRAZIER: Okay. I also object because they
20 didn't introduce it before they tried to place it in
21 evidence.

22 THE COURT: All right. Hang on one second.

23 Weren't y'all done with your direct examination of
24 the witness before you offered it in evidence and offered
25 him an opportunity to cross-examine the witness and he said

1 no questions and then on redirect you tried to introduce it?

2 MR. MORONEY: (Shaking head yes).

3 THE COURT: Ms. Bolen, do you want to advise him
4 on any of that?

5 MS. BOLEN: Yes, sir, I can step back.

6 THE COURT: Okay.

7 THE WITNESS: All right.

8 MS. BOLEN: I was trying to.

9 (Off the record)

10 (Back on the record)

11 MR. FRAZIER: Your Honor, objection on the grounds
12 that they didn't introduce the evidence while they were
13 questioning -- try to admit the evidence -- admit the drugs
14 into evidence while they --

15 THE COURT: I heard you on that one.

16 Let me hear you in that, because as I -- did I
17 correctly summarize the SLED analyst was questioned through
18 direct, questioning was terminated, cross-examination was
19 allowed. He chose not to question and answer any questions
20 and then the State attempted to introduce State's Exhibit 4?
21 Is that right?

22 MR. MORONEY: That is correct, Your Honor.

23 THE COURT: Why do you get it in?

24 MR. MORONEY: Beg a moment of the court's
25 indulgence.

1 THE COURT: I'll give you some time too.

2 MR. MORONEY: Okay.

3 (Off the record)

4 (Back on the record)

5 MR. MORONEY: Your Honor, I -- I understand the
6 argument Mr. Frazier is making at this point. We just ask
7 to recall a witness, a previous witness in the chain.

8 MR. FRAZIER: Your Honor, since they didn't do it
9 while he was there, they should not have a chance to go back
10 and recall a witness.

11 THE COURT: He hadn't rested yet. He just excused
12 that witness.

13 MR. FRAZIER: But they shouldn't have a chance to
14 go back and try to admit the evidence after they didn't try
15 to admit the evidence while the SLED forensic evidence.

16 THE COURT: That's a good argument, but I think
17 he's right on this one. He can't get -- if he's done, he
18 may be done, but --

19 Let's take a few minutes break. All right?

20 MR. MORONEY: All right.

21 THE COURT: Who are you going to call?

22 MR. MORONEY: One moment. Let me coordinate just
23 to see who the closest, most convenient for the court.

24 Are we on break, Your Honor?

25 THE COURT: We will stand down for a couple of

1 minutes.

2 (Whereupon, proceedings were recessed).

3 (Whereupon, proceedings were reconvened).

4 THE COURT: All right, back on the record.

5 Bring them in.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: All right, Mr. Moroney.

9 CONT'D DIRECT EXAMINATION BY MR. MORONEY:

10 Q. Mr. Robinson, just to clarify, with that BEST pack
11 control number that you read to us, was that associated with
12 the Greenwood City case?

13 MR. FRAZIER: I object, Your Honor.

14 THE COURT: On what basis?

15 MR. FRAZIER: I have a matter of court of law.

16 I object that he had a chance --

17 THE COURT: Okay.

18 Y'all step back in the jury room. I got one more
19 thing to put on the record. It's important.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: Okay.

23 MR. FRAZIER: I object on the ground that they had
24 a chance to admit the evidence. He was there and he had a
25 chance to do it. He stopped. He closed his -- he closed

1 the SLED thing, told him he could step down and he shouldn't
2 be able to go back and pull the SLED agent back on the stand
3 and retry to admit evidence.

4 THE COURT: All right.

5 Ms. Bolen, you got some law that he's going to
6 present to the court, since you are advising him on the law?

7 MS. BOLEN: Let me pull some up, Your Honor.

8 (Off the record)

9 (Back on the record)

10 MR. FRAZIER: Your Honor?

11 THE COURT: Yes, sir.

12 MR. FRAZIER: Under State v. Broome, 274 S.C. 189,
13 1980, the State can recall a witness in rebuttal to
14 defenses.

15 MS. BOLEN: My handwriting is bad, Your Honor. I
16 apologize.

17 MR. FRAZIER: Okay. The State can recall a
18 witness in rebuttal to a defense case. This is not in
19 rebuttal. It's not the State's case in chief.

20 THE COURT: It is the State's case in chief.

21 MR. FRAZIER: It is the State's case in chief.

22 And State v. Gee, 1974, 262 S.C. 373.

23 Again, State can recall a witness as rebuttal, but
24 not in -- again, State can recall a witness as rebuttal but
25 not in State's case in chief.

1 No agreement has -- there is no agreement in this
2 case -- in the State's case and defense to allow or permit a
3 recall.

4 THE COURT: Okay. How are you going to get around
5 a recall?

6 MR. MORONEY: Your Honor, we are not in a recall
7 phase right now. If you recall, this is redirect still and
8 the jury was sent out on a motion for a matter of law.

9 We discussed it off the record earlier about I
10 might have a recall. This is on redirect.

11 MR. BOLEN: Your Honor, I was advising him one
12 more point of law.

13 THE COURT: Okay.

14 MR. MORONEY: Let me just --

15 THE COURT: You can respond.

16 MR. MORONEY: This isn't a recall, as the defense
17 is arguing. We have got case law on this. We cite --

18 THE COURT: Hang just a second. Let's do this.
19 Let me ask you this. Y'all are not calling any more -- do
20 y'all intend to call more witnesses in your case? You may
21 rest. I don't know what Mr. Frazier is saying.

22 What I'm thinking is can I go ahead and send the
23 jury home and maybe we think about it overnight and come
24 back and figure it out, but I don't want to get to have this
25 witness to have to come back.

1 MR. MORONEY: I would say the --

2 THE COURT: Let's hold onto the jury for a minute.
3 I was trying to think could we let the jury go on home or
4 not. Let's don't do that.

5 MR. MORONEY: Correct.

6 THE COURT: All right. Let me -- y'all start
7 looking up your law and let me hear from Mr. Frazier one
8 more time.

9 MR. FRAZIER: Okay. They cannot redirect when
10 defendant did not cross-examine.

11 THE COURT: That's the facts we have got here.
12 Why are you allowed to follow up? The first witness he's
13 asked no questions to is this witness.

14 MR. MORONEY: Correct.

15 MS. BOLEN: Yes, sir.

16 MR. MORONEY: Okay. And pursuant -- so we will
17 call this as a recall of a witness situation then, Your
18 Honor.

19 THE COURT: All right. Then why are you calling
20 it a recall?

21 MR. MORONEY: Pursuant to State v. Singleton, 395
22 S.C. 6, the witness may be reexamined as to the same matters
23 to which he testified in the discretion of the court and as
24 to any new matter brought out during cross-examination.

25 Rule 611 South Carolina --

1 THE COURT: That doesn't apply. No new matter on
2 cross-examination, so --

3 MR. MORONEY: Right, but --

4 THE COURT: We are not in this subsection of it,
5 so --

6 MR. MORONEY: I'm reading what you --

7 THE COURT: -- try to get me to exercise
8 discretion.

9 MS. BOLEN: What's the cite for that again?

10 MR. MORONEY: 395 S.C. 6, 716 S.E.2d 332.

11 "And the decision to recall a witness in reply is
12 left to the sound discretion of the trial court."

13 MR. FRAZIER: Your Honor, under Singleton, the
14 case is about whether the State can call a reply witness who
15 was not sequestered. In Singleton the State called a reply
16 rebuttal witness after defense presented its case. Here the
17 defense has not presented its case, so it is improper for
18 the State to call a reply rebuttal witness.

19 THE COURT: Okay. And for the record you are
20 right. This is not a reply witness, nor is it a rebuttal
21 witness. The State hasn't rested. They are still in their
22 case in chief, so you are right on that, but that's not
23 the -- I don't think that case is the right one for this
24 factual scenario that I have, because the State hasn't
25 rested, but can they recall this witness since you didn't

1 cross-examine him?

2 MS. BOLEN: And, Your Honor, I think I was just
3 advising him as to the law on the case that the State
4 brought up. I can see if there is any other --

5 MR. MORONEY: Your Honor, when you are done
6 reading.

7 THE COURT: Okay.

8 MR. MORONEY: I mentioned Rule 611 and its
9 particular Subsection D is the one I want to draw your
10 attention to. The reexamination and recall, a witness may
11 be reexamined as to the same matters to which he testified
12 only in the discretion of the court, but without exception
13 may be reexamined as to any new matter brought out during
14 cross-examination. I understand there is no
15 cross-examination here. After the examination of the
16 witness has been concluded by all the parties to the action,
17 that witness may be recalled only in the discretion of the
18 court.

19 THE COURT: I think it's court discretion. I
20 believe -- I really do. I believe it is.

21 MS. BOLEN: That's right. Is that Rule 611?

22 MR. MORONEY: 611, subsection D.

23 MS. BOLIN: I just want to make sure, Your Honor.

24 THE COURT: That's where I believe it falls to is
25 the discretion of the court.

1 MR. MORONEY: And, Your Honor, you know, the
2 foundation has been laid extensively I would suggest and
3 this is certainly --

4 THE COURT: Okay.

5 MR. MORONEY: -- in the scope of what he's
6 testified to, and it is your discretion to approve. We move
7 subsequently here to admit the evidence, for you to admit it
8 into evidence.

9 (Off the record).

10 (Back on the record).

11 MR. FRAZIER: Your Honor, I feel like they had
12 their chance. They should not have a chance to recall a
13 witness -- I mean should not have a chance to go back and do
14 it again, plus they didn't present the evidence. And under
15 the 1611 (sic) it could violate the due process clause, and
16 it also states that they cannot introduce new evidence.

17 THE COURT: Okay. I agree with you on that rule,
18 but it's in the discretion of the court. This piece of
19 evidence has been identified by a half dozen different
20 witnesses. It's been analyzed. I think this comes in,
21 okay?

22 Now, I want -- I'm going to let it in. It's
23 State's 4. It's been marked and identified all the way down
24 the line.

25 If you got any more questions of this witness -- I

1 don't think he would be able to reexamine this witness.

2 MR. FRAZIER: Your Honor, also -- also I look at
3 the places from one officer saying like -- Mr. McAllister
4 stating that it was found on the possession at World -- on
5 the suspect's person or possession at World Finance; the
6 other officer stating that the drugs were found at the
7 hospital and not by the officer. McAllister stated the
8 officer found the drugs --

9 THE COURT: And you can argue -- you can argue all
10 that, but the testimony has been consistent how the drugs
11 were found.

12 MR. FRAZIER: But it's two different -- it's --
13 then the other officer --

14 THE COURT: The thing is you are not on trial --
15 you are not on trial for an arrest warrant. You were
16 arrested on the scene and arrest warrant was served on you.
17 The fact that the English and the grammar utilized by
18 Captain McAllister you have some issues with, you can argue
19 and say "the arrest warrant says this," but you are formally
20 charged under the indictment that said that you were in
21 actual or constructive possession of between 10 and 28 grams
22 of methamphetamine. That's what you are on trial for is
23 what's in the indictment, not what's on the booking report,
24 not what's on the arrest warrant, not what the officer was
25 thinking when he was weighing the stuff and field testing.

1 It's the indictment.

2 MR. FRAZIER: And also about the drugs, where
3 there drugs were found.

4 THE COURT: That's argument. They have all
5 testified. You can argue that. They presented what they
6 presented. I can't say -- I mean, what you are describing
7 to me is a question of fact. That's a jury question.

8 MR. FRAZIER: I think the search -- the search
9 thing also.

10 THE COURT: That's -- I have ruled that the
11 hospital employee was not under the requirements of a police
12 officer. They are different.

13 MR. FRAZIER: I think that after a person has been
14 placed under handcuffs, there are procedures.

15 THE COURT: That's your argument. This evidence
16 is coming in. I'm going to admit it, but you are protecting
17 your record.

18 All right. Now, do we need any more from this
19 witness?

20 MR. MORONEY: Just to clarify, Your Honor, we
21 could have him -- be done with him and then I would move to
22 admit the evidence.

23 THE COURT: It's in. State's 4 is now in --

24 MR. MORONEY: Okay.

25 THE COURT: -- subject to objection. And I will

1 grant leave to provide additional -- if Ms. Bolen wants to
2 help you, provide additional grounds to support your
3 objection to make your record complete, she can do that.

4 MR. FRAZIER: Okay.

5 MR. MORONEY: Your Honor, can I --

6 THE COURT: It's in.

7 MR. MORONEY: I would just ask that we do that in
8 front of the jury.

9 THE COURT: I'm going to tell them the evidence is
10 in now.

11 MR. MORONEY: And then --

12 THE COURT: So he can step down.

13 MR. MORONEY: For continuity purposes they've seen
14 him up there. Now he's going to be missing.

15 THE COURT: No, just let him sit right there. He
16 will just step down so --

17 MR. MORONEY: Okay.

18 THE COURT: I'll explain it to them. We have been
19 arguing a legal issue.

20 All right. Now, let's get them in and get them
21 out of here so --

22 MR. MORONEY: I move to enter.

23 MR. FRAZIER: Are they reopening?

24 THE COURT: No, they are not. They are not
25 reopening. They are not going to question him any further.

1 They are just going to move the evidence in. It's been
2 identified, analyzed, talked about, discussed. The chain
3 was complete. They can just move it in and that's what they
4 have done.

5 MR. MORONEY: Just to clarify, Terrence, we are
6 going to move to enter into evidence.

7 THE COURT: And I am filling in -- pursuant to the
8 Supreme Court, I'm able to fill in the gaps of the custodian
9 within the walls of SLED. Those were properly identified,
10 consistent with the State v. Hart. Is that the case?
11 Whichever it is.

12 MR. MORONEY: Hatcher.

13 THE COURT: Hatcher.

14 Those gaps were filled in and those were -- the
15 chain of custody within the walls of SLED have been
16 completed.

17 The Greenwood County, Greenwood City employees,
18 those all within the chain have testified.

19 All right. Are you going to rest?

20 MR. MORONEY: We are going to move to admit the
21 evidence in front of the jury?

22 THE COURT: Yeah.

23 MR. MORONEY: Then rest.

24 THE COURT: I'm going to get them out of here, if
25 you are done, because they have been sitting back there for

1 about thirty minutes. I'm worried about them sitting back
2 there too long. That's my big pet peeve.

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT: All right.

6 MR. MORONEY: Your Honor, at this time I would
7 move that State's Exhibit 4 marked for identification be
8 admitted into evidence.

9 THE COURT: It would be admitted, subject to the
10 objections, all of them put on the record by Mr. Frazier, on
11 all the grounds. They are reaffirmed -- I mean placed on
12 the record appropriately. It's admitted subject to the
13 objection. It's in evidence.

14 (Whereupon, State's Exhibit No. 4 was entered into
15 the record as evidence)

16 MR. MORONEY: Your Honor, the State rests.

17 THE COURT: All right. Now, folks, I mean, the
18 State has presented all it's going to present in its case in
19 chief. I have got a few more things to deal with on the
20 record.

21 We'll start back in the morning at 9:30. I'm
22 going to send y'all home. I'm sorry I couldn't have done it
23 thirty minutes ago, but I wasn't sure whether it was more
24 witnesses, but the State is done with its witnesses.

25 Y'all be back in the jury room tomorrow morning at

1 9:30. We'll see you at 9:30 sharp. No, I'm sorry, take
2 that back. Let's go at ten o'clock. I have got to present
3 something to a high school on career day type thing at eight
4 o'clock in the morning at Mid Carolina and as soon as I get
5 done with that I'm going to fly over here. Ten o'clock.
6 Sorry about that, folks.

7 (The following takes place outside the presence of
8 the jury panel)

9 MR. FRAZIER: Your Honor?

10 THE COURT: Hang on.

11 All right. The State has rested.

12 You have got some motions, Mr. Frazier?

13 MR. FRAZIER: Yes. I would like to move for a
14 directed verdict on the grounds of insufficient evidence for
15 lack of investigation.

16 THE COURT: On which indictment?

17 MR. FRAZIER: On the carjacking indictment and --

18 THE COURT: Okay.

19 MR. FRAZIER: And the trafficking and auto
20 breaking.

21 THE COURT: All right. Let's do them one at a
22 time.

23 Tell me about the carjacking.

24 MR. FRAZIER: And the grand larceny also, Your
25 Honor.

1 THE COURT: Tell me about the carjacking. Why is
2 there insufficient evidence for the jury to consider that
3 indictment?

4 MR. FRAZIER: It's insufficient evidence. It does
5 not prove or establish use of force.

6 The -- hold on, Your Honor.

7 THE COURT: All right. Regarding intimidation.
8 The witness, the lady, had the Kevin Harvick T-shirt on.
9 The victim owned the white truck. She said "I came out to
10 the back wheel of my truck" and then she retreated back
11 towards the door when she felt "I was fighting a losing
12 battle," or some words to that effect. And then she turned
13 around and said -- was asked the question "how did she
14 feel?" She said "I felt frightened and intimidated." Those
15 facts and her actions of retreating are sufficient to go to
16 the jury.

17 Force --

18 MR. FRAZIER: Your Honor --

19 THE COURT: -- force and violence or by
20 intimidation.

21 MR. FRAZIER: Your Honor?

22 THE COURT: Okay. So on that basis it goes to the
23 jury.

24 MR. FRAZIER: Your Honor?

25 THE COURT: I'm not looking for weight. I'm

1 looking for any evidence.

2 MR. FRAZIER: No, I'm looking at the -- she stated
3 she also was angry and she charged at the victim. That does
4 not state intimidation. She was not intimidated out of her
5 vehicle. If something was thrown at her vehicle, she was
6 not intimidated out of her vehicle. She could have kept
7 going. If she --

8 THE COURT: I agree with you. I agree with you.
9 She came out of her vehicle to the back corner. Then she
10 started retreating. That's when she started getting afraid.

11 MR. FRAZIER: Okay. But she also charged at the
12 suspect afterwards and there was no use of force. If she
13 was intimidated, she wouldn't have never attacked --

14 THE COURT: No, there was testimony from the clerk
15 at the window, the owner of the Chick-fil-A, that there was
16 a push, a shove, or a tussle, those words.

17 MR. FRAZIER: Okay.

18 THE COURT: That is force.

19 MR. FRAZIER: They all -- they all -- okay.

20 Listen. The witness at the window, she could not
21 properly identify a suspect. She only stated a black male.

22 THE COURT: No, no, no, no. Don't get what she's
23 confused about. What she wasn't confused about was the
24 tussle. There was a black male and Mrs. Chatos were in a
25 tussle.

1 MR. FRAZIER: She never --

2 THE COURT: She was -- she was very clear about
3 that, so you are wrong on that one.

4 I'm looking at whether there is enough evidence
5 for the jury to consider. You are arguing for me whether
6 they proved it beyond a reasonable doubt. That's their
7 problem. If there is enough evidence for the jury to
8 consider it, I deny the motion. There is enough evidence to
9 get by the intimidation and the violence issue. They
10 presented evidence of intimidation and violence in the light
11 most favorable to them.

12 MR. FRAZIER: Your Honor -- okay. So intimidation
13 means that -- carjacking states that use of force, a person
14 being forced out of their vehicle by intimidation or
15 violence. Not after they got out of their vehicle.

16 THE COURT: There is plenty of facts for the jury
17 to consider whether or not force was used.

18 You want to argue it wasn't too much, it was not
19 too much at all. As a matter of fact she got out of the car
20 voluntarily.

21 MR. FRAZIER: Also --

22 THE COURT: She retreated trying to get to the
23 safety of her door. Her testimony -- I'm using her
24 testimony. I'm not telling you what I believe. The jury
25 has got to believe it. What I heard --

1 MR. FRAZIER: Also --

2 THE COURT: -- she -- she testified that she
3 retreated to her door jamb looking for more safety,
4 security. Her car was her security. And then the tussling
5 ensued and she fought back. There is no question -- she
6 said she grabbed you around the neck very tightly. She
7 would not have done that if she didn't think there was force
8 and violence going on, and she didn't grab you around the
9 neck to put you in the car.

10 MR. FRAZIER: Also surveillance -- their
11 surveillance of that, and it doesn't show --

12 THE COURT: That directed verdict motion is
13 denied. Move onto something else. I'm looking where there
14 is facts for the jury to consider, not whether or not the
15 State proved it. There's a difference.

16 MR. FRAZIER: Okay.

17 THE COURT: Are there any facts for the jury to
18 consider? Yes. That's what I'm trying to do in a directed
19 verdict motion.

20 If it's not enough to prove it beyond a reasonable
21 doubt, that's what the jury decides. Twelve members
22 unanimously did the State prove that element beyond a
23 reasonable doubt? I'm not considering that portion. That's
24 what you are arguing with me on --

25 MR. FRAZIER: Okay.

1 THE COURT: -- is whether or not they have proved
2 it beyond a reasonable doubt. That's a different issue.

3 MR. FRAZIER: Okay.

4 THE COURT: The issue is is there evidence
5 presented to the court record considered -- that can be
6 considered by the jury as an element and their answer is
7 yes. Okay?

8 MR. FRAZIER: All right.

9 THE COURT: You -- I want you to understand what
10 my threshold for the directed verdict motion is. It's not
11 the same as proof beyond a reasonable doubt. It's slightly
12 different. I'm not weighing the evidence. I'm considering
13 whether there is evidence present to weigh it.

14 MR. FRAZIER: Okay.

15 THE COURT: If there is nothing for the jury to
16 weigh, then, you know, I go your way. I say yes, you are
17 correct, but there is facts and testimony, if believed, the
18 jury could consider that she was scared.

19 MR. FRAZIER: Okay.

20 THE COURT: All right.

21 MR. FRAZIER: Also on the -- on the possession of
22 methamphetamine --

23 THE COURT: Hang on one second. I'm getting
24 called from my grandmother. She's 96. I never get calls
25 from her.

1 (Off the record).

2 (Back on the record).

3 THE COURT: All right. Keep on coming with your
4 motions.

5 MR. FRAZIER: Trafficking methamphetamine
6 different weights, different places that it was claimed to
7 be found or he say she say stating and --

8 THE COURT: All right. Now, any evidence? Is
9 there any evidence present? You are arguing questions of
10 fact and what and how much proof. There is enough -- there
11 is enough on the trafficking and the differing weights.
12 That goes to the weight of the evidence the State produced.

13 Now, I note for you, so you understand, you are
14 charged with possession of more than 10, but less than 28,
15 and they have been hitting within a half gram of 20 grains.
16 They have 20 and change, 20 and change, and 19.92, something
17 along those lines, so it's within that range on every single
18 conceivable witness' testimony, and the State offered an
19 explanation as to why the preliminary weights were heavier
20 because it was weighed within its packaging, so I'm going to
21 deny on that basis also.

22 MR. FRAZIER: Auto breaking. Nothing was broke.

23 THE COURT: All right. The indictment reads "it's
24 unlawful to break, or attempt to break, into a motor
25 vehicle." She didn't give you permission to go in her car.

1 MR. FRAZIER: Nothing was broke.

2 THE COURT: No, no, no, nothing broken. There
3 is -- nothing has to be broken.

4 MR. FRAZIER: All right.

5 THE COURT: It's taking control and putting your
6 hand inside.

7 MR. FRAZIER: All right.

8 THE COURT: So respectfully that motion for
9 directed verdict is denied.

10 MR. FRAZIER: Okay. And grand larceny, no proof
11 of actual cost of car.

12 THE COURT: We discussed that in depth. A 2014
13 Chrysler 300, the court, and anyone, can take notice that's
14 a newer car. The cleanup guy said it was top, top shelf,
15 top quality.

16 MR. FRAZIER: That's hearsay, Your Honor.

17 THE COURT: No, it's not. It's his direct
18 observation of the quality of the car and he works on them.

19 There is ample testimony that the value of the car
20 was more than \$10,000. It might not be twenty. She said
21 they paid twenty-seven for it when they bought it new. It's
22 a 2014 model, so it can't be more than a year old.

23 MR. FRAZIER: What about under Rule Five
24 violation, evidence wasn't provided before or in a proper
25 amount of time for the defendant to prepare in the timely

1 manner or legal timely manner?

2 THE COURT: Whichever.

3 MR. FRAZIER: See, the SLED report, the chain of
4 custody, the evidence report, and the disks and the extra
5 statements and extra witnesses was not provided in the
6 proper amount of time, wasn't provided thirty days before
7 trial and some were provided the day of trial. And also the
8 jail management intake report.

9 Also the indictments. They were provided on --
10 some were provided on 7-12 -- I mean -- I mean 11-12, and
11 some were provided on the day of trial.

12 And it's also paperwork stating that the other
13 ones were provided, the disks and all that were provided on
14 11-12.

15 THE COURT: Do you want to be heard on that?

16 MR. MORONEY: If you would like, we are speaking
17 solely with respect to the Rule Five motion, or are we still
18 on directed verdict?

19 THE COURT: Oh, no, we are on Rule Five.

20 MR. MORONEY: Just a Rule Five issue.

21 I think we addressed much of these allegations
22 earlier. He was provided with everything that we have
23 documented.

24 With respect to some of the items we received this
25 week, we received a motion for speedy trial and I had to

1 rush to get the SLED results. The first time we put the
2 hands on the chain of custody was this week when the drugs
3 were brought over from Columbia. We gave it to Mr. Frazier
4 as soon as we got a copy.

5 The indictments --

6 MR. FRAZIER: Could you --

7 MR. MORONEY: The Grand Jury --

8 MR. FRAZIER: Could you say -- do you have copies
9 of the motions that was put in, the dates?

10 THE COURT: Motions? Which motions?

11 MR. FRAZIER: The motions that was put in from the
12 defense through the Clerk of Court. I put in motions
13 through the Clerk of Court of the Rule Five and all that.

14 THE COURT: All right. Your record is protected.
15 You made Rule Five motions and they tried to comply with
16 them, and because of the speedy trial motion you accelerated
17 their discovery process. The SLED report was retrieved and
18 SLED analysis retrieved back on Monday at one o'clock.

19 The chain of custody, they called everybody in the
20 chain, except the SLED people, which they generally allow
21 the gaps to be filled in, so I don't see that it's nothing
22 but a harmless error.

23 MR. FRAZIER: What about the --

24 THE COURT: If they didn't call all the chain
25 witnesses, I might be with you, but they called all the

1 chains witnesses from Greenwood that touched the evidence.

2 MR. FRAZIER: There is other evidence and the fact
3 that they used at trial that was not provided to me in the
4 timely manner for trial of me to prepare a defense for
5 myself.

6 I also stating to see copies of video statements
7 also that I received on 11-12.

8 THE COURT: You didn't make a motion for a
9 continuance right when we started, did you?

10 MR. FRAZIER: A motion for contempt?

11 THE COURT: Continuance. I don't remember it.

12 MR. FRAZIER: No, I didn't. I never made a motion
13 for continuance, but I would like to make a motion for a
14 continuance now.

15 THE COURT: No, you can't do it after you start --

16 MR. FRAZIER: But --

17 THE COURT: If you had asked for a motion for a
18 continuance right before we swore the jury, I would have
19 probably granted it, since the SLED analysis weren't in your
20 hand, but I'm not going to do it now. You can't now.

21 MR. FRAZIER: I understand that.

22 THE COURT: Once the ship unties from the dock,
23 you sail. You are the one that asked them to untie it as
24 quick as possible by making a speedy trial motion.

25 MR. MORONEY: Your Honor, he's had the SLED

1 analysis the minute -- I rushed that SLED analysis and he's
2 had it since the day I got it in my hand, which was Monday.
3 I have to look at the date, but it was Monday.

4 THE COURT: He's really not challenged it wasn't
5 met. He's challenging how they got it.

6 MR. FRAZIER: I'm challenging that it wasn't met,
7 that they didn't -- they didn't meet the time management
8 provided --

9 THE COURT: You stipulated the qualifications to
10 the analyst. You have not challenged one bit in your
11 cross-examination of whether or not that drug was
12 methamphetamine. You challenged how they acquired it from
13 you. It's a totally different issue. That's a search issue
14 you have been arguing, not analysis and weight issue. You
15 are changing your argument on me.

16 MR. FRAZIER: I'm talking about the time frame
17 manner of the Rule Five.

18 THE COURT: Yeah, I understand.

19 I don't believe there is any substantive
20 violation. I'm going to deny your request. You should have
21 asked for a continuance if you didn't have everything in
22 discovery.

23 Anything else? Tell you what. You got all night.
24 I need to run. My grandmother was taken to the hospital.
25 That's why I got that call and --

1 MR. FRAZIER: Okay.

2 THE COURT: -- they have rested, so you got to
3 decide whether or not you want to present witnesses
4 tomorrow --

5 MR. FRAZIER: Okay.

6 THE COURT: -- if any at all. If you want to
7 testify or not, you get to think about that overnight. And
8 before you do that, if there is anything else you want to
9 put on the record, as far as motion, I'll allow you the
10 opportunity in the morning. So I'll give the night to think
11 about it. Fair enough?

12 MR. FRAZIER: All right. Okay.

13 THE COURT: All right.

14 (Whereupon, proceedings were adjourned to November
15 19, 2016)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENWOOD) IN THE COURT OF GENERAL SESSIONS
3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 TERRENCE O'NEIL) 2015-GS-24-1603
7 FRAZIER,) 2015-GS-24-1604
8 DEFENDANT.) 2015-GS-24-1605
9) 2015-GS-24-1606
10) 2015-GS-24-1632
11) NOVEMBER 19, 2015
12) GREENWOOD, SOUTH CAROLINA

(VOLUME IV)

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE. ; And a Jury.

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

BRIAN MORONEY, ASSISTANT SOLICITOR
MICAH BLACK, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

DEFENDANT APPEARING PRO SE

PATRICIA BOLEN, ASSISTANT PUBLIC DEFENDER
ELIZABETH ABLE, ASSISTANT PUBLIC DEFENDER
APPEARING FOR DEFENDANT AS STANDBY COUNSEL

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

1 (PROCEEDINGS, NOVEMBER 19, 2015).

2 THE COURT: All right, we are back on the record.

3 Mr. Frazier, you and Ms. Bolen had a chance to
4 visit last night and some this morning. Is there anything
5 else we need to put on the record before we call the jury in
6 and you can call your witnesses?

7 MR. FRAZIER: Yes, sir, Your Honor.

8 I would like to -- since this is a court
9 procedure, a discussion about the drugs yesterday?

10 THE COURT: Yes, sir.

11 MR. FRAZIER: I would like to ask for you to allow
12 us to continue to search, since it wasn't for sure -- for
13 sure the decision was in the court's discretion.

14 THE COURT: Well, here is the way it works. I
15 read the law what I thought was appropriate. I considered
16 the rule and the law that the solicitor presented and I
17 considered several cases that you and Ms. Bolen presented.
18 It was my determination that allowing the State to introduce
19 the evidence, even without the benefit of the witness, was
20 in the court's discretion. The State's case was still in
21 the case in chief. They had not rested at that time. And
22 so based upon that, utilizing the court's discretion,
23 State's Exhibit 4 was admitted into evidence subject to your
24 objection. So your objection saying I may have made a
25 mistake is preserved and can be argued later, but once I

1 make a ruling, I generally stick with it, unless you can
2 show me I'm absolutely wrong right now. Once I make a
3 ruling I stick with it. If I'm wrong, there is another
4 court that can consider what I heard, what I did, which
5 rules I applied and whether or not I was right or wrong.
6 But --

7 MR. FRAZIER: So if we can provide a way right
8 now?

9 THE COURT: If you want me -- do you want to give
10 me another case to consider, I'll read it.

11 MR. FRAZIER: That's what I'm asking. Can we
12 continue to research?

13 THE COURT: Well, I mean, are you asking to
14 continue to research? You can hand me a case right now, if
15 that's continuing, yes, but we are not going to delay this
16 trial more than another five minutes.

17 MR. FRAZIER: Okay. Well, just give us five
18 minutes, Your Honor.

19 (Off the record).

20 (Back on the record).

21 MR. MORONEY: Well, I would like to clarify the
22 record on a previous issue we addressed regarding the Self
23 security employee and the search there. I think we
24 established on the record that he -- it's the State's
25 position he was an employee of Self Regional and, therefore,

1 not a state actor, and it's the State's position it would
2 not be a Fourth Amendment violation for an unreasonable
3 search or seizure because he was not acting as an agent for
4 the City of Greenwood Police Department or Officer Donald
5 Trotter. He was acting solely at the protocol as an
6 employee of Self Regional when that -- when the drugs were
7 located.

8 THE COURT: All right. And you placed all that on
9 the record earlier.

10 (Off the record)

11 (Back on the record)

12 MR. FRAZIER: Your Honor, also since the State and
13 the prosecutors stated they notified me orally of the disks
14 of the evidence that was in -- that was evidence that was
15 placed in the evidence locker, I would like call them as a
16 witness.

17 THE COURT: You can't do that.

18 MR. FRAZIER: Okay. Yes, sir, Your Honor.

19 THE COURT: You can't call them as witnesses.

20 They represented to the court they brought you all
21 the discovery, and that's one of the odd problems and I did
22 not allow them to utilize the magazine and the dollar
23 bill -- or the \$20 bill because they believed it was part of
24 the exhibit they had handed to you and they told you that,
25 but it was not listed individually.

1 MR. FRAZIER: Uh-huh.

2 THE COURT: They didn't have a copy of what they
3 proposed to introduce and I didn't allow those for that
4 reason, but the disks clearly were given to you because you
5 had a copy of them and they utilized their disks, so what
6 they provided is what they provided and you can't call them
7 as witnesses.

8 MR. FRAZIER: Okay. Also I would like to have all
9 evidence that's not admitted into it suppressed.

10 THE COURT: Only the evidence that's in. It's
11 only four exhibits?

12 MR. MORONEY: Just two items in evidence, Your
13 Honor, the surveillance video and the drugs.

14 THE COURT: Yeah, there's only two things in.

15 MR. FRAZIER: The surveillance video and the
16 drugs. Everything else the jury doesn't get to see.

17 MR. FRAZIER: Okay.

18 THE COURT: All right.

19 MR. FRAZIER: I just want to make sure, Your
20 Honor.

21 THE COURT: Now, the map, the other red map, that
22 wasn't introduced. It's just a map --

23 MR. FRAZIER: Yeah, I understand.

24 THE COURT: -- but you can call your attention to
25 it or -- that's not in evidence either.

1 MR. FRAZIER: Okay.

2 THE COURT: The jury's basic question is going to
3 be the believability of all of the eyewitnesses. That's the
4 case as the court has perceived it.

5 MR. FRAZIER: Okay.

6 THE COURT: Solicitor, I want to mark that \$20
7 bill as a Court's Exhibit just for the purposes of the
8 record. It's not introduced, but I would like it marked.

9 MR. MORONEY: I believe -- I believe we will have
10 to get that brought over.

11 THE COURT: Let's get it marked as a Court's
12 Exhibit, whichever the next sequential Court's Exhibit is,
13 that would be marked.

14 A Court's Exhibit means it's in the record so you
15 can argue it later, but it's not in evidence for the jury.

16 MR. FRAZIER: Okay. I understand.

17 THE COURT: Court's 1.

18 What else do we have to take up before I bring the
19 jury in?

20 MR. FRAZIER: I think that would be it, Your
21 Honor.

22 THE COURT: All right. Now, before we bring the
23 jury in, Mr. Bolen has advised you, what witnesses do you
24 plan to call, Mr. Frazier?

25 MR. FRAZIER: I'm not going to call any witnesses.

1 THE COURT: Okay. You are not going to present
2 anything?

3 MR. FRAZIER: Huh?

4 THE COURT: Are you going to testify?

5 MR. FRAZIER: No, sir.

6 THE COURT: You are going to present nothing?

7 MR. FRAZIER: No, I'm going to present -- yes, I'm
8 going to present my defense, but I'm not going to testify.
9 I'm not going to call any witnesses.

10 MS. BOLEN: I may need a moment, judge, to talk
11 about that with him, if I could.

12 THE COURT: Maybe what he wants is to summarize in
13 closing what the evidence --

14 MS. BOLEN: Right.

15 THE COURT: -- hasn't shown. That may be is what
16 he's thinking. If that is, then we are going to talk about
17 whether he's testifying or not.

18 MS. BOLEN: I think it would be a very quick
19 conversation, Your Honor.

20 THE COURT: Okay.

21 (Off the record).

22 (Back on the record).

23 MS. BOLEN: Thank you, Your Honor.

24 I think he may want to address -- I think his
25 answer to some of your questions about his defense may have

1 changed.

2 THE COURT: Okay. Let's just go into that.

3 Mr. Frazier, you can present your testimony. You
4 can call yourself as a witness. You can't --

5 MR. FRAZIER: Yeah.

6 THE COURT: Now, here is the -- here is what Ms.
7 Bolen I think has perhaps explained to you. You don't have
8 to testify.

9 MR. FRAZIER: Yeah, I understand.

10 THE COURT: The State is not allowed to comment on
11 your not testifying, if you choose to stay silent.

12 MR. FRAZIER: Yes.

13 THE COURT: You have represented yourself and
14 cross-examined the witnesses and not testified, that's fine.

15 The State -- if you choose to not say anything
16 else, just say "I rests" and you want to argue the summary
17 of the case, what the witnesses have shown, or what they
18 failed to show, pointing out the deficiencies in the State's
19 case, like the date on the arrest warrant being different
20 than --

21 MR. FRAZIER: Okay.

22 THE COURT: That's -- you can point all that out
23 in summary to the jury.

24 MR. FRAZIER: Okay.

25 THE COURT: You know, "look at this, look at

1 that," you know, argue what you would like.

2 MR. FRAZIER: Okay.

3 THE COURT: Whatever is in evidence, summarizing
4 the testimony of the witnesses.

5 Now, you can't go and say so and so witness said
6 something they didn't say.

7 MR. FRAZIER: Okay. I can only state what they
8 did say?

9 THE COURT: You can state, you know, you heard
10 witness so and so state that they were unsure, or that they
11 thought, or I think that proves. You are allowed that kind
12 of argument.

13 MR. FRAZIER: Yes, sir.

14 THE COURT: Now, if you don't present any part of
15 your case in defense, you get to argue last. You get to
16 hear their argument and then you are the last thing the jury
17 gets to hear and that's an advantage.

18 MR. FRAZIER: Yeah.

19 THE COURT: Now, the State won't be allowed to say
20 "Mr. Frazier didn't say anything because he was scared," or
21 "because he didn't want you to hear what he had to say."
22 They cannot comment at all on your silence, if you choose
23 not to testify.

24 I will tell the jury in my instructions when y'all
25 get done "ladies and gentlemen of the jury, y'all are to

1 consider the evidence the State has presented. You are not
2 to discuss at all Mr. Frazier's not testifying in your
3 deliberations. You are only to consider evidence before
4 you, not the absence of his testimony or the reason why he
5 chose to exercise his right to remain silent. You got to
6 discuss the case and decide the case on the evidence in
7 court, not his silence."

8 MR. FRAZIER: Yes, sir.

9 THE COURT: That's kind of my instruction, one of
10 them, when I give my full instructions to the jury, if you
11 decide you don't want to testify.

12 MR. FRAZIER: Yes, sir.

13 THE COURT: Now, if you wish to testify to
14 introduce anything that you got in your hand, then you are
15 going to have to call yourself as a witness and say "I have
16 got several things I would like to show you."

17 Now, I don't know you can lay the foundation for
18 your exhibits. I have not looked at them. Ms. Bolen may
19 have and she can advise you on that.

20 So with that in mind, if you testify you are the
21 first. The State argues last. Then I instruct the jury.
22 So you might not want to testify. I don't know. It's your
23 decision. It's solely your decision. Okay?

24 MR. FRAZIER: Okay.

25 THE COURT: Have you -- is that consistent with

1 what you and Ms. Bolen just discussed?

2 (Off the record).

3 (Back on the record).

4 THE COURT: So I know and Mr. Frazier knows, do
5 y'all have any convictions you would propose to impeach him
6 on? You said you had a drug charge?

7 MR. MORONEY: One --

8 THE COURT: Is that the extent?

9 MR. MORONEY: One moment, Your Honor.

10 THE COURT: Yes.

11 MR. MORONEY: Let me pull it up.

12 (Off the record).

13 (Back on the record).

14 THE COURT: Ms. Bolen, do you have an idea of the
15 arguments he's going to make? Is it possible for him just
16 to close in summary and make comments on the facts that he
17 wishes to highlight, or does he have additional facts he
18 needs to get in?

19 MS. BOLEN: That's sort of what I'm trying to get
20 from him, Your Honor. Obviously I can't advise him of
21 whether he should testify or not, but I have explained to
22 him that at closing he can talk about and argue from the
23 facts that are already in evidence, that he cannot introduce
24 new facts into evidence. If he wanted --

25 THE COURT: I don't want to suggest anything to

1 him either --

2 MS. BOLEN: Right.

3 THE COURT: -- because I can't give you advice,
4 but you have got a lot of facts through the sixteen or
5 eighteen witnesses.

6 MR. FRAZIER: I know. I'm not going to testify,
7 Your Honor.

8 THE COURT: All right. So you are going to
9 present nothing?

10 MR. FRAZIER: Huh?

11 THE COURT: Are you going to present nothing?

12 MR. FRAZIER: If I don't testify, can I present
13 this?

14 THE COURT: What is that?

15 MR. FRAZIER: The hospital gown that was
16 mentioned.

17 MS. BOLEN: I tried to explain to him, Your Honor,
18 that if he wants to bring up any --

19 MR. FRAZIER: Things that happened --

20 THE COURT: -- evidence or exhibit, he would have
21 to have witnesses to introduce those things, which would
22 include himself.

23 THE COURT: All right. Now, you can mention the
24 hospital gown. It's not contradicted by anybody. The State
25 presented a witness and said they took you to the hospital,

1 checked you into the hospital and the hospital employees,
2 took your clothes off and put you in a gown. It's not
3 contradicted. You can comment on that.

4 MR. FRAZIER: Okay.

5 THE COURT: I mean, you don't need to prove they
6 put a hospital gown on you.

7 MR. FRAZIER: Yeah.

8 THE COURT: The State has already said it.

9 MR. FRAZIER: That's what I was thinking.

10 THE COURT: So you can leave it sitting right
11 there and point at it, "that's the hospital gown they put me
12 in," and leave it at that.

13 MR. FRAZIER: Yeah. Okay.

14 THE COURT: Okay? It may be to your advantage to
15 not present anything and argue last.

16 MR. FRAZIER: I'm not going to testify, Your
17 Honor.

18 THE COURT: Okay.

19 MR. FRAZIER: But I have these State's cases I
20 wanted to refer to as taken on the stand.

21 THE COURT: No, no, the law is my charge. The law
22 is my problem.

23 MS. BOLEN: Your Honor, I think -- I think what
24 he's -- you know, I'm not advising him, but he told me that
25 he wishes to call one or both of the prosecutors as

1 witnesses.

2 THE COURT: I'm not going to allow him to do that.

3 MS. BOLEN: Okay.

4 THE COURT: He's not going to do that on discovery
5 violations. He -- that's not before the jury. I have ruled
6 on that. I may be wrong, but they provided Rule Five
7 requests partially, was a little bit late because of the
8 speedy trial motion. I found no substantial error in their
9 compliance. It was not all at one time. It was in pieces,
10 but the Rule Five is not a substantial violation and so he's
11 not going to be allowed to call them as witnesses.

12 And the discovery process, he can point out, it
13 would be allowed, that the analysis is dated November 16th,
14 and that was Monday. He can say that. The State has got to
15 live with it. That's when they got it back.

16 MR. FRAZIER: Yes, sir, Your Honor.

17 THE COURT: He's more than welcome to say "the
18 SLED analysis was received on Monday. I didn't have much
19 time to look at it." Certainly he can say that.

20 MR. MORONEY: Your Honor, just for clarification
21 purposes, we would just ask that during his closing he's not
22 to testify to anything of his account of what happened that
23 day because he's choosing not to testify, so --

24 THE COURT: I will give him some latitude because
25 he's self-representing himself.

1 MS. BOLEN: Your Honor, just kind of a matter of
2 logistics, I think he may want to play some of the videos
3 that were introduced in his closing. My computer is a
4 little quirky, although he's welcome to try it, but I have
5 never had it set up.

6 THE COURT: What do you want to show? I mean,
7 they are in evidence. He can show that.

8 MS. BOLEN: Okay. I guess he's wanting to use the
9 State's computer.

10 THE COURT: Were y'all going to show any of it?

11 MR. MORONEY: I'm sorry?

12 THE COURT: Are y'all going to show any of the
13 DVD?

14 MR. MORONEY: We are not planning on it, Your
15 Honor, but we can set this up for him.

16 THE COURT: Well, I mean, you can do that, or you
17 can just comment on it and say "ladies and gentlemen of the
18 jury, I want you to look at the video at this particular
19 section and look for this, look for that. See if you see
20 this, see if you see that." You are able to do that.

21 MR. FRAZIER: Okay. Yes, sir.

22 THE COURT: But do you want to set it up?

23 MR. FRAZIER: Yes, sir.

24 THE COURT: Okay.

25 MR. MORONEY: Do you want me to get it cued up

1 now, Your Honor? It does take some time.

2 THE COURT: Yeah, go ahead and cue it up.

3 Tell the jury we might be a minute or two and we
4 will have them right in here. We are going to -- it looks
5 like we are going to do summaries.

6 (Whereupon, Attorney Elizabeth Able replaced
7 Attorney Patricia Bolen to sit with the defendant)

8 (Off the record).

9 (Back on the record).

10 MR. MORONEY: Your Honor, I believe there is an
11 issue with some of the other disks that Mr. Frazier may have
12 that we have given him in discovery, that he wanted to play
13 all those disks and he's -- I think that's the issue we are
14 considering right now.

15 THE COURT: What's in evidence is what you get to
16 show. What you are interested in is what they had.

17 MR. FRAZIER: No. Yes, sir, Your Honor.

18 My disk is just -- that disk has a bunch of extra
19 different views and footages that my disk don't have and I
20 was wanting to play my disk.

21 MR. MORONEY: He has the disk with all those views
22 and he also has the one on my cell phone.

23 THE COURT: I remember.

24 What has -- we went through this earlier. Your
25 disks should be identical to his. I mean --

1 MR. FRAZIER: I mean, this is -- this is what he
2 provided me with and I would like to present what he
3 provided me with.

4 THE COURT: I have admitted what was presented
5 through the witness, through the Chick-fil-A guy, Mr. -- I
6 think -- I can't recall his name.

7 MR. MORONEY: Whitaker.

8 MR. FRAZIER: Okay. So what about the other disk?
9 I would have to play it through?

10 THE COURT: You can play it off his. I mean, his
11 should be identical to yours.

12 MR. FRAZIER: Okay.

13 THE COURT: I don't -- I don't understand why you
14 continue to say it's not the same. I mean, they opened
15 yours up the other day when we got in the middle of this and
16 it was the same. I think -- as I understood it, it was just
17 a little bit confusing to you.

18 MR. FRAZIER: The only thing about this, the disk
19 I have is he recorded it off his phone. That disk is the
20 original disk.

21 THE COURT: Right, which is the better evidence.

22 MR. FRAZIER: I don't have the original disk.

23 THE COURT: He says you do. He says one of yours
24 is the original disk.

25 MR. FRAZIER: I have a disk that he recorded on

1 his phone off the original disk.

2 THE COURT: And the same. You have got both. You
3 have got all twelve, which is an identical copy of that CD.

4 MR. FRAZIER: I don't have all twelve.

5 MR. MORONEY: If it would help, Your Honor, we
6 could do it real briefly.

7 THE COURT: Yeah, all right. Give him your disk.
8 Give him your disk and he will open it up and show you.
9 What he's trying to say all he did was duplicate it.

10 Off the record.

11 (Off the record)

12 (Back on the record)

13 THE COURT: I understand the phone copy.

14 Okay, show it to him.

15 The phone copy is of lower quality, but that was
16 just for convenience and that wasn't introduced to the jury.
17 It's not as clear.

18 (Off the record)

19 (Back on the record)

20 THE COURT: So are the disks the same?

21 MR. FRAZIER: I mean, it looks like it's the same.

22 THE COURT: So, I mean, you can show whatever.

23 The whole disk came into evidence, all twelve videos or the
24 time segments that the Chick-fil-A owner copied.

25 (Off the record).

1 (Back on the record)

2 THE COURT: The three angles we agreed it was poor
3 quality, but it was just the three cameras that y'all were
4 talking about.

5 MR. FRAZIER: This is the only video that he
6 showed me. He didn't show the video of the twelve.

7 THE COURT: Here is the thing. He's told you what
8 he was going to show was he had twelve. Three were
9 pertinent and he gave you a brief copy of it on his cell
10 phone, trying to be expediting the process of telling you
11 what he was going to use. He gave you finally a copy of the
12 whole thing, all twelve, and he's only shown through the
13 Chick-fil-A guy the three that show activity of the scene.
14 The whole thing then, you can use all twelve cameras.

15 MR. FRAZIER: Okay.

16 THE COURT: You can use any part of it you like.
17 Even though they only commented on camera two, or five, or
18 whichever it was, you can show whatever you want.

19 The fact that he gave you a reduced copy of lower
20 quality, the jury doesn't see it. It was for your
21 convenience. I mean, for instance, when I was a lawyer they
22 had audio recording of my lady performing a drug deal. I
23 took my Dictaphone and recorded it and walked into where she
24 was in jail and played it off my Dictaphone. It wasn't a
25 good copy but she could hear what was being said. So they

1 were going to use it at trial and that's kind of what he
2 did. So he didn't use it at trial. He used a better copy
3 at trial with all twelve. You have got full use of those.
4 The three is not relevant because it wasn't introduced and
5 he didn't try to use it against you, anything like that.
6 The lower quality three are the same as the better quality
7 three over the quality.

8 MR. FRAZIER: All right, Your Honor.

9 THE COURT: Are you ready to go?

10 (Off the record).

11 (Back on the record)

12 THE COURT: All right. We good?

13 MR. MORONEY: Yes.

14 THE COURT: Y'all can use that video too, but it's
15 going to be cued up for him because he's talking last.

16 That's it? Bring them in.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: Mr. Frazier and his counsel, advisory
20 counsel, Ms. Able this morning, former Ms. Bolen, she was in
21 here a little bit, but the State rested. They presented all
22 the testimony the evidence they want you to consider on
23 these indictments.

24 Mr. Frazier has the opportunity to call any
25 witnesses he wishes, including himself. He's advised the

1 court with the evening to think about it that he's not going
2 to present any testimony whatsoever, or any evidence. And
3 what that means is it's time for summaries of the parties.

4 Who is going to close for y'all?

5 MR. MORONEY: I am.

6 THE COURT: Mr. Moroney is going to close,
7 summarize for the State, as to what he believes the evidence
8 has shown, and then Mr. Frazier will get an opportunity to
9 summarize what he believes the testimony has shown.

10 Now, I'm going to tell you in my instructions, I'm
11 going to say ladies and gentlemen of the jury, thank y'all
12 for listening. The burden of proof is on the State. The
13 burden of proof is proof beyond a reasonable doubt.

14 A reasonable doubt is the kind of doubt which
15 would cause a reasonable person to hesitate to act.

16 The elements of the crime are for this one, one,
17 two, three. The next one, one, two, three, whatever they
18 are. I'm going to give y'all those instructions when they
19 finish.

20 What's important is y'all listen carefully to how
21 they summarize it, but also most importantly Mr. Frazier has
22 undertaken to represent himself. He's made the decision not
23 to testify. I'm going to tell you ahead of time the fact
24 he's not testifying is his Constitutional Right, and him
25 exercising that right cannot be used against him in any way

1 by the State. They are not allowed to comment on his not
2 presenting testimony, or him not testifying, or anything.
3 In fact, y'all have only got to decide the case on what's
4 been presented. His remaining silent is his decision. It
5 can't even be discussed in the jury room. I'm going to tell
6 you ahead of time that's very important to him is that he
7 gets to argue to you last, but he's providing a summary of
8 what he thinks the testimony and evidence has shown, so
9 that's a very important right that he can exercise, and it's
10 everyone who is ever brought into court in indictments are
11 presented against them, those are allegations and that's it.
12 They are not proof of anything. The proof is the witnesses.
13 The proof is the evidence. Y'all got to weigh it in
14 deciding whether or not there was sufficient proof offered.
15 That's y'all's job. Those are questions of fact.

16 All right. With that in mind, it's the State's
17 time to close.

18 Mr. Moroney?

19 MR. MORONEY: Thank you, Your Honor.

20 This case is about four victims of -- four victims
21 and Terrence Frazier seated right there and the actions of
22 Terrence Frazier on the afternoon of July 9th of this year,
23 and those actions turned into an incident.

24 The case is also about the quantity of
25 methamphetamine that was found in the right front pants

1 pocket of Mr. Frazier, presumably the testimony that you
2 have heard the same methamphetamine that fueled his
3 outrageous crime spree that day.

4 And you have heard over the past several days the
5 defense in cross-examination bring up issues not relevant to
6 the facts of this case. And that's what's important here
7 are the facts of this case and that's what you have before
8 you as the jury and that's what you should consider are the
9 facts, the relevant facts.

10 As you know, this was a crime spree that spread
11 from four different incident locations; the Chick-fil-A,
12 Frank's Car Wash, the World Finance Corporation, and finally
13 Self Regional Hospital where the search is completed.

14 I find it helpful to briefly illustrate here the
15 different incidents and just break it down because it could
16 be confusing. It's so much going on that day.

17 First we are at the Chick-fil-A here on the bypass
18 in Greenwood. As you will remember, this is where the
19 carjacking took place.

20 Folks, you heard the testimony of the victim,
21 Susannah Chatos, who went to Chick-fil-A that day to pick up
22 a milkshake for a family member. As she approaches the
23 walk-up window there at the Chick-fil-A she first encounters
24 Terrence Frazier for the first time. Right off the bat she
25 notices his erratic behavior, his demeanor and something is

1 not right. He's rambling, not making much sense. He's got
2 this pornographic magazine in his hand that he's waving
3 around and talking to the staff about and Ms. Chatos was
4 offended by that and confronts him about it and says "this
5 is a Christian establishment. Don't bring that around
6 here," and they have -- they exchange some words.

7 And during their conversation he starts throwing
8 down money talking about this pornographic magazine,
9 somebody in the line. We heard testimony that it was quite
10 a good bit of money, maybe eighty to a hundred dollars worth
11 of twenties. Ms. Chatos testified it was windy that day and
12 she remembers it blowing all over the place. Strange that
13 he didn't pick it back up and it was a very bizarre
14 encounter.

15 She ultimately gets her order. And during all
16 this also the manager and owner of the Chick-fil-A, he
17 observed this encounter at the front window and just tried
18 to focus on the customer, but is taking notes of Terrence
19 Frazier's behavior that day, and he sat here and pointed Mr.
20 Frazier out in the courtroom as being that individual who
21 was acting so erratic that day.

22 And we heard Ms. Chatos' testimony that she
23 returned to her vehicle, the white F-150 parked in the
24 handicapped spot, and gets in it to leave. And as she
25 leaves she sees the same individual who she had the

1 encounter with earlier pulling on the door handle in the
2 parking lot, and, in particular, she notices a Chick-fil-A
3 truck and she knows it to be as such because it says
4 Chick-fil-A on the side and she knows it belongs to the
5 owner/operator Brian Whitaker pulling on -- Terrence Frazier
6 pulling on the handle of that truck. And just as she sees
7 that, as she's about to pass him, she hears the thump as
8 Terrence Frazier throws that pornographic magazine at her
9 vehicle. It makes her angry. She puts the car in park, as
10 you see in the video that we showed from the surveillance
11 video. She backs up the car and puts it in park and gets
12 out and confronts Mr. Frazier and says she was angry, "why
13 are you doing this," something to that effect, curses at him
14 and they engage in a conversation. Very quickly she states
15 this was not going well and it's not going to end well and
16 she doesn't have a good feeling about it, so she starts
17 retreating to her car and backing up to her driver's door.
18 She's then at the back of her truck. She's retreating to
19 the driver's door of the truck. And now she's at the point
20 where she's right there where the open door is, the car is
21 still running -- the truck is still running and she's in
22 that opening there or where the steering wheel and the seat
23 and all that is. And during their conversation Mr. Frazier
24 now is following her as she is retreating back to the car
25 and he confronts her at that door opening.

1 And we have a witness, Mary Kate C. , a
2 junior in high school, who sat up here and testified as an
3 employee at Chick-fil-A who witnesses this and witnesses
4 then a push, and she can't recall exactly. She may have
5 gone down, but she definitely went back, and this was not a
6 friendly encounter, and Ms. Chatos is able to regain her
7 composure and at this point Mr. Frazier now has gained entry
8 into her vehicle, is seated in the driver's seat of her Ford
9 F-150. Ms. Chatos testified she was scared. She is
10 intimidated. She gets up and she fights to get that
11 property back and get Mr. Frazier out of the driver's seat
12 of her vehicle.

13 She describes vividly she remembers that Mr.
14 Frazier was sweating. She identified him, pointed him out
15 in this courtroom that he was the individual who was doing
16 that and sitting in her car. She tried to get her hands
17 around his neck and shoulders. She remembers pulling his
18 shirt down and pulling his shoulder. This was an intense
19 struggle and Mary Kate C. corroborated that.

20 Mr. Frazier is able to put it in gear, the car is
21 still running, and speeds off at a high rate of speed, and
22 that high rate of speed is also documented on the
23 surveillance video, as you have seen. When he takes off,
24 the open door slams shut on Ms. Chatos' arm and shoulder and
25 she is injured as a result of that and she has a broken rib

1 as the result of that as well and received subsequent EMS
2 treatment.

3 The defendant -- the defense through their
4 cross-examination has brought up issues of some money
5 missing, but, folks, you heard testimony from Brian Whitaker
6 and from Susannah Chatos that the money was being thrown on
7 the ground by Terrence Frazier. It was left there before he
8 proceeded to go to the parking lot and pull on the handle
9 and carjack Ms. Chatos. That money could have been
10 anywhere. A \$20 bill was retrieved and put into evidence.
11 The remainder of the \$20 bills could have blown anywhere.

12 And suffice it to say that law enforcement's
13 concern when they got there was not a few \$20 bills blowing
14 around the walk-up window of Chick-fil-A. It was the safety
15 of the victim, the scene, and interviewing witnesses and
16 determining what's going on.

17 A car has been stolen. Ms. Chatos is being
18 treated by EMS and Frank's Car Wash comes into the picture
19 here. And this is where we have the incident leaving the
20 scene of an accident and the grand larceny of goods greater
21 than \$10,000.

22 We heard from Bessie Williams, the first victim at
23 Frank's Car Wash that day who had just got her car washed,
24 preparing to leave, just like any other ordinary experience
25 she had prior to at Frank's Car Wash when she hears the

1 screeching of tires, believes that that sounds like an
2 accident is about to happen. And, sure enough, she looks up
3 and sees a white F-150 is being driven by Terrence Frazier
4 smash violently into her car.

5 We heard employee Clarence Woolridge say that
6 there were two impacts, that it was clear that the
7 accelerator was not let off and there are two impacts.

8 Ms. Williams testified as a result her car was
9 totaled, that black Lincoln, a complete loss. Fortunately
10 she was not seriously injured as a result of that collision.

11 And immediately after that collision she observed
12 the defendant, who she pointed out in this courtroom, run
13 out of the white F-150 and approach a red Chrysler 300 that
14 was sitting there getting detailed by employee Clarence
15 Woolridge. Ms. Williams and Clarence Woolridge observed Mr.
16 Frazier get in the Chrysler 300 and speed off, again at a
17 high rate of speed.

18 Mr. Woolridge testified it almost ran over him and
19 that he observed several employees had to jump out of the
20 way. And had they not jumped out of the way, Mr. Frazier
21 would have ran them over possibly.

22 Again, under cross-examination the defense has
23 brought up this issue of the value of the car and you have
24 heard the testimony of Ms. Kimberly Searles, the owner of
25 that -- the person who was entrusted that vehicle that day.

1 Her boyfriend owns the vehicle, but she uses that vehicle,
2 and still does to this day, and that vehicle was purchased
3 well north of \$20,000. Current Blue Book value we had her
4 discuss and look at that report, it was somewhere in the
5 range of \$18,000. So this value was clearly valued greater
6 than \$10,000.

7 And next we move on to World Finance and how the
8 defendant continues on in the parking lot at World Finance
9 and that's his encounter with Gwendolyn Callaham and this is
10 where the offense of the breaking and entering to the auto
11 comes into play.

12 Ms. Callaham is driving down the road and sees the
13 red Chrysler 300 that had just been stolen from Ms. Kimberly
14 Searles from Frank's Car Wash and she sees it driving
15 erratically in her rearview mirror, very aggressively.
16 Something is not right. She doesn't have a good feeling
17 about it so she needs to get off the road and try to get
18 away from that person. She pulls into the World Finance
19 Corporation, which is just down the road from Frank's Car
20 Wash. Mr. Terrence Frazier follows right in behind her in
21 the Chrysler 300, blocks her in in the parking lot. Before
22 she has a chance to even get out Terrence Frazier runs up
23 and confronts her at the driver's side door. She's
24 extremely frightened. He's screaming and yelling "where is
25 my money? Where is my money?" She had never seen this man

1 before. She has no idea what's going on. She thought he
2 even may have a weapon, based on the gestures he was making
3 that day with his clothing, coupled with his behavior how he
4 was acting towards her that day. She's so terrified that
5 she had to run inside World Finance Corporation and asked
6 the employees to lock the door, which they do, and they
7 watch through the glass and Mr. Frazier then proceeds to go
8 into her car and open doors and rummage through all the car.
9 She said he was under the steering compartment area. He may
10 have been trying to hot wire the car. He had been asking
11 for money. Perhaps he was looking for money. She had no
12 idea what was going on. Perhaps he was looking for keys to
13 steal yet a third car. She had no idea, said call police
14 and the police responded.

15 Officer Donnie Trotter from the city was first on
16 the scene and sees the defendant, Terrence Frazier, seated
17 in the driver's seat of Ms. Callahan's car, the red Saturn.

18 Do you recall that Ms. Callahan sat in here and
19 pointed out Mr. Terrence Frazier as being that individual
20 that caused her to run into the World Finance, that
21 confronted her and blocked her in.

22 And Donnie Trotter also came in here and testified
23 and identified Terrence Frazier and pointed him out in this
24 courtroom as being the same individual who was in that car
25 when he arrives on the scene and subsequently puts him into

1 handcuffs.

2 The pat-down is completed. There is no search
3 completed. Officer Donald Trotter's main concern at that
4 point was the weapon. He didn't go into any pockets and
5 look for drugs, or anything like that. He didn't feel any
6 weapons. He was secure. Mr. Frazier was compliant with
7 being put in the handcuffs, but then became increasingly
8 agitated and had to be put in additional restraints around
9 his feet.

10 Detective William Kay testified that he's becoming
11 increasingly agitated. He corroborated to that as well.
12 And, again, no additional search completed.

13 As he became increasingly agitated the supervisor
14 requested that Donnie Trotter transport him to the jail,
15 remove him from the scene. The scene was now secure. So he
16 goes on to the jail. We heard the testimony from Donnie
17 Trotter that the jail wouldn't take him. The jail wouldn't
18 take him because they believed that he was under the
19 influence of amphetamines, or methamphetamine. He was not
20 acting right and they believed there was a health issue and
21 he needs to be screened at the hospital first. They weren't
22 going to book him in. So he wasn't booked in, was not
23 searched, and he was refused entry to the jail and needed to
24 be treated at the hospital.

25 Donnie Trotter proceeds to take him back out to

1 his car. He puts him back in his patrol car and drives a
2 couple minutes down the road.

3 Now he gets to Self Regional Hospital, and this is
4 where the trafficking methamphetamine charge comes in.
5 There is a large quantity of methamphetamine found in the
6 pants pocket of Terrence Frazier. He is brought in to
7 C-Pod, as Travis Rogers described, the Self security
8 officer. He's there for protocol. Mr. Frazier was brought
9 in the C-Pod room. It got kind or crowded in there. There
10 was staff, nurses, doctors, security. Donnie Trotter steps
11 just outside the door there, and per protocol of Self
12 Regional security they switch him out into a hospital gown.
13 And in doing so then Travis Rogers takes his clothes. And
14 in further protocol he goes through the clothes for the
15 safety of the staff, doctors, and nurses, I think self, for
16 the patients, Terrence Frazier. And in going through those
17 pockets, in the right front pant's pocket that he just
18 observed taken off of Mr. Frazier finds a large quantity of
19 what he believes to be drugs from his experience and he
20 pulls this bag out of his pocket. This is the little baggy
21 that it was in, as we heard described from the testimony
22 earlier, and these are the drugs themselves. And when he
23 retrieves them he is surprised and directly hands them to
24 Donnie Trotter and says "I found this," and Donnie Trotter
25 from the city police department takes custody of them. From

1 his training and experience he observes them to be what he
2 believes drugs and he calls Captain McAllister to notify him
3 of the drugs that are found.

4 Those drugs were transferred to Captain McAllister
5 and you heard him testify as to how he entered them into
6 evidence with the BEST pack, the SLED BEST pack, which is a
7 tamperproof BEST pack. And they described how that process
8 goes and it was sent off for testing.

9 You subsequently heard the testings came back
10 positive for methamphetamine after Doug Robinson performed
11 the tests at the South Carolina Law Enforcement Division lab
12 up in Columbia. The weight came back as 19.92 grams of
13 methamphetamine, and that certainty of the weight was within
14 99.7 percent certainty. He said there may be slight
15 variations in that weight, but it's 99.7 percent certainty.
16 Pretty good certainty.

17 You heard the defense bring up these issues of the
18 search and how it was conducted. The Self security agent
19 was just performing the search pursuant to his policy.
20 Donnie Trotter didn't direct him to conduct any search. He
21 was just standing by while he received treatment and the
22 security agent found the drugs and handed them to Donnie
23 Trotter and they are here in evidence today for your
24 consideration.

25 Folks, I ask you to recall the numerous witnesses,

1 the numerous victims that sat up here over the past few days
2 and pointed out the defendant, Terrence Frazier, who is
3 standing up right back here, as the person who they saw that
4 did this carjacking at Chick-fil-A leave the scene of the
5 accident, steals Kimberly Searles Chrysler 300; go into and
6 break into Ms. Callaham's red Saturn SUV. And you will hear
7 an instruction on the law from the judge shortly, as the
8 judge is responsible for giving you his instruction on the
9 law, and you are the judge of the facts. And when given
10 that instruction he will explain that the breaking does not
11 necessarily mean a breaking of a window. Any slight entry
12 into the vehicle, such as opening a door, opening a rear
13 hatch, as you heard the testimony when Ms. Callaham observed
14 him open the rear hatch and rummaging through the vehicle,
15 that will satisfy as a breaking, but, again, the judge will
16 instruct you on the law and the definitions of that in just
17 a moment.

18 And, similarly, the trafficking methamphetamine,
19 the judge will explain that a possession weight greater than
20 10 grams will constitute trafficking methamphetamine.
21 Folks, we have 19.92 grams of methamphetamine in the right
22 front pants pocket of Mr. Terrence Frazier. Clearly
23 trafficking weight. Clearly in possession - his pants.
24 Can't be any more in possession of something that's in your
25 pocket.

1 Folks, under our law the carjacking statute states
2 that carjacking, the person who takes or attempts to take a
3 motor vehicle from another person by force and violence or
4 by intimidation while the person is operating the vehicle or
5 while the person is in the vehicle.

6 Folks, force, intimidation, violence, we have all
7 three. You heard the testimony which I have just spoken of
8 and you have heard earlier this week of the shove; that Ms.
9 Chatos was scared; she was intimidated. Mr. Frazier
10 attacked her to get past her and then get into the car. The
11 car was still running. It was just outside the driver's
12 side door. She was still operating the vehicle. She was
13 intending to leave. Mr. Frazier followed her to that open
14 car door, stole her vehicle by force while she was still
15 operating the vehicle.

16 In leaving the scene of an accident, the law
17 states that to be guilty of leaving the scene of an accident
18 the defendant was driving the vehicle, the vehicle was
19 involved in an accident, the defendant did not stop, or
20 failed to return and remain at the scene. And the defendant
21 failed to give his name, address, and vehicle registration
22 number, and has failed to show his driver's license. You
23 heard the facts. Frazier didn't stop and exchange
24 information. He didn't ask if she was okay. He ran and
25 stole the Chrysler 300 and left the scene and got out of

1 there after hitting Bessie Williams black Lincoln.

2 With respect to the Chrysler 300 and the grand
3 larceny charge, grand larceny -- to prove grand larceny we
4 have to demonstrate to you that the defendant took and
5 carried away the property of another against the will
6 without consent of the other person and the slightest
7 removal of the property would complete possession of the
8 property even for an instant by the defendant is enough to
9 show a taking and carrying away of the property. And we
10 must prove to you beyond a reasonable doubt that the
11 defendant intended to permanently deprive Kimberly Searles,
12 the owner, from the property. Permanently deprive her of
13 the property, meaning that he didn't intend to return it. I
14 think that's evident from the testimony you heard and facts
15 that are before you. He hopped in that car and took off.

16 And what he done just prior, he carjacked a woman
17 and wrecked her car, stolen that car already, wrecked out,
18 now he's stealing another car and he's continuing on.

19 The only reason the stopped was because he was
20 ultimately arrested by Officer Donnie Trotter at the World
21 Finance Corporation down the road. Terrence Frazier didn't
22 intend to return this car. He wasn't running an errand. He
23 intended to permanently deprive Ms. Searles of that vehicle.

24 I touched on the breaking into the motor vehicle a
25 little bit and the elements of that earlier. We must

1 demonstrate to you that the defendant broke, or attempted to
2 break, into a motor vehicle or compartment with the intent
3 to steal the vehicle, or anything of value from the vehicle,
4 anything attached to the vehicle, or anything used in
5 connection with the vehicle, or in the commission of any
6 criminal offense.

7 Mr. Frazier had already committed the carjacking;
8 had left the scene of an accident; committed the grand
9 larceny; and now he's entered this vehicle without any
10 permission and he's rummaging through it. He's broken into
11 this motor vehicle and I explained that a breaking does not
12 require a physical breaking of glass, or any kind of damage
13 to a car. Pulling and opening that back hatch he broke into
14 this motor vehicle.

15 Finally, that possession weight of greater than 10
16 grams. We have the 19.92 grams of methamphetamine in the
17 right front pants pocket. We must demonstrate that he was
18 in possession, actual possession in his pocket, of 19.92
19 grams of meth. I submit to you that we have done that from
20 the facts and testimony that you have heard.

21 In addition to trafficking methamphetamine, we
22 must show the defendant had knowledge that the drugs were in
23 his pocket. Now, it seems pretty obvious that if they are
24 in your pants pocket, you know it's there. You have a cell
25 phone in your pocket, you know it's there. You have 19.92

1 grams of meth, you know it's there.

2 Furthermore, we have heard numerous witnesses
3 testifying to the defendant's demeanor that day and how he
4 was behaving erratically and not making any sense. This
5 string of incidents that he keeps on committing as he's
6 going through the city and county of Greenwood, consistent
7 with the behavior of someone who is not right in their mind,
8 who is under the influence of methamphetamine. He knew
9 those drugs were there because he had used those drugs
10 leading to this string of events that took place that day,
11 but we are fortunate that the injury and property loss that
12 we have had and we heard about, the facts here, is what it
13 is. We have a hurt shoulder, a broken rib and damaged
14 property. We are lucky those employees were able to jump
15 out of the way of the vehicles Mr. Frazier was driving like
16 a mad man. Nobody else was further injured, killed, or
17 hurt.

18 Folks, at the outset we explained that as the
19 State and the prosecutors we have to prove each charge
20 before you and prove the defendant's guilt beyond a
21 reasonable doubt. That's not beyond all doubt or every
22 doubt, as we know there are very few things in this world
23 that we are a hundred percent absolutely certainty of. We
24 have to prove this case beyond a reasonable doubt. That's
25 proof that leaves you firmly convinced of the defendant's

1 guilt. Firmly convinced of the defendant's guilt.

2 Ladies and gentlemen, I would ask you as you
3 prepare shortly to go back in this room to deliberate and
4 perform your duty as jurors and that's to consider the
5 facts. You are the judge of the facts. Judge Griffith will
6 explain the law here to you shortly and he's the judge over
7 the law, but you are the judge of the facts, and you have
8 them before you, and I ask that you find the defendant,
9 Terrence Frazier, guilty of carjacking, leaving the scene of
10 an accident, grand larceny greater than \$10,000, breaking
11 into an automobile and trafficking methamphetamine.

12 Thank you for your time and thank you for your
13 patience.

14 THE COURT: All right. Mr. Frazier.

15 MR. FRAZIER: Good morning. I'm the defendant.

16 First I'm going to start off with carjacking,
17 which is alleged carjacking.

18 Carjacking, as he said, has to state force,
19 intimidation, or violence. Well, I have some videos I want
20 to play today that's going to clearly prove it's not
21 carjacking.

22 The solicitor, he stated carjacking, but also he
23 stated at the second scene when Ms. Gwendolyn Callaham's car
24 was the defendant going to steal another car. Why didn't he
25 say carjacking? Okay.

1 I have something I want to read first.

2 It says "dear jury. It's clear put at the top
3 that they are L-I-A-R-S, liars, and that that's habitual."

4 I'm sure y'all heard and paid attention and pretty
5 smart and intelligent to tell when a person stated one thing
6 and state it another, or tell the expressions and
7 re-expression when the person is telling the truth or when a
8 person is telling a lie. Okay. Since they are liars, in
9 fact, and just as their job is to prosecute, it is clear to
10 believe that there is reasonable doubt that whether these
11 charges are true and the prosecutors are lying in lies and
12 making false statements, false statements which will place
13 them under perjury under oath.

14 So everybody, except for them, got over here took
15 the stand and they swore upon their oath, that they swore
16 that they was telling the truth, the whole truth, and
17 nothing but the truth so help them God. All right. So if
18 they did that and they tell a lie, they are lying under
19 oath, which puts them under perjury.

20 Later in the trial it's clear the prosecutors are
21 stepping outside of their traditional duties with wrongful
22 misconduct to get a conviction by dishonesty or lying.
23 Trying to make -- trying to take me away from my family, my
24 friends and peers for as long as they possibly can. Just to
25 make their selves look good, they will take somebody away

1 from their life. It don't matter to them. This is their
2 job. Like they say, this is their job. It's their job to
3 prosecute somebody. It's not saying whether a person did it
4 or not. As long as they get their check, they don't care
5 whether they did it or not. Their job is to prosecute and
6 make sure that they get a conviction to make their self a
7 name for their self. It don't matter to them whether the
8 person is innocent or guilty. As long as their check is
9 steady coming, they got food on their table, it don't matter
10 to them. They are going to go home.

11 The reasons for them doing that is they are new in
12 the solicitor's office. One and two, both of them, they are
13 new in the solicitor's office. And when you are new in the
14 solicitor's office, it's just like the first day at working
15 at a job. You are going to work as hard as you can to make
16 and prove that you want this position, or a higher position,
17 that you are the one that wants to be kept at this job, that
18 you have got responsibility and you can -- responsibility
19 and you can handle your responsibility of a higher position.

20 Okay. It's election -- and also it's election
21 time and they are trying to make a name for their self, or
22 get a higher position. It's election time right now and for
23 them to get a case of carjacking, especially, and all the
24 rest of the charges that I will explain later on, that would
25 make them look real good right about this time. "Oh, I got

1 something under my belt. Oh, I got a name for myself. Oh,
2 I got a conviction. Yeah. We put him away. We did it. We
3 did it. We did it." No matter whether I'm innocent or
4 guilty. They don't care whether I'm innocent or guilty, as
5 long as they prove or get a conviction and it looks good
6 under them, so they can say "yeah, yeah, I did it. I did
7 it. I did it."

8 They are probably saying -- they probably said or
9 are saying to themselves, or each other, "we know he's not
10 guilty of these charges, maybe lesser charges, or none."
11 They know that I'm not guilty of definitely carjacking. No
12 carjacking. Maybe lesser charges, or none. Okay?

13 It could be the defendant may be guilty of a
14 lesser charge than what they was trying to make it, or none.
15 He is, but if we can't get -- they can get a conviction on
16 these charges for a bunch of time, we can make the name for
17 ourselves. For them to get a conviction would make a good
18 name for their self in the solicitor's office. Oh, yeah, it
19 would be in the media, paper, yeah, blah, blah, blah, such
20 and such, such and such. Oh, they might get a higher
21 position just because of a conviction.

22 I haven't been incarcerated in the detention
23 center but four months. People over there have been there
24 two years and three years. Murder cases that's over there
25 two and three years, they ain't went to trial. They want to

1 go to trial, but they won't go to trial, and I sit over here
2 and I deal with this. I hear this every day, but I decide
3 to represent myself because I got a little knowledge about
4 the law, know wrong from right, especially common sense. If
5 you got common sense, it's -- you may need a little help in
6 certain areas, you may be right, but if you got common
7 sense, the law is common sense. And if you know the law
8 contradicts itself. And when they try to make -- when they
9 try to enhance the law and cover up this way where you won't
10 get out of this way, they cover up another loophole where
11 you can get out another way. And they figure out, well,
12 they keep slipping out this way, so we are going to break
13 this way, and it's to perform another loophole. If one of
14 them got any one of these charges, you don't think they got
15 a loophole so they can get out of it? You best believe they
16 do.

17 A bunch of time. We can make it for our self and
18 probably get a conviction. We won't. Plus publicity and to
19 establish a solid foundation in the solicitor's office. And
20 media attention, once this is published in the papers, they
21 make a name for their self. They can get a name themselves.
22 They get a conviction, they can get the publicity, the
23 attention, everything they need. "Oh, we did it. It's in
24 the papers. He did it. He's guilty." Don't matter if the
25 person is not guilty. They just want to look -- they just

1 want the media attention. How it look around here that we
2 got a conviction on this. "Well, I got a solid foundation
3 in the solicitor's office now. I'm ready for a higher
4 position. I'm going to go to my boss man. Well, since I
5 got that conviction, can I be head solicitor, or head
6 assistant solicitor, or the head assistant solicitor in
7 charge?" Maybe so. All right. "You did win that case, so
8 maybe I'll give you that position." That would make them
9 look real good, but I'm going to give you more than
10 reasonable doubt to prove that I'm not guilty and they are
11 lying. More than reasonably. More reasons than any reason.

12 Published in the paper so they can live up to an
13 image wearing nice suits and ties with popularity. A name
14 and a --

15 MR. MORONEY: Your Honor, can we approach?

16 THE COURT: Hang on.

17 Mr. Frazier, I have kind of let you go on and
18 comment on the prosecutors. Their job is to advocate for
19 the State. Your job is to advocate for yourself. Let's
20 confine --

21 MR. FRAZIER: Away --

22 THE COURT: -- your summary to the facts
23 presented.

24 MR. FRAZIER: Okay.

25 THE COURT: I will let you have that, but let's

1 move onto something else.

2 MR. FRAZIER: Okay.

3 THE COURT: The next topic.

4 MR. FRAZIER: All right. Yes, sir.

5 I'm basically saying it's not about all that.

6 Okay. I told the jury from day one I was going to
7 prove that they are lying and making false allegations to
8 try and get a conviction as is their duty to prosecute. And
9 I feel I have proved that by them and also people that took
10 the stand to get a prosecution. I feel I have done that.
11 And I have done good so far, and I will continue to do so as
12 I explain things and break it down.

13 I feel I deliver my word making me a man of my
14 word. I feel I have earned your respect and I feel now that
15 I have earned -- I have the right of your respect to believe
16 in what I'm saying. And as jurors I ask in your head you
17 hold them to the same standard or prosecutors should have to
18 also.

19 The next thing we are going to talk about the
20 county, the police, the law enforcement that's in charge of
21 all these things of this case, carjacking and all these
22 drugs. Okay.

23 THE COURT: You need to confine your comments to a
24 summary of what was presented at the trial, not for
25 something -- do you remember I told the jury what you need

1 to decide this case you will hear and being told in the
2 courtroom. That's kind of where you are limited. What's
3 going outside the courtroom is not important to this trial.
4 What this jury has been told is evidence and witnesses is
5 what you could summarize.

6 MR. FRAZIER: Okay.

7 Well, it's clear that a lot of people lied under
8 oath on that stand. They took the oath and they lied.

9 Okay. I'm not going to speak on what happened,
10 but it's a lot of stuff that's going on within law
11 enforcement outside of this case. All right.

12 It's clear to see the victim is and has lied under
13 oath with perjury -- which is perjury, and I will prove.

14 It's clear that witness Mary Kate C. , the
15 girl from Chick-fil-A, got up here and stated she do not
16 know what the suspect looked like. She cannot point him
17 out. All she know is the suspect was a black male. So,
18 therefore, that's not a clear identification of the
19 defendant or who pushed Ms. Chatos. So she can't state that
20 and she didn't state that Terrence Frazier, or "I seen
21 Terrence Frazier push Ms. Chatos down." She said -- she
22 said Ms. Chatos went down and then she said Ms. Chatos --
23 she believed Ms. Chatos went down, but she said she thinks
24 they seen a push. So where her saying that, that's not for
25 sure, and she's not certain about what she seen, and she

1 cannot properly identify the suspect or say that Terrence
2 Frazier pushed Ms. Chatos down. She also admits that Ms.
3 Chatos got out of her vehicle and approached the suspect.

4 Mary Kate C. was not asked to be added as a
5 witness by the prosecutor to me or notified me of her being
6 a witness until the day of trial and is not on the witness
7 list, and stated all she seen was a black male, which proves
8 she can't identify the suspect or say the alleged suspect
9 committed this crime.

10 The witness Brian Whitaker, the owner of
11 Chick-fil-A, stated he did not see use of force. He did not
12 see a push. He only seen suspect pulling off in the truck.
13 He stated under oath he did not see a push. He did not see
14 any use of force. He's the owner of Chick-fil-A. He only
15 seen the truck pulling off. If he didn't see no use of
16 force and she can't identify the suspect, who is there to
17 say that any force happened? She's not for sure. She's
18 uncertain. He didn't see any use of force or a push. He
19 didn't see a suspect or a defendant use any violence towards
20 her. So with that being said, I don't see how the State can
21 claim or establish any force or violence.

22 Also Ms. Chatos said she don't know what was
23 throwed at her vehicle. It could have been a rock fell from
24 anywhere, anything. I'm not saying that's what it was, but
25 it could have been, but at the same time she could have

1 avoided the problem. She could have avoided any problems
2 that was -- that occurred or that's alleged or claimed in
3 this incident.

4 With Mr. Whitaker saying that he didn't see any
5 force or any violence or anything, he just seen the truck
6 pulling off.

7 And the camera showed the victim got out of her
8 truck willingly. Not by force. She got out of her truck
9 willingly. She was angry. She stopped the truck and got
10 out of her truck willingly. Nobody forced her out of the
11 truck. Nobody used violence to get her out of her truck.
12 Nobody intimidated her out of her truck. She stopped her
13 truck willingly, threw it in park, got out and went toward
14 the suspect. And in the victim's statement, which you will
15 hear today, she admitted to getting out of her truck and
16 that she was very angry, cussing at the suspect, and she
17 attacked suspect, so that, in fact, proves that she wasn't
18 intimidated or scared.

19 She didn't say -- here today, jury, you ever
20 bought a car and you done look up the car facts and it might
21 have messed up thirty days or something later, or you might
22 have been over there at the car lot and he is trying to tell
23 you all these things and you don't understand that, you
24 don't understand, and then you think oh, he's give me a good
25 deal, he's giving me a good deal, and then later on you

1 experience well, no, he didn't. Somebody said, "well, look,
2 this man got you. He really got you." He is like that was
3 not a good deal. You shouldn't have did that. That's what
4 they are trying to do today, sell you a bad idea, sell you a
5 lie, sell you a false statement.

6 I have not finished. I have some more to say.

7 Hey, can I, Your Honor?

8 THE COURT: His computer running?

9 MR. FRAZIER: Okay. As you can see, jury, you see
10 somebody walking around right there. Okay. Look at there.
11 Ms. Chatos, she clearly got out of her truck. You see
12 somebody stepped back. It looks like, you know -- okay, you
13 see Ms. Chatos right there at the back of the truck.

14 Y'all have seen this video before. All of the
15 sudden you don't see nothing. You just see -- look at Ms.
16 Chatos. She's not pushed down. She's not -- she's -- it
17 don't show no use of force. She's walking away, like
18 nothing is wrong with her. She's normal. She looks like
19 she is a little angry, but it don't show her being pushed
20 down or none of that. Okay. You seen that.

21 Now, let's play the other two angles.

22 Okay. Here is where the truck leaves around.
23 Okay. And the next angle the truck leaves into the road.
24 There goes the truck. It leaves. Takes off in the road.
25 Now, it's clear that no force was used in that. In fact --

1 Okay. Now I want to let you listen to Ms. Chatos
2 statement.

3 THE COURT: Listen to what incident? What do you
4 want them to listen to?

5 MR. FRAZIER: Let them listen to Ms. Chatos
6 statement.

7 THE COURT: You can comment on the testimony. You
8 can summarize whatever she testified to, but I don't think
9 her statement or other statements of the witnesses --

10 I have explained to the jury, the witnesses
11 testify. Their testimony is recorded and they can listen to
12 their testimony again during deliberations, and you can
13 summarize her testimony in your closing summary now, but I
14 don't believe her statement to any of the law enforcement
15 was presented for the jury's consideration because she was
16 here, which is --

17 So y'all understand, if the State only had to
18 present a recorded statement, we could play it for y'all and
19 y'all hear her statement and Mr. Frazier wouldn't be allowed
20 to ask her what about this. You can't cross-examine a
21 statement. That's why they don't come in. You make the
22 witness come and testify and then allow cross-examination.
23 That's why it doesn't come in. So it's not what's hiding
24 it, but if it were just as easy as handing out statements
25 and letting y'all read them, that's how a trial would be,

1 but that's not how it's done. It's live testimony question
2 and answer, cross-examine question and answer, so you can
3 see a full presentation of what she remembers, if she has a
4 bad memory, poor eyesight, whatever. That's why the
5 cross-examination is allowed and the statement is not used.
6 So we understand. That's why it wasn't admitted. They
7 never are.

8 MR. FRAZIER: Okay. Well, it clear --

9 THE COURT: But -- now, I want to tell them again
10 if y'all want to hear any witness' testimony replayed, y'all
11 can hear the questions asked of the State and Mr. Frazier.
12 Y'all get to rehear that, if you would like.

13 So, Mr. Frazier, that is available, but for them.

14 MR. FRAZIER: For them to listen to after.

15 THE COURT: You summarize it.

16 MR. FRAZIER: I get what you are saying.

17 THE COURT: Okay.

18 MR. FRAZIER: Let's see, let's move -- okay. I'm
19 going to stick at the carjacking.

20 All right. Carjacking. It states person
21 willfully and unlawfully take or attempt to take a motor
22 vehicle from another person by force and violence or by
23 intimidation while the person was operating the vehicle or
24 while the person was in the vehicle.

25 Okay. Now, in Mr. Whitaker's statement he stated

1 he didn't see no force, but Ms. Mary Kate C. , she
2 can't identify the suspect or the suspect who did this, or
3 she say it was a push, but she can't identify Terrence
4 Frazier pushing or doing anything to Ms. Chatos. The video
5 showed that Ms. Chatos clearly wasn't pushed. She wasn't
6 forced out of her truck. And if somebody threw something at
7 your truck and you get out, you can't be intimidated. So
8 you are intimidated, why didn't Ms. Chatos keep going? You
9 are scared, why didn't you keep going, but Ms. Chatos chose
10 to get out of her vehicle. And Mr. Whitaker's statement
11 stated that he didn't see no force, nothing. Okay. So if
12 Mr. Whitaker didn't see no force, how can he -- how can the
13 State say that Mr. Whitaker -- that Ms. Chatos was pushed
14 down?

15 If you go back to what the State's first
16 impression, they said that Ms. Chatos was snatched out of
17 her truck, pushed down to the ground, and her truck was
18 taken from her and left. It's clear Ms. Chatos wasn't on
19 the ground. It's clear that Ms. Chatos wasn't snatched out
20 of her truck. It's clear that Ms. Chatos wasn't threw to
21 the ground. It doesn't show Ms. Chatos even being on the
22 ground. All it shows is her truck pulling off and she
23 walking away. She is not appeared to be hurt. She is not
24 appeared to be injured. It's no proof of carjacking.

25 Okay. No proof of intimidation, because the

1 victim could and should have kept going. Ms. Chatos could
2 have kept going and avoided the problems. She could avoided
3 any problems, but instead the victim stated she was angry by
4 something hitting her truck. Not by intimidation or
5 intimidator. So she wasn't intimidated. Something hitting
6 your truck doesn't intimidate you. You have a right -- you
7 have the right, your own free will to keep going.

8 Ms. Chatos stated she was angry of something
9 hitting her truck. She was angry, so she wasn't
10 intimidated. So she stopped her truck, threw it in park,
11 got out of her truck willingly; then approached the suspect
12 in a rage and angered manner, cussing the suspect with cuss
13 words with the intention like she was in attack mode. If
14 you are cussing the suspect, if you are cussing the person,
15 your intention is like you are angry, like you are ready to
16 attack, use physical harm towards the person. Cussing the
17 suspect with cuss words with intention like she was in the
18 attack mode or wanting to fight or do physical harm to
19 suspect.

20 Then started -- Ms. Chatos then started a verbal
21 altercation with suspect. Ms. Chatos started a verbal
22 altercation, not the suspect, not the defendant. If anyone
23 was intimidated, it was the suspect or the defendant.

24 Then she attacked the suspect by grabbing suspect
25 around the neck with hands and ripping shirt in a physical

1 aggressive rage and anger. In a physical aggressive rage
2 and anger manner. She did all this out of anger, rage.
3 Physical. Nobody physically touched her. It shows that.
4 She physically touched the defendant who she said stole her
5 truck. So if any violence or force was used or established
6 was or from by the victim Ms. Susannah Chatos. She admits
7 to all of this. She grabbed the person around their neck
8 and she tried to choke him and jerk and snatch him out of
9 their car. That was the force. She used physical force,
10 not the suspect.

11 I also don't see this happening. A man my size,
12 135 pounds soaking wet, if that pushing down or pulling out
13 or snatched out to the ground or thrown to the ground by
14 physical force and getting into their truck and pulling off
15 with stealing it, a nice sized woman like Ms. Chatos.
16 Nothing against a nice sized woman, or any sized woman, but
17 I just don't see a person 135 pounds and a nice sized woman
18 like Ms. Chatos -- Ms. Chatos looked like she got a little
19 stamina to her. She looks like she can be very aggressive
20 and mean and she looked like she can protect herself. In
21 fact, I think she can, because she approached like she
22 could. Ms. Chatos' size will make a 135 pound man think
23 twice or wish he hadn't of tried what he did. It's clear.

24 So it's clear that Ms. Chatos wasn't carjacked
25 because she wasn't removed from her vehicle by or with

1 violence, force, or intimidation, nor was her vehicle taken
2 from her by or with violence, force, or intimidation, and
3 nor was she scared of or feared the suspect. Ms. Chatos'
4 actions was clearly out of anger and rage. Ms. Chatos was
5 not inside or operating the vehicle, which video would
6 clearly show and prove. Okay. That's on the carjacking.

7 We are going to move on to leaving the scene of an
8 accident. Also if you remember yesterday, I think it was,
9 it's Bessie Edie Williams. Do you remember correctly she
10 stated that her car was a total loss? She could not get no
11 reimbursement from her car because of uninsured vehicle.
12 That means Ms. Bessie Edie Williams lost her car completely
13 and had to get a new car because no insurance.

14 It's clear if you look at the blue ticket and the
15 warrants or the blue ticket and the supplemental report, Ms.
16 Susannah Chatos had two different number tags on her truck.
17 So that's clear that's an unregistered vehicle on the road,
18 uninsured, is the reason why Ms. Bessie Edie Williams could
19 not get no reimbursement for her car. So, therefore, Ms.
20 Chatos was, in fact, breaking the law at the time she was on
21 the road in that vehicle.

22 THE COURT: Let's keep to the testimony that was
23 provided. There was no --

24 MR. FRAZIER: Now --

25 THE COURT: Hang on. There was no testimony about

1 insurance on any of the vehicles except the testimony from
2 Ms. Williams that her claim was dealt with by the insurance
3 company, and insurance, its coverage, the terms of the
4 policy are not before the jury. That's not a question for
5 the jury to resolve, because that's not an issue for them to
6 resolve. All right?

7 MR. FRAZIER: All right. Leaving the scene of an
8 accident.

9 Okay. It's clear that they are saying this truck
10 was wrecked into Ms. Bessie Edie Williams. Okay. Leaving
11 the scene of an accident, the truck was wrecked into Ms.
12 Bessie Edie Williams. Hit her car. The truck come in
13 Frank's Car Wash and hit her car.

14 Okay. Now, we got to look at was it the suspect
15 or the defendant was found driving in the truck? Was he
16 there when the police got there at the scene of leaving the
17 scene of an accident? Was it Terrence Frazier there in that
18 truck? Okay. Ms. Bessie Edie, they all pointed out and say
19 they seen me in the truck.

20 Leaving the scene of the accident. All right.
21 But we got to look at the facts of this. Ms. Bessie's car
22 was totaled. Ms. Susannah Chatos got her car back the same
23 day. In fact, of all the things that's regarding in the
24 past.

25 Also lack of investigation. The police officers

1 never took no pictures. They never took no pictures. They
2 put crime scene tape up, but they didn't take no pictures of
3 the vehicle, didn't take no pictures of Ms. Bessie's car
4 that was wrecked. They didn't take no pictures of nothing,
5 so how do we even know that these cars are wrecked? It's no
6 proof, other than them saying that. Okay.

7 Now, as it's the police officers duty to protect
8 and serve, I think they should have taken pictures of the
9 scene, of the crime scene. Any proper investigator or
10 police officer who do his job in a proper manner, he's going
11 to do it all. He's going to lay down the marks to show
12 this. He's going to take pictures of the scene. He's going
13 to put his tape up to keep people out from around it. He's
14 going to do every procedure that he's supposed to. You can
15 clearly see that something is not right because they are
16 trying to keep something back because they are not showing
17 everything that they are claiming.

18 And also you have the witnesses. Now, I'm not
19 going to say that the witnesses are lying. I'm not going to
20 say that the witness is lying. I'm not going to say that
21 they are telling the truth, but I can tell you one thing,
22 what the law enforcement is doing is not adding up and they
23 are not doing their proper investigation and procedures like
24 they are supposed to.

25 So leaving the scene of an accident with Bessie

1 Edie Williams losing her car on this.

2 Also Ms. Chatos stated that she was transported to
3 EMS. That video never shows nothing about no EMS pulling up
4 there at Chick-fil-A. You do not see no EMS pull up there
5 at Chick-fil-A.

6 It's proof with the solicitor's office provided me
7 with through the motions that Ms. Bessie -- I mean Ms.
8 Chatos was in the hospital. It was not the day of that. In
9 fact, I wish I could, but I cannot show, because it
10 wasn't -- but it's not that day that Ms. Chatos went to the
11 hospital to the EMS. It's no medical record stating to
12 whether Ms. Chatos had any injuries. They have pictures of
13 Ms. Chatos, but the day that Ms. Chatos went to the hospital
14 was 7-31. 7-31. It was not 7-9-15. That's over twenty
15 some days later. So it's clear to see that something is
16 kind of fishy with that. Why you didn't go to the hospital
17 that day? Why didn't you even go to the hospital that day?
18 Why is this picture saying 8-26 when it was printed and you
19 are in the hospital on 7-31? It's clear that Ms. Chatos
20 didn't go to the hospital that day. Ms. Chatos even stated
21 that her truck was released from the police officer, brought
22 to the hospital by her family. She rode home with a family
23 member. The truck was took home after and went to the
24 hospital. She rode home with the family member. The truck
25 was then drove back to her house. The next day they state

1 they found a magazine. Ain't the investigator or these
2 people who found this truck should have searched this check
3 then? And you mean to tell that they didn't take pictures
4 of the items that was inside the truck? They didn't take
5 pictures of this food that was all throwed around everywhere
6 in this truck? So -- and then -- and then after that they
7 let this truck be released. No pictures.

8 I'm sure when the investigator or police officer
9 have the accident and they put up tape and they do all this,
10 they should search the inside of the vehicle for any items
11 or any extra things or any damage to anything inside the
12 vehicle, take pictures; you know, do a thorough
13 investigation. It's clear that they didn't do a thorough
14 investigation.

15 They are saying "oh, I didn't search the vehicle,
16 but I looked inside of it." Okay. Well, what if something
17 was tore up on the inside of the truck? You didn't take a
18 picture of it. Oh, you just looked in there. Okay, that's
19 fine. They look all right. Well, I ain't going to worry
20 about that. I'm going to focus on this right here. No, you
21 are supposed to do the whole nine yards. Do a thorough
22 investigation.

23 Okay. The witnesses is saying -- and so -- saying
24 that they seen this. You heard them testify yesterday. And
25 after this Ms. Bessie's car was a total loss.

1 Ms. Susannah Chatos truck had some scratches on
2 it, the officers stated, but didn't take no pictures, and
3 then it was released back to her family, which they drove to
4 the hospital.

5 Now, let's go to the next day when this magazine
6 was found. Okay. This magazine was found the next day.
7 Ms. Susannah Chatos said she called a police officer to have
8 her car searched because she think there may be drugs in it
9 or to be searched for drugs. The officer stated he came the
10 next day. He found a magazine in the middle of the truck,
11 like in the console, like by the console of the truck.
12 Okay. You remember -- let's go back to Ms. Susannah Chatos
13 where she stated the magazine -- where she found the
14 magazine that morning. She say she found the magazine on
15 the right side of the truck by -- like on the right
16 passenger's side of the truck. The officer stated he found
17 the magazine in the middle of the seat. Something -- it's
18 either one or the other. The officer stated he took the
19 magazine from -- he searched her car. Okay, if she called
20 him about a magazine in her car, what's the big deal? Okay,
21 I'm going to come out here. All right, I got the magazine.
22 Thank you. Why would you search her car? Why -- you mean
23 to tell me your family rode around the whole time with food
24 all scattered around in the truck and they didn't clean it
25 out and they didn't look at this magazine or find this

1 magazine and say what is this doing in here? I don't -- so,
2 evidently, boom, this magazine could have been in their car.
3 In fact, her family could have had any other food in there.

4 Now, let's go to Ms. Susannah Chatos -- Ms.
5 Susannah and the calling the police officer. The officer
6 states he found the magazine here. The magazine was gotten.
7 What does drugs got to do with the magazine or her car being
8 searched for drugs got to do with the magazine? It has
9 nothing to do with the magazine. The officer got the
10 magazine, retrieved it, put it in evidence, but you didn't
11 do an incident report. You didn't do no kind of
12 establishment or claim that you went here and found this and
13 this is part of this or that -- this and that -- I mean, or
14 this case is part of this is evidence from this case. You
15 didn't put it in evidence and say well, this is from this
16 case. I'm going to do an incident report on this for
17 supplemental or none of that. You just took this evidence
18 for -- okay, I'm just going to put this in evidence right
19 here under this case without making an inventory report of
20 it? I was never notified of none of this. Never notified
21 of no magazine or nothing. So this police officer clearly
22 stated that he felt like it wasn't a need. So that day you
23 came to work you just felt like you didn't want to do your
24 job. That's basically what you are saying. You came to
25 work that day, you felt like you didn't want to do your job.

1 Well, if I like what I'm doing every day I come to work, I'm
2 going to do my job. I'm going to put everything I got into
3 it. I'm going to dedicate myself to it and make sure that
4 everything is done right. So that s'hows you a careless or
5 they care how much they care about their job. How much they
6 care about this going the way it's supposed to be and
7 everything being in the right manner. Okay. So that tells
8 you the officer didn't do his proper job.

9 How come this magazine was not reported by Ms.
10 Susannah Chatos family? How come they didn't notify her
11 when they got to the hospital that this was in her car?
12 Ain't no way you rode in this car, drove it to the hospital
13 and then went back home and didn't notice these items in
14 this truck.

15 Okay. Also, the officer did that. The magazine
16 was put in. He didn't do his job. The next day -- I mean
17 after that that's the end of leaving the scene of an
18 accident. So it's clearly the police didn't do what he
19 needed to do.

20 Now we are going to move to auto breaking. Auto
21 breaking. Let's see what the warrant states.

22 THE COURT: Do you want the indictment?

23 MR. FRAZIER: Yes.

24 THE COURT: It's right here.

25 MR. FRAZIER: Yes.

1 Auto breaking. Auto breaking is did willfully,
2 unlawfully break, or attempt to break, into any motor
3 vehicle or any compartment thereof in the daytime or in the
4 nighttime with intent to steal same or anything of value
5 from, or attached, or connected thereto.

6 Okay. It's clear it said break. Clearly it said
7 break. Break means when something is dysfunctional,
8 impaired, or is not in the same function or level that it
9 was.

10 Ms. Gwendolyn Callaham, which is the owner of the
11 vehicle, stated nothing was broke on her car. They said on
12 dispatch they got a call suspect was attempting to break in
13 a window.

14 Also it said a person attempts to break. If you
15 attempt to break, I think you would have to have some tools
16 or something trying to get in here or some kind of tools and
17 break something. Nothing was broke on Ms. Gwendolyn
18 Callaham's car. All she said was the defendant opened up
19 the back hatch and looked around. Opened up the front door,
20 looked around. Okay. Nothing was broke. She said the
21 suspect didn't take nothing out of her car. Nothing was
22 taken. Nothing was broken. So I would take that as that's
23 not auto breaking.

24 I would think auto breaking would mean that you
25 have to break something on a vehicle or take something from

1 the vehicle. It says with intent to steal or go into a
2 car's compartment.

3 Ms. Gwendolyn also stated she could not see what
4 the suspect was doing. He appeared to be like he was
5 looking around. That's not a for sure. That's not a
6 guarantee that the person was looking for something or
7 appeared to be looking around.

8 Also she stated the suspect went to pulling up his
9 shirt, like he had a weapon or something and then suspect
10 urinated. Now, I think that's kind of rough there. Now --
11 but you say you thought he might have had a gun. Might or
12 thought is not a for sure. It's not a for certainty. It's
13 not a guarantee.

14 She said the police responded that instant right
15 afterward. Okay.

16 Ms. Gwendolyn Callahan also stated that she got
17 out of her car the same time the suspect exited the other
18 car. She stated -- she said the suspect said "where is my
19 money?" She said "what are you talking about," and ran in
20 the World Finance and they locked the door.

21 Okay. You pay attention. I want y'all to go back
22 and listen to these statements.

23 And she said she ran in the door. She said that
24 the person went in the back and then -- he went in the back
25 of her car, opened it up, looked around, and he went in the

1 front and then he ran up to the door. She stated also
2 nothing was taken. Again, nothing was broken. So I don't
3 feel like there is no auto breaking. Nothing was taken from
4 her vehicle. Nothing was broken. Clear.

5 Now we have I think --

6 It is trafficking methamphetamine, Your Honor?

7 THE COURT: Yes, sir, got it right here.

8 I want you to start getting finished up because we
9 have been going about an hour. I don't want to cut you off.

10 MR. FRAZIER: Okay.

11 THE COURT: But the jury is getting a break here
12 shortly. I was hoping to get you done so we could have a
13 break while I instruct them.

14 MR. FRAZIER: Okay.

15 Trafficking methamphetamine.

16 THE COURT: You can just argue the facts because
17 we have all told them -- you told them and the solicitor
18 told them and I have told them three times I'm going to
19 instruct the law.

20 MR. FRAZIER: Trafficking methamphetamine.

21 On the warrant Officer McAllister, the arresting
22 officer, said drugs were found on the suspect or defendant
23 person at World Finance. He admitted that. That he typed
24 the warrant, that -- that's what the warrant said.

25 MR. MORONEY: Your Honor, we would object.

1 THE COURT: The warrant says the warrant for the
2 person. The warrant is not in evidence. The indictment is
3 in evidence. The indictment is actually not in evidence.
4 The indictment is the charging instrument that provide
5 elements of the case.

6 Confine your comments to the testimony of Captain
7 McAllister.

8 MR. FRAZIER: Okay.

9 Did willfully, unlawfully, knowingly traffic in
10 methamphetamine, in that the said defendant was in actual or
11 constructive possession or more of more 10 grams, but less
12 than 28 grams of methamphetamine.

13 Okay. In possession. The warrant says
14 possession.

15 McAllister also admitted that he is not the
16 arresting officer. No drugs were found by the arresting
17 officer also.

18 Mr. McAllister states he took possession of the
19 drugs weighed 21.09, field tested positive for
20 methamphetamine from Officer Trotter.

21 He says -- he also -- he says that it field tested
22 positive for methamphetamine, and he tested it at city
23 police department.

24 If you can go forward a little bit, the person who
25 gave -- once he put the drugs in evidence, the lady admitted

1 Officer McAllister is not qualified field testing those
2 drugs.

3 MR. MORONEY: Your Honor, we object. I don't
4 believe that's in the record of the testimony.

5 THE COURT: All right. You can argue the facts
6 and testimony, but I'm not certain that's what she said.
7 You have got a -- the evidence custodian said that she had
8 possession of the drugs while they were in the evidence
9 locker and that she took them to SLED and retrieved them
10 from SLED.

11 MR. FRAZIER: I also asked her was Mr. McAllister
12 qualified to test drugs and she stated no.

13 THE COURT: Move on.

14 MR. FRAZIER: Okay.

15 McAllister, he -- he -- he said he did the initial
16 report, which is the incident report, but -- he says he did
17 the initial report. And he says -- in his initial report he
18 says warrants were signed, served, bond was set on July
19 10th. He stated under oath warrants -- stated they were
20 signed, served July 11th, but I can -- the suspect did, in
21 fact, go in front of the judge on the 10th.

22 He admitted to typing warrants and making errors
23 on the warrants and the supplemental report. States -- his
24 supplemental report states that drugs were found at the
25 hospital during the search of Donald Trotter -- during the

1 search of the suspect -- or defendant by Donald Trotter.
2 Donald Trotter stated he did not find any drugs on the
3 suspect, that he didn't search the suspect, and that the
4 security officer found the drugs. The security --

5 So basically what we got here is one saying "oh, I
6 found drugs here." Then he turned around and said "oh, no,
7 drugs were found at the hospital by this person." The other
8 person said "no, I didn't search him. I didn't find no
9 drugs on him." Oh, then they throw it on the next person,
10 "well, no, it was the people at the hospital, the security
11 officer at the hospital." Nobody wants to own up to who did
12 what and this and that and they are trying to throw it on
13 the next person, throw it on the next person, and something
14 ain't right about that.

15 Officer Trotter stated he found an ID in the
16 defendant's back pocket. Then Officer Trotter stated he
17 only patted the defendant down, but he didn't search him,
18 and he didn't find nothing on the defendant or in his
19 pocket. Trotter booked the defendant in and admitted to it
20 being leaving the scene of an accident only. Nothing else.
21 Trotter didn't do an incident report or a supplemental
22 report on what happened at the hospital and states he didn't
23 find the drugs. Officer Trotter states he didn't search me.
24 He only patted me down in order to find -- he only patted me
25 down. In order to find the ID in the defendant's back

1 pocket you have to reach your hand in the back pocket,
2 remove the ID from the pocket, which confirms a search.

3 Female officer Kenya Griffin stated that she --
4 states that she only -- stated that she and an alternate are
5 the only ones who have access or keys to open or remove
6 evidence. And that once evidence is entered, that her or
7 the alternate has to be there to remove evidence -- remove
8 evidence or items. But evidence report shows Officer
9 McAllister entering and removing items himself multiple
10 times. Also other officers, including Kenya Griffin.

11 Officer Caughman, when he got on the stand he
12 stated he did the initial report and not the supplemental
13 report, but his name is on both the reports he admitted,
14 which he admitted -- Officer Caughman, which he admitted,
15 Officer Caughman also stated that he don't know who did the
16 supplemental report, but it wasn't him, but the supplemental
17 report is different from the incident report. And he also
18 explained the difference between the incident report and the
19 supplemental report, but his name is on both of them, but
20 you didn't do it. Again, somebody not wanting to take blame
21 for errors, mistakes.

22 It's a bunch of error mistakes all through this
23 case. It's clear to see that something is just not adding
24 up. If you put two and two together and you get three,
25 something ain't right. It's clear to see that it's the

1 drugs went through multiple hands from -- from persons said
2 he found them here, to a search at the hospital, to -- from
3 the security guard hand, to Officer Trotter's hand, to Mr.
4 McAllister's hand, to Kenya Griffin's hand, which is in
5 evidence, to out of evidence, back into evidence. Supposed
6 to be sent to SLED. It wasn't sent that day. They waited
7 later on. Back out of evidence. Back into evidence. And
8 then sent to SLED twenty days later. These drugs were
9 supposed to be entered on the 10th. He claims he found
10 these drugs on the 9th.

11 The locker -- she said it was nineteen lockers.
12 The drugs that -- when Officer McAllister put the drugs in
13 the locker, she stated it was no locker number put down. So
14 how do we know that these drugs were put in what locker, in
15 particular.

16 It's just clear that everybody is telling a lie
17 and they did it under oath. That's what makes it so bad.
18 It's clear. Nobody is wanting to take -- tell the truth.
19 Nobody is wanting to take up ownership or responsibility for
20 what is going down because they don't want to get in trouble
21 and lose their job, or get suspended, or have to resign.
22 It's clear that this is not adding up. These drugs went
23 through too many hands. Too many lies are saying. This
24 person is saying that. Another person is saying something
25 else. Another person put it on this person and that person

1 put it on that person. Can somebody please tell the truth
2 and own up to what really happened?

3 They don't -- they don't maintain custody. I can
4 understand that one person had these drugs and he took them.

5 THE COURT: Okay.

6 MR. FRAZIER: He did that.

7 THE COURT: Let's get to the end.

8 MR. FRAZIER: But it's clear to see and thank you.
9 I ask y'all to look in your hearts. Common sense, and I
10 know y'all are pretty intelligent brilliant people. Thank
11 you, and that's it.

12 THE COURT: Thank you, sir.

13 All right. Well, I want y'all to step in the jury
14 room. Take a quick break. When you are in there decide if
15 y'all want to go eat lunch real quick and come back and get
16 my instructions. You can't discuss the case now. The clerk
17 can order us lunch. It takes longer to go get it and bring
18 it back, or y'all can go and maybe eat quick and come back
19 in 45 minutes. Y'all decide if you want to go and come
20 back. That would suit me if it suits you.

21 (The following takes place outside the presence of
22 the jury panel)

23 THE COURT: We will stand at ease for about ten
24 minutes while they make that decision of whether they are
25 going to go eat and come back and get instructions, or

1 receive instructions while food is ordered.

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 (\$20 Bill marked as Court's Exhibit No. 1 for
5 identification)

6 THE COURT: All right. We had an informal jury
7 instruction conference.

8 On the carjacking, at the request of the defendant
9 I'm also going to charge the lesser included grand larceny.
10 The carjacking would be --

11 MR. MORONEY: I was just looking up the different
12 statutes, Your Honor, use of vehicle without permission. I
13 was just looking at that. I didn't look at the grand
14 larceny.

15 THE COURT: Well, I have already decided grand
16 larceny.

17 He also asked for use of vehicle without
18 permission on that. It's a lesser included of the grand
19 larceny. I have not decided on that one yet.

20 MR. MORONEY: Yes. What was your decision with
21 respect to the grand larceny?

22 THE COURT: I'm going to charge carjacking and
23 then lesser included grand larceny.

24 He also requested on the grand larceny indictment
25 to charge the lesser included money amount, the two to

1 10,000 range also.

2 MR. MORONEY: Yes, sir.

3 THE COURT: So more than ten, two to ten would be
4 the lesser included of that one.

5 MR. MORONEY: Okay.

6 (Whereupon, both Assistant Public Defender
7 Patricia Bolen and Assistant Public Defender Elizabeth Able
8 at the table with defendant at this time).

9 THE COURT: I don't think the facts presented can
10 be considered an unlawful -- a use without owner permission
11 of a car. I don't see it.

12 MR. MORONEY: And I agree. I think, particularly
13 with the Blockburger Test that should be applied. There is
14 an additional element with unlawful use -- or the use of
15 vehicle without permission. You got the intent to defraud
16 there and that's just clearly not something that's in the
17 carjacking. It's got an additional element.

18 And I think similarly if we go back to grand
19 larceny, I know you are inclined to charge the lesser
20 included of grand larceny, I think under the same argument
21 for the Blockburger Test, grand larceny additionally has
22 more elements that are not included in the carjacking and
23 wouldn't meet the Blockburger Test as a lesser included.

24 The grand larceny, as you know, Your Honor, simply
25 addresses larceny of goods, chattels, instruments, or other

1 persons be valued in excess of \$2,000 the grand larceny.

2 Carjacking clearly reads, it's pretty short,
3 guilty of the felony of carjacking takes, or attempts to
4 take a motor vehicle from another person by force and
5 violence or by intimidation while the person is operating
6 the vehicle and while the person is in the vehicle.

7 THE COURT: Well --

8 MR. MORONEY: You got an additional element --

9 THE COURT: There's a factual question of whether
10 or not she was in the vehicle and force was used. Those are
11 absent than taking of someone else's property with intent to
12 deprive would meet those tests. I'm going to charge it.

13 MR. MORONEY: Okay.

14 THE COURT: Anything else we need to put on the
15 record before we give these instructions, because my intent
16 would be to instruct the jury, let them begin deliberating
17 as lunch comes in. They can interrupt them and go ahead.

18 MR. BLACK: Your Honor, while we took a break, I
19 know you mentioned the \$20 bill. We actually marked that as
20 Court's Exhibit No. 1. We did do that while we were on the
21 break.

22 THE COURT: Good deal. That's in.

23 MR. BLACK: Not in evidence. It's just --

24 THE COURT: Right, as a Court's Exhibit.

25 MR. BLACK: Right.

1 THE COURT: All right. Is there any objection by
2 you, Mr. Frazier for --

3 MR. FRAZIER: Yes.

4 THE COURT: No, no, no, that's not my question.
5 Not any objection. I want to ask a specific question.

6 Any objection to when I describe the indictments
7 to say the indictment for carjacking is within regard to Ms.
8 Chatos's vehicle? The lesser included of grand larceny is
9 her truck.

10 The grand larceny of the Chrysler is Mrs.
11 Whomever -- what her name was. I have the indictments with
12 specificity so the jury is not confused as to which charge
13 and which incident we are talking about, because there are
14 five incidents. There is the taking of the white truck, yes
15 or no.

16 There is the leaving the scene of the accident
17 with the Mercury -- I mean with the Lincoln.

18 There is taking of the red car.

19 There is the drugs.

20 And then what was the other one? The breaking and
21 entering into Mrs. Callaham's vehicle at the very end.

22 So as I go through the individual indictments to
23 reflect back with regard to Ms. Callaham's vehicle, in
24 regard to Ms. Williams vehicle, Ms. Searles vehicle. The
25 indictments have it in there and I want the jury to know the

1 ladies/victims names that testified so that they can kind of
2 compartmentalize the facts.

3 Y'all did it in y'all's arguments. He argued each
4 incident and you argued each incident as it happened through
5 time. I mean, y'all did that.

6 MR. FRAZIER: Your Honor, I object because I
7 didn't get to argue grand larceny.

8 THE COURT: What grand larceny?

9 MR. FRAZIER: The grand larceny of the Frank's Car
10 Wash with Ms. Searles.

11 THE COURT: You argued that earlier on. You did.

12 Now, you argued an hour and five minutes. You had
13 ample time and wide latitude. I timed you. You were
14 allowed to argue a long time. Ms. Bolen, she had to step
15 out momentarily and she missed some of that, but you did
16 argue the grand larceny of that car. Now, not as
17 extensively as you did some of the others, but you commented
18 on it.

19 MS. BOLEN: Your Honor?

20 THE COURT: Yes.

21 MS. BOLEN: I just had to step out for a minute.
22 I just want to make sure that he has question for me and I
23 want to make sure I'm in the right part of the proceeding.
24 Had Your Honor already decided which lesser included you are
25 going to be instructing on, or does he have a chance to talk

1 to you about that?

2 THE COURT: Well, I'm -- we discussed it at side
3 bar.

4 MS. BOLEN: Okay.

5 THE COURT: Here is the lesser included.

6 MS. BOLEN: Okay.

7 THE COURT: The grand larceny of Ms. Searles car.
8 The lesser included of the value, two to ten.

9 He asked for petit larceny and I'm declining that.
10 I do not believe there is facts to consider a petit larceny
11 a lesser included of the 2014 model car. A car that's less
12 than two years old that runs is worth more than \$2,000.
13 Absolutely. There was no comment the car was in bad shape.
14 The cleanup guy said it was top shape, so I don't see any
15 facts in the light most favorable to Mr. Frazier's argument
16 that it would constitute a value of less than \$2,000. I
17 can't fathom that.

18 The carjacking, he asked for a grand larceny
19 charge on that, or a use of vehicle without owner's
20 permission. I'm inclined to give a grand larceny charge as
21 a lesser included of the carjacking on that one.

22 On the trafficking he asked for a lesser included
23 possession or possession with intent type charge. I do not
24 believe, since this is a threshold of weight, which would be
25 inference, that he's not entitled to any other charge other

1 than trafficking. Nothing lesser included.

2 MS. BOLEN: Your Honor --

3 THE COURT: And then lastly the breaking into
4 motor vehicle, he asked that -- for an unlawful entry,
5 maybe, and I don't believe that's appropriate. I think
6 unlawful entry is into a home and not to a personal vehicle.
7 I'm not certain to that.

8 I'm -- I think I named them all. Did I miss any
9 of them or do y'all have any further requests, since you
10 have heard my summary of our conversation at the side bar?

11 MS. BOLEN: Your Honor, he may want to -- he may
12 want to object, Your Honor, argue.

13 THE COURT: He can.

14 MR. FRAZIER: Your Honor, on the -- on the -- the
15 carjacking to a use of -- unlawful use of vehicle, he was
16 saying that it does not -- it was like -- it does not state
17 deprived with intention -- the intention to deprive. I'm
18 reading section -- Section 16-21-60 (a), "it is unlawful for
19 a person not entitled to possession of a vehicle to take,
20 use, or drive a vehicle without the consent of the owners
21 and with the intent to deprive him temporarily or otherwise
22 of the vehicle or its possession."

23 Your Honor, okay, I want to argue on that because
24 that's basically no force, no intimidator, no -- no
25 violence, and that's basically saying that she didn't give

1 consent to use the vehicle. It wasn't my vehicle. I don't
2 own the vehicle, and basically her vehicle was taken. She
3 didn't give permission and it was taken and -- it was
4 taken without her consent.

5 THE COURT: That may be a better lesser included
6 than the grand larceny, because there was no testimony of
7 the value of her vehicle.

8 MR. FRAZIER: Yes, sir.

9 THE COURT: Y'all got any objection to that?

10 MR. FRAZIER: I would like to use that on both the
11 grand larcenies, Your Honor.

12 THE COURT: No, one grand larceny, there is a lot
13 of testimony about it. This is the one that's not.

14 MR. MORONEY: Well, judge, to be clear, you are
15 suggesting to include the use of vehicle without
16 permission --

17 THE COURT: As a lesser.

18 MR. MORONEY: In lieu of the --

19 THE COURT: In lieu of the grand larceny.

20 MR. MORONEY: Grand larceny as a lesser included?

21 THE COURT: Yes.

22 And the grand larceny on Ms. Searles car, the
23 lesser included as to the value. That goes in. I'm good on
24 that, but the carjacking, the lesser included only being a
25 use of vehicle without permission, and no instruction on

1 Mrs. Chatos' vehicle as a grand larceny.

2 MR. FRAZIER: Your Honor?

3 THE COURT: Yes.

4 MR. FRAZIER: I also would like to object on
5 the -- on the -- on the grand larceny for Mr. Searles car
6 is that -- for them to prove their intention was to deprive
7 the owner from her vehicle permanently.

8 THE COURT: They provided testimony. She came out
9 and claimed she said "you got my car. Don't take my car,"
10 and it was driven off. That's --

11 MR. FRAZIER: The State is not going to be able to
12 prove the intention.

13 THE COURT: Those are the facts to show that they
14 used, okay?

15 MR. FRAZIER: There is still no intention proven
16 there, Your Honor.

17 THE COURT: Well, that's the State's burden to
18 prove beyond a reasonable doubt and the State presented
19 testimony.

20 MR. FRAZIER: Your Honor, I would like to argue to
21 you on simple larceny.

22 THE COURT: No, I'm not -- I'm not charging simple
23 petit larceny. You can argue that one more time, but I'm
24 not going to do it. There's not one single word --

25 MR. FRAZIER: Your Honor, there is no proof --

1 THE COURT: -- in this trial that shows that
2 vehicle was worth less than \$2,000. Not one.

3 MR. FRAZIER: Your Honor, there's also no proof as
4 far as to the value of Ms. Searles car too.

5 THE COURT: The red Chrysler?

6 MR. FRAZIER: There's no proof, no actual proof.

7 THE COURT: She testified. She is the owner. She
8 can testify to the value.

9 MR. FRAZIER: She is not the owner of the vehicle
10 also, Your Honor.

11 THE COURT: I have ruled on that. If I'm wrong
12 you can appeal me, but we have already -- I have crossed
13 that bridge. I determined in court that she was competent.
14 She was qualified. The jury can take notice of the value
15 the car. That's in. That's -- that's a directed verdict
16 motion. I denied it. The jury heard it. They can decide
17 whether they believe her, but you are arguing directed
18 verdict motion on that grand larceny now and that's not
19 appropriate now. We are talking about jury instructions.

20 MR. MORONEY: Your Honor, I would just like to
21 clarify, just put on the record here with respect to
22 Blockburger v. U.S., "for the same act constitutes a
23 violation of two distinct statutory provisions, the test to
24 determine whether these are two offenses or one is whether
25 each provision requires proof of additional facts that the

1 other does not."

2 Your Honor, it's the State's position that the two
3 offenses you are considering are the grand larceny and the
4 use of vehicle without permission both contain additional
5 elements and need additional proof that is needed for the
6 carjacking.

7 THE COURT: I'm not charging the grand larceny on
8 the carjacking. I'm not going to charge it.

9 MR. MORONEY: And --

10 THE COURT: I have backed off of that. I'm
11 thinking --

12 MR. MORONEY: So then this argument is with
13 respect also then to the use of vehicle without permission.
14 Use of vehicle without permission does contain an additional
15 element of proof and that would be in violation of the
16 Blockburger Test.

17 THE COURT: What is the additional element?

18 MR. MORONEY: The additional element here --

19 THE COURT: Took a car from a person.

20 MR. MORONEY: Unlawful person not entitled to
21 possession; not entitled to possession of arguably not
22 included there in the carjacking.

23 THE COURT: You presented facts to support that.

24 MR. MORONEY: To take --

25 THE COURT: Your witness testified "you are taking

1 my property. I'm going to grab you around the neck."

2 Certainly --

3 MR. MORONEY: Okay. And I'm just going down the
4 line here. To take, use, or drive a vehicle without the
5 consent of the owner.

6 Again, this is the large issue we have is with the
7 intent to deprive them temporarily or otherwise. The intent
8 element is an additional element and --

9 THE COURT: They do that -- they do that from the
10 circumstances. That general charge on criminal intent, they
11 do that from the general intent of circumstances there.
12 That's not --

13 MR. MORONEY: But, Your Honor --

14 THE COURT: You have got intent that the defendant
15 took by force or intimidation the vehicle from another
16 person while they were operating it.

17 MR. MORONEY: There is no intent element here in
18 the carjacking statute, Your Honor, and --

19 THE COURT: Oh, yes, there is.

20 MR. MORONEY: -- it says to take, or attempt to
21 take, a motor vehicle from another person by force and by
22 violence or by intimidation while the person is operating
23 the vehicle, while the person is in the vehicle. It's
24 just -- it's just the act is raised. There is no intent
25 element and the use of vehicle without permission requires

1 that.

2 THE COURT: Well, we have been through this. If
3 y'all want to appeal me on the intent again, have at it.
4 You can take two of them up, but I'm charging intent on
5 everything. A serious crime, carries twenty years, has
6 intent, in my opinion. Y'all can argue that mens rea that
7 it's just the act. An act of violence or intimidation is
8 intent. You can argue it and if y'all want to appeal it,
9 take it up again. Have two of them up there. That's cool
10 with me.

11 MR. MORONEY: I mean, we are not trying to get
12 into that all that. I was just looking solely at the
13 Blockburger Test and the additional elements of proof and --

14 THE COURT: He's representing himself. I'm going
15 to give him the benefit of the doubt. All right.

16 MR. MORONEY: We understand, Your Honor.

17 THE COURT: Okay.

18 MR MORONEY: We appreciate your time.

19 THE COURT: All right, are we ready to go?

20 MS. BOLEN: Just one minute, judge.

21 THE COURT: That's about what I'm going to take.

22 (Off the record)

23 (Back on the record)

24 (The following takes place in the presence of the
25 jury panel).

1 (Whereupon, at 12:42 p.m. the court instructed the
2 jury panel)

3 THE COURT: All right, folks. I'm going to read
4 you my instructions, or get lunch?

5 What I'm going to try to do is tell you the
6 general law and then as we get to the individual indictments
7 we will address those a little more succinctly.

8 So Ms. Dillashaw and ladies and gentlemen of the
9 jury, the State has brought five indictments against Mr.
10 Terrence Frazier. He's pled not guilty and by that plea it
11 requires the State to prove all the elements on each of the
12 indictments. They all stand individually. They must prove
13 those elements to the standard of proof called beyond a
14 reasonable doubt.

15 You bear in mind that his plea is that he has
16 denied all the charges in the indictments.

17 Mr. Frazier comes into court presumed innocent.
18 He is entitled to this presumption throughout the entire
19 case, unless and until it's dispelled by the State of
20 evidence satisfying you that they have proved the case and
21 all the elements beyond a reasonable doubt. They must prove
22 each element beyond a reasonable doubt.

23 Our Constitution makes me the instructor of the
24 law and it makes you also the finders of facts.

25 Now, since I am the sole and only instructor of

1 the law, we have discussed this earlier, is that you as a
2 group would have to accept the law as I am instructing it to
3 you. And if you have an understanding of what the law is,
4 you heard on the television, the radio, read on the
5 Internet, you must disregard that understanding and accept
6 the law as I am instructing it to you.

7 Now, if I make an error in the instruction of the
8 law or of any evidentiary ruling during the trial of the
9 case, there is another time and there is another place where
10 that error could be considered and, if necessary, corrected.
11 For our purposes here today you must accept the law as I am
12 giving it to you.

13 Now, I told you the State has the burden of
14 proving the guilt of Mr. Frazier. Mr. Frazier has no burden
15 whatsoever, as he's presumed innocent, so the State must
16 prove its case to the standard of proof called beyond a
17 reasonable doubt.

18 You as the judges of the facts in considering this
19 most importantly are the judges of the credibility and the
20 believability of the witnesses who have testified in the
21 case. I tell you that you can use your every-day
22 experiences and your common sense in evaluating the
23 credibility of the witnesses who have testified. You can
24 also consider their manner and the appearance of each of the
25 witnesses who testified. You can consider whether a witness

1 was straightforward, whether the witness was hesitant in
2 answering. You can consider how a witness came to know the
3 facts to which he or she testified, what was their ability
4 to know these facts. You can consider whether there was
5 some reason a witness would want to give testimony which
6 would help or hurt one side or the other. In other words,
7 were any of the witnesses either biased or prejudiced. Was
8 the testimony of a witness strengthened or weakened by other
9 testimony or other evidence.

10 You as the jury can consider or believe as much or
11 as little of each witness' testimony as you deem
12 appropriate. You can believe the testimony of a single
13 witness against that of many, or just the opposite. You can
14 believe part of a witness' testimony and disbelieve the
15 rest.

16 The fact that testimony is not controverted does
17 not mean that you must accept it as true and undisputed.
18 You must still gauge the credibility of the witness who
19 testified in the case.

20 Now, I observed you as a group listening closely
21 to the evidence presented. As you go to the jury room you
22 will be weighing this evidence and weighing evidence is
23 entirely a mental process. You must weigh the evidence
24 using your good judgment and your common sense.

25 Additionally, the evidence presented are generally

1 presented in two types. There is direct testimony and
2 circumstantial evidence.

3 Direct evidence is testimony of a person who
4 asserts or claims to have actual knowledge of certain facts,
5 such as an eyewitness. They can testify as to what they
6 saw, heard, smelled, observed.

7 Circumstantial evidence, on the other hand, is a
8 proof of a chain of facts and circumstances indicating the
9 existence of another fact.

10 Our law makes no distinction between the weight or
11 value to be given to direct evidence or circumstantial
12 evidence, nor is there a greater degree of proof required of
13 circumstantial evidence than that of direct evidence.

14 I tell you you should just weigh all the evidence
15 that you heard and consider in this case.

16 To the extent the State relies on circumstantial
17 evidence, all of the circumstances must be consistent with
18 one another and when taken together point conclusively to
19 the guilt of the accused beyond a reasonable doubt.

20 Now, if these circumstances are able to portray
21 the defendant's behavior is suspicious, then the State's
22 proof has failed. However, after weighing all the evidence,
23 whether it's direct evidence or circumstantial evidence, or
24 any combination of the two, if you are convinced of the
25 guilt of the defendant beyond a reasonable doubt, you must

1 find him guilty.

2 And if you are not convinced of his guilt beyond a
3 reasonable doubt, you find him not guilty.

4 Reasonable doubt. What is a reasonable doubt? A
5 reasonable doubt is the kind of doubt that would cause a
6 reasonable person to hesitate to act. Reasonable doubt may
7 arise from evidence which is in the case, or from a lack or
8 absence of evidence in this case.

9 Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the defendant's guilt. It is
11 the kind of doubt which one can assign a reason, if the
12 assignment can be done reasonably and convincingly.

13 Now, a defendant in every case is entitled to
14 every reasonable doubt that may arise in the case. And what
15 that means is if you have any doubt about anything, you
16 would be required to resolve that doubt in the defendant's
17 favor. However, I tell you that the very fact that you as a
18 group engage in a full and free discussion of the issue of
19 guilt or innocence does not automatically create a
20 reasonable doubt. You as a group of twelve make the
21 determination of whether or not a reasonable doubt exists as
22 to his guilt.

23 All right. Specifics. I'm going to start with
24 indictment 16 -- I'm looking at the wrong numbers. Y'all
25 bear with me.

1 Indictment 1603, which is for leaving the scene of
2 an accident. Mr. Frazier is charged with leaving the scene
3 of an accident causing damage to a vehicle which was driven
4 or attended by a person.

5 In order to sustain a conviction the State must
6 prove beyond a reasonable doubt that Mr. Frazier was driving
7 a vehicle and that the vehicle was involved in an accident;
8 the accident caused damage to a vehicle which was driven or
9 attended by another person; the defendant did not stop or
10 failed to return or remain at the scene; and the defendant
11 failed to give his name, address, registration number, and,
12 if asked, he failed to show his driver's license.

13 So the State must also prove beyond a reasonable
14 doubt that the defendant knew, or should have known, that
15 the accident happened. This may be shown by evidence and
16 circumstances and conditions which would cause an ordinary
17 reasonable person to believe that the vehicle had been
18 involved in an accident resulting in damage to the vehicle
19 which was driven or attended by the other person.

20 Indictment 1604, trafficking in methamphetamine.

21 In order for the State to sustain a conviction on
22 trafficking in methamphetamine, the State must prove beyond
23 a reasonable doubt that Mr. Frazier knowingly sold,
24 manufactured, cultivated, delivered, purchased, brought into
25 this state, provided financial assistance, or otherwise

1 aided, abetted, conspired to sell, manufacture -- hold on --
2 cultivate, deliver, bring into this state, and was knowingly
3 in actual or constructive possession, knowingly attempted to
4 become in actual or constructive possession of
5 methamphetamine.

6 The State must prove beyond a reasonable doubt
7 that the amount or the weight of methamphetamine was more
8 than 10 grams, but less than 28 grams, for a trafficking
9 methamphetamine charge.

10 And I tell you the State must prove those two
11 grounds beyond a reasonable doubt of each of those elements.

12 Indictment 1605, which is the grand larceny
13 indictment. This is the grand larceny alleged in the
14 indictment of the vehicle owned or operated by Ms. Kimberly
15 Searles, which was the Chrysler.

16 Mr. Frazier is charged with grand larceny of a
17 motor vehicle. In order to sustain a conviction beyond a
18 reasonable doubt Mr. Frazier took a motor vehicle that
19 belonged to someone else against the will or without the
20 consent of the other person. The slightest removal of the
21 motor vehicle or the complete possession of the motor
22 vehicle even for an instant by the defendant is enough to
23 show a taking and carrying away of the motor vehicle.

24 The State must also prove beyond a reasonable
25 doubt that the defendant intended to permanently deprive the

1 owner of the vehicle.

2 And, finally, the State must prove the value of
3 the motor vehicle was taken was \$10,000, or more.

4 Now, if the State failed to prove the value of the
5 vehicle was more than \$10,000, you can consider whether or
6 not Mr. Frazier or the State proved Mr. Frazier is guilty of
7 grand larceny of a motor vehicle between the values of 2,000
8 and \$10,000.

9 The elements are the same. The State must prove
10 that a motor vehicle belonged to someone else and he took
11 the vehicle against the will and without the consent of that
12 person. The slightest removal of the vehicle or complete
13 possession of the motor vehicle is enough to show the taking
14 and carrying away of the vehicle.

15 The State must prove value of the vehicle was more
16 than 2,000, but less than 10,000 to sustain a conviction for
17 that lesser included grand larceny charge.

18 And the State must prove those elements all beyond
19 a reasonable doubt.

20 Indictment 1606, which is the breaking and
21 entering -- I'm sorry, breaking into a motor vehicle. This
22 is in regard to Ms. -- the vehicle owned alleged in the
23 indictment is Ms. Gwendolyn Callahan.

24 On that indictment the State must prove to obtain
25 a conviction beyond a reasonable doubt that Mr. Frazier

1 broke, or attempted to break, into a motor vehicle or its
2 compartment with the intent to steal the vehicle, or
3 anything of value from within the vehicle, or anything
4 attached to the vehicle, or anything used in connection with
5 the vehicle.

6 Now, breaking is any act of physical force,
7 however slight, by which any obstruction to entering the
8 vehicle is forcibly removed. The breaking does not need to
9 be by means of great force, because any force which is
10 necessary to make an opening sufficient is sufficient. For
11 example, if a car door is closed, even though it is not
12 locked, an opening of that door would constitute a breaking
13 under this statute.

14 Intent means intending the result which actually
15 occurs, not an accidental or involuntary act.

16 Intent may be shown by the acts and conduct of the
17 defendant and any other circumstances which may naturally
18 and reasonably infer intent.

19 Lastly Indictment 1632, which is the carjacking
20 indictment. The State has indicted Mr. Frazier on that
21 offense.

22 In order for the State to prove carjacking, the
23 State must prove beyond a reasonable doubt that Mr. Frazier
24 took, or attempted to take, a motor vehicle from another
25 person by force and violence or by intimidation while the

1 person was operating the vehicle or while the person was in
2 the vehicle.

3 Now, if the State fails to prove those elements
4 that the vehicle was taken by force or intimidation while
5 the person was operating the vehicle, you may consider
6 another lesser included offense of the unauthorized use of a
7 vehicle.

8 In order for the State to sustain a conviction for
9 unauthorized use of a vehicle, or use of a vehicle without
10 permission, the State can prove beyond a reasonable doubt
11 that Mr. Frazier took or used or drove a vehicle which he
12 was not entitled to possess and he did not have the consent
13 of the owner and he had the intent to deprive the owner of
14 its possession.

15 Intent may be shown by acts and conduct from which
16 the defendant and other circumstances which you may
17 naturally and reasonably infer intent.

18 Now, I have discussed intent. Criminal intent is
19 a necessary element of the crimes which must be proven by
20 the State beyond a reasonable doubt. Criminal intent is
21 always a matter for the jury to determine from the
22 circumstances surrounding the situations.

23 There is no way to prove intent to a mathematical
24 certainty. There is no way medical science can dissect a
25 person's brain and determine what he or she had in mind, so

1 our law states that criminal intent may be inferred from the
2 circumstances shown to have existed both before and after
3 the fact. This is how you, the jury, make the determination
4 of whether or not the element requiring intent was present
5 or not.

6 Criminal intent is a state of mind that operates
7 jointly with an act or an omission in the commission of a
8 crime. Criminal intent is a mental state of conscious
9 wrongdoing.

10 It is you, the jury, your job to determine what
11 the defendant intended to do based upon the circumstances
12 shown to have existed.

13 The State must prove criminal intent beyond a
14 reasonable doubt on the indictments as elements of the
15 charges I just explained to you.

16 I instructed you preliminarily, and I instruct you
17 again, that the fact that Mr. Frazier chose not to testify
18 is not a factor to be considered by you in any way in your
19 deliberations. The question and consideration of his guilt
20 or innocence must be considered by you based upon the
21 evidence and proof offered by the State. The fact he chose
22 to exercise the right to remain silent may not be considered
23 by you in any manner whatsoever. A defendant has a
24 Constitutional right to remain silent and his assertion of
25 his right is not to be used against him.

1 So under your oath you are to draw no conclusion
2 whatsoever from the fact that he exercised his right and
3 chose not to testify. The fact that he chose not to testify
4 should not even be discussed in the jury room. The burden
5 of proof is upon the State and the defendant is not required
6 to prove his innocence. The burden of proof remains upon
7 the State to prove his guilt.

8 Now, Ms. Dillashaw, members of the jury, as y'all
9 begin to retire and start your deliberations I want you to
10 be mindful of the importance of your job. You are not
11 called very often to serve as jurors, but you and I are
12 acting for the community in this state. It is my job to
13 make certain this trial has been conducted fairly. It is
14 your job to make certain your verdict is fair and just.

15 Now, it's improper for me to comment on any facts
16 during the case. It's your job to make determinations of
17 facts. My job is to instruct you on the law. I hope by
18 none of my rulings or none of my comments during the trial,
19 that you not consider those in any manner whatsoever in
20 either party's favor. You must consider the testimony and
21 the evidence presented by the parties, reviewing it, make
22 determination of those facts, weighing it fairly and
23 impartially and reaching a unanimous verdict on each of the
24 indictments.

25 I tell you that each indictment stands

1 independently. So the first indictment, up or down, guilty
2 or not guilty. All five do not have to be consistent. All
3 are to be considered individually. All five can be the same
4 one way or the other. You can have one and four, four and
5 one, two and three. It does not matter. You are to
6 consider them individually.

7 Now, the indictments are done so that you can
8 understand the lesser included offenses, for there are
9 several indictments which have lesser included offenses. My
10 law clerk has prepared a verdict form for you to see, and so
11 the one -- or the indictment that has the lesser included,
12 it would be on the verdict form for you to see.

13 Now, if y'all need to see the indictments, the
14 indictments will come back, but the verdict form is what I
15 guess you can use as a guide to consider the charges which I
16 have instructed.

17 Now, I told you earlier and told the lawyers and
18 Mr. Frazier that if y'all need to hear any testimony a
19 second time, write it on a note "we would like to hear the
20 testimony of the Chick-fil-A owner," so and so, whomever.
21 Mike can get it together, but he's got it on a recorder.
22 He's got to cue it up so you can't come in here and say
23 start playing it because it will catch him off guard. Now,
24 you send me a note out and within five or six, seven minutes
25 he can probably have it found on his record and can replay

1 it for you.

2 If y'all want to see the videos, let me know. I
3 can bring you in here and let y'all mess with the videos, or
4 I can direct my law clerk to manage the computer so y'all
5 can see the video that you want, if that's your choice.

6 My instructions are kind of lengthy somewhat.
7 They are simple to me, but I do this all the time. If you
8 want the instructions on any element of any of the law or
9 any of the elements of any of the charges in the
10 indictments, "judge, will you please re-instruct us on the
11 elements of the charge" and I'll try to do that. In some
12 cases I can send you a written portion of the instructions I
13 have just given you and maybe I can submit that back, but if
14 you send me notes saying "we would like to hear testimony,"
15 or "can you re-instruct us on some element," it helps me
16 explain to the lawyers what you are asking for and what I
17 can give you.

18 Now, once y'all start your deliberations y'all are
19 working on your time. When lunch comes in Mr. Willingham
20 will interrupt and say lunch is here. Y'all can eat through
21 lunch, if you want to.

22 Is the other room open, the big room?

23 THE BAILIFF: 200, I think so, yes, sir.

24 THE COURT: Tables over there?

25 THE BAILIFF: Yes, sir.

1 THE COURT: Okay. That room has no windows. If
2 y'all want to go to the other room, Mr. Willingham will set
3 y'all up over there. It's a little bigger. Y'all can eat
4 and deliberate. Sometimes I feel like the small room.

5 Now, there is no bathrooms in the other room.
6 That's the advantage to this one, but here is the deal.
7 Y'all can deliberate for twenty minutes, or hour, whatever.
8 If you need a break, somebody needs to step outside to go to
9 the bathroom, stop deliberations. One person wants a break,
10 the whole team takes a break, but I'm kind of offering up
11 the bigger room if y'all would rather have it. Okay?

12 Now, y'all decide whether y'all want to be in that
13 room or not at first. I'm going to put you in here and
14 y'all decide whether y'all are going to make do in here, or
15 you want to go over there. I need to talk with the lawyers
16 and Mr. Frazier to make certain my instructions were
17 complete, so I'm going to tell you to step in there and let
18 me talk to them and ask were my instructions sufficient.
19 They can make comments on them. Then once I hand you the
20 verdict form and the evidence, that's when you start your
21 deliberations.

22 So y'all decide whether y'all want to stay here
23 and make do, or go across there and make do, because there
24 is advantages to both rooms. The bathrooms being here are
25 very convenient. The room over there being a little bit

1 bigger, so we will go over there. So y'all step in the
2 room. Don't start your deliberations quite yet.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: All right, folks, any comments on the
6 instructions? I was looking at my verdict form and Robert
7 had some details on it I want to show y'all.

8 MR. MORONEY: Just one minor issue, Your Honor. I
9 wanted to draw your attention to the trafficking charge, in
10 that long litany of everything to consider, I was just
11 reading along and I believe you added an and before with
12 knowingly in actual or constructive possession. I think
13 that additional and article adds -- makes it kind of he
14 needs to -- you know, we must prove all of that litany of
15 items of manufacture, deliver, and being in possession,
16 where I think without that and, you know, just being in
17 actual possession.

18 THE COURT: I may have said that, but I don't -- I
19 may have said that unintentionally, but I try to read and
20 then I talk.

21 MR. MORONEY: I understand.

22 THE COURT: That is very possible that I said
23 that.

24 MR. MORONEY: But that is the only thing that I
25 wanted to bring up.

1 THE COURT: Okay. Let me clear that up with them.

2 MR. MORONEY: Okay.

3 THE COURT: Ms. Bolen, I want you to -- you can
4 comment on these jury instructions. You are advising him.

5 MS. BOLEN: Your Honor, I didn't -- I didn't hear
6 anything that I would advise him to object to.

7 THE COURT: In my charge, I'm going to briefly
8 read it. The State must prove beyond a reasonable doubt
9 that the defendant knowingly sold, manufactured, cultivated,
10 delivered, purchased, brought, provided assistance, aided,
11 abetted, attempted, or conspired to sell, manufacture,
12 cultivate, or bring into this state; was knowingly in actual
13 or constructive possession; or, knowingly attempted to
14 become in actual or constructive possession. That's what
15 you are commenting on is there is or's rather than and's?

16 MR. MORONEY: That's right, Your Honor.

17 THE COURT: Okay.

18 Let's find out where they want to go first and
19 then we will bring them back in here and I'll clear that up.

20 (Off the record).

21 (Back on the record).

22 THE COURT: There is only two pieces of evidence?

23 MR. MORONEY: That's right, Your Honor.

24 THE COURT: The disk and the report -- the drugs I
25 mean.

1 THE BAILIFF: They are going to stay.

2 THE COURT: All right.

3 Bring them back in here real quick. I want to
4 clear this up.

5 (The following takes place in the presence of the
6 jury panel)

7 THE COURT: All right, folks, on my instruction on
8 the trafficking, I want to be clear. There was a long list
9 of verbs the State must prove in order to prove trafficking.

10 Let me get back up here. Bear with me.

11 They must prove beyond a reasonable doubt that a
12 defendant knowingly sold, manufactured, cultivated,
13 delivered, purchased, brought into this state, provided
14 financial assistance, or otherwise aided, abetted, or
15 attempted, or conspired to sell, manufacture, cultivate,
16 deliver, purchase, or bring into this state, or was
17 knowingly in actual possession or constructive possession,
18 or knowingly attempted to become in actual or constructive
19 possession.

20 Everything in there is or's. I may have said and,
21 but those verbs are a long string of verbs. So the drugs
22 were -- any one of those elements, but the State must prove
23 those elements, the weight, and the knowing actual
24 constructive possession. The State must prove those beyond
25 a reasonable doubt.

1 All right. With that said, Ms. Dillashaw, I will
2 show you the verdict form.

3 These are the indictments. I'll give them to you
4 too. Y'all can read those, if you would like. They can go
5 back, but this is kind of sequentially how I gave you the
6 instructions.

7 Now, y'all are welcome to the two pieces of
8 evidence. There is only two things submitted. There was
9 the State's Exhibit No. 4, which is the -- this one, and
10 then the disk. So y'all can take those back.

11 In order to play the disk, you will have to say
12 "we would like to see the disk" and come back and ask us and
13 we will play it out here.

14 These are the only two?

15 MR. MORONEY: Yes, Your Honor.

16 THE COURT: If you need any further instructions,
17 you have got any questions --

18 Do they have pads back there?

19 THE BAILIFF: Yes, sir.

20 THE COURT: If you need to.

21 JURY FOREPERSON: Will we get this?

22 THE COURT: No, that's your -- that's why you are
23 foreperson. You get in charge of the list. If you want
24 more copies of it, sure, we can do that.

25 Will you copy this verdict form? Give me about

1 five copies of it. It will be a few copies around so y'all
2 can kind of go down, or do you want twelve?

3 JURY FOREPERSON: Twelve.

4 THE COURT: All right. Bring me twelve, please.

5 All right, while I'm doing that, y'all step in the
6 jury room.

7 You are my alternate?

8 THE BAILIFF: Yes, she is.

9 THE COURT: You stay right there.

10 ALTERNATE JUROR: Okay.

11 THE COURT: But did you order lunch?

12 ALTERNATE JUROR: Yes.

13 THE COURT: You get to stay and eat lunch.

14 ALTERNATE JUROR: Okay.

15 THE COURT: I'm about to separate you from the
16 other twelve friends.

17 ALTERNATE JUROR: Okay.

18 (Whereupon, at 1:10 p.m. the jury panel retired to
19 the jury room to begin deliberations)

20 THE COURT: We are going to stand at ease. It's
21 1:10. When lunch gets here we will interrupt and let them
22 have that.

23 You just stay out here with us.

24 ALTERNATE JUROR: Okay.

25 (Whereupon, at 1:12 p.m., proceedings were

1 recessed pending the verdict of the jury panel)

2 (Jury Note marked as Court's Exhibit No. 2 for
3 identification)

4 (Whereupon, at 2:58 p.m., proceedings were
5 reconvened)

6 THE COURT: The bailiff has told me the jury has a
7 verdict. Someone may be in the restroom right now, but as
8 soon as they are ready we will have them in.

9 (Whereupon, at 3:00 p.m., the jury panel returned
10 to open court to render its verdict)

11 THE COURT: All right. Ms. Dillashaw, have y'all
12 reached a verdict?

13 JURY FOREPERSON: We have.

14 THE COURT: Was it unanimous?

15 JURY FOREPERSON: Yes, sir.

16 THE COURT: You may publish the verdict.

17 THE CLERK: State of South Carolina, County of
18 Greenwood, versus Terrence O'Neil Frazier, as to the charge
19 of leaving the scene of an accident, we, the jury, find the
20 defendant guilty.

21 As to the charge of trafficking in
22 methamphetamine, we find the defendant guilty.

23 As to the charge of grand larceny of motor
24 vehicle, we, the jury, find the defendant guilty.

25 As to the charge of breaking into a motor vehicle,

1 we, the jury, find the defendant guilty.

2 As to the charge of carjacking, we, the jury, find
3 the defendant --

4 (Off the record).

5 (Back on the record).

6 THE COURT: Read this one and then I'll make a
7 statement on the record for that.

8 THE CLERK: Use of vehicle without permission, we,
9 the jury, find the defendant guilty.

10 Signed by Donna Dillashaw, foreperson.

11 THE COURT: All right. Ms. Dillashaw, on the
12 charge of carjacking, there was no verdict rendered. Would
13 you need to step in the jury room to represent the verdict
14 unanimous on that one, or can you represent that that
15 verdict was unanimous, one way or the other, since you found
16 a verdict on the other?

17 JURY FOREPERSON: We found him not guilty of the
18 carjacking.

19 THE COURT: All right.

20 JURY FOREPERSON: I failed to check it. I'm
21 sorry.

22 THE COURT: We are going to amend that. And that
23 would be consistent with the conviction on the lesser
24 included.

25 Now, since Mr. Frazier is unrepresented, I'm going

1 to ask the clerk to poll the jury as to the five verdicts,
2 and not individually, but all five together.

3 What that means is the clerk is going to ask you a
4 question, Ms. Dillashaw, is that your verdict and is it
5 still your verdict individually, because normally an
6 attorney would advise Mr. Frazier he would have that right.
7 The court is going to impose that motion on his behalf.

8 So please poll the jury in that fashion as to
9 conclusive, all five verdicts, "are those your verdicts and
10 still your verdicts."

11 THE CLERK: Jason Watts, is this your verdict and
12 still your verdict?

13 JUROR NUMBER 133: Yes.

14 THE CLERK: Emily Temple, is this your verdict and
15 still your verdict?

16 JUROR NUMBER 123: Yes.

17 THE CLERK: Daci Johns, is this your verdict and
18 still your verdict?

19 JUROR NUMBER 56: Yes.

20 THE CLERK: Renea Williams, is this your verdict
21 and still your verdict?

22 JUROR NUMBER 141: Yes.

23 THE CLERK: Lisa Holloway, is this your verdict
24 and still your verdict?

25 JUROR NUMBER 37: Yes.

1 THE CLERK: Thomas Wiley, is this your verdict and
2 still your verdict?

3 JUROR NUMBER 139: Yes.

4 THE CLERK: Lynn McClurkin, is this your verdict
5 and still your verdict?

6 JUROR NUMBER 77: Yes.

7 THE CLERK: Dorian Freeman, is this your verdict
8 and still your verdict?

9 JUROR NUMBER 34: Yes.

10 THE CLERK: James Hedrick, is this your verdict
11 and still your verdict?

12 JUROR NUMBER 46: Yes.

13 THE CLERK: Brett Weeks, is this your verdict and
14 still your verdict?

15 JUROR NUMBER 134: Yes.

16 THE CLERK: Mark Kornet, is this your verdict and
17 still your verdict?

18 JUROR NUMBER 65: Yes.

19 THE CLERK: And Donna Dillashaw, is this your
20 verdict and still your verdict?

21 JUROR NUMBER 27: Yes.

22 THE COURT: All right. The jury has been polled.

23 I'm going to speak to the jury briefly, but Ms.
24 Bolen, helping Mr. Frazier, is there any other issues for
25 the jury since they have been polled?

1 MS. BOLEN: No, sir.

2 THE COURT: All right. Very well.

3 Y'all step back in the jury room. I'm going to
4 come in and tell y'all what's next.

5 (Whereupon, at 3:05 p.m., the jury panel was
6 discharged).

7 (Whereupon, proceedings were recessed).

8 (Whereupon, proceedings were reconvened)

9 (Certified Indictment marked as Court's Exhibit
10 No. 3 for identification)

11 (Letter, dated 10/29/15 marked as Court's Exhibit
12 No. 4 for identification)

13 THE COURT: All right. We are ready to proceed
14 with sentencing, Mr. Moroney?

15 MR. MORONEY: Yes, Your Honor.

16 THE COURT: Mr. Frazier, are you ready?

17 MR. FRAZIER: Yes, sir.

18 THE COURT: All right. Come on up. Come around
19 here right in front of the clerk. Come right here in the
20 center.

21 Before we -- I know a little bit about his prior
22 record.

23 Mr. Frazier, tell me, you have been incarcerated
24 since the 9th of July of --

25 MR. FRAZIER: Yes, sir, since the 9th of July.

1 THE COURT: So you are due credit for all those
2 days on any of these indictments.

3 All right, solicitor, tell me just a little bit
4 about his prior record. I know the facts of the case. You
5 don't need to get into that. Tell me about his prior record
6 and --

7 MR. MORONEY: Yes, Your Honor.

8 THE COURT: -- then we will hear from Mr. Frazier.

9 MR. MORONEY: Starting back in December of 2008,
10 Mr. Frazier was convicted of assault of a high aggravated
11 nature. He received a 560 day sentence in reference to
12 that.

13 THE COURT: Is that the old ABHAN?

14 MR. MORONEY: That's what it looks like, Your
15 Honor.

16 THE COURT: Okay.

17 MR. MORONEY: He's got a simple possession of
18 marijuana. He was convicted back in August 2009, where he
19 was convicted and sentenced to 30 days.

20 Also in August of 2009, sentenced by Your Honor
21 for possession of cocaine, first offense. Convicted and
22 sentenced to six months.

23 He has a minor charge of possession of beer or
24 wine by a minor. The court date shown conviction
25 November 2010.

1 Also a simple possession, first offense,
2 November 2010.

3 Previously convicted of unlawful carrying of a
4 weapon, 2011. It looks like the date on that would be
5 September of 2011.

6 Driving with an expired vehicle license, convicted
7 October 2011.

8 Pointing and presenting firearms at a person. He
9 was convicted. It appears that date of conviction is
10 October of 2014. Convicted, sentenced to one year. The
11 sentence was suspended to 181 days of time served and two
12 years probation.

13 That's what he's on probation for now? Are you on
14 probation now.

15 MR. FRAZIER: Uh-uh.

16 THE COURT: Mr. Williams says that he is.

17 MR. MORONEY: That's what he's on probation for.

18 THE COURT: Come up here, Mr. Williams.

19 How much time has he got hanging over his head?

20 MR. MORONEY: I believe it's the remainder of a
21 year. So 181 days has been served. That's the balance of
22 the year.

23 THE COURT: Okay, 179 days.

24 MR. FRAZIER: Yes, sir.

25 THE COURT: That's all he's got looking at?

1 PROBATION AGENT: Yes, sir, we were just going
2 to --

3 THE COURT: That ain't no big deal. You have got
4 credit to that already in the bank.

5 MR. FRAZIER: Uh-huh.

6 THE COURT: All right. The biggest problem I
7 heard was the drug case, which was back in August of '09.

8 MR. FRAZIER: '08, sir.

9 THE COURT: August 27th of '09 is when I signed
10 the sentencing sheet. Do you remember that?

11 MR. FRAZIER: (Shaking head no).

12 THE COURT: You don't remember pleading in front
13 of me?

14 MR. FRAZIER: Uh-uh.

15 THE COURT: I don't see the prosecutor. He was in
16 here a minute ago, Mr. Andrews.

17 Anyway, that could be used against you. I'm
18 pretty certain that was told to you, which means the
19 trafficking case is a second offense, which carries a bigger
20 range than the first offense.

21 MR. FRAZIER: Uh-huh.

22 THE COURT: Tell me what's going on. I mean, I
23 heard your trial. Several people encouraging you, including
24 your sister and your brother, or your friend. I don't know
25 who this gentlemen was. Is he a brother or friend?

1 MR. FRAZIER: My brother.

2 THE COURT: Okay.

3 Both your siblings were in here. They care about
4 you a lot, and you mentioned your family several times.

5 MR. FRAZIER: Uh-huh.

6 THE COURT: What's going on?

7 MR. FRAZIER: Nothing.

8 THE COURT: Okay. What do you think would be a
9 fair sentence, considering what the jury has convicted you
10 of?

11 MR. FRAZIER: I can't tell you that, Your Honor.
12 It's up to you.

13 THE COURT: Okay. Fair enough.

14 MR. MORONEY: Your Honor, the victims are not able
15 to be here today due to previous engagements. They wanted
16 to relay that they felt that a considerable active sentence
17 would be appropriate, given the facts of this case.

18 I understand -- I have met with Mr. Frazier on
19 previous occasions, numerous occasions, and I understand
20 this incident was likely fueled by his ingestion of a
21 considerable amount of methamphetamine that day. However,
22 that does not negate the fact of what took place and the
23 victims whose lives were affected that day and will forever
24 be affected.

25 Ms. Chatos has an injury that she still is getting

1 treated now. She was already disabled at the time of this
2 incident and is now dealing with the shoulder injury and the
3 cracked rib and so on, and the fear that he put the
4 remainder of the victims in.

5 Just briefly, Your Honor, with respect to the
6 methamphetamine, I know you see this a lot, the amount in
7 this case is well above that threshold limit of 10 grams and
8 to me is indicative of strongly trafficking weight. This
9 was not a personal use amount, solely to be used for
10 personal use.

11 THE COURT: All right. Mr. Frazier, I'm going to
12 revoke the balance of the 179 days you owed on probation.
13 That case would be ended.

14 There is restitution asked for by three victims.
15 I'm inclined to ask you would you agree to these restitution
16 amounts to be converted to civil judgments and not placing
17 you on probation?

18 MR. FRAZIER: It's at your discretion, Your Honor.

19 THE COURT: Okay. All right, that's what I think
20 I'm going to do with the restitution. I'm going to consider
21 it, but I'm going to convert it to civil judgments so it can
22 start drawing interests today, but these victims are very
23 unlikely to get paid, considering how long you will be
24 incarcerated.

25 On leaving the scene, sentence is 12 months.

1 That's indictment 1603.

2 1632, use of vehicle without permission,
3 36 months.

4 1606 and 1605, both 60 months.

5 On the trafficking in methamphetamine, the
6 sentence is 20 years.

7 You get credit for the days since July 9th of '15.

8 I'm converting those restitution amounts to the
9 three victims to a civil judgment.

10 Good luck.

11 MR. FRAZIER: All right.

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenwood County, South Carolina, on the 16th, 17th, 18th and 19th days of November, 2015.

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

December 10, 2016



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 575

COUNTY OF Greenwood
STATE _____ VS. Terrence O'neil Frazier

09GS24-0646

INDICTMENT/CASE#: 2009 -GS- 24 - 646AKA: _____
Race: BLK Sex: M Age: 19
DOB: _____ SS#: _____
Address: Shirley Road
City, State, Zip: Hodges, SC
DL# _____ SID# _____A/W#: M075212
Date of Offense: 2008-02-28
S.C. Code § 44-53-370
CDR Code #: 3011

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: POSS. COCAINE, 1ST (0-24RS AND/OR \$0-\$K)in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 3011☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: 71681 Demetri Andrews Terrence Frazier MDP
Solicitor Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 6 days/months/years or under the ☐ Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Current incarceration☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. Since April 12, 2009☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐COURT'S
EXHIBIT

3

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211 (A) (1) (Conv. Surcharge)	\$100
§14-1-211 (A) (2) (DUI Surcharge)	\$100
§56-5-2995 (A) (2) (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942 (J) (Vehicle Assessment)	\$40/ea
3% to Country (If paid in installments)	\$50
§90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ paid to the Public Defender Fund

Other: _____

ATTEST A TRUE COPY

Angela Woodhurst

ANGELA WOODHURST

☐ Appointed PD or appointed other counsel, \$35.43 TP AND GS☐ Requires \$500 be paid to Clerk during probation.

S. C.

PRESIDING JUDGE J. P. H. 7Judge Code: 5-4Sentence Date: 8-27-09Court Reporter: J. Webster

650

APP'X 650

The State of South Carolina



OFFICE OF THE SOLICITOR
EIGHTH JUDICIAL CIRCUIT

864/942-8800
FAX 864/942-8830

Abbeville
Greenwood
Laurens
Newberry

DAVID M. STUMBO
SOLICITOR

Suite 203, Park Plaza
600 Monument Street
Post Office Box 516
Greenwood, SC 29648-0516

October 29, 2015

ATTN: TERRENCE O. FRAZIER, HAND DELIVERY
STATE'S OFFER FOR PLEA AGREEMENT

Greenwood County Detention Center
528 Edgefield Street
Greenwood, SC 29646



Mr. Frazier:

This letter is to notify you of the State's offer for a plea agreement in reference to your pending Greenwood County General Sessions charges. The offer is as follows:

Defendant enters a plea of guilty to the two offenses of Strong Arm Robbery and Trafficking Methamphetamine 1st Offense (10g or more but less than 28g) for a negotiated cap of 10 years.

Due to your previous conviction for Possession of Cocaine on August 28, 2009, your charge of Trafficking Methamphetamine is enhanced to a 2nd Offense, which carries a penalty of 5-30 years. However, Trafficking Methamphetamine 1st Offense carries a lesser penalty of 3-10 years. Strong Arm Robbery carries a penalty of 0-15 years.

In consideration of this plea, the State will agree to nol-pros (not prosecute) your pending charges of Carjacking (Take or Attempt to Take a Vehicle by Force), Use of Vehicle without Permission with Intent to Deprive, Theft of a Controlled Substance x 2, Financial Transaction Card Theft, Petit Larceny, Breaking into a Motor Vehicle, and Hit and Run. *and Grand Larceny @ TF*

Sincerely,

Brian J. Moroney
Assistant Solicitor

Eighth Circuit Solicitor's Office, Greenwood County, South Carolina

I received a copy of the above letter on October 29, 2015.

Signed: Terrence Frazier

FILED IN PROCEEDINGS
8. 11. 15
GREENWOOD SC

2015 NOV 24 AM 10:20

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

WARRANT NUMBER

2015A2420100542

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24- *1606*

THE STATE

vs.

Terrence O'Neil Frazier

Foreman of the Grand Jury

Date: *11-13-15*

INDICTMENT FOR

BREAKING INTO MOTOR VEHICLE

§ 16-13-0160

VERDICT

True Bill

CDR: 0258

Foreman

Verdict Guilty

11-19-15

652

APPX 652

577

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

BREAKING INTO MOTOR VEHICLE

§ 16-13-0160

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did willfully and unlawfully break or attempt to break into any motor vehicle or any compartment thereof, in the daytime or in the nighttime, with intent to steal the same or anything of value there from or attached or annexed thereto, the said vehicle being owned by Gwendolyn Callahan, in violation of Section 16-13-160 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 cases made and provided.



Susan G. Torrey
Assistant Solicitor

FILED IN CRIMINAL DIVISIONS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

2015 NOV 24 AM 10:20

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24-1605

1605

WARRANT NUMBER

DIRECT INDICTMENT

2015D2400100132

THE STATE

vs.

Terrence O'Neil Frazier

INDICTMENT FOR

GRAND LARCENY
§ 16-13-0030

CDR: 3421

VERDICT

True Bill

Foreman

[Signature]
Lonna Lillastrom

Verdict: Guilty

Lonna Lillastrom

11-19-15

654

APPX 654

579

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

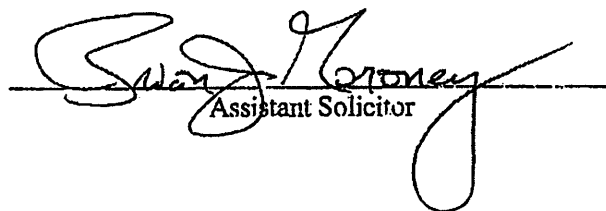
INDICTMENT FOR

GRAND LARCENY
§ 16-13-0030

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did feloniously take and carry away the personal goods of Kimberly W. Searles of the value of more than ten thousand and NO/100 (\$10,000.00) dollars described as follows: one (1) 2014 Chrysler 300, with the intent to deprive the owner permanently of such goods, in violation of Section 16-13-30 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 cases made and provided.



Susan J. Horney
Assistant Solicitor

FILED IN COURT SESSIONS
815 COURT STREET
GREENWOOD, SC

2015 NOV 24 AM 10:20

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24- *1604*

WARRANT NUMBER

2015A2420100540

THE STATE

vs.

Terrence O'Neil Frazier

Foreman of the Grand Jury

Date: *11-13-15*

INDICTMENT FOR

TRAFFICKING IN METHAMPHETAMINE
§ 44-53-0375

VERDICT

CDR: 0450

True Bill

Foreman

[Signature]
Lonna Lillastan

Verdict: Guilty

Lonna Lillastan

11-19-15

656

APPX 656

581

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

TRAFFICKING IN METHAMPHETAMINE
§ 44-53-0375

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did willfully, unlawfully, and knowingly traffic in methamphetamine, in that the said defendant was in actual or constructive possession of more than 10 grams, but less than 28 grams of methamphetamine, in violation of Section 44-53-375 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 cases made and provided.



Assistant Solicitor

FILED
8th JUDGE
GREENWOOD, SC

2015 NOV 24 AM 10:19

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

WARRANT NUMBER

79764HA

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24- *1603*

THE STATE

vs.

Terrence O'Neil Frazier

Foreman of the Grand Jury

Date: *11-13-15*

INDICTMENT FOR

LEAVING SCENE OF ACCIDENT
§ 56-05-1220

VERDICT

True Bill

CDR: 2464

Foreman

J. McAllister
Anna L. Lashan

Verdict: Guilty

Anna L. Lashan

11-19-15

658

APPX 658

583

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

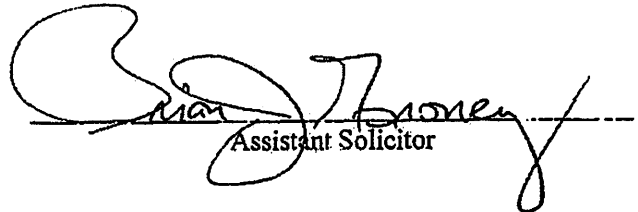
INDICTMENT FOR

LEAVING SCENE OF ACCIDENT
§ 56-05-1220

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did willfully and unlawfully fail to stop his motor vehicle which was involved in an accident resulting in damage to another motor vehicle being driven and occupied by Bessie Williams, in violation of Section 56-5-1220 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 cases made and provided.



Assistant Solicitor

FILED IN GENERAL SESSIONS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

2015 NOV 24 AM 10: 21

WITNESSES

Brian Penn
Greenwood County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2015

Indictment # 15GS24-1632

WARRANT NUMBER

2015A2410200701

THE STATE

vs.

Terrence O'Neil Frazier

Foreman of the Grand Jury

Date: 11-13-15

INDICTMENT FOR

CARJACKING
§ 16-03-1075

VERDICT

True Bill

CDR: 2599

Foreman

Verdict:

Guilty to Use of Vehicle w/o permission

11-19-15

660

APPX 660

585

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

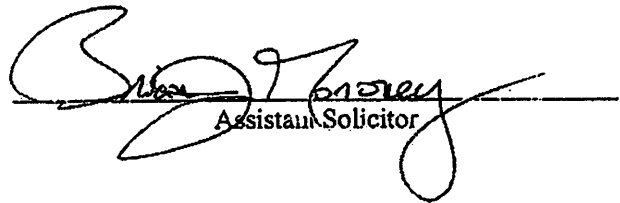
INDICTMENT FOR

CARJACKING
§ 16-03-1075

At a Court of General Sessions, convened on the 13th day of November, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Terrence O'Neil Frazier, on or about July 9, 2015, in Greenwood County, did willfully and unlawfully take or attempt to take a motor vehicle from another person by force and violence or by intimidation, while the person was operating the vehicle or while the person was in the vehicle, to wit: that Terrence O'Neil Frazier did take a 1997 Ford F-150 pickup truck being operated by one Susanna Chatos, in violation of the provisions of Section 16-3-1075 of the 1976 Code of Laws of South Carolina, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

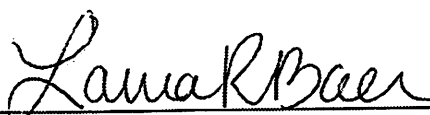


Assistant Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 28th day of March, 2018.

ARREST WARRANT

2015A2420100540

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
GREENWOOD

THE STATE

against

FRAZIER, TERRANCE ONEAL

Address:

Phone: 864-000-0000 SSN:

Sex M Race B Height 500 Weight 100

DL State: SC DL#:

DOB: Agency ORI #: SC024041J

Prosecuting Agency: CITY OF GREENWOOD

Prosecuting Officer: MITCH MCALLISTER

Offense: DRUGS/TRAFFICK COCAINE

Offense Code: 0450

Code/Ordinance Sec. 44-53-0375(C)(1)(A)

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☒ Municipality of
GREENWOOD /
The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to

Defendant Terrance Frazier

7-11-15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

B. LEE MILLER

520 MONUMENT STREET

GREENWOOD SC 29646

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
GREENWOOD

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618Personally appeared before me the affiant MITCH MCALLISTER who
being duly sworn deposes and says that defendant FRAZIER, TERRANCE ONEAL

did within this county and state on 07/09/2015 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of GREENWOOD)
in the following particulars.

DESCRIPTION OF OFFENSE:

DRUGS/TRAFFICK COCAINE BASE/METHAMPHETAMINE 10 LESS LESS 28 G (1ST) - 44-53-0375(C)(1)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
CASE 15013432ON 07/09/2015 TERENCE O'NEIL FRAZIER DID KNOWINGLY, WILLINGLY AND UNLAWFULLY POSSESS MORE THAN 10
GRAMS OF METHANPHETAMINES. FRAZIER WAS ARRESTED ON UNRELATED OFFENSES AT WORLD FINANCE. A
SEARCH OF HIS PERSON REVEALED A BAGGIE CONTAINING THE CRYSTAL LIKE SUBSTANCE WHICH FIELD TESTED
POSITIVE FOR METHANPHETAMINES AND AN APPROX WEIGHT OF 20.09 GRMS. THIS INCIDENT OCCURED WITHIN THE
CITY LIMITS OF GREENWOOD AND IN VIOLATION OF SC CODE OF LAWS.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
GREENWOOD

Affiant's Address 520 MONUMENT STREET

GREENWOOD SC 29646

Affiant's Telephone 864-942-8465

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/09/2015 defendant FRAZIER, TERRANCE ONEAL

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of GREENWOOD) as set forth below

DESCRIPTION OF OFFENSE:

DRUGS/TRAFFICK COCAINE BASE/METHAMPHETAMINE 10 LESS LESS 28 G (1ST) - 44-53-0375(C)(1)
(A)Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 7-11-15

Signature of Issuing Judge (L.S.)

Judge Code: 202

Judge's Address 520 MONUMENT STREET

GREENWOOD SC 29646

Judge's Telephone 864-942-8458

Issuing Court

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Appellant,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

APPELLATE CASE NO 2023-001439

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether Frazier knowingly and intelligently waived his right to counsel.

STATEMENT OF THE CASE

Respondent Terrence Frazier was indicted for carjacking, leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued in excess of \$10,000, and trafficking methamphetamine, all based on events occurring on July 9, 2015. Frazier proceeded to jury trial pro se before the Honorable Eugene C. Griffith, Jr. on November 16-19, 2015. Following some pretrial motions, Judge Griffith provided Frazier with standby counsel, who was available to assist him throughout jury proceedings. Frazier was convicted as charged, except the jury found him guilty of using a vehicle without permission as a lesser included offense of carjacking. Frazier was sentenced to twenty years imprisonment for trafficking methamphetamine and concurrent sentences for the remaining convictions.

Frazier appealed his convictions, and on November 27, 2019, this Court issued an opinion remanding the case for an evidentiary hearing to determine whether Frazier knowingly and voluntarily waived his right to counsel. State v. Frazier, Op. No. 2019-UP-371 (S.C. Ct. App. filed November 27, 2019). On March 3, 2023, a hearing was convened at the Greenwood County courthouse before Judge Griffith. The court had before it the appellate court opinion and the transcript of the November 16 -19, 2015 trial contained in the record on appeal from Frazier's direct appeal. The Court heard testimony from Brian Moroney, the assistant solicitor who prosecuted the case. The Court also heard testimony from Frazier.

The remand court took the matter under advisement. The court issued an order on August 25, 2023, finding Frazier did not knowingly and intelligently waive his right to counsel. (R. p. 11). The court explained:

Based upon the weighing all of the above factors that the weight of the sufficiency of

the factors for the court to consider as whether the Defendant understood his understanding of his rights, This Court finds the lack of a knowing and intelligent waiver weighs in favor of the defendant. [Sic].

The lower court did not order a new trial. Due to the procedural posture, both parties filed a notice of appeal. Because the ruling below is adverse to the State, the State is designated as the Appellant. This Brief of Appellant follows.

STATEMENT OF FACTS

The facts adduced at trial and at pretrial hearings leading up to trial were recounted as follows in the State's brief to the Court prior to remand. For convenience, they are reproduced here, followed by the facts adduced at the remand hearing.

Underlying facts

Like a tornado, Appellant Frazier blazed a trail through Greenwood businesses on July 9, 2015. Witnesses would describe the affected parts of Greenwood as chaotic. Those witnessing him that day would describe Frazier's behavior as erratic. At the end of trial, the prosecutor noted Frazier was likely high on methamphetamine that day, which explains a lot. R. p. 643. Yet Frazier still had more than nineteen grams of methamphetamine left in his pants when a hospital security guard searched him.

Events started at the Greenwood Chick-Fil-A. Brian Whitaker, manager at Chick-Fil-A, testified Frazier, holding a magazine in a wrapper, approached Whitaker at the walk-up window, and told him he believed the woman on the cover of the magazine was in the drive-thru line at Chick-Fil-A. Frazier threw four or five twenty-dollar bills on the ground, apparently wanting to wager whether or not the woman was actually the coverperson. Whitaker declined the wager, but Frazier left his money on the ground. Whitaker described Frazier's behavior as odd. Frazier started pulling on the door handle of Whitaker's pick-up truck. Whitaker was not so concerned since he did not have anything of value in his truck. Then Frazier jumped in a female customer's pick-up truck and sped away. R. pp.169–175.

That female customer was Susannah Chatos. She parked in the handicap parking space at Chick-Fil-A and after she exited, Frazier approached her to tell her the woman on the cover of his

pornographic magazine was in the drive-thru line. Perhaps sensing Chatos's disinterest, Frazier approached Whitaker at the walk-up window and put the magazine in front of him to look at. R. pp.222–23. Chatos intervened: she took the magazine and gave it back to Frazier, telling him, “[L]ook, this is a Christian establishment, . . . we don’t look at . . . garbage around here.” R. p. 224, lines 2–6. Frazier was insistent – he told them he would bet a \$100, throwing the wager on the ground. Frazier walked back to the parking lot. Whitaker offered to walk her back to her pick-up, but she declined. Walking back, she saw Frazier lifting the door handles on Whitaker’s pick-up truck. She stepped in her truck and started to pull away when Frazier threw something at her truck. She got out, and confronted Frazier, and Frazier jumped in the pick-up truck. Through the driver window, she had her hands around his neck, but his sweat made him slippery – she fell backwards as he drove away with her truck. She ended up with a fractured rib from the ordeal. R. pp. 224–26. She found the pornographic magazine in her truck the next day and called law enforcement to search the truck for drugs. R. p. 240. Deputy Brian Penn described her demeanor as shaking, upset, teary-eyed, and she nursed a hurt arm. R. pp. 258–59.

Officer Matt Emery testified he observed Frazier on a nearby convenience store surveillance video buying a case of beer, a bag of snacks, and a magazine. R. pp. 292–94. Deputy Johnston picked up the only remaining \$20 from off the ground. R. pp. 278–79. He also retrieved a case of beer and a bag of snacks from the back of Whitaker’s truck. R. p. 278.

Bessie Williams was the second victim falling in Frazier’s path. She was driving her Lincoln out of Frank’s Car Wash when Frazier smashed the stolen pick-up into her vehicle. Her Lincoln was totaled. Williams watched as Frazier left the truck, ran behind her vehicle, and began erratically yelling and screaming. To the best of her recollection, at no point before he left in a red Chrysler did

Frazier even look in Williams's direction. He certainly never attempted to render her any aid. R. pp. 306–310.

Kimberly Searles was next. Frazier jumped in Searles's red Chrysler while it was getting washed at Frank's Car Wash. The attendant told Frazier, "You can't take this car." Searles added, "You can't take my car." Undaunted, Frazier took her Chrysler and sped away down the road, jumped the sidewalk as he turned the vehicle around, then sped in the opposite direction. R. pp. 329–30. The attendant, Clarence Woolridge, noted other employees needed to jump back to avoid being hit by Frazier as he pulled away with his second stolen car that day. R. p. 345. Lieutenant Caughman described Frank's Car Wash as "chaotic" when he arrived afterwards. The stolen truck was still running when he arrived. R. p. 356, p. 358.

Gwendolyn Gallaham drove by Frank's Car Wash, then noticed she was being followed by a red Chrysler. She pulled into World Finance and got out of her vehicle the same time the driver, Frazier, got out of the Chrysler. He demanded she give him his money. Gallaham, undoubtedly perplexed, asked what money. Frazier repeated his demand and started rummaging through her car, including her trunk. She ran into World Finance and told the employees to call the police. She told them to lock the doors because she thought Frazier was about to pull out a gun when he fumbled with his pants. Instead of pulling out a weapon, Frazier urinated between the two cars. R. pp. 375–380. Law enforcement arrived and arrested Frazier. R. p. 384. Officer William Kay interviewed Gallaham and noted a puddle of liquid running down the parking lot where he was told Frazier urinated. R. p. 389, p. 402.

Officer Trotter first took Frazier to the jail. Officer Trotter escorted him to the patrol car and sat him in the back passenger seat. Officer Trotter was about to leave but Frazier "had gotten up on

his seat and had his head bent over and he had his back end sitting up on the ledge of the back seat.”

R. p. 413, lines 15–20. Officer Trotter and another officer needed to fasten the hobble strap around Frazier’s legs to keep Frazier in his seat belt. R. p. 413, lines 20–23. Frazier was sweaty, and he could not stay still. The nurse at jail told Officer Trotter that Frazier was intoxicated and told him to take Frazier to the hospital. R. pp.412–413.

Officer Trotter never did a full-blown search of Frazier, just an initial pat-down to ensure he was not armed. However, at the hospital, the security guard gave Officer Trotter a bag of methamphetamine the guard found after the guard searched Frazier. R. pp. 415–417.

The security guard, Travis Rogers, testified Frazier was talkative and acted “very sexual” towards the nursing staff. He exposed himself, offering to have sex with the nurse. For the medical staff’s safety, he searched Frazier and found a bag of drugs in his pants pocket. R. pp. 446–447. The SLED chemist testified the substance seized was 19.92 grams of methamphetamine. R. p. 497.

Preliminary hearing

Frazier’s preliminary hearing was held on September 1, 2015, before the Honorable Municipal Judge Lee Miller. Judge Miller noted for the record that Frazier was present without an attorney. Judge Miller explained for the record that he cautioned Frazier he should not go forward with the preliminary hearing without an attorney, noting it was a critical stage of the proceedings. Frazier confirmed this. Judge Miller then confirmed Frazier was waiving his right to counsel, and Frazier replied he was representing himself and waiving his right to counsel. (Preliminary hearing recording).

Bond hearing

At the October 15, 2015 bond hearing, as Frazier begged for a bond, the trial court asked

Frazier why he did not have an attorney and Frazier responded:

Because my family can't afford a lawyer and I am trying, I look at the cases very frivolous and I understand, I am not saying I am the smartest but I feel like I am smart enough to get through this myself **and I know a little about the law to make it through.**

R. p. 78, lines 1–5. The trial court warned Frazier, “You can represent yourself, I can’t force a lawyer on you. These young lawyers are smart.” R. p. 78, lines 6–7. Frazier responded he wanted to get out on bond and then work on trying to get an attorney. R. p. 78, lines 8–10. Frazier also advised the trial court that he filed a speedy trial motion. R. p. 80, lines 7–10.

Frazier’s performance at trial

Upon the case being called, the trial court verified with Frazier that he refused the State’s plea offer. He then advised the trial court he was moving for a change of venue. R. p. 90. Frazier made an in limine motion to make sure the tickets for breaking into a motor vehicle and leaving the scene of an accident would not be admitted at trial. The motion was granted. R. p. 122.

Notably, Frazier asked for copies of the transcripts of his bond hearing and “**representation**” **hearing**. R. p. 141. The prosecutor then asked the trial court to provide Frazier Faretta warnings. In response to the trial court’s inquiry, Frazier advised the trial court he was twenty-five years old, went to ninth grade in school, and cut grass and helped remodel houses. R. p. 144, lines 16–24. Frazier understood he could have a public defender appointed, but did not want one appointed because it would take longer before the case would be tried. R. p. 145.

The trial court noted he was well organized and did “fairly well” with the pretrial motions. The trial court offered to provide counsel to advise Frazier on procedural matters while he handled the witnesses since he was familiar with the facts. R. p. 145, lines 16–22.

Frazier asked if he filled out paperwork for a public defender and the trial was postponed, would he be able to get a bond reduction, and the trial court advised that he probably would not get a bond reduction. R. pp. 145–46. The trial court asked Frazier if he felt comfortable representing himself and Frazier indicated he did with the facts but wanted an attorney to sit with him. Frazier indicated a public defender previously was appointed to represent him on another charge. R. pp. 146–47.

During opening argument, Frazier implored the jury to observe the witnesses' demeanor, to look at the facts, and told the jury the charges were false. R. pp. 165–69. He concluded: "They are going to try [to] paint a picture in your head that oh, he is just a bad person. He's just a menace to society and dah, dah, dah, dah, dah. No, it's not like that. I want you to look at the facts that they paint, the pictures. Look at it. Look, listen, observe, study it, analyze it, and then make your decision." R. p. 169, lines 18–23.

For the State's first witness, the trial court sustained Frazier's hearsay objection. R. p. 171. Then later, the trial court sustained Frazier's leading objection. R. p. 174. He was allowed to consult with his stand-by counsel during an in-camera argument regarding some surveillance video footage. R. pp. 184–85. During cross-examination, Frazier used the statement to refresh the witness's recollection. R. p. 199.

With a later witness, the trial court required the prosecutor to rephrase a question following Frazier's objection that arguably suggested a legal conclusion. R. p. 227. He made an objection to the magazine being admitted into evidence based on chain of custody and lack of foundation, which resulted in the trial court requiring the prosecutor to make a proffer. R. pp. 231–32. Later, the trial court provisionally declined to allow the magazine into evidence through that witness in response to

Frazier's argument. R. pp. 236–37. Frazier made successful hearsay objections again during Officer Penn, Officer Emery, Officer Moore, and Officer Caughman's testimony. R. p. 258; p. 295; p. 320; p. 358.

Frazier made a successful Rule 5, SCRCrimP, objection to prevent the recovered \$20 bill from being admitted into evidence. R. pp. 279–85. Frazier knew to make a motion to suppress the methamphetamine (but was unsuccessful since it was a third-party search) and challenge the chain of custody (also unsuccessful). R. pp. 433–44. Frazier made a clever argument against admission of the chemist's report that momentarily seemed to catch the prosecution in a procedural trap. R. pp. 501–05. He later presented the trial court with citation to a case to argue his point. R. p. 507. He also made a reasonable argument against the authority cited by the prosecution. R. p. 510.

After the State rested its case, Frazier made an insightful, albeit unsuccessful, directed verdict argument on the carjacking charge, arguing the lack of evidence to support force or intimidation. R. pp. 519–20. During an informal charge conference, Frazier requested an instruction for grand larceny as a lesser offense of carjacking. Ultimately, the trial court provided unauthorized use of a vehicle as a lesser included offense. R. p. 602; pp. 623–24.

Frazier let the jury know why he decided to represent himself:

[B]ut I decide[d] to represent myself **because I got a little knowledge about the law**, know wrong from right, especially common sense. If you got common sense, it's – you may need a little help in certain areas, you may be right, but if you got common sense, the law is common sense.

R. p. 573, lines 2–7.

Frazier was acquitted of one of the two major charges – carjacking, and instead convicted of unauthorized use of a vehicle as a lesser included offense. This favorable result is likely due to his

effective closing argument. Frazier pointed out that Whitaker testified he did not see force used on Chatos. R. p. 577, lines 10–21. He then argued to the jury the surveillance video showed that Chatos got out of the truck willingly and not by force. R. p. 578, lines 7–14. He pointed out, “And in the victim’s statement, which you will hear today, she admitted to getting out of her truck and that she was very angry, cussing at the suspect, and she attacked [the] suspect, so that, in fact, proves that she wasn’t intimidated or scared.” R. p. 578, lines 14–18.

Frazier then pushed his legal argument vehemently, advising the jury of the elements of carjacking, including the requirement of the use of “force or violence or by intimidation while the person was operating the vehicle or while the person was in the vehicle.” R. p. 581, lines 20–24. Frazier argued, “She wasn’t forced out of her truck. And if somebody threw something at your truck and you get out, you can’t be intimidated.” R. p. 582, lines 5–7.

Referencing the video, Frazier argued all it showed was the truck pulling off and Chatos walking away, without the appearance of being hurt. “She is not appeared to be injured. It’s no proof of carjacking.” R. p. 582, lines 22–24. Frazier argued again there was no proof of intimidation. R. p. 582, line 25 – p. 583, line 7.

Frazier turned to the point that “if any violence or force was used or established was or from by the victim [Chatos]. . . . She used physical force, not the suspect.” Noting his own professed size of a 135 pounds, “soaking wet,” Frazier argued the size disparity contradicted the element of intimidation. R. pp. 584–85.

Remand hearing

On remand, the State presented testimony from Brian Moroney, the assistant solicitor who prosecuted Frazier. Moroney testified he met with Frazier several times to deliver discovery and

communicate a plea offer. Moroney testified: "I would give him letters each time I would do that. And given the significant penalties he was facing, not only with the carjacking, but trafficking methamphetamine, began talking about the penalties associated with that." R. p. 17, 29. He testified these were "substantive meetings" that lasted "[a]t least 30 minutes, a couple of them." R. p. 28.

He testified Frazier insisted he wanted to represent himself and explained he had successfully represented himself at the magistrate court level. Moroney attempted to explain that circuit court was different than magistrate's court, and that Frazier would be responsible for applying complicated areas of law such as the rules of evidence. Moroney testified: "I was desperately trying to explain to him how different of a posture he was in now with what he was facing and the jury trial and the rules of evidence and how complicated that can be and that he needed representation to look over this case." R. p. 18. He explained "the rules are a lot tighter" than in magistrate's court. He testified he discussed the potential for Fourth Amendment challenges with Frazier. R. p. 32. He explained his interactions with Frazier "were not cursory, check the box, Terrence, you should get an attorney We walked through this case step-by-step and the charges that he was facing." R. p. 65.

Frazier explained to Moroney that he wanted a private attorney, not a public defender. Frazier was polite and confident in his ability to represent himself. Moroney testified Frazier was focused on "scrivener's errors" and other minor evidentiary issues that were not likely to result in acquittal. He told Fraizer he would not be "able to adequately represent himself like an attorney could do." R. p. 31. In sum, Moroney testified he "warn[ed] [Fraizer] of the dangers of proceeding pro se numerous, numerous times." R. pp. 19–20.

Moroney testified he brought Frazier in front of Judge Edward Miller so that Judge Miller could provide Frazier with Faretta warnings. R. pp. 19–20. Judge Miller had a conversation with

Frazier in the “small courtroom.” Moroney described the hearing as follows:

It was not a verbatim recitation of the Faretta warning. It was not a recitation from the form, but Judge Miller essentially had a conversational, you know, back and forth with him, getting to the crux of the issue that, do you understand that these attorneys go to law school, have legal training for several years, and you don't have the benefit of that, you know. And these are serious charges you're facing, you know, and somebody can aid you in the defenses. And I know that you're competent, you know, you say you can handle yourself, but you could benefit by having somebody assist you on this case, those kind of things.

R. p. 21. Moroney stated Judge Miller told Frazier he would appoint counsel free of charge, but Frazier was “adamant” that he wanted to represent himself. R. p. 22. Moroney believed Frazier’s appearance before Judge Miller took place a term or two before his trial. R. pp. 21–24.

Frazier testified he did not understand how sentencing enhancement works, and did not understand he would be facing a trafficking second offense charge. R. pp. 41–42. He testified he was motivated to go to trial so he could get out of jail, and that his mother had died while he was in county jail. R. pp. 45–46. He testified he didn't remember Moroney advising him that it was important to have an attorney. Frazier testified he has been diagnosed with ADHD and is easily distracted. R. p. 37. Frazier testified he had been to court on prior charges, but had not had a General Sessions trial. Frazier did not recall whether the magistrate's court proceeding at which he represented himself was a jury trial. R. p. 39. He testified he pled not guilty and the charge was “thrown out.”

When asked whether he understood what the prosecutor meant when he advised him it wasn't a good idea to represent himself, he responded: "To be honest with you, I think he might have said something of the nature during trial or at trial. But before then, to be honest with you, I never . . . remember him mentioning anything about not representing myself or representing myself. . . .

There would be dangers or nothing that . . . I remember him . . . bringing the paper to me about a plea negotiation, but that's about it." R. p. 47. Regarding standby counsel, Frazier testified: "he did assist me . . . with giving me standby counsel to the best of his ability." R. p. 47. He recalled the hearing in front of Judge Miller and recalled Judge Miller telling him "you don't have to represent yourself, but if you decide to represent yourself, then I can't force a lawyer on you or something." R. p. 49.

STANDARD OF REVIEW

Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo. State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018).

ARGUMENT

Frazier knowingly and intelligently waived his right to counsel.

The lower court found Frazier did not knowingly and intelligently waive his right to counsel. However, the record shows Frazier was aware he could be appointed counsel and freely chose to represent himself, as was his right. This Court should find Frazier's waiver was knowing and voluntary and affirm his convictions.

Pursuant to both the United States Constitution and the South Carolina Constitution, a criminal defendant brought to trial in South Carolina "must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975); see U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel or by both."). However, "[t]he right to defend is personal." Faretta, 422 U.S. at 834. As a result, a defendant is entitled to waive his right to counsel and represent himself during a trial in a pro se capacity. State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003); see State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) ("A South Carolina criminal defendant has the constitutional right to represent himself under both federal and state constitutions."). Thus, even though it ultimately may be detrimental for a defendant to personally conduct his own defense, that defendant's choice to do so "must be honored out of 'that respect for the individual which is the lifeblood of the law.'" Thompson, 355 S.C. at 262, 584 S.E.2d at 134 (citation omitted).

In order to effectuate a valid waiver of the right to counsel, a defendant must be advised of

the right to counsel and adequately warned of the dangers of self-representation. Ex parte Jackson, 381 S.C. 253, 259, 672 S.E.2d 585, 588 (Ct. App. 2009). Before allowing a defendant to proceed pro se, the trial judge should determine whether the defendant knowingly and voluntarily waived his right to counsel, and the **preferred** method for doing so is for the trial judge to conduct a specific inquiry addressing the dangers and disadvantages of pro se representation with the defendant. Thompson, 355 S.C. at 262-263, 584 S.E.2d at 135; see United States v. King, 582 F.2d 888, 890 (4th Cir. 1978) (instructing “no particular form of interrogation is required” in order for a trial judge to determine whether a defendant’s waiver of his right to counsel is knowing and intelligent). However, “the ultimate test is not the trial judge’s advice but the accused’s understanding.” State v. Cash, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992). Significantly, “[i]f the record demonstrates the defendant’s decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied.” Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990).

Factors used to determine if the accused had sufficient background to understand the disadvantages of self-representation include:

- (1) the accused’s age, educational background, and physical and mental health;
- (2) whether the accused was previously involved in criminal trials;
- (3) whether he knew of the nature of the charge and of the possible penalties;
- (4) whether he was represented by counsel before trial and whether an attorney indicated to him the difficulty of self-representation in his particular case;
- (5) whether he was attempting to delay or manipulate the proceedings;
- (6) whether the court appointed stand-by counsel;

- (7) whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) whether he knew of legal challenges he could raise in defense to the charges against him;
- (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and
- (10) whether the accused's waiver resulted from either coercion or mistreatment.

Cash, 309 S.C. at 43, 419 S.E.2d at 813.

In State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002), this Court examined whether McLauren, an admitted jailhouse lawyer, freely and voluntarily waived the right to counsel absent any express colloquy regarding the dangers of self-representation. This Court found McLauren's waiver was voluntarily made after assessing the Cash factors, finding in relevant part: (1) "McLauren was a mature man with both formal and informal education. There was no evidence in the record of any physical or mental impairment." (2) McLauren was previously involved in criminal proceedings with a record going back to 1965. (3) McLauren knew the nature of the charge, "address[ing] questions by the court and [making] motions." (4) The court appointed standby counsel to provide McLauren legal advice and sit with McLauren during trial. (5) There was no indication McLauren was attempting to delay or manipulate the proceedings, noting McLauren made a motion for a speedy trial. (6) This Court reiterated McLauren was appointed standby counsel. (7) McLauren knew to comply with the rules and was familiar with them, making motions, calling witnesses, and objecting at times to the prosecutor's questions. (8) McLauren knew of legal challenges he could raise in defense to the charges against him. (9) The exchange between McLauren and the court did not consist of only pro forma answers to pro forma questions.

McLauren's actions indicated he understood the legal system. (10) There was no evidence McLauren's waiver was the result of coercion or mistreatment: "McLauren expressly stated that he wanted to represent himself and that he would waive his right to an attorney." Id. at 495-96, 563 S.E.2d at 349-50.

By comparison, in the instant case: (1) Frazier was twenty-five years old with nothing in the record suggesting any physical or mental impairment. (2) Frazier accumulated a substantial criminal record which was probably the source of his legal knowledge he professed to the jury during closing argument. (3) Frazier clearly knew the nature of the charges, and made a sophisticated legal argument that resulted in Frazier being acquitted of carjacking. (4) Like McLauren, Frazier was not represented by counsel before trial, but was assigned standby counsel that was available to Frazier all through the jury proceedings to provide legal advice. (5) Nothing in the record indicated Frazier was attempting to delay or manipulate the proceedings. Like McLauren, Frazier requested a speedy trial. (6) Frazier received stand-by counsel. (7) The record indicates Frazier understood he needed to comply with procedural rules, and his objections and motions indicated some familiarity with the rules. (8) Frazier demonstrated he knew of several defenses to raise, including his successful defense to carjacking, one of the two major charges he was facing. (9) Frazier's actions, like McLauren's, were indicative of some understanding of the legal system. (10) Like McLauren, there is no indication Frazier's decision was the result of coercion or mistreatment. Instead, Frazier unequivocally requested to represent himself. He was aware he could fill out paperwork to have a public defender appointed. R. p. 145, lines 23–24. He previously represented to the judge during the bond hearing that he had some legal knowledge. R. p. 78, lines 1–5. He chose to represent himself at the preliminary hearing despite warnings from the municipal judge.

On remand, the State presented evidence that Frazier was advised of his right to counsel but chose to waive that right. The solicitor testified Judge Edward Miller conducted a Faretta hearing in one of the terms preceding Frazier's trial.¹ R. pp. 19–20. While that transcript is not available, the solicitor testified this was a substantial hearing where Judge Miller warned Frazier that he was facing serious charges, that lawyers “go to law school, have legal training for several years,” and Frazier didn’t “have the benefit of that.” R. p. 21.

Moroney testified he had “numerous” conversations with Frazier where he warned him of the dangers of proceeding pro se. Moroney testified Frazier was focused on “scrivener's errors” and other minor evidentiary issues that were not likely to result in acquittal. Moroney discussed the charges and potential penalties with Frazier. He testified Frazier wished to represent himself, and explained he had successfully represented himself at the magistrate court level. Moroney attempted to explain that circuit court was different than magistrate's court, and that Frazier would be responsible for applying complicated areas of law such as the rules of evidence. He explained “the rules are a lot tighter” than in magistrate's court. He testified he discussed the potential for Fourth Amendment challenges with Frazier. He explained his interactions with Frazier “were not cursory, check the box, Terrence, you should get an attorney We walked through this case step-by-step

¹ At his preliminary hearing, Frazier appeared before Municipal Judge Lee Miller and proceeded pro se. Brief of Respondent filed April 17, 2018, at 5. A recording of the preliminary hearing is on file with this Court, and is referenced in the Court's opinion remanding the case. In its opinion, this Court noted that the municipal court cautioned Frazier about proceeding without an attorney, but the warnings did not adequately warn Frazier of the specific dangers of proceeding pro se. In the trial transcript, the solicitor mentions a hearing before “Judge Miller.” R. p. 144, line 13. However, it was not apparent from the transcript that the solicitor was actually referring to Circuit Court Judge Edward Miller, as Moroney explained at the remand hearing. Accordingly, the State wishes to emphasize there was a hearing convened specifically for the purpose of administering Faretta warnings at the circuit court level.

and the charges that he was facing." R. p. 65. Moroney reiterated: "To be frank today . . . I understand the position Mr. Frazier's in, in wanting to rewrite history, but . . . the truth is what I'm telling you today. He was advised numerous times of the perils proceeding unrepresented. And he knew that. And he elected to do that on his own accord." R. p. 64.

While this is not the preferred method of advisement, the solicitor spoke with Frazier several times about the pitfalls of self-representation in General Sessions court and testified they had in-depth conversations about the issues and charges against Frazier. He testified his discussions "were not cursory, check-the-box" conversations. R. p. 65. The lower court did not dispute any of these facts. Instead, it ignored most of Moroney's testimony and emphasized that Frazier did not understand certain aspects of his case, such as sentencing enhancement. R. p. 8. But that does not bear on Frazier's understanding of his right to counsel and his ability to waive the right. Whether a defendant is "capable of effectively representing himself has no bearing upon his ability to elect self-representation." State v. Samuel, 422 S.C. 596, 603, 813 S.E.2d 487, 491 (2018).

Furthermore, the lower court's order contains confusing language which seems to conflate the question before it. The court wrote that the "lack of a knowing and intelligent waiver weighs in favor of the defendant." R. p. 11. But the Cash factors do not weigh "in favor" of either party. The only question is whether the waiver was knowing and voluntary.

The record shows Frazier made a knowing and voluntary decision to proceed without counsel. His convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, Frazier's convictions should be affirmed.

Respectfully submitted,

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October 31, 2024

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Appellant,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

APPELLATE CASE NO 2023-001439

PROOF OF SERVICE

I, Susan Spencer, certify that I have served the within Final Brief of Appellant and Record on Appeal by emailing a copy to Respondent's counsel of record, Joanna Delany, Esquire, at the email address provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 31st day of October, 2024.

By: 
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STATE OF SOUTH CAROLINA

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Appeal from Greenwood County

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THE STATE,

APPELLANT,

V.

TERRENCE O'NEIL FRAZIER,

RESPONDENT

APPELLATE CASE NO. 2023-001439

FINAL BRIEF OF RESPONDENT

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COUNTER STATEMENT OF THE ISSUE

Whether the circuit court correctly concluded Frazier's waiver of the right to counsel was not knowingly and intelligently made, since there was a plethora of evidence to support the court's findings that Frazier was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation?

STATEMENT OF THE CASE

Terrence Frazier (Frazier) was indicted for carjacking, leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued over ten thousand dollars, and trafficking methamphetamine. R. 649 – 161; *State v. Frazier*, Op. No. 2019-UP-371 at 2 (S.C. Ct. App. filed November 27, 2019). Frazier was tried before the Honorable Eugene C. Griffith, Jr., and a jury, from November 16 – 19, 2015. R. 82. Frazier represented himself pro se but was assisted during part of the trial by standby counsel Patricia Bolen and Elizabeth Able. Standby counsel was appointed after jury selection and pretrial motions. R. 146, l. 16 – 75, l. 147. Brian Moroney (Moroney) and Micah Black prosecuted the case. R. 82; R. 148; R. 149, ll. 9-14.

Frazier was found guilty of leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued over ten thousand dollars, and trafficking methamphetamine. The jury found Frazier not guilty of carjacking but convicted him of the lesser offense of using a vehicle without permission. R. 635, l. 17 – 636, l. 24. The trial court sentenced Frazier to concurrent terms of twelve months for leaving the scene of an accident, thirty-six months for using a vehicle without permission, sixty months for breaking into a motor vehicle, sixty months for grand larceny, and twenty years for trafficking methamphetamine, second offense. R. 644, l. 25 – 645, l. 6.

Frazier directly appealed his convictions, and on November 27, 2019, this Court issued an opinion in which it found that the record did not demonstrate Frazier's decision to represent himself was made with an understanding of the risks of self-representation. *State v. Frazier*, Op. No. 2019-UP-371 (S.C. Ct. App. filed November 27, 2019). This Court concluded that the record failed to show whether Frazier was adequately warned of the dangers of proceeding pro se

or had sufficient background to understand the risks of self-representation. *State v. Frazier*, Op. No. 2019-UP-371 at 6. This Court remanded the case for an evidentiary hearing on the issue. *Id.* at 7.

On March 3, 2023, the circuit court held a hearing to determine whether Frazier's waiver of his right to counsel was knowingly and intelligently made. R. 12. After taking the matter under advisement, on or about October 3, 2023,¹ the circuit court issued an order in which it determined Petitioner's waiver of counsel was not knowingly and intelligently made. R. 4 – 11.

Due to the procedural posture of the case, Frazier served a notice of intent to appeal to ensure jurisdiction was returned to this Court. However, the State served notice of appeal because the ruling was adverse to the State. The State has referred to itself as Appellant for ease of reference. Therefore, for ease of reference and consistency, Terrence Frazier will refer to himself as Respondent. The State has filed its brief of appellant. This brief of respondent follows.

¹ The order was signed by the court on August 25, 2023, but it was filed with the Greenwood County Clerk of Court's Office on October 3, 2023.

STANDARD OF REVIEW

“Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo.” *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018). “Specifically, we review a circuit judge’s findings of historical fact for clear error; however, we review the denial of the right of self-representation based upon those findings of fact de novo.” *Id.* “Whether a waiver [of the Sixth Amendment right to the assistance of counsel] is valid is a mixed question of law and fact that we review de novo on direct appeal.” *Hines v. State*, 443 S.C. 32, 38, 902 S.E.2d 377, 380 (2024). “In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012).

ARGUMENT

The circuit court correctly concluded Frazier's waiver of the right to counsel was not knowingly and intelligently made, since there was a plethora of evidence to support the court's findings that Frazier was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation.

Relevant facts

Frazier was accused in a string of incidents that began at Chick-fil-A in Greenwood on July 9, 2015. The State alleged as follows. Frazier took Susannah Chatos's white truck from the parking lot of Chick-fil-A and subsequently crashed the truck into Bessie Williams's Lincoln MKZ, which was parked beside Frank's Carwash down the street. R. 170, l. 2 – 254, l. 20; R. 306, l. 24 – 315, l. 1; R. 342, l. 13 – 343, l. 23. Frazier got into Kimberly Searles's Chrysler 300 that was being dried outside of the carwash, and he drove away. R. 328, l. 2 – 354, l. 23. That car was driven down to World Finance, where it was used to block in Gwendolyn Callaham's Saturn SUV. R. 375, l. 16 – 390, l. 7. When law enforcement arrived, Frazier was seated in the driver's seat of the Saturn. He was arrested and taken to jail. R. 409, l. 3 – 414, l. 10; R. 418, l. 21 – 422, l. 6.

The jail refused to admit Frazier because he appeared to be under the influence, so he was taken to the emergency room. R. 414, l. 11 – 423, l. 14. The hospital has a protocol of stripping and searching the clothing of anyone in a "C-pod" room for staff safety. R. 431, l. 13 – 450, l. 3. During a search of Frazier's right front pants pockets, a security guard found what he believed to be drugs. The guard gave the material to law enforcement. R. 415, l. 1 – 417 l. 22; R. 445, l. 22 – 447, l. 4; R. 455, l. 19 – 476, l. 1. A representative of the South Carolina Law Enforcement

Division testified that the material tested positive as methamphetamine and weighed 19.92 grams without packaging. R. 494, l. 19 – 500, l. 16.

Frazier's first interaction with the trial judge occurred at his October 15, 2015, bond hearing. R. 1. In response to the judge's inquiry as to why he did not have a lawyer, Frazier responded:

Because my family can't afford a lawyer and I am trying, I look at the cases [as] very frivolous and I understand, I am not saying I am the smartest but I feel like I am smart enough to get through this myself and I know a little about the law to make it through.

R. 77, l. 24 – 78, l. 5. The court responded: "You can represent yourself, I can't force a lawyer on you. These young lawyers are smart." R. 78, ll. 6-7. Frazier agreed but said that he was going to try to get out on bond and then try to retain an attorney. R. 78, ll. 8-18. Frazier noted his desire to have a speedy trial. R. 80, ll. 7-10.

One month later, Frazier appeared for trial without a lawyer. R. 82. The proceedings began with the court asking Frazier: "Are you prepared to represent yourself?" Frazier responded: "Yes, sir." R. 92, ll. 11-12. The court asked: "Now, have you had an opportunity to speak with a lawyer of your choosing to see if you wanted help and assistance in defending yourself in this matter? Are you prepared to go to trial?" and "Are you ready to go trial?" Frazier responded "Yes, sir." R. 89, l. 22 – 90, l. 3.

The court heard Frazier's preliminary motions after jury selection. Framed as a motion to "change venue" and "transfer," Frazier complained that he was uneducated and had not been given access to a law library at the local jail in order to prepare a proper defense. R. 114, l. 22 – 115, l. 19. Frazier asked if he could be granted access to legal books, but the judge said "if it's not available, it's not available." R. 118, ll. 13-16.

Following the conclusion of the preliminary motions, the prosecutor said: “Your Honor, we wanted to do a *Faretta* Warning about -- his rights this afternoon, to get that out of the way.” R. 144, ll. 8-10. The court asked who did the *Faretta* warning previously. The prosecutor stated that Frazier was brought before a Judge Miller, but stated: “*It was something that probably took five minutes. I don’t think it was near in-depth.*”² R. 144, ll. 11-15 (emphasis added). The court asked Frazier about his educational and work background. Frazier was twenty-five years old and completed the ninth grade. He had worked cutting grass and remodeling houses. R. 144, l. 16 – 145, l. 4. Frazier said that he understood the court could appoint him a public defender. R. 145, ll. 5-7. The court responded: “*Do you want one? I mean you are doing fairly well this afternoon pointing out these motions and pretrial matters. You are doing a very nice job of being organized.*” R. 145, ll. 8-11 (emphasis added). Frazier asked if getting a lawyer would “start his case all the way over and take more time?” The judge stated: “It could, but -- now, would you like me to see if I can get a lawyer to sit with you to help advise you on procedural matters, like the Court Rules?” Frazier said: “Yeah, that will work.” R.145, ll. 12-19. The court told Frazier that he would still handle the case and witnesses himself, since he was “familiar with the facts.” R. 145, ll. 20-21. Frazier responded again: “Yes sir, that will work.” R. 145, l. 22. However, Frazier inquired about whether he could seek a bond reduction if he applied for a public defender and the date of trial was pushed further out. The court responded that he “technically” could but said “you probably wouldn’t get it.” R. 145, l. 23 – 146, l. 3. Frazier responded that he “really want[ed] to get this over with.” R. 146, ll. 4-5.

² Despite consultation with the assistant solicitor, Greenwood County Clerk of Court’s Office, and multiple court reporters, prior appellate counsel was unable to procure the transcript of any hearing before a Judge Miller.

The trial judge asked Frazier if he felt comfortable representing himself, to which Frazier responded “Yeah, I feel – I feel comfortable with the facts of the evidence.” Frazier asked that a public defender be able to sit with him, and the judge stated he would see if he could get someone. The judge stated that he would speak with Patricia Bolen to see if she or someone else in the office was available, but said that they would “help you with the rules” but have “no responsibility for defending you.” R. 146, l. 6 – 147, l. 17. Court was then adjourned for the day. R. 147, ll. 18-23.

When the parties returned the next day, the court advised Frazier that there would be a member of the public defender’s office present to help with “advice on procedures” but the jury would be instructed that Frazier was representing himself. R. 149, ll. 2-11; R. 150, ll. 16-24. Trial proceeded.

As seen, this Court remanded this case for a hearing to determine whether Frazier’s waiver of counsel was knowingly and intelligently made.

During the remand hearing, the circuit court had before it the appellate court opinion remanding this case for an evidentiary hearing, and the Record on Appeal. It heard testimony from Brian Moroney, who prosecuted the case. The circuit court also heard testimony from Frazier. During the hearing, admitted as exhibits were Frazier’s arrest warrant for trafficking methamphetamine, and his indictment for the same offense. The testimony at the remand hearing included the following.

Terrence Frazier testified that at the time of his trial, he was 25 years old. Frazier stated that as a child he had ADHD (Attention-Deficit/Hyperactivity Disorder) and he had been to the Beckman Mental Health Center. Frazier said it took him a long time to grow out of the ADHD and he still had trouble concentrating. R. 37, ll. 4-19. Frazier explained that he took medication

for anxiety, but he did not take that medication at the time of his trial. R. 37, l. 20 – 38, l. 4. Frazier stated that the last grade he completed in school was the eighth grade. Frazier said he did not finish the ninth grade. R. 38, ll. 5-22. According to Frazier, he was a drug user when he was arrested on these charges. R. 47, ll. 1-3.

Frazier stated that he had been to court previously for three or four cases, but most of his prior charges had been “basically thrown out or reduced to a lesser charge.” Frazier explained that he had never been in a general sessions trial before this case. Frazier recalled that he had been to court in magistrate’s court previously and he pled not guilty and the charge was “thrown out.” R. 38, l. 25 – 39, l. 14. Frazier explained the charge was a “30-day charge” against “a female” and he represented himself. Frazier stated it was a “hometown” “situation,” and he did not question witnesses. Frazier said the court heard the woman’s side of the story and his own side of the story. Frazier did not recall if a jury was present. Frazier stated he had never watched a trial the whole way through, either in person or on television. R. 39, l. 12 – 41, l. 1.

Frazier explained he thought the charges in this case were non-violent, and that he was facing zero to ten years for the trafficking methamphetamine offense. Frazier stated he did not know he would be tried for all the offenses at once. Frazier said he thought the trafficking was non-violent because it was his “first time catching a trafficking charge” and he did not understand the nature of enhancement. Frazier testified he did not know the State was going to use a 2009 possession of cocaine convention to enhance his trafficking charge. Frazier stated he did not know he was facing trafficking, second offense, at trial. Frazier noted that neither his warrant nor his indictment said second offense. Frazier said he had no notification he faced an enhanced trafficking charge until sentencing. R. 41, l. 2 – 44, l. 10; R. 51, ll. 3-6.

Frazier recalled meeting with Moroney when Moroney brought him the plea offer. According to Frazier, he did not recall Moroney mentioning anything about not representing himself or representing himself. Frazier clarified that Moroney may have told him it was dangerous to represent himself and he could have a lawyer appointed in the last stages, but not when the plea offer was conveyed. Frazier stated he did not recall a conversation with Moroney about having a charge thrown out in magistrate's court. R. 42, l. 15 – 43, l. 5; R. 46, ll. 14-25; R. 52, ll. 1-21; R. 54, ll. 1-6.

Frazier testified he went to trial about a month after his mother died. Frazier stated his “mind wasn’t in the right state” due to her death. Frazier said he did not want the public defender because he was trying to get his family to hire a lawyer. Frazier testified he was not trying to manipulate the courts. R. 45, l. 20 – 46, l. 8; R. 48, ll. 6-9; R. 49, ll. 9-12.

Frazier stated he went in front of Judge Miller and Judge Miller stated “something of the sort like . . . you don’t have to represent yourself but if you decide to represent yourself, I can’t force a lawyer on you or something.” R. 48, ll. 10-15. Frazier said Judge Miller did not go into details about what a lawyer could do for him. Frazier stated he told Judge Miller, “I do not waive my rights.”³ R. 54, l. 14 – 55, l. 10. Frazier testified he thought the charges were “flimflam” because he had two sets of warrants and he did not receive the warrants in a timely manner. R. 48, l. 16 – 49, l. 8. Frazier stated he did not understand that he would have to comply with the criminal procedure rules at trial. R. 49, ll. 18-20. Frazier said that no one had forced him to go to trial pro se or mistreated him in the case. R. 49, l. 22 – 39, l. 2.

Assistant Solicitor Moroney testified that in the course of prosecuting Frazier, he met with Frazier “several times” at the local jail to hand-deliver discovery, since Frazier had filed a

³ It appears Frazier was referring to a statement he made at his preliminary hearing in front of a municipal judge. See *State v. Frazier*, Op. No. 2019-UP-371 at 2.

speedy trial motion and indicated he wished to represent himself. R. 17, ll. 9-15. Moroney stated he explained the plea offer of a cap of ten years which he was extending and went through a “cost/benefit analysis” of what Frazier was facing at trial versus what he would be facing if he accepted the plea offer. R. 17, ll. 15-23. According to Moroney, he discussed the penalties that Frazier was facing, and the possibility that he could get consecutive, “double digit” sentences. R. 26, ll. 3-17. Moroney said that his meetings with Frazier were approximately 30 minutes long. R. 28, ll. 6-8.

Moroney stated he went through the penalty for each charge with Frazier. Moroney testified he could not recall whether he discussed the fact that Frazier was facing sentencing enhancements, but he said he would have gone over that. R. 29, ll. 4-21. Moroney stated he discussed the fact that there were defenses to the charges. R. 32, ll. 8-11. According to Moroney, he was “deferential” to Frazier by telling him he was a “smart guy,” and that the jury would be able to tell Frazier was a “nice guy.” R. 30, ll. 21-25.

Moroney testified that Frazier referenced prior success at a magistrate-level trial. Moroney did not recall in which county the magistrate offense trial was held. Moroney stated he tried to explain to Frazier that this case was in a different posture from that case, that the rules of evidence were complicated, and that Frazier needed legal representation. R. 18, ll. 4-24. Moroney stated Frazier was adamant these were “flimflam” charges and he would be able to get himself acquitted. R. 34, ll. 4-8. Moroney said Frazier brought up issues that he saw in this case, such as “scrivener’s errors” with his arrest warrants. R. 32, ll. 8-11.

Moroney explained that Frazier wanted a private attorney, and Moroney told him that a public defender could be appointed to him. According to Moroney, Frazier did not want a public defender, and he declined the offer of a public defender. Moroney said he told Frazier that

representing himself was a dangerous prospect because of the time he faced, and that an attorney would help him navigate the case. R. 19, l. 7 – 20, l. 10; 31, ll. 17-19. Moroney stated that an attorney could advise Frazier about his concerns regarding “scrivener’s errors” and laboratory weights. Moroney testified that he did not recall if he mentioned the Fourth Amendment. R. 31, l. 22 – 32, l. 17.

Moroney stated he had numerous discussions with Frazier in which Moroney cautioned Frazier about the perils of proceeding pro se. Moroney said he brought Frazier in front of Judge Edward Miller so that Judge Miller could provide Frazier with *Faretta*⁴ warnings. R. 19, l. 21 – 20, l. 25. According to Moroney, Judge Miller had a conversation with Frazier in the “small courtroom” and explained that these were serious charges, that attorneys had gone to law school and had legal training for several years, that Frazier did not have the benefit of that, and that Frazier could benefit from having someone to aid him in his defenses and assist with the case. Moroney stated Judge Miller told Frazier he would appoint counsel free of charge, but Frazier was adamant that he wanted to represent himself. Moroney believed Frazier’s appearance before Judge Miller took place a term or two before his trial.⁵ R. 21, l. 1 – 22, l. 20; 24, ll. 17-24.

Moroney was recalled after Frazier testified. R. 60, ll. 17-22. Moroney stated he did recall telling Frazier about enhanced sentencing provisions and Frazier was advised numerous times about the perils of proceeding unrepresented. R. 61, l. 7 – 64, l. 1. Moroney said he did mention concepts such as the Fourth Amendment and suppression, topics about which a lawyer could advise Frazier. R. 64, l. 23 – 65, l. 1.

⁴ *Faretta v. California*, 422 U.S. 806 (1975).

⁵ A transcript of this hearing could never be located.

The circuit court took the matter under advisement. It later issued an order in which it concluded Frazier's waiver of the right to counsel was not knowingly and intelligently made. The circuit court's order included the following findings of fact and conclusions of law.

The circuit court found Frazier's testimony that he was unaware he faced enhancement for trafficking methamphetamine, second offense, to be credible. It found his testimony was supported by his arrest warrant and indictment, neither of which indicated that he faced enhancement. The circuit court found credible Frazier's testimony that he did not realize a possession charge could enhance a trafficking charge. The court also found credible Moroney's testimony that he did meet with Frazier and did at some point mention enhancements. However, it found Moroney's own difficulty recalling this fact indicated any discussion of enhancements was not lengthy or detailed. (As seen, Moroney initially testified he did *not* recall discussing sentencing enhancements with Frazier.)

The circuit court found Moroney's testimony about the importance of Frazier's appearance before Judge Edward Miller for *Faretta* warnings was overstated in the context of the entire record. For example, on the first day of trial, Moroney stated to the trial court that Frazier's appearance before Judge Miller for *Faretta* warnings was brief and was not "near in depth," and he requested the trial court do additional *Faretta* warnings. *See* R. 144, ll. 8-16.

In applying the *Cash* factors,⁶ the circuit court concluded as follows.

(1) "[T]he accused's age, educational background, and physical and mental health." The circuit court found this factor cut both ways. Frazier was 25 years old, with an eighth-grade education, and he had ADHD and anxiety. His anxiety was untreated at the time of his decision

⁶ *State v. Cash*, 309 S.C. 40, 419 S.E.2d 811 (Ct. App. 1992).

to represent himself. His mother died while he was in pretrial detention. However, the court observed that Frazier is intelligent.

(2) “[W]hether the accused was previously involved in criminal trials.” The circuit court found this factor weighed in favor of the defendant, since Frazier had no prior involvement in general sessions trials, although he had once represented himself in magistrate court.

(3) “[W]hether he knew of the nature of the charge and of the possible penalties.” The circuit court found this factor also weighed in favor of the defendant. It was undisputed Frazier was aware of most of the offenses and punishments he faced. However, Frazier was not aware that he faced trafficking methamphetamine, second offense, and its enhanced penalty.

(4) “[W]hether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case.” The circuit court found this factor weighed in favor of the defendant, since it was undisputed Frazier was never represented by counsel during the pendency of the case.

(5) “[W]hether he was attempting to delay or manipulate the proceedings.” The circuit court found this factor weighed in favor of the defendant. Frazier was not attempting to delay or manipulate the proceedings.

(6) Whether the court appointed stand-by counsel. The circuit court found this factor weighed neutrally. Standby counsel was not appointed until after jury selection and pretrial motions were completed.

(7) “[W]hether the accused knew he would be required to comply with the rules of procedure at trial.” The circuit court found this factor weighed in favor of the defendant. This Court found the colloquy at trial was inadequate to warn Frazier of the dangers of proceeding without counsel. *State v. Frazier*, Op. No. 2019-UP-371 at 6. Moroney did not testify that there

was any caution by Judge Miller about needing to comply with criminal procedure rules. Frazier also testified at the remand hearing he did not know he would be required to comply with the criminal procedure rules.

(8) “[W]hether he knew of legal challenges he could raise in defense to the charges against him.” The circuit court found this factor did not weigh in favor of either party. It appeared Frazier was both aware and unaware of various defenses he could raise. For example, Frazier did mount a successful defense to the offense of carjacking, but he did not attempt to suppress the drugs on Fourth Amendment grounds.

(9) “[W]hether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions.” The circuit court found this factor cut both ways. The trial court’s exchange with the defendant at trial on his desire to proceed pro se was not merely pro forma answers and questions. However, the colloquy may have made Frazier feel more confident that he could represent himself because the Court told Frazier he was doing a “nice job” of being organized and doing “fairly well” with pretrial motions. R. 145, ll. 8-11. Moroney’s comments to Frazier that he was “smart” and a “nice guy,” which would “come across to the jury” were not helpful in this regard.

(10) “[W]hether the accused’s waiver resulted from either coercion or mistreatment.” The circuit court found this factor weighed in favor of the State. The waiver was not caused by coercion or mistreatment.

The circuit court found the balancing of the above factors favored the defendant, and his waiver of the right to counsel was not knowingly and intelligently made. R. 9 – 11. The circuit court concluded Frazier was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation. R. 11.

Discussion

The Sixth and Fourteenth Amendments guarantee an accused's right to the assistance of counsel. U.S. Const. amend. VI; U.S. Const. amend. XIV; *Gideon v. Wainwright*, 372 U.S. 335, 339 (1963); *Faretta v. California*, 422 U.S. at 807. "A defendant may waive his right to counsel, but he must do so knowingly and intelligently." *State v. Dial*, 429 S.C. 128, 133, 838 S.E.2d 501, 504 (2020). To establish a valid waiver of the right to counsel, the accused must be advised of his right to counsel and adequately warned of the "dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open." *Faretta v. California*, 422 U.S. at 835.

The "test is what the defendant understands about the scope of the right he wishes to discard[.]" *Hines v. State*, 443 S.C. 32, 40, 902 S.E.2d 377, 381 (2024). It is the defendant's "understanding of the right—not the incantations of the trial judge or the words on a printed form—that controls [the] inquiry into whether the waiver is good." *Id.*, 443 S.C. at 39, 902 S.E.2d at 380–81. "[R]ecognizing the enormous importance and role that an attorney plays at a criminal trial, we have imposed the most rigorous restrictions on the information that must be conveyed to a defendant, and the procedures that must be observed, before permitting him to waive his right to counsel at trial." *Patterson v. Illinois*, 487 U.S. 285, 298 (1988). "A defendant's waiver of his right to counsel on the eve of trial . . . is good only if he knows of the precise dangers trials pose for the uncounseled." *Hines*, 443 S.C. at 41, 902 S.E.2d at 381. "As to waiver of trial counsel, we have said that before a defendant may be allowed to proceed pro se, he must be warned specifically of the hazards ahead." *Iowa v. Tovar*, 541 U.S. 77, 88–89 (2004).

“To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. In the absence of a specific inquiry by the trial judge addressing the disadvantages of a pro se defense as required by the second *Faretta* prong, this Court will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source.” *Prince v. State*, 301 S.C. 422, 423–24, 392 S.E.2d 462, 463 (1990). “If the record demonstrates the defendant’s decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied.” *Wroten v. State*, 301 S.C. 293, 294-95, 391 S.E.2d 575, 576 (1990). “The purpose of the ‘knowing and voluntary’ inquiry . . . is to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced.” *Godinez v. Moran*, 509 U.S. 389, 401 n. 12 (1993) (emphasis in original).

Factors the courts have considered in determining if an accused had sufficient background to understand the disadvantages of self-representation include: (1) the accused’s age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers

to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment. *State v. Cash*, 309 S.C. at 43, 419 S.E.2d at 813.

“[T]o establish waiver of the right to counsel, it is incumbent upon the state to prove an intentional relinquishment or abandonment of the right.” *State v. Cash*, 309 S.C. at 47, 419 S.E.2d at 815 (citing *Brewer v. Williams*, 430 U.S. 387 (1977)). “The burden is on the State to demonstrate the validity of a defendant's waiver of his right to counsel.” *State v. Dial*, 429 S.C. at 133, 838 S.E.2d at 504.

There was a plethora of evidence to support the remand court's decision that the State did not meet its burden. As to its findings on the *Cash* factors, as seen, the court found five of the *Cash* factors to favor Respondent; one of the *Cash* factors to favor the State; and the remaining four *Cash* factors to favor neither party.

The court's finding that the second *Cash* factor (whether the accused was previously involved in criminal trials) weighed in favor of Respondent was supported by the record. Frazier had no prior involvement in general sessions trials. Frazier had never watched a criminal trial the whole way through, either in person or on television. R. 38, l. 25 – 39, l. 14; R. 39, l. 12 – 41, l. 1.

The court's finding that the third *Cash* factor, (whether the accused knew of the nature of the charge and of the possible penalties) weighed in favor of Respondent was also supported by the record. “The information a defendant must possess in order to make an intelligent election, our decisions indicate, will depend on a range of case-specific factors, including the defendant's education or sophistication, *the complex or easily grasped nature of the charge*, and the stage of the proceeding.” *Iowa v. Tovar*, 541 U.S. at 88 (emphasis added). Frazier's waiver was not knowing and intelligent in part because he did not understand the consequences he faced.

Frazier mistakenly thought he faced a less severe sentence for trafficking than he actually faced. *See* S.C. Code Ann. § 44-53-375(C)(1) (providing penalty for first offense trafficking in methamphetamine, 10 – 28 grams, is imprisonment of not less than three years nor more than ten years and a fine of twenty-five thousand dollars; penalty for second offense trafficking in methamphetamine, 10 – 28 grams, is imprisonment of not less than five years nor more than thirty years and a fine of fifty thousand dollars). The court found Frazier credible that he was not aware he faced trafficking methamphetamine, second offense, and its enhanced penalty. The court noted this testimony was corroborated by Frazier’s arrest warrant and indictment, neither of which indicated he faced enhancement. R. 8; R. 660; R. 653 – 654. Frazier testified he thought that he was facing up to ten years for the trafficking methamphetamine offense. Frazier stated it was his “first time catching a trafficking charge” and he did not understand the nature of enhancement. Frazier testified he did not know the State was going to use a 2009 possession of cocaine conviction to enhance his trafficking charge. Frazier stated he did not know he was facing trafficking, second offense, at trial. Frazier said he had no notification he faced an enhanced trafficking charge until sentencing. R. 41, l. 2 – 44, l. 10; R. 51, ll. 3-6.

The record also supported the court’s finding that the fourth *Cash* factor (whether the accused was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case) weighed in favor of Respondent. It was undisputed Frazier was never represented by counsel during the case. Moreover, Moroney, an attorney and Frazier’s adversary, remarked to Frazier that he was a “smart guy,” and that the jury would be able to tell Frazier was a “nice guy.” R. 30, ll. 21-25). Similarly, during the court’s colloquy with Frazier, the court told Frazier he was doing a “nice job” of being organized, and was doing “fairly well” with pretrial motions. R. 145, ll. 8-11. *See, e.g., United States v.*

Williams, 641 F.3d 758, 767 (6th Cir. 2011) (model *Faretta* inquiry “must be followed by a strong admonishment that the court recommends against the defendant trying to represent himself or herself”). Thus, instead of warning against self-representation, both the solicitor and the court at times made comments which encouraged Frazier to waive his right to counsel.

The record supported the court’s finding that the fifth *Cash* factor (whether the accused was attempting to delay or manipulate the proceedings) weighed in favor of Respondent. It was undisputed that Frazier was not attempting to delay or manipulate the proceedings. Frazier was tried less than a week after he was indicted, approximately four months after the incident date. R. 82; R. 649 – 658. Frazier’s trial was held about a month after his mother died, and he testified his “mind wasn’t in the right state” due to her death. Frazier testified he was not trying to manipulate the courts. R. 45, l. 20 – 46, l. 8; R. 49, ll. 9-12.

The record supported the court’s finding that the seventh *Cash* factor (whether the accused knew he would be required to comply with the rules of procedure at trial) weighed in favor of Respondent. In this Court’s initial opinion during Frazier’s direct appeal, this Court found the colloquy at trial was inadequate to warn him of the dangers of proceeding without counsel. *State v. Frazier*, Op. No. 2019-UP-371 at 6. Moreover, Moroney did not testify that there was any caution by Judge Miller about needing to comply with criminal procedure rules. Frazier stated he did not understand that he would have to comply with the criminal procedure rules at trial. R. 49, ll. 18-20. Additionally, the court’s remarks to Frazier at trial about standby counsel’s role regarding the court rules were confusing as to whether Frazier would be responsible for complying with the court rules or whether standby counsel would be responsible. R. 147, ll. 5-13; R. 149, ll. 9-14.

The record supported the court's decision that the first *Cash* factor (the accused's age, educational background, and physical and mental health) did not favor the State. (The court found this factor cut both ways.) Frazier was 25 years old, with an *eighth-grade* education, and he had ADHD and anxiety. His anxiety was untreated at the time of his decision to represent himself. His mother died while he was in pretrial detention. However, the court found Frazier to be intelligent. R. 37, ll. 4-19; R. 37, l. 20 – 38, l. 4; R. 38, ll. 5-22; R. 9.

The record supported the court's decision that the sixth *Cash* factor (whether the court appointed stand-by counsel) did not favor the State. (The court found this factor weighed neutrally.) Standby counsel was not appointed until after jury selection and pretrial motions were completed. R. 149, l. 9 – 150, l. 20.

The record supported the court's decision that the eight *Cash* factor (whether the accused knew of legal challenges he could raise in defense to the charges against him) did not favor the State. (The court found this factor did not weigh in favor of either party.) Frazier was both aware and unaware of various defenses he could raise. Frazier did mount a successful defense to the offense of carjacking, but he did not attempt to suppress the drugs on Fourth Amendment grounds. R. 636, ll. 17-18; R. 114, l. 20 – 144, l. 4.

The record supported the court's decision that the ninth *Cash* factor (whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions) did not favor the State. (The court found this factor cut both ways.) The court's exchange with Frazier at trial on his desire to proceed pro se was not merely pro forma answers and questions. However, the colloquy made Frazier feel more confident that he could represent himself because the Court told Frazier he was doing a "nice job" of being organized and doing "fairly well" with pretrial motions. R. 145, ll. 8-11. As seen, Moroney's comments to Frazier

that he was “smart” and a “nice guy,” which would “come across to the jury” were not helpful in this regard. R. 30, ll. 21-25.

Finally, the record supported the court’s finding that the tenth *Cash* factor (whether the accused’s waiver resulted from either coercion or mistreatment) weighed in favor of the State. It was undisputed that the waiver was not caused by coercion or mistreatment.

The circuit court’s conclusion, that Frazier’s decision to represent himself was not made with a sufficient understanding of the risks of self-representation, was the correct conclusion. The record did not show that Frazier was adequately warned of the dangers of proceeding pro se or had sufficient background to understand the risks of self-representation. Frazier did not understand the “significance and consequences” of the decision. *Godinez v. Moran*, 509 U.S. at 401 n. 12. He did not know the “precise dangers trials pose for the uncounseled.” *Hines*, 443 S.C. at 41, 902 S.E.2d at 381. The State did not meet its burden to show the waiver of counsel was knowingly and intelligently made. Frazier is entitled to a new trial. U.S. Const. amend. VI; U.S. Const. amend XIV; *Faretta v. California*, 422 U.S. at 835; *Cash*, 309 S.C. at 47, 419 S.E.2d at 815.

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests this Court affirm the decision of the circuit court that his waiver of the right to counsel was not knowingly and intelligently made, and remand the case to the Greenwood County Court of General Sessions for a new trial.



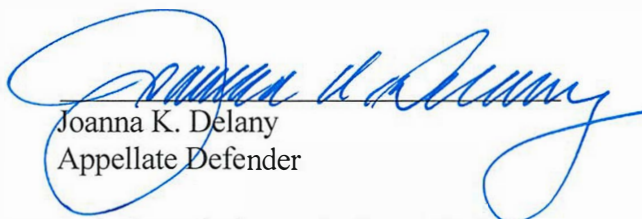
Joanna K. Delany
Appellate Defender
ATTORNEY FOR RESPONDENT

This 5th day of November, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

November 5, 2024.



Joanna K. Delany
Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

APPELLANT,

V.

TERRENCE O'NEIL FRAZIER,

RESPONDENT

APPELLATE CASE NO. 2023-001439

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Final Brief of Respondent in the above-referenced case have been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 5th day of November, 2024.



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South Carolina Commission on Indigent Defense
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ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Terrence O'Neil Frazier, Respondent.

Appellate Case No. 2023-001439

Appeal From Greenwood County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2025-UP-427
Submitted November 3, 2025 – Filed December 23, 2025

AFFIRMED

Attorney General Alan McCrory Wilson and Assistant
Attorney General Joshua A. Edwards, both of Columbia,
and Solicitor David M. Stumbo, of Greenwood, for
Appellant.

Appellate Defender Joanna K. Delany, of Columbia, for
Respondent.

PER CURIAM: Terrence O'Neil Frazier was convicted of leaving the scene of an
accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued

over ten thousand dollars, and trafficking methamphetamine. Frazier appealed his convictions, this court found the record did not demonstrate his decision to represent himself was made with an understanding of the risks of self-representation, and we remanded for an evidentiary hearing on the issue of whether Frazier's waiver of counsel was knowingly and intelligently made. *State v. Frazier*, Op. No. 2019-UP-371 (S.C. Ct. App. filed Nov. 27, 2019). After a hearing, the circuit court found Frazier's waiver of counsel was not knowingly and intelligently made. The State appeals. We affirm pursuant to Rule 220(b), SCACR.

We find that Frazier's decision to represent himself was not made with a sufficient understanding of the risks of self-representation; thus, he did not knowingly and intelligently waive his right to counsel. *See State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018) ("Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo."); *State v. Dial*, 429 S.C. 128, 133, 838 S.E.2d 501, 504 (2020) ("A defendant may waive his right to counsel, but he must do so knowingly and intelligently."); *id.* ("For a knowing and intelligent waiver to occur, the defendant must be '(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.'" (quoting *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990))); *id.* ("The burden is on the State to demonstrate the validity of a defendant's waiver of his right to counsel."); *Hines v. State*, 443 S.C. 32, 39, 902 S.E.2d 377, 380-81 (2024) ("[I]t is [a defendant's] understanding of the right—not the incantations of the trial judge or the words on a printed form—that controls our inquiry into whether the waiver is good."); *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992) (enumerating the factors to be considered in determining if the accused had sufficient understanding of the disadvantages of self-representation to include the following: "(1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment"). After our review of the *Cash* factors, we agree with

the circuit court's finding that Frazier's waiver of counsel was not knowingly and intelligently made. Accordingly, the order on appeal is

AFFIRMED.¹

WILLIAMS, C.J., and THOMAS and CURTIS, JJ., concur.

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

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2023-001439

THE STATE,

Appellant,

v.

TERRENCE O. FRAZIER,

Respondent.

Opinion No. 2025-UP-427

PETITION FOR REHEARING

On December 23, 2025, this Court issued an unpublished opinion affirming the lower court's order finding Respondent Terrence Frazier did not knowingly and voluntarily waive his right to counsel. State v. Frazier, Opinion No. 2025-UP-427 (S.C. Ct. App. filed December 23, 2025). Pursuant to Rule 242 of the South Carolina Appellate Court Rules, the State respectfully petitions for rehearing.

Initially, the State respectfully submits the Court misapprehended or overlooked portions of the record demonstrating Frazier received Faretta warnings from Circuit Court Judge Edward Miller during a hearing convened for that purpose. R.p.19–20. Although the transcript of that hearing does not exist, the solicitor gave credible testimony establishing the hearing took place.

This was in addition to the extensive warnings the solicitor personally gave Frazier. The record demonstrates Frazier was familiar with the criminal process and understood his right to a jury trial, but knowingly and voluntarily waived that right. The State will not repeat all arguments from the Brief of Appellant, but incorporates them by reference into this petition.

Additionally, the State wishes to call to the Court's attention that the opinion does not explicitly order a new trial. While the opinion affirms the lower court, the remand court also did not order a new trial, but merely found Frazier's waiver was not knowing and voluntary. The State respectfully submits this Court should clarify the relief it is granting.

CONCLUSION

This Court should grant Appellant's petition and reverse the lower court.

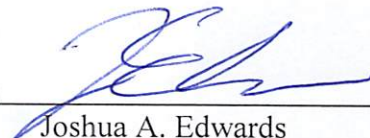
Respectfully submitted,

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BY: _____


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ATTORNEYS FOR APPELLANT

January 7, 2026

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2023-001439

THE STATE,

Appellant,

v.

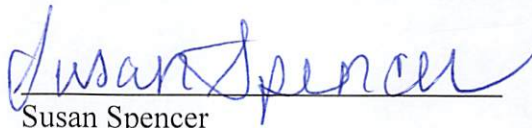
TERRENCE O. FRAZIER,

Respondent.

PROOF OF SERVICE

I, Susan Spencer, certify that I have served the within Petition for Rehearing on Respondent by sending an electronic copy to Joanna K. Delany, Esquire to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 7th day of January, 2026.



Susan Spencer
Legal Assistant
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2025-UP-427

THE STATE,

APPELLANT,

V.

TERRENCE O'NEIL FRAZIER,

RESPONDENT

APPELLATE CASE NO. 2023-001439

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Respondent Terrence O'Neil Frazier requests that this Court grant rehearing in order to remand the case for a new trial. Respondent respectfully asserts that given the unusual procedural history of this case, this Court overlooked his request that the Court not only affirm the circuit court's ruling that the waiver of the right to counsel was not knowingly and intelligently made, but also that, resultantly, this Court remand the case to the Greenwood County Court of General Sessions for a new trial. *See* Brief of Respondent at 23.

The circuit court correctly concluded Frazier’s waiver of the right to counsel was not knowingly and intelligently made, since there was a plethora of evidence to support the court’s findings that Frazier was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation.

In his 2018 brief of appellant, Respondent Frazier argued he was “entitled to a new trial because he did not knowingly and intelligently waive his right to counsel where the record does not demonstrate that [Frazier’s] decision to represent himself was made with an understanding of the risks of self-representation.” *See* Final Brief of Appellant at 1 – 17 (Appellate Case No. 2015-002464). In that brief, Frazier requested this Court reverse his convictions and grant him a new trial. *See* Final Brief of Appellant at 18 (Appellate Case No. 2015-002464). On November 27, 2019, this Court issued an opinion in which it remanded the case to the circuit court for an evidentiary hearing to determine whether Frazier’s waiver of the right to counsel was knowingly and intelligently made. *See State v. Frazier*, Op. No. 2019-UP-371 at 4 (S.C. Ct. App. filed November 27, 2019) (“[W]e remand for an evidentiary hearing to determine whether Frazier’s waiver was knowingly and intelligently made.”).

After a hearing at which both sides were permitted to present testimony and introduce evidence, the circuit court determined Respondent Frazier’s waiver of the right to counsel was not knowing and intelligent. R. 1 – 11; R. 12 – 65. This Court subsequently affirmed the circuit court’s ruling that Frazier’s waiver of counsel was not knowingly and intelligently made, citing, *inter alia*, *State v. Cash*, 309 S.C. 40, 419 S.E.2d 813 (Ct. App. 1992) (enumerating factors to be considered in determining if accused had sufficient understanding of disadvantages of self-representation). *State v. Frazier*, Op. No. 2025-UP-427 at 2 – 3 (S.C. Ct. App. filed December 23, 2025). Respondent Frazier obviously takes no issue with this Court’s holding in that regard.

Rather, Respondent Frazier seeks rehearing in order to request this case consequently be remanded to the circuit court for a new trial, since that issue (whether Frazier was entitled to a new trial) was not before the circuit judge on remand. Instead, this Court only remanded the case to the circuit court for an evidentiary hearing to determine whether Frazier’s waiver of the right to counsel was knowingly and intelligently made. *State v. Frazier*, Op. No. 2019-UP-371 at 3 (S.C. Ct. App. filed November 27, 2019). Therefore, in this situation, this Court—not the circuit court—has the power to grant a new trial.

Compare State v. Dixon, 269 S.C. 107, 109, 236 S.E.2d 419, 420–21 (1977) (“The case is remanded to the lower court for a determination of whether the waiver was intelligently made If it be found by the lower court that the waiver was intelligently made, an order dismissing the appeal shall be made by this Court. If it is determined that the waiver was not intelligently made, an order reversing the appellant’s conviction and granting him a new trial shall be issued.”); *State v. Dial*, 429 S.C. 128, 135-36, 838 S.E.2d 501, 505 (2020) (“we remand Dial’s case to the circuit court for the court to conduct an evidentiary hearing pursuant to *Dixon* to determine whether Dial knowingly and intelligently waived his right to counsel . . . if the trial court finds the waiver was not knowing and intelligent, it shall grant the defendant a new trial Alternatively, if the trial court determines ‘the waiver was intelligently made, an order dismissing the appeal shall be made by this Court’”); *State v. Cash*, 304 S.C. 223, 225, 403 S.E.2d 632, 634 (1991) (“we remand the case to the trial judge to determine whether appellant knowingly and intelligently waived his right to counsel If the trial court determines that the waiver was knowingly and intelligently made, it shall issue an order denying appellant a new trial on this ground. If the trial court finds that the waiver was not knowing and intelligent, it shall grant appellant a new trial.”). Importantly, this Court did not remand the case for a decision

by the trial court as to whether Frazier was entitled to a new trial in the event it determined his waiver was not knowing and intelligent. Instead, as seen, the 2019 opinion only held: “we remand for an evidentiary hearing to determine whether Frazier’s waiver was knowingly and intelligently made.” Therefore, it is for this Court, rather than the circuit court, to order Frazier receive a new trial.

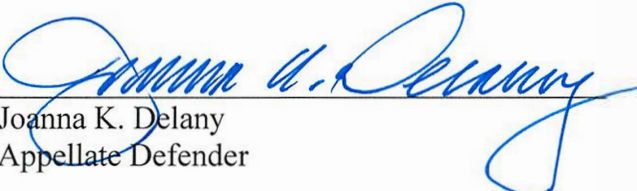
The proper remedy in this situation is to remand for a new trial. *See State v. Thompson*, 355 S.C. 255, 269, 584 S.E.2d 131, 138 (Ct. App. 2003) (remanding for new trial where defendant was erroneously deprived of his fundamental right to assistance of counsel); *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990) (remanding for new trial where record did not demonstrate petitioner was sufficiently aware of the dangers of self-representation to make an informed decision to proceed pro se); *State v. Bateman*, 296 S.C. 367, 369, 373 S.E.2d 470, 471 (1988) (remanded for new trial where record did not demonstrate request to proceed pro se was accompanied by a knowing and intelligent waiver); *Bridwell v. State*, 306 S.C. 518, 519, 413 S.E.2d 30, 31 (1992) (remanded for new trial where waiver of counsel was not knowing and voluntary); *In re Christopher H.*, 359 S.C. 161, 170, 596 S.E.2d 500, 505 (Ct. App. 2004) (remanded for new trial where waiver of right to counsel was not knowingly and intelligently made).

The circuit court found Respondent Frazier’s waiver of the right to counsel was not knowingly and intelligently made. R. 1 – 11. This Court affirmed that ruling. *State v. Frazier*, Op. No. 2025-UP-427 (S.C. Ct. App. filed December 23, 2025). However, Frazier has not been granted a new trial. Because the proper remedy in this case is to remand for a new trial, and because neither the circuit court nor this Court has ruled that Frazier is entitled to a new trial, Frazier respectfully requests this Court grant rehearing, hold he is entitled to a new trial, and

remand the case for a new trial. *E.g., Bateman*, 296 S.C. at 369, 373 S.E.2d at 471; *Thompson*, 355 S.C. at 269, 584 S.E.2d at 138.

CONCLUSION

Respondent Frazier respectfully requests this Court grant rehearing, hold he is entitled to a new trial, and remand the case for a new trial.



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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR RESPONDENT

This 7th day of January, 2026.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

APPELLANT,

V.

TERRENCE O'NEIL FRAZIER,

RESPONDENT

APPELLATE CASE NO. 2023-001439

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Terrence O'Neil Frazier, #334278, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of January, 2026.



Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

The State, Appellant,

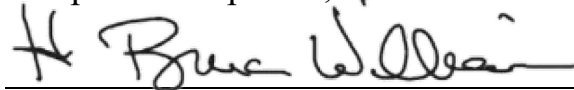
v.

Terrence O'Neil Frazier, Respondent.

Appellate Case No. 2023-001439

ORDER

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied. For clarification of the status of the case, the attached opinion is substituted for the previous opinion, which is withdrawn.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

Joanna Katherine Delany, Esquire

Joshua Abraham Edwards, Esquire

Alan McCrory Wilson, Esquire

The Honorable Eugene C. Griffith, Jr.

FILED
Feb 04 2026

APP'X 730

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Terrence O'Neil Frazier, Respondent.

Appellate Case No. 2023-001439

Appeal From Greenwood County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2025-UP-427
Submitted November 3, 2025 – Filed December 23, 2025
Withdrawn, Substituted, and Refiled February 4, 2026

AFFIRMED AND REMANDED

Attorney General Alan McCrory Wilson and Assistant
Attorney General Joshua A. Edwards, both of Columbia,
and Solicitor David M. Stumbo, of Greenwood, for
Appellant.

Appellate Defender Joanna K. Delany, of Columbia, for
Respondent.

PER CURIAM: Terrence O'Neil Frazier was convicted of leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued at more than ten thousand dollars, and trafficking methamphetamine. Frazier appealed his convictions, this court found the record did not demonstrate his decision to represent himself was made with an understanding of the risks of self-representation, and we remanded for an evidentiary hearing on the issue of whether Frazier's waiver of counsel was knowingly and intelligently made. *State v. Frazier*, Op. No. 2019-UP-371 (S.C. Ct. App. filed Nov. 27, 2019). After a hearing, the circuit court found Frazier's waiver of counsel was not knowingly and intelligently made. The State appeals. We affirm pursuant to Rule 220(b), SCACR and remand for a new trial.

We find that Frazier's decision to represent himself was not made with a sufficient understanding of the risks of self-representation; thus, he did not knowingly and intelligently waive his right to counsel. *See State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018) ("Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo."); *State v. Dial*, 429 S.C. 128, 133, 838 S.E.2d 501, 504 (2020) ("A defendant may waive his right to counsel, but he must do so knowingly and intelligently."); *id.* ("For a knowing and intelligent waiver to occur, the defendant must be '(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.'" (quoting *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990))); *id.* ("The burden is on the State to demonstrate the validity of a defendant's waiver of his right to counsel."); *Hines v. State*, 443 S.C. 32, 39, 902 S.E.2d 377, 380-81 (2024) ("[I]t is [a defendant's] understanding of the right—not the incantations of the trial judge or the words on a printed form—that controls our inquiry into whether the waiver is good."); *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992) (enumerating the factors to be considered in determining if the accused had sufficient understanding of the disadvantages of self-representation to include the following: "(1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro*

forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment"). After our review of the *Cash* factors, we agree with the circuit court's finding that Frazier's waiver of counsel was not knowingly and intelligently made. Accordingly, the order on appeal is

AFFIRMED AND REMANDED.¹

WILLIAMS, C.J., and THOMAS and CURTIS, JJ., concur.

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

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Terrence O'Neil Frazier, Appellant.

Appellate Case No. 2015-002464

Appeal From Greenwood County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2019-UP-371
Heard October 14, 2019 – Filed November 27, 2019

REMANDED

Appellate Defender Laura Ruth Baer, and Appellate
Defender Joanna Katherine Delany, both of Columbia,
both for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General David A. Spencer, both of
Columbia, and Solicitor David Matthew Stumbo, of
Greenwood, all for Respondent.

PER CURIAM: Terrence Frazier argues he is entitled to a new trial because he did not knowingly and intelligently waive his right to counsel. Frazier maintains that

the record does not demonstrate that his decision to represent himself was made with an understanding of the risks of self-representation. We remand to the circuit court for an evidentiary hearing on the issue.

FACTS

Law enforcement initially charged Frazier with trafficking methamphetamine, grand larceny, auto breaking, and leaving the scene of an accident based on a myriad of events that took place on July 9, 2015. At his preliminary hearing held on September 1, 2015, Frazier appeared *pro se* and had the following exchange with the municipal court:

Q: "Mr. Frazier, you understand that I have cautioned you that you should not go forward without an attorney, is that correct, sir?"

A: "I understand that."

Q: "And . . . you waive your rights to an attorney at this critical stage of a preliminary hearing and you want to go forward today, is that correct?"

A: "I'm representing myself, I don't waive my rights."

Frazier was subsequently indicted on November 13, 2015, for breaking into a motor vehicle, grand larceny, trafficking in methamphetamine, leaving the scene of an accident, and carjacking.

On the first day of trial proceedings, November 16, 2015, Frazier again appeared *pro se*. After noting that Frazier refused the State's plea offer, the court asked, "Now, have you had an opportunity to speak with a lawyer of your choosing to see if you wanted help and assistance in defending yourself in this matter? Are you prepared to go to trial?" Frazier responded that he was prepared to proceed to trial. After the conclusion of pretrial matters, the State asked the court to give Frazier a *Faretta*¹ warning, expressing concern that the warning given at the preliminary hearing "probably took five minutes" and was likely not comprehensive enough. The circuit court engaged in the following colloquy with Frazier:

¹ *Faretta v. California*, 422 U.S. 806 (1975).

Q: Mr. Frazier, tell me how far you went [in] school. You told the jury that you were 25.

A: 9th grade, Your Honor.

Q: What kind of work have you been doing?

....

A: Like cutting grass, remodeling houses, stuff like that.

....

Q: Do you understand I could appoint you a public defender?

A: I understand that, Your Honor.

Q: Do you want one? I mean you are doing fairly well this afternoon pointing out these motions and pretrial matters. You are doing a very nice job of being organized.

A: If I get appointed a public defender, it won't start my case all the way over and take more time, would it?

Q: You don't hear that very often. It could, but—now, would you like me to see if I can get a lawyer to sit with you to help advise you on procedural matters, like the [c]ourt [r]ules?

A: Yeah, that will work.

Q: But you handle your case and you handle the witnesses, since you are familiar with the facts.

A: Yes, sir, that will work. Well, look, . . . if I filled out for a public defender and I put in for a bond reduction hearing, . . . if they extended the time for the trial, could I go up for a bond reduction?

Q: Technically you could, but you probably wouldn't get it.

A: Yeah. Well, I really want to get this over with.

Q: You feel comfortable representing yourself?

. . . .

A: Yeah, I feel . . . comfortable with the facts of the evidence.

Q: Okay.

A: But I would like you to allow them to sit with me and —

Q: I'm going to see if I can get a public defender to sit with you to advise you procedurally. Did you ever have a public defender? Who was your lawyer before that was—

A: No, I didn't have a lawyer. I never got one.

Q: You never had one?

A: No.

Q: Have you ever had [a] public defender appointed [to] you for any matter?

A: Yes, sir, I have.

The court then appointed Frazier standby counsel. Frazier was found guilty on all charges save for carjacking, for which the jury found him guilty of the lesser offense of use of a vehicle without permission. He was sentenced to incarceration for twelve months for leaving the scene of an accident, thirty-six months for use of vehicle without permission, sixty months for both grand larceny and breaking into a motor vehicle, and twenty years for trafficking methamphetamine second offense. This appeal follows.

ISSUE

Is Frazier entitled to a new trial because he did not knowingly and intelligently waive his right to counsel?

STANDARD OF REVIEW

"Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo." *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018). Specifically, we review a circuit court's findings of historical fact for clear error; but we review the sufficiency of a waiver of counsel based on those findings of fact de

novo. *See id.* (citing *United States v. Bush*, 404 F.3d 263, 270 (4th Cir. 2005)). "In doing so, [an appellate c]ourt must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit [court] at the time the defendant made his request." *Id.*

LEGAL ANALYSIS

Frazier argues he did not knowingly and intelligently waive his right to counsel at any point in the proceedings because he was not warned of the dangers of self-representation. We agree that the record fails to show that Frazier was either adequately warned of the dangers of proceeding *pro se* or had sufficient background to understand the risks of self-representation. We disagree, however, that a new trial is the proper remedy.

Under both the federal and state constitutions,² a criminal defendant in South Carolina must be afforded the right to the assistance of counsel. *Faretta*, 422 U.S. at 807. A defendant may waive this right and represent himself, so long as his waiver is knowing and intelligent. *State v. Barnes*, 407 S.C. 27, 35–36, 753 S.E.2d 545, 550 (2014). To effectuate a valid waiver of the right to counsel under *Faretta*, the accused must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. *Watts v. State*, 347 S.C. 399, 402, 556 S.E.2d 368, 370 (2001). "It is the [circuit court]'s responsibility to determine whether there is a competent, intelligent waiver by the defendant." *Id.* The type of warnings and procedures that should be required before allowing a waiver of the right to counsel depends on the particular stage of the proceedings in question. *Iowa v. Tovar*, 541 U.S. 77, 89–90 (2004). "Warnings of the pitfalls of proceeding to trial without counsel . . . must be 'rigorous[ly]' conveyed[,] . . . [h]owever, . . . at earlier stages . . . a less searching or formal colloquy may suffice." *Id.* at 89 (quoting *Patterson v. Illinois*, 487 U.S. 285, 298 (1988)).

"While a specific inquiry by the [circuit court] expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the [circuit court]'s advice but rather the defendant's understanding." *Watts*, 347 S.C. at 402, 556 S.E.2d at 370 (quoting *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990)). In the absence of this specific inquiry by the circuit court, the appellate court will look to the record to determine whether the defendant had a sufficient background or if he was apprised of his rights by some other source. *See id.*; *Gardner v. State*, 351 S.C. 407, 412, 570 S.E.2d 184, 186 (2002); *see also State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992) (listing factors courts

² U.S. Const. amend. VI; S.C. Const. art. I, § 14.

consider when determining the sufficiency of a defendant's background). "If the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." *Wroten*, 301 S.C. at 294, 392 S.E.2d at 576.

Here, the record reflects that no adequate *Faretta* warning was given by the courts at any stage of the proceedings. At the preliminary hearing, the municipal court indicated it had merely "cautioned" Frazier that he should not go forward without an attorney. Such general warnings are inadequate. *See State v. Bryant*, 383 S.C. 410, 416, 680 S.E.2d 11, 14 (Ct. App. 2009). The record does not include any mention by the municipal court of the *specific* dangers of proceeding *pro se*. Likewise, the *Faretta* colloquy between Frazier and the circuit court was inadequate. While the court properly advised Frazier of his (1) right to representation, it failed to mention (2) any dangers of proceeding without counsel. Further, the record does not reflect that Frazier had sufficient background to understand the dangers of self-representation. He was twenty-five years old with a ninth grade education, was unrepresented by counsel throughout the entire matter, self-described his charges as "frivolous," and the record does not reflect that he had been through a criminal trial prior to the instant matter. *See Gardner*, 351 S.C. at 413, 570 S.E.2d at 187 (finding the fact that the defendant had a twelfth grade education, had been represented by counsel on a previous charge to which he pled guilty, and had an attorney when he was first charged in the present matter insufficient to demonstrate that he was aware of the dangers of self-representation); *Osbey v. State*, 425 S.C. 615, 620–21, 825 S.E.2d 48, 51 (2019) (finding the background of a defendant who had two prior drug convictions insufficient to plead guilty to a third drug offense without warnings of the dangers of self-representation).

"The record in this case fails to show that there was a valid waiver of the right to counsel. Therefore, the [next] issue is what remedy is appropriate." *State v. Cash*, 304 S.C. 223, 224, 403 S.E.2d 632, 633 (1991).

"The typical remedy for failing to show a knowing and intelligent waiver of counsel is to remand to the [circuit] court for an evidentiary hearing to determine whether the waiver was, in fact, knowingly and intelligently made." *In re Christopher H.*, 359 S.C. 161, 169, 596 S.E.2d 500, 505 (Ct. App. 2004). "The justice of [such a] case does not require a new trial, but the appellant is entitled to a factual determination by the lower court on the 'intelligent waiver' issue." *State v. Dixon*, 269 S.C. 107, 109, 236 S.E.2d 419, 420 (1977). "However, this court can grant an appellant a new trial without an evidentiary hearing if it is clear that a hearing on remand would serve no useful purpose." *In re Christopher H.*, 359 S.C. at 169, 596 S.E.2d at 505; *see also Cash*, 304 S.C. at 225, 403 S.E.2d at 634

("[E]xcept in extraordinary cases where it is clear that a hearing on remand would serve no useful purpose, the remedy when the record fails to show a knowing and intelligent waiver of the right to counsel will be a remand for a *Dixon* hearing.").

Here, a full hearing on the issue has not been held, and this case does not rise to the level of "extraordinary" as was the case in *In re Christopher*—when the courts failed to **both** (1) adequately advise the accused of his right to counsel and (2) adequately warn him of the dangers of self-representation pursuant to *Faretta*. See *In re Christopher H.*, 359 S.C. at 169–70, 596 S.E.2d at 505. Further, the accused in that case was only sixteen years old with a ninth grade education, had a full scale IQ of seventy-four, and had been to family court only once before. *Id.* In the instant matter, it is unclear from the record if Frazier had previously been through a trial, knew the nature of his charges or the possible penalties, the extent to which his prior counsel informed him of his rights, the level of "caution" provided by the municipal court before the preliminary hearing formally began, whether he had the opportunity to speak to a lawyer of his choosing before trial (and whether this lawyer warned him about the dangers of self-representation), or whether he received warnings about the dangers of proceeding *pro se* from any other source. Therefore, the proper remedy is to remand for an evidentiary hearing, where both Frazier and the State can present evidence on the issue. See *Cash*, 304 S.C. at 225, 403 S.E.2d at 634 ("Both the prosecution and the defense will be permitted to present evidence on this issue."); cf. *State v. Moore*, 343 S.C. 282, 288 n.5, 540 S.E.2d 445, 448 n.5 (2000) ("Given that a full hearing has been conducted and a full record exists, a remand for a hearing . . . is unnecessary.").

CONCLUSION

Based on the foregoing, we remand for an evidentiary hearing to determine whether Frazier's waiver was knowingly and intelligently made.

REMANDED.

SHORT, THOMAS, and GEATHERS, JJ., concur.