

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Lexington County

R. Lawton McIntosh, Circuit Court Judge

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S.C. Supreme Court

RICO HICKMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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A P P E N D I X

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ROBERT M. PACHAK  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

KAELOE E. MAY  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
VS  
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

-vs-

RICO HICKMAN,

Defendant.

TRANSCRIPT OF RECORD

08-GS-32-2864, et al

*Tuesday*

January 27-28, 2009  
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge; and a jury.

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

LAWRENCE G. WEDEKIND, Asst. Solicitor  
DERRICK E. MOBLEY, Asst. Solicitor  
Attorneys for the State

ELIZABETH C. FULLWOOD, Deputy Public Defender  
BENNETT E. CASTO, Asst. Public Defender  
Attorneys for the Defendant

L. COCONUT PANTSARI, R.P.R.  
Circuit Court Reporter

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## COURT'S EXHIBITS

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## INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

1 (The following proceedings are reported on  
2 January 27, 2009).

3 THE COURT: Solicitor, if you would call your  
4 next case for trial.

5 MR. WEDEKIND: Yes, sir. The State calls the  
6 case of the State versus Rico Amadeus Hickman under  
7 Indictment 2008-GS-32-2864, charged with assault and  
8 battery with intent to kill.

9 Indictment 2008-GS-32-2865, the State versus  
10 Rico Amadeus Hickman, the charge is kidnapping. The  
11 next indictment would be 2008-GS-32-2867, the State  
12 versus Rico Amadeus Hickman, charged with armed robbery  
13 with a deadly weapon.

14 THE COURT: Could I have the indictments,  
15 ~~Madame Clerk or Solicitor?~~

16 (Hands to Court).

17 THE COURT: Ms. Fullwood, do you represent  
18 Mr. Hickman?

19 MS. FULLWOOD: I do, Your Honor.

20 THE COURT: You have one motion to reserve; is  
21 that correct?

22 MS. FULLWOOD: I do, Your Honor.

23 THE COURT: Is Mr. Hickman present in the  
24 courtroom?

25 MS. FULLWOOD: He is. And I came up to give

1 the Court my requested voir dire, but I don't think I  
2 handed it to the Court. If I may approach.

3 THE COURT: Yes, ma'am.

4 (Hands to Court).

5 THE COURT: Ladies and gentlemen of the jury  
6 panel, if you would please give me your complete and  
7 undivided attention. I would ask you to please consider  
8 yourselves still under oath from yesterday as far as the  
9 questions that I will ask you in a few moments.

10 The State has called for trial three separate  
11 indictments, 2008-GS-32-2864, 2865, and 2867. Each  
12 indictment is the State versus Rico Amadeus Hickman,  
13 H-I-C-K-M-A-N. Each indictment has been true billed by  
14 the grand jury.

15 I am going to publish these indictments, read  
16 them to you, prior to asking you questions concerning  
17 your qualifications to serve as members of this jury.  
18 But please remember the indictments are not evidence.  
19 They are not evidence of any of the allegations  
20 contained therein.

21 They are merely the formal charging document  
22 by which an individual is placed on notice of the  
23 charges that have been placed against him or her and the  
24 charges that he or she must answer.

25 The first indictment, assault and battery with

1 intent to kill, reads that Rico Amadeus Hickman and/or  
2 his codefendants did in Lexington County, on or about  
3 January 17, 2008, with malice aforethought willfully and  
4 unlawfully commit a violent injury to the person of  
5 another that could have resulted in death, to wit, Rico  
6 Amadeus Hickman or a codefendant did shoot the victim,  
7 Jackie Ray Jackson, twice during a burglary and an armed  
8 robbery in violation of 16-3-620 of the Code of Laws of  
9 South Carolina, 1976 as amended. That is an indictment  
10 for assault and battery with intent to kill.

11 The next indictment, 2865, reads that Rico  
12 Amadeus Hickman did in Lexington, South Carolina, on or  
13 about January 28, 2008, knowingly, willfully, and  
14 unlawfully seize, confine, inveigle, decoy, kidnap,  
15 ~~abduct, or carry away one Jackie Ray Jackson by any~~  
16 means whatsoever without authority of law and without  
17 his consent, to wit, the Defendant and codefendants did  
18 hold the victim at gunpoint and attempt to rob him in  
19 his store against his will in violation of 16-3-910 of  
20 the Code of Laws of South Carolina, 1976 as amended.

21 And Indictment 2008-GS-32-2867 reads that Rico  
22 Amadeus Hickman and/or his codefendant did in Lexington  
23 County, South Carolina, on or about January 17, 2008,  
24 knowingly and willfully, while armed with a pistol,  
25 feloniously take from the person or presence of

1 Mr. Jackie Ray Jackson by means of force a pistol with  
2 intent to deprive the owner of the use of such property  
3 in violation of 16-11-330(a) of the Code of Laws of  
4 South Carolina. That is a charge of armed robbery while  
5 armed with a deadly weapon.

6 Ladies and gentlemen, the prosecution in this  
7 case, the State, is represented by Assistant Solicitor  
8 Wedekind. If you would please introduce yourself to the  
9 jury and any other members of the Solicitor's staff that  
10 will assist you in the prosecution of this case.

11 MR. WEDEKIND: Yes, sir. My name is Lawrence  
12 Wedekind. I'm an assistant solicitor here in the  
13 Eleventh Circuit, which incorporates Lexington County.  
14 I will be assisted by Mr. Derrick Mobley, who also is  
15 with the Solicitor's Office.

16 Sir, do you want me to introduce the remaining  
17 witnesses?

18 THE COURT: No, sir. Thank you. The  
19 Defendant in this case is represented by Ms. Elizabeth  
20 Fullwood. Ms. Fullwood, would you please stand and  
21 introduce yourself to the jury and any members of your  
22 staff and your client to the jury panel.

23 MS. FULLWOOD: Yes, Your Honor. My name is  
24 Beth Fullwood. I'm a lawyer and I represent Rico  
25 Hickman, who is my client. This is Bennett Casto with

1 my office. He is also a lawyer and we are going to try  
2 the case together. Thanks.

3 THE COURT: Thank you. Thank you very much,  
4 Ms. Fullwood, Mr. Hickman.

5 Is any member of the jury panel related by  
6 blood or marriage or close personal friends of  
7 Mr. Wedekind or any individual employed with the  
8 Lexington County Solicitor's Office? If so, please  
9 stand.

10 (There is no response).

11 THE COURT: Or Assistant Solicitor Derrick  
12 Mobley? If so, please stand.

13 (There is no response).

14 THE COURT: Has any member of the jury panel  
15 or any member of your immediate family been represented  
16 by Assistant Solicitor Wedekind or Mobley? If so,  
17 please stand.

18 (There is no response).

19 THE COURT: Is any member of the jury panel  
20 related by blood or marriage or close personal friends  
21 of Ms. Fullwood or Mr. Casto? If so, please stand.

22 (There is no response).

23 THE COURT: Has any member of the jury panel  
24 or any member of your immediate family ever been  
25 represented by Ms. Fullwood or Mr. Casto? If so, please

1 stand.

2 (There is no response).

3 THE COURT: The victim listed in the case is  
4 Mr. Jackie Ray Jackson. Mr. Jackson, would you please  
5 stand and face the jury panel. This is Mr. Jackson.  
6 Thank you, sir. You may be seated.

7 Is any member of the jury panel related by  
8 blood or marriage or close personal friends of  
9 Mr. Jackie Ray Jackson? If so, please stand.

10 (There is no response).

11 THE COURT: Mr. Hickman, the Defendant, has  
12 already stood before you. Is any member of the jury  
13 panel related by blood or marriage or close personal  
14 friends of the Defendant in this matter, Rico Hickman?  
15 If so, please stand.

16 (There is no response).

17 THE COURT: As you heard me read out the  
18 indictments, this alleges an incident that occurred in  
19 Lexington County on or about the 17th of January of  
20 2008, involving an alleged armed robbery, kidnapping,  
21 and assault and battery with intent to kill. Does any  
22 member of the jury panel have any knowledge about the  
23 case? If so, please stand.

24 (There is no response).

25 THE COURT: Does any member of the jury panel

1 have any bias or prejudice towards the parties or the  
2 subject matter involved in the case? If so, please  
3 stand.

4 (Juror stands).

5 THE COURT: Yes, sir, your name and name,  
6 please?

7 PROSPECTIVE JUROR: 106, Thomas McKenzie.

8 THE COURT: If you would step up here to my  
9 court reporter for me.

10 (Whereupon a bench conference with the Court,  
11 counsel, and the juror is reported as follows).

12 THE COURT: Tell me your name again, sir.

13 PROSPECTIVE JUROR: Thomas McKenzie.

14 THE COURT: I thought that was right, 106.

15 Tell me your situation, Mr. McKenzie.

16 PROSPECTIVE JUROR: About a year ago, I was  
17 working with Lexington County Detention, and I've had  
18 several runs in with Mr. Hickman. I don't want to  
19 prejudice anything.

20 THE COURT: I will set you aside for the trial  
21 of this case. Please do not say anything to any of your  
22 fellow jurors.

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you very much.

25 (Whereupon the bench conference is concluded).

1 THE COURT: Has any member of the jury panel  
2 heard or know anything about this case from any source  
3 whatsoever? If so, please stand.

4 (There is no response).

5 THE COURT: Is any member of the jury panel  
6 related by blood or marriage or close personal friends  
7 with any member of the Lexington County Sheriff's  
8 Department? If so, please stand.

9 (Juror stands).

10 THE COURT: Yes, ma'am, your name and number,  
11 please?

12 PROSPECTIVE JUROR: Faban Joyner, Number 80.

13 THE COURT: Ms. Joyner, are you related or  
14 friends?

15 PROSPECTIVE JUROR: I'm related. My mother is  
16 a sergeant with the Lexington County Sheriff's  
17 Department.

18 THE COURT: How long has your mother been  
19 employed with the Lexington County Sheriff's Department?

20 PROSPECTIVE JUROR: I don't know. I'm  
21 guessing, 20, 25 years.

22 THE COURT: The fact that your mother is  
23 employed with the Lexington County Sheriff's Department,  
24 could you still be a fair and impartial juror to both  
25 the State and the defense in this case?

1 PROSPECTIVE JUROR: I believe so.

2 THE COURT: Thank you. You may be seated.  
3 Any others?

4 (There is no response).

5 THE COURT: Has any member of the jury panel  
6 ever been employed as a law enforcement officer or with  
7 a law enforcement agency? If so, please stand.

8 (Juror stands).

9 THE COURT: Yes, sir, your number and name,  
10 please?

11 PROSPECTIVE JUROR: Juror Number 52, Bob  
12 Greene.

13 THE COURT: What agency were you employed  
14 with?

15 PROSPECTIVE JUROR: The F.B.I.

16 THE COURT: And you are now currently employed  
17 with them; is that correct?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: In what capacity?

20 PROSPECTIVE JUROR: Working in the accounting  
21 department.

22 THE COURT: And the fact that you are employed  
23 in the accounting department with the F.B.I., could you  
24 still be a fair and impartial juror to both the State  
25 and the defense in this case?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Thank you. You may be seated.

3 Any others?

4 (Juror stands).

5 THE COURT: Yes, sir, your number and name,  
6 please?

7 PROSPECTIVE JUROR: 139, Steve Roland.

8 THE COURT: Mr. Roland.

9 PROSPECTIVE JUROR: Does that include  
10 correctional officers?

11 THE COURT: Well, it may be included. When  
12 was that, Mr. Roland?

13 PROSPECTIVE JUROR: Back in the early '90s.

14 THE COURT: When?

15 PROSPECTIVE JUROR: In the early '90s.

16 THE COURT: What agency?

17 PROSPECTIVE JUROR: It was the Department of  
18 Corrections over on Broad River Road.

19 THE COURT: The fact that you were employed  
20 with the Department of Corrections in the early '90s,  
21 could you still be a fair and impartial juror to both  
22 the State and the defense in this case?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you. You may be seated. I  
25 believe I asked this question in a similar fashion a

1 minute ago, but is any member of the jury panel close  
2 personal friends or related by blood or marriage to  
3 anyone employed with the Lexington County Solicitor's  
4 Office? If so, please stand.

5 (There is no response).

6 THE COURT: Is any member of the jury panel a  
7 member of or contributor to any group which has as its  
8 primary concern the promotion of law enforcement or  
9 victims' rights?

10 These groups would include but not be limited  
11 to M.A.D.D., S.A.D.D., C.A.V.E. or C.A.D.R.E. If you  
12 are a member of or contributor to any such group, please  
13 stand.

14 (There is no response).

15 THE COURT: Has any member of the jury panel  
16 or any member of your immediate family or close personal  
17 friend ever been a victim of a crime of personal  
18 violence? If so, please stand.

19 (Juror stands).

20 THE COURT: Yes, sir, your number and name,  
21 please?

22 PROSPECTIVE JUROR: 77, Paul Jerkins.

23 THE COURT: All right, sir. How about step up  
24 to my court reporter for me.

25 (Whereupon a bench conference with the Court,

1 counsel, and the juror is reported as follows).

2 THE COURT: You can't be 37. What is your  
3 number?

4 PROSPECTIVE JUROR: Seventy-seven.

5 THE COURT: Paul Jerkins. Tell me your  
6 situation.

7 PROSPECTIVE JUROR: My brother got charged  
8 with attempt to kill.

9 THE COURT: Your brother got charged?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: When was that?

12 PROSPECTIVE JUROR: It was back in 1988.

13 THE COURT: And fact that your brother was  
14 charged with that type of offense, could you still be a  
15 fair and impartial juror to both the State and the  
16 defense in this case?

17 PROSPECTIVE JUROR: Yes, I will.

18 THE COURT: Thank you. You may be seated.

19 (Whereupon the bench conference is concluded).

20 THE COURT: Is any member of the jury panel a  
21 customer of Jackson's Gold and Pawn located at  
22 4209 Augusta Road, West Columbia? If so, please stand.

23 (There is no response).

24 THE COURT: I will call a list of names of  
25 potential witnesses in the trial of this case. If any

1 of the witnesses are present in the courtroom as your  
2 name is called, I would ask you to please stand and face  
3 the jury.

4 I would advise the jury panel that the  
5 witnesses do not have to be present at this time during  
6 this procedure. Garrick Broadnax. This is Mr. Broadnax  
7 to my front right. Thank you, Mr. Broadnax. You may be  
8 seated.

9 Of course, the question is, ladies and  
10 gentlemen, is any member of the jury panel related by  
11 blood or marriage or close personal friends of any of  
12 these individuals whose names I now call.

13 Next is Detective Steve Collins. This is  
14 Detective Collins to my front right, Lexington County  
15 Sheriff's Department. Thank you, Detective Collins.  
16 C.S.I. Troy Crump. This is Mr. Crump with the Lexington  
17 County Sheriff's Department.

18 Elizabeth Harmon. Ms. Harmon is way in the  
19 back, Lexington County Sheriff's Department.  
20 Mr. Jackson has already stood before you.

21 (Juror stands).

22 THE COURT: Yes, sir, your number and name,  
23 please?

24 PROSPECTIVE JUROR: 184, David Ziegler.

25 THE COURT: 184. Mr. Ziegler, you are a

1 friend of?

2 PROSPECTIVE JUROR: We both volunteer at the  
3 fire station in Lexington County, Ms. Harmon.

4 THE COURT: I didn't catch you. You both  
5 volunteer?

6 PROSPECTIVE JUROR: Ms. Harmon and I are both  
7 volunteer firefighters in Lexington County.

8 THE COURT: How long have y'all both been  
9 volunteers at the same location?

10 PROSPECTIVE JUROR: Seven or eight years.

11 THE COURT: The fact that you are acquainted  
12 with Ms. Harmon as a volunteer firefighter and have been  
13 so for seven or eight years, could you still be a fair  
14 and impartial juror to both the State and defense in  
15 this case?

16 PROSPECTIVE JUROR: Yes, Your Honor.

17 THE COURT: Thank you. You may be seated.  
18 Any others?

19 (There is no response).

20 THE COURT: Again, Jackie Jackson.

21 Mr. Jackson has already stood before you. Candy Kyzer.  
22 I see Ms. Kyzer also. She is in the far back, with the  
23 Lexington County Sheriff's Department.

24 Omar Rumph. This is Mr. Rumph to my front  
25 right. Thank you. C.S.I. Mike Phipps. Did I pronounce

1 that right?

2 MR. WEDEKIND: You did, sir, but he is not  
3 present.

4 THE COURT: Mr. Phipps is with the Lexington  
5 County Sheriff's Department. Lassie Sanders. Is that  
6 Lassie, Ms. Sanders.

7 MR. MOBLEY: It's a Mister, Your Honor.

8 THE COURT: I'm sorry. Mr. Lassie Sanders.  
9 Angela Taylor.

10 Again, ladies and gentlemen, is there any  
11 member of the jury panel, besides the gentleman that has  
12 already stood, that is related by blood or marriage or  
13 close personal friends of any of those individuals whose  
14 names I just called? If so, please stand.

15 (There is no response).

16 THE COURT: Any additional potential witnesses  
17 Mr. Solicitor?

18 MR. WEDEKIND: No, sir, that would be the  
19 list.

20 THE COURT: Ms. Fullwood?

21 MS. FULLWOOD: Yes, sir.

22 (Hands to Court).

23 THE COURT: Thank you. Some of them may be  
24 repetitious. It will be kind of like concentration.  
25 You may have heard it before or maybe not.

1 Eric Ackerman, Lexington County Sheriff's  
2 Department. Jeremy Bradley -- excuse me -- Jerry  
3 Bradley. Sherry Brown with S.L.E.D. Betty Butler with  
4 S.L.E.D.

5 I have already called Detective Collins' name.  
6 Patricia Crooks with S.L.E.D. Keith Crump. I assume  
7 that is Troy Crump. I already called his name. David  
8 Day, Lexington County Sheriff's Department.

9 Dominic Hollins, H-O-L-L-I-N-S. Michelle  
10 Horton, Lexington County Sheriff's Department. Laura  
11 Mills with S.L.E.D. Dana Mitchum. Nikki Perry with  
12 S.L.E.D. Amy Stevens with S.L.E.D., Doris Yarborough  
13 with S.L.E.D.

14 I asked y'all earlier about the Lexington  
15 County Sheriff's Department. Is any member of the jury  
16 panel related by blood or marriage or close personal  
17 friends with anyone employed with the State Law  
18 Enforcement Division? If so, please stand.

19 (Juror stands).

20 THE COURT: This is our gentleman with the  
21 F.B.I.?

22 PROSPECTIVE JUROR: Yes, Your Honor.

23 THE COURT: Give me your number again.

24 PROSPECTIVE JUROR: 52, Greene.

25 THE COURT: Mr. Greene, you have a friend or

1. friends with the State Law Enforcement Division?

2. PROSPECTIVE JUROR: My mother works for  
3. S.L.E.D.

4. THE COURT: Your mother?

5. PROSPECTIVE JUROR: Yes, sir.

6. THE COURT: How long has she been employed?

7. PROSPECTIVE JUROR: Probably ten years now.

8. THE COURT: The fact your mother is employed  
9. with the State Law Enforcement Division, could you still  
10. be a fair and impartial juror to both the State and the  
11. defense in this case?

12. PROSPECTIVE JUROR: Yes, Your Honor.

13. THE COURT: Thank you. You may be seated.  
14. Any others?

15. (There is no response).

16. THE COURT: Finally, ladies and gentlemen of  
17. the jury panel, do you know any reason whatsoever why  
18. you feel like you could not be a fair and impartial  
19. juror in the trial of this case to both the State and  
20. the defense? If so, please stand.

21. (There is no response).

22. THE COURT: Thank you very much. I find our  
23. panel is qualified and our strikes are?

24. MR. WEDEKIND: Five and ten, I believe.

25. MS. FULLWOOD: That's correct.

1 THE COURT: That's what I think. Five for the  
2 State and ten for the defense. Thank you.

3 Madame Clerk, if you would give us a panel,  
4 please, or a jury, please.

5 CLERK: As we did yesterday, when your name is  
6 called, if you will come and stand in front of the  
7 podium, facing back out until we give you instructions  
8 to either have a seat in the jury box or return to your  
9 seat.

10 Juror number 131, James Rakes.

11 (The juror, a white male, comes forward).

12 CLERK: What say you for the State?

13 MR. WEDEKIND: Please seat the juror.

14 CLERK: What say you for the defense?

15 MS. FULLWOOD: Please excuse the juror from  
16 this trial.

17 CLERK: Please return to your seat, sir.

18 Juror number 13, Christopher Boozer.

19 (The juror, a white male, comes forward).

20 CLERK: What say you for the State?

21 MR. WEDEKIND: Please excuse the juror.

22 CLERK: Please return to your seat.

23 Juror number 80, Faban Joyner.

24 (The juror, a white female, comes forward).

25 CLERK: What say you for the State?

1 MR. WEDEKIND: Please seat the juror.

2 CLERK: What say you for the defense?

3 MS. FULLWOOD: Please excuse the juror from  
4 this trial.

5 CLERK: Return to your seat, please.

6 Juror number 84, Roxanne Keeney.

7 (The juror, a white female, comes forward).

8 CLERK: What say you for the State?

9 MR. WEDEKIND: Please seat the juror.

10 CLERK: What say you for the defense?

11 MS. FULLWOOD: Please swear the juror.

12 CLERK: Have a seat in the jury box.

13 Juror number 106, Thomas McKenzie.

14 (The juror, a white male, comes forward).

15 CLERK: What say you for the State?

16 MR. WEDEKIND: Please seat the juror.

17 CLERK: What say you for the defense?

18 MS. FULLWOOD: Please excuse the juror from  
19 this trial.

20 CLERK: Please return to your seat.

21 Number 141, Patricia Ruch.

22 (The juror, a white female, comes forward).

23 CLERK: What say you for the State?

24 MR. WEDEKIND: Please seat the juror.

25 CLERK: What say you for the defense?

1 MS. FULLWOOD: Please swear the juror.

2 CLERK: Have a seat in the jury box, ma'am.

3 Juror number 37, Wendy Foltermann.

4 (The juror, a white female, comes forward).

5 CLERK: What say you for the State?

6 MR. WEDEKIND: Please seat the juror.

7 CLERK: What say you for the defense?

8 MS. FULLWOOD: Please swear the juror.

9 CLERK: Please have a seat in the jury box,

10 ma'am.

11 Juror number 102, Sallie Marcil.

12 (The juror, a white female, comes forward).

13 CLERK: What say you for the State?

14 MR. WEDEKIND: Please excuse the juror.

15 CLERK: Please return to your seat.

16 Juror number 17, Sandra Brannen.

17 (The juror, a white female, comes forward).

18 CLERK: What say you for the State?

19 MR. WEDEKIND: Please seat the juror.

20 CLERK: What say you for the defense?

21 MS. FULLWOOD: Please swear the juror.

22 CLERK: Please have a seat in the jury box.

23 Juror number 87, Donna Kelly.

24 (The juror, a white female, comes forward).

25 CLERK: What say you for the State?

1 MR. WEDEKIND: Please seat the juror.  
2 CLERK: What say you for the defense?  
3 MS. FULLWOOD: Please swear the juror.  
4 CLERK: Please have a seat in the jury box.  
5 Juror number 144, Samuel Sanfratello.  
6 (The juror, a white male, comes forward).  
7 CLERK: What say you for the State?  
8 MR. WEDEKIND: Please seat the juror.  
9 CLERK: What say you for the defense?  
10 MS. FULLWOOD: Please swear the juror.  
11 CLERK: Please have a seat in the jury box.  
12 Juror number 113, Ouidasue Nash.  
13 (The juror, a white female, comes forward).  
14 CLERK: What say you for the State?  
15 MR. WEDEKIND: Please seat the juror.  
16 CLERK: What say you for the defense?  
17 MS. FULLWOOD: Please excuse the juror from  
18 this trial.  
19 CLERK: Please return to your seat.  
20 Number 135, Willie Richardson.  
21 (The juror, a black male, comes forward).  
22 CLERK: What say you for the State?  
23 MR. WEDEKIND: Please excuse the juror.  
24 CLERK: Please return to your seat.  
25 Juror number 77, Paul Jenkins.

1 (The juror, a white male, comes forward).  
2 CLERK: What say you for the State?  
3 MR. WEDEKIND: Please excuse the juror.  
4 CLERK: Please return to your seat.  
5 Juror number 20, Rolf Buchner;  
6 (The juror, a white male, comes forward).  
7 CLERK: What say you for the State?  
8 MR. WEDEKIND: Please seat the juror.  
9 CLERK: What say you for the defense?  
10 MS. FULLWOOD: Please excuse the juror from  
11 this trial.  
12 CLERK: Please return to your seat.  
13 Juror number 164, Susan Taylor.  
14 (The juror, a white female, comes forward).  
15 CLERK: What say you for the State?  
16 MR. WEDEKIND: Please seat the juror.  
17 CLERK: What say you for the defense?  
18 MS. FULLWOOD: Please swear the juror.  
19 CLERK: Please have a seat in the jury box.  
20 Juror number 151, Larry Shumpert.  
21 (The juror, a white male, comes forward).  
22 CLERK: What say you for the State?  
23 MR. WEDEKIND: Please seat the juror.  
24 CLERK: What say you for the defense?  
25 MS. FULLWOOD: Please swear the juror.

1 CLERK: Please have a seat in the jury box.

2 Juror number 152, Bradley Sightler.

3 (The juror, a white male, comes forward).

4 CLERK: What say you for the State?

5 MR. WEDEKIND: Please seat the juror.

6 CLERK: What say you for the defense?

7 MS. FULLWOOD: Please swear the juror.

8 CLERK: Please have a seat in the jury box.

9 Juror number 165, Daniel Thigpen.

10 (The juror, a white male, comes forward).

11 CLERK: What say you for the State?

12 MR. WEDEKIND: Please seat the juror.

13 CLERK: What say you for the defense?

14 MS. FULLWOOD: Please swear the juror.

15 CLERK: Please have a seat in the jury box,

16 sir,

17 Juror number 93, Jessica Leggett.

18 (The juror, a white female, comes forward).

19 CLERK: What say you for the State?

20 MR. WEDEKIND: Please seat the juror.

21 CLERK: What say you for the defense?

22 MS. FULLWOOD: Please swear the juror.

23 CLERK: Please have a seat in the jury box.

24 Juror number 8, Britta Barnett.

25 (The juror, a white female, comes forward).

1 CLERK: What say you for the State?

2 MR. WEDEKIND: Please seat the juror.

3 CLERK: What say you for the defense?

4 MS. FULLWOOD: Please swear the juror.

5 CLERK: Please have a seat in the jury box,  
6 ma'am.

7 Alternates, Your Honor?

8 THE COURT: Yes, ma'am, one alternate. The  
9 strikes are one and two.

10 CLERK: Juror number Stephen Roland.

11 (The juror, a white male, comes forward).

12 CLERK: What say you for the State?

13 MR. WEDEKIND: Please seat the juror.

14 CLERK: What say you for the defense?

15 MS. FULLWOOD: Please excuse the juror from  
16 this trial.

17 CLERK: Please return to your seat.

18 Juror number 52, Robert Greene.

19 (The juror, a white male, comes forward).

20 CLERK: What say you for the State?

21 MR. WEDEKIND: Please seat the juror.

22 CLERK: What say you for the defense?

23 MS. FULLWOOD: Please excuse the juror from  
24 this trial.

25 CLERK: Please return to your seat.

1 Juror number 184, David Ziegler.

2 (The juror, a white male, comes forward).

3 CLERK: What say you for the State?

4 MR. WEDEKIND: Please seat the juror.

5 CLERK: What say you for the defense?

6 MS. FULLWOOD: Please swear the juror.

7 CLERK: Please have a seat in the jury box.

8 (The jury is impaneled at 3:00 p.m.)

9 THE COURT: Any motions regarding the jury  
10 selection process from the State?

11 MR. WEDEKIND: No, sir.

12 THE COURT: From the defense?

13 MS. FULLWOOD: Yes, Your Honor.

14 THE COURT: Ladies and gentlemen of the jury  
15 panel just selected for the trial of this case,  
16 momentarily I am going to ask you to go with your  
17 bailiff to your jury room.

18 During this brief recess, I would ask you, do  
19 not discuss the case amongst yourselves. You would not  
20 be authorized to discuss the case until you have heard  
21 all the evidence and testimony, the closing arguments,  
22 the charge on the law by the Court, and directed to  
23 begin your deliberations.

24 With that being said, if you would please go  
25 with your bailiff. Thank you very much.

1 (The jury retires to the jury room).

2 THE COURT: Those of you who are remaining in  
3 the jury panel, I cannot excuse you at this time. I  
4 have a motion that I must hear, and I must hear it  
5 outside of your presence.

6 So I am going to give you a 15-minute recess.  
7 During that recess you will have to leave the courtroom,  
8 not the courthouse, of course, but you would have to  
9 leave the courtroom.

10 When you come back, I should be through with  
11 the motion by 3:15. If not, the bailiff will be posted  
12 at the back door to advise you, you could not come back  
13 in until I have heard this motion.

14 With that being said, those remaining in the  
15 jury panel, if you would please exit the courtroom.  
16 Take a 15-minute recess and return at 3:15. Thank you  
17 very much.

18 (The jury panel leaves the courtroom).

19 THE COURT: Ms. Fullwood.

20 MS. FULLWOOD: Your Honor, during the jury  
21 selection process, juror number 135, Willie C.  
22 Richardson, was called as a prospective juror in this  
23 case.

24 Your Honor, Mr. Richardson was the only  
25 African-American who was on this panel of jurors from

1 which Mr. Hickman's jury was pulled. The State  
2 exercised a preemptory challenge against Mr. Richardson.

3 I think that the exercise of the strike alone,  
4 establishes a prima facie case that the State had a  
5 racial reason for striking this juror. So I would ask  
6 the Court to require that Mr. Wedekind explain for the  
7 record the reasons for exercising a strike against that  
8 juror.

9 THE COURT: Thank you, Ms. Fullwood.  
10 Solicitor.

11 MR. WEDEKIND: Yes, sir, I think as the Court  
12 will note for the record, there was four strikes  
13 exercised by the State. Those were against juror  
14 number 13, who is a white male; juror number 135, who is  
15 a black male; juror number 77, who was a white male; and  
16 I believe juror number 102, who was a white female.

17 I would note for the record that juror  
18 number 135, the black male in question, according to my  
19 collection of rap sheets, he was charged in the past  
20 with driving under the influence -- I'm sorry -- 1997,  
21 he shows a charge of no driver's license and open  
22 container, drunkenness, and a simple possession of  
23 marijuana.

24 In 1998 there is a charge of assault and  
25 battery with intent to kill and criminal sexual conduct

1 in the third degree. Then there is also a 2003 D.U.I.  
2 first offense conviction on his record.

3 Based on that, the fact that he had some  
4 previous run-ins with law enforcement and maybe had some  
5 pending charges, the State exercised its strike against  
6 that juror.

7 I would also note for the record that there  
8 was juror 13, who was a white male. We showed on our  
9 records check that he has a charge with no disposition  
10 of D.U.I. from 1994. And because of that potential  
11 taint to his bias, we exercised a strike against a white  
12 male for that particular question.

13 Then regarding juror number 77, we struck that  
14 juror, who was a white male, because his brother had  
15 been charged, I think when he came up in questioning  
16 before the Court, and he said he could be fair and  
17 impartial.

18 However, I noted that his brother had been  
19 charged with, I believe, armed robbery, a similar  
20 offense, had been acquitted, but we still exercised that  
21 strike against him as well, sir.

22 The white female I just struck. I don't like  
23 librarians and she was a librarian.

24 THE COURT: Ms. Fullwood.

25 MS. FULLWOOD: Your Honor, my office can't

1 afford to run rap sheets of every prospective juror at  
2 \$8 per juror. We just don't have the money. Our  
3 funding source doesn't have the money. So I really am  
4 not in a position to tell you whether or not any of the  
5 jurors accepted by the State also had previous charges  
6 or previous convictions.

7 For certain this Mr. Richardson was not  
8 convicted of A.B.W.I.K. and C.S.C. in 1998. Otherwise,  
9 he would have been ineligible to sit on this jury. I  
10 would simply ask Your Honor for the record that you  
11 require the State to put in a Court's exhibit the sheet  
12 it has of the rap sheets or the prior convictions of all  
13 the prospective jurors so that it will be reviewed on  
14 appeal.

15 THE COURT: I don't know if it's all the  
16 prospective jurors, but clearly 135 and 13, do you have  
17 the rap sheet on Mr. Richardson, Solicitor?

18 MR. WEDEKIND: Yes, sir. I have both the rap  
19 sheet and I would be happy to provide the Lexington  
20 County courthouse attorney list that we have of the  
21 entire jury venire. It shows our annotations. I was  
22 not present when the jury was screened, but I will also  
23 happily give this to the Court to make it as an exhibit.

24 THE COURT: Just make it a Court's exhibit. I  
25 would confirm that Mr. Jenkins did come forward

1 concerning his brother's charge. I think his brother  
2 was a defendant in assault and battery with intent to  
3 kill.

4 MR. WEDEKIND: Yes, sir.

5 THE COURT: As opposed to an armed robbery if  
6 I recall.

7 MR. WEDEKIND: Yes, sir, I'm sorry.

8 (Court's Exhibit Number 1 is marked for  
9 purposes of the record).

10 THE COURT: Are there any jurors that were sat  
11 by the State or accepted by the State that were in the  
12 same position as Mr. Richardson, Number 135, Solicitor?

13 MR. WEDEKIND: We are confirming that, sir,  
14 but I do not believe so. Generally that is a big flag  
15 when I see anyone with a charge against them, let alone  
16 a conviction.

17 THE COURT: If you would confirm that for the  
18 record, please.

19 (Pause).

20 MR. WEDEKIND: Yes, sir, prefaced off of the  
21 sheet that I have already handed up were the annotations  
22 that we put on it. There was nothing on any of the  
23 jurors that were selected by the State.

24 THE COURT: Will you make those part of the  
25 record, Solicitor.

1 MR. WEDEKIND: Yes, sir.

2 (Court's Exhibit Number 2 is marked for  
3 purposes of the record).

4 THE COURT: Anything further, Ms. Fullwood?

5 MS. FULLWOOD: No, Your Honor.

6 THE COURT: I would find under the Batson test  
7 that there is a facially race neutral reason. There  
8 does not appear -- or was not actually -- a pretextual  
9 reason for racial discrimination.

10 All right. What is the time frame? When do  
11 y'all want to start? I know you have a motion,  
12 Ms. Fullwood.

13 MR. WEDEKIND: The State would be ready upon  
14 the Court's pleasure after the motions are done, sir.

15 THE COURT: When this jury comes back in, I  
16 will deal with them. Then we will hear your motion.

17 THE COURT: Court will be in recess ten  
18 minutes.

19 (Whereupon there was a recess).

20 (The jury panel is excused).

21 THE COURT: Ms. Fullwood, do you have a  
22 motion?

23 MS. FULLWOOD: Yes, sir, I do, Your Honor.

24 THE COURT: All right.

25 MS. FULLWOOD: Your Honor, I am making this

1 motion with all due respect for the Court whom I have  
2 known for many, many years. But I would, Your Honor, at  
3 this time move that the Court recuse itself from the  
4 trial of this case.

5 I have explained to Mr. Hickman that Your  
6 Honor has a daughter who works as an Assistant Solicitor  
7 in the Eleventh Circuit Solicitor's Office. Mr. Hickman  
8 believes that because of this, he is concerned about the  
9 conflict or any possibility of a conflict with Your  
10 Honor presiding over the trial of the case. For that  
11 reason we again very respectfully ask Your Honor to  
12 recuse yourself.

13 THE COURT: Thank you. Thank you very much,  
14 Ms. Fullwood. Is there any other ground that  
15 Mr. Hickman would have for recusal besides the fact that  
16 I have a daughter employed as an assistant solicitor  
17 with the Eleventh Circuit Solicitor's Office?

18 MS. FULLWOOD: There is none, Your Honor.

19 THE COURT: Thank you. Thank you very much,  
20 Ms. Fullwood. I would note for the record that the case  
21 is being prosecuted by Assistant Solicitor Wedekind and  
22 Mobley.

23 I would ask Assistant Solicitor Wedekind, has  
24 my daughter been involved in the case in any manner  
25 whatsoever, Solicitor?

1. MR. WEDEKIND: No, sir. As an officer of the  
2 Court, I will represent to you, sir, that, no, she has  
3 not been consulted in any way on this case. She has not  
4 been asked to assist in any fashion with the case.

5 I have spoken with Mr. Mobley. Originally it  
6 was Solicitor Myers directly who had this case. He  
7 asked me to assist and work it up. I did that alongside  
8 of Mr. Myers, and then he had to attend a conference.  
9 That was the bar conference. He was not participating  
10 in the preparations for it and told me before departure  
11 to not expect him to be a participant in the trial.

12 At that point I talked to Ms. Whetstone. She  
13 had a transfer court trial set up with Mr. Delgado. She  
14 declined. I then spoke to Mr. Mobley who has been  
15 assisting me since the end of last week, and that has  
16 been the only other solicitor who has participated in  
17 the preparation of the case.

18 THE COURT: Thank you. Thank you very much.  
19 I would further state for the record that before today,  
20 I knew nothing of the case. I did not know the  
21 Defendant's name.

22 The only thing I know about the case now is  
23 what I read of the indictments. I have not had any  
24 conversations with my daughter about this case, nor do I  
25 ever have any conversations with my daughter about her

1 cases. She does not appear before me at trials,  
2 motions, pleas or otherwise.

3 I have looked at State versus Jackson, which  
4 is 578 S.E.2d 744, which is a case in which there was a  
5 motion for the trial judge, Williams, to recuse himself  
6 because he had been employed with the Solicitor's Office  
7 at the time of Jackson's indictment.

8 It alleges that he should recuse himself just  
9 because of the fact that he was Deputy Solicitor at the  
10 time the offense was committed. As Judge Williams  
11 stated, he was unfamiliar with the case and had not  
12 discussed it with any employees of the Solicitor's  
13 Office, nor have I in this case, nor had he discussed it  
14 with any law enforcement agency, nor have I in this  
15 case.

16 Further, it's not enough for a party seeking  
17 disqualification of a judge to simply allege bias or  
18 prejudice. The party must show some evidence of that  
19 bias and prejudice.

20 There are cases cited within Jackson, for  
21 example, Commonwealth versus Darush, D-A-R-U-S-H,  
22 holding that a trial judge did not abuse his discretion  
23 in refusing to recuse himself on the basis that the  
24 offenses for which the Defendant was committed occurred  
25 when the trial judge was serving as district attorney

1 and where he had taken a statement from a primary  
2 witness in the incident case and had prosecuted the  
3 Defendant on unrelated charges.

4           There is another case cited in Jackson, Laird  
5 versus Tatum, which is 93 S.C. 7, 1972, where then  
6 Justice Rehnquist held that his recusal was not  
7 warranted merely because he was an assistant attorney  
8 general while Laird was being investigated and  
9 prosecuted because Rehnquist did not have any advisory  
10 role in any matters involving Laird. He had never  
11 signed a pleading or brief regarding the case and had  
12 never personally participated in the trial.

13           Based on that, based on the fact I know  
14 nothing about the case, my daughter is not involved in  
15 the case, I have had no conversations with my daughter  
16 about the case, and the prosecutor alleges as an officer  
17 of the Court he has had no conversations, nor has his  
18 co-counsel, nor has law enforcement, I would  
19 respectfully deny your motion to recuse myself,  
20 Ms. Fullwood. I certainly respect the motion itself,  
21 Ms. Fullwood. Thank you very much. Are there any other  
22 matters pretrial that we need to take up?

23           MS. FULLWOOD: Yes, sir. Asserting the first  
24 motion -- and I am certainly not trying to argue with  
25 the Court's ruling. I understand the ruling.

1 THE COURT: Yes, ma'am.

2 MS. FULLWOOD: As a basis it's my  
3 understanding -- and I don't think there is any state  
4 case for the record on point -- but it's my  
5 understanding there is a State judicial ethics advisory  
6 opinion that states that in this sort of situation on  
7 objection of the party, recusal should be had. I would  
8 just like to put that in the record. That is all.

9 THE COURT: Let me see if I can pull up a copy  
10 of that opinion very quickly, Ms. Fullwood.

11 (Pause).

12 THE COURT: Do you have a copy of that  
13 opinion?

14 MS. FULLWOOD: Your Honor, I am sorry. I  
15 looked for it, but I don't think I was looking in the  
16 right place. I have seen it before, but I do not have a  
17 copy of it.

18 THE COURT: Give me just a moment.

19 (Pause).

20 THE COURT: The opinion I that see,  
21 Ms. Fullwood, is opinion number 11-1999. It is the  
22 propriety of county magistrate presiding in a criminal  
23 matter from the same county where his daughter-in-law is  
24 an assistant solicitor has the propriety of presiding  
25 over bond hearings, preliminary hearings, and such.

1 In the opinion it states that in that  
2 situation, the judge's daughter-in-law in her capacity  
3 an assistant solicitor will never appear before the  
4 judge in court, but she may be assigned to prosecute a  
5 case in which the judge was initially involved.

6 The judge will not have prior knowledge of  
7 which cases the daughter-in-law may be assigned to  
8 prosecute. The committee does not envision the  
9 potential for the appearance of impropriety if the  
10 judge's daughter-in-law does not practice before the  
11 judge in court.

12 However, if the judge believes that there will  
13 be an appearance of impropriety if his daughter-in-law  
14 tries a case in which the judge was initially involved,  
15 he disclosed that fact to all parties involved and  
16 recused himself from any further work on that case.

17 I think the situation is different here in  
18 that in this situation, my daughter was never involved  
19 in the prosecution of this case. I think there is a  
20 distinguishing factor there.

21 I do not think it rises to the level of  
22 violating the cannons or covenants of judicial conduct.  
23 Thank you very much. Any other matters, Ms. Fullwood?

24 MS. FULLWOOD: Yes, Your Honor.

25 THE COURT: All right.

1 MS. FULLWOOD: Your Honor, at this time I  
2 would move for a continuance in the case. Judge, I hate  
3 to do it but here is why. The reason is basically  
4 because there have been problems with getting discovery  
5 in this case, and as a result I really have been  
6 hampered in conducting independent pretrial  
7 investigation that Mr. Hickman is entitled to.

8 Your Honor, we filed discovery motions in this  
9 case, and discovery was provided on October 8 of last  
10 year. What we got, Your Honor, was discovery where  
11 every witness' address, phone number, and other  
12 identifying information was blacked out.

13 I immediately asked Mr. Wedekind for an  
14 unredacted copy for my use. In fact, I have an e-mail  
15 that I sent to him on October the 11th telling him that  
16 I am reminding him that I need the unredacted discovery.

17 Your Honor, on October 13 Mr. Wedekind by  
18 e-mail said he had a copy of the discovery, and he  
19 wanted me basically to specify what information I  
20 wanted.

21 I replied and told him what I needed. I  
22 wanted the addresses, I wanted the phone numbers, I  
23 wanted everything that had been blacked out. I did not  
24 feel that I should have to go through the Solicitor's  
25 Office and let them know in advance which witnesses I

1 was going to be contacting and which witnesses I was  
2 interested in. I was entitled to all of that  
3 information to use as I saw fit in investigating for  
4 Mr. Hickman's trial. I did tell him that orally.

5 Now, I was not able to talk to Mr. Wedekind up  
6 until last Tuesday for two weeks because he had been at,  
7 I guess, Army reserve training. He e-mailed me  
8 Thursday, January 22, because I had at some point asked  
9 him for the chain on some D.N.A. evidence in this case,  
10 both from the Sheriff's Department and from S.L.E.D.

11 He said -- told me that he remembered that I  
12 had asked him again for that. He said, Yes, I will get  
13 that to you. He had also not given me one of the pages  
14 of the D.N.A. report and said that he would get that to  
15 me.

16 On that day I asked him for the Sheriff's  
17 Department chain of custody and S.L.E.D. chain of  
18 custody. In addition on January 22 in another e-mail to  
19 Mr. Wedekind, I told him I don't have the unredacted  
20 discovery. I need every address and telephone number  
21 that was obscured. Again, he wanted me to let him know  
22 which ones, rather than give me all the information.

23 Your Honor, finally I got what I have been  
24 asking for since mid October this past Friday. I got  
25 the chain of custody sheets from the Sheriff's

1 Department this past Monday, and at some point I have  
2 gotten the chain of custody sheets from S.L.E.D.

3 Your Honor, this has caused two kinds of  
4 problems for me. First of all, not getting any  
5 identifying information for these witnesses until last  
6 Friday of about midday means that my staff and I have  
7 not been able to track down all of the people and talk  
8 to them and subpoena them that we think that we need to  
9 present for Mr. Hickman's defense.

10 It turns out one witness, the address she  
11 gave, when we went there, nothing is there, and we need  
12 more time to locate this witness and to have this  
13 witness be subpoenaed, put under process, and be  
14 compelled to testify in this case.

15 Another witness we had been having problems  
16 actually serving a subpoena on, and it's because of the  
17 late date in which we got the information that we could  
18 use to do this work.

19 In addition, Your Honor, we don't have certain  
20 information that we should have been provided. When we  
21 got the Sheriff's Department evidence sheets yesterday,  
22 I found out that a fingerprint that was lifted from the  
23 pawn shop was actually analyzed.

24 I have no report in my discovery about the  
25 results of that examination. I e-mailed Mr. Wedekind

1 this morning and asked for results, and I have not heard  
2 a response. But, again, potentially that is exculpatory  
3 information that would be important to Mr. Hickman's  
4 defense.

5 Since October on more than one occasion, I  
6 have also asked Mr. Wedekind for Brady information in  
7 the form of statements from these codefendants that are  
8 going to testify against Mr. Hickman.

9 From one codefendant I don't have anything in  
10 discovery where he makes any admissions that he is  
11 connected to this case. But now the other, Judge, we  
12 have a statement that he made January 17, 2008, that is  
13 exculpatory, a different statement he made January 18  
14 that is exculpatory.

15 It is my understanding now that he is going to  
16 come into court and testify, and his current version of  
17 events contradicts the previous two statements that he  
18 made to law enforcement.

19 I think under those circumstances, even if  
20 those statements have not been reduced to writing or  
21 recorded -- which in a way I think it's kind of  
22 fantastic or incredible that no documentation was done  
23 of a statement where two individuals are admitting their  
24 involvement in this type of criminal activity.

25 But I think that under Brady and under Davis

1 v. Alaska that I am entitled to these inconsistent  
2 statements because they are impeachment material on that  
3 particular codefendant, and I don't have that.

4 The posture that we are standing in now, I'm  
5 not going to find out the impeachment information until  
6 the fellow gets on the stand. I think when the State  
7 knows what the inconsistent statement is and knows  
8 whether or not that statement has changed over time as  
9 he has been subjected to previous interviews, I think  
10 it's incumbent upon the State to reduce that to writing  
11 and to give the defense that information under Brady.  
12 Coming at this point in time through the testimony of  
13 this witness is simply going to be too late.

14 In addition one of the witnesses I cannot find  
15 is a witness that might potentially contradict some of  
16 what that witness is going to say. But because we got  
17 what meager location information just last Friday I have  
18 been out there looking, but we just can't find that  
19 witness yet.

20 Judge, I don't take this lightly. I really  
21 don't. This is a serious trial. They served a notice  
22 of seeking life without parole on Mr. Hickman, and I  
23 would respectfully ask Your Honor for a continuance  
24 given the late receipt of the discovery and Brady  
25 material so that I can give Mr. Hickman effective

1 assistance of counsel. Thank you.

2 THE COURT: Thank you, Ms. Fullwood.  
3 Solicitor.

4 MR. WEDEKIND: I don't really know exactly  
5 where to begin, Your Honor, but if you need some -- I  
6 will try and cover it, but if there's any gaps and you  
7 have any questions, please ask and I will try to resolve  
8 it.

9 As far as the copy of the redacted  
10 information, there has been a new policy instituted, I'm  
11 told, from the Supreme Court or something where the  
12 State cannot give out personal information of witnesses  
13 without subjecting themselves to some liability if that  
14 information is misused.

15 That has led to a reaction from the  
16 Solicitor's Office to be a lot more cautious in  
17 redacting. So we have instituted this policy where  
18 Social Security numbers, addresses, phone numbers,  
19 personal items that could be used against witnesses, is  
20 not to be released without that person's permission.

21 What we have done is in this particular case  
22 with the redacted information, our policy was just to  
23 have the parallels do it. My paralegal responded to  
24 that and did a blanket reduction of everything she could  
25 find.

1           A quite voluminous amount of information was  
2 provided in the initial batch of discovery. She did  
3 that. I had the clean copy that was unredacted, and  
4 Ms. Fullwood was given a redacted copy.

5           She did address some concerns in that. I  
6 said, Well, if there is any particular witnesses you  
7 want to get more information, I will happily sit down  
8 with you. You bring your copy over and anything you  
9 want in this, I will review it with you and do that.

10           I think I made that offer several times. Back  
11 in October, back in December, I also invited her to come  
12 over. She declined to do that, said she was busy and  
13 had to do other personal matters and decided not to  
14 attend. So that was that.

15           I had my Army school start on January 4th  
16 through the 16th, but upon return she then presented me  
17 with a request for the further redacted information. I  
18 said, Come over, and we will go over it page by page.  
19 Anything you want, I would be happy to review on a line  
20 item by line item process.

21           I still did not see -- we always provided the  
22 information in the statements from the witnesses, always  
23 provided their names, just took out their personal home  
24 address, their Social Security number, if given, date of  
25 birth, and phone number. We never denied them access to

1 that information, only personal information related to  
2 that witness.

3 THE COURT: How many people are we talking  
4 about?

5 MS. FULLWOOD: We are talking about basically  
6 all of the lay witnesses, save, of course, Mr. Jackson  
7 because he has a local business. We know where that is.  
8 We are talking six to eight witnesses, Judge.

9 I will say, Your Honor, every time  
10 Mr. Wedekind wanted to go through it line by line, I  
11 clearly told him, I simply wanted all of the information  
12 that was redacted. I don't think defense counsel should  
13 have to be forced to tell the solicitor specifically  
14 what witnesses they are intending to talk to.

15 THE COURT: But the total is eight?

16 MS. FULLWOOD: Let me give you -- six to  
17 eight. I will give you a count.

18 THE COURT: All right. In other words, if you  
19 really just wanted to talk to four of the eight, you  
20 didn't want just to identify those four.

21 MS. FULLWOOD: Exactly, yes, sir.

22 THE COURT: But if you have got the  
23 information, you would still be just talking about a  
24 total number of eight; is that correct?

25 MS. FULLWOOD: If I can look through my

1 notebook here, I will try to determine that.

2 (Pause).

3 MS. FULLWOOD: Actually, Judge, right in the  
4 middle, seven.

5 THE COURT: Seven?

6 MS. FULLWOOD: Yes, sir.

7 THE COURT: And of those seven, you don't have  
8 any information of their addresses?

9 MS. FULLWOOD: Your Honor, I received that  
10 information Friday midday.

11 THE COURT: Last Friday?

12 MS. FULLWOOD: Yes, sir, but we still haven't  
13 been able to locate and talk to all of those people.

14 THE COURT: How many have you not been able to  
15 talk with?

16 MS. FULLWOOD: Judge, I think I have only been  
17 able to talk to two of them.

18 THE COURT: So there is five outstanding that  
19 you need to talk with?

20 MS. FULLWOOD: Yes, sir. Yes, sir, I believe  
21 that is correct.

22 THE COURT: These are lay witnesses?

23 MS. FULLWOOD: Yes, sir.

24 THE COURT: Thank you, Ms. Fullwood. Does  
25 that appear correct, Solicitor?

1 MR. WEDEKIND: I would agree with the number  
2 that she wanted -- I have no idea what witnesses she  
3 wants to see, Your Honor. I would certainly be happy to  
4 concede to the number seven.

5 I did speak with her at the end of last week.  
6 I think it was on Thursday. She finally -- I invited  
7 her again at that time and said, We will go over it line  
8 by line. I said any one you want to meet, if there is a  
9 problem, I will call them and ask if they want to be  
10 contacted by you or would happily want to volunteer that  
11 information.

12 She said, Look, I will give you my promise  
13 that these people will not be -- nothing bad will be  
14 released from them or anything like that. I finally  
15 relented and I said, Okay. Under that circumstance I  
16 will give them to you because I really don't think it's  
17 going to be a big problem.

18 So I then told her to send someone over, and I  
19 would have the full, clean, unredacted copy provided to  
20 her. I think Lisa showed up, and I gave her a copy of  
21 it. So that's where we went with that.

22 THE COURT: So you are saying as of last  
23 Thursday --

24 MR. WEDEKIND: Yes, sir.

25 THE COURT: -- Ms. Fullwood has been provided.

1 all this information?

2 MR. WEDEKIND: Yes, sir.

3 THE COURT: And Ms. Fullwood has told he --

4 MR. WEDEKIND: As far as the redacted  
5 statements and information.

6 THE COURT: Ms. Fullwood has indicated to me  
7 she was only able to contact two of the seven.

8 MR. WEDEKIND: I will take her word on that.

9 ~~THE COURT: Is that correct, Ms. Fullwood?~~

10 MS. FULLWOOD: Yes, sir, but there is another  
11 correction. I'm sure Mr. Wedekind just misspoke, but it  
12 was Friday that I got the unredacted copies.

13 MR. WEDEKIND: Yes, sir, absolutely. We  
14 agreed Thursday. She gave me her assurance that none of  
15 that information would be misused or released  
16 improperly. I said under those circumstances I will  
17 make a copy.

18 I think a copy was made Friday morning, and  
19 Lisa showed up about 11 or 12, after lunch, and I handed  
20 her the copy of the full packet of discovery. Then I  
21 think she asked me for copies of the prior convictions  
22 of the Defendant, and I gave her copies of that, too,  
23 because I just happened to have -- my investigator  
24 happened to give me copies of his prior convictions or  
25 certified true copies. I gave her the copy of that,

1 too.

2 THE COURT: That at least enlightens me. I  
3 haven't made a ruling. That enlightens me on the  
4 redacted information. What was the next, Solicitor?

5 MR. WEDEKIND: Yes, sir. The D.N.A. report I  
6 had taken and electronically scanned the S.L.E.D. report  
7 and transmitted that several months ago, I think, to  
8 Ms. Fullwood.

9 She then called me back and said that page 2  
10 of that entire report was missing. I don't know why  
11 that would be, but taking her word at that, I then  
12 rescanned the entire report and retransmitted it  
13 electronically in an attachment. I have not heard back.  
14 I think she got the full copy that time and that was  
15 done.

16 THE COURT: When was that? When did she  
17 receive that according to your records?

18 MR. WEDEKIND: Friday, I think, or Monday.  
19 I'm not sure.

20 MS. FULLWOOD: Yes, sir, I'm not complaining  
21 about -- not so much complaining about that as the fact  
22 of not getting the chain because he doesn't have those  
23 witnesses on his witness list.

24 I did have the chain. I got one part of the  
25 chain yesterday and one the day before. So it has been

1 a scramble to try to put the chain together on this  
2 D.N.A.

3 MR. WEDEKIND: I will happily explain that.  
4 As you know, sir, there has been budget cuts at  
5 S.L.E.D., and they are very backlogged at their D.N.A.  
6 lab. I left a message --

7 THE COURT: That can't affect Mr. Hickman.

8 MR. WEDEKIND: No, sir, I'm just using this by  
9 means of explanation. When she initially made the  
10 request for the chain of custody, I called Ms. Mills,  
11 who was the D.N.A. analyst who did the actual report  
12 that we have on this case.

13 Ms. Mills was not present at the time. I left  
14 several messages, and finally I left the recording  
15 saying what I was looking for. She never called me  
16 back. I did finally call her again at Ms. Fullwood's  
17 instigation.

18 I called her. I got lucky and got a hold of  
19 her this time. She said, Oh, I don't do that. I do the  
20 analysis and run it through the machine and get the P.C.  
21 and spit out the numbers, and I do the reports, but I  
22 don't do the chain of custody. You need to talk to -- I  
23 forget that woman's name, Tammy, someone at S.L.E.D.

24 So she gave me the number and I called Tammy,  
25 and Tammy said, Yes, I can do it but it will take

1 several days to get that done, maybe like a week. I  
2 said as soon as you can.

3 So I guess miracles happen, but the very next  
4 day I got an e-mail from Tammy with the attached chain  
5 of custody, and I think that was the end of last week,  
6 Friday or Thursday.

7 So that was S.L.E.D. As soon as I got that,  
8 within like five minutes of me getting that, I turned  
9 around, and I think I said something like, Ask and you  
10 shall receive, and I sent it right off to Ms. Fullwood.

11 She e-mailed me again, and I said, Here it is.  
12 I just got it. That went to her. Then she hit me up  
13 for the first time that she ever requested, she said,  
14 Oh, by the way, I also want the Lexington County chain  
15 of custody as well.

16 I then called Ms. Harmon, I think on that, and  
17 she said, I just can't spit this out Friday afternoon,  
18 but I will have it to you Monday. Sure enough, first  
19 thing -- I think actually she made it on Friday  
20 afternoon that she might have gotten it to me.

21 I sent that to Ms. Fullwood first thing  
22 Monday, and she has had that within 24 hours of her  
23 initial request for the Lexington County chain of  
24 custody.

25 She had never previously requested the full

1 chain of custody until I guess about -- it would have  
2 been December. So she eventually was provided with  
3 that, all information on the chain of custody from  
4 S.L.E.D.

5 I will also state for the record the State has  
6 no intention of introducing any D.N.A. evidence in this  
7 case. So I don't know why that is going to be a problem  
8 for the State particularly to present that information.

9 THE COURT: What about the fingerprint report?

10 MR. WEDEKIND: Detective Collins and I think  
11 Investigator Crump said they did lift a latent print,  
12 but it was -- he lifted the print and stated that.  
13 That's always been in the discovery as a print was  
14 acquired, a latent print was acquired.

15 I'm told by Detective Collins that there was  
16 negative results on the print. It didn't come back. I  
17 don't know if it was readable. I don't know if it was  
18 smudged.

19 I don't know if it came back to an individual,  
20 but not somebody related to this case. I really don't  
21 know anything about it. I was just told from him it was  
22 no value in the case.

23 THE COURT: Is there a report on that?

24 MR. WEDEKIND: He said there was a report  
25 produced.

1 (Pause).

2 MR. WEDEKIND: He said the person that it was  
3 submitted to would have made an analysis and report, but  
4 he does not have it with him. Duane Johnson would have  
5 done the fingerprint analysis.

6 THE COURT: So there is a fingerprint report  
7 that you don't have?

8 MR. WEDEKIND: I don't have it, sir.

9 THE COURT: Detective Collins can get it to  
10 you, and you can get it to Ms. Fullwood?

11 (Pause).

12 MR. WEDEKIND: He has not seen one. He was  
13 only told that there was nothing of value, but he said  
14 if it does exist, he will certainly make a request of it  
15 and make a copy and provide it to Ms. Fullwood if that  
16 is desired. The first I heard of any request of a  
17 latent print request was about ten minutes ago.

18 THE COURT: What about the statements? I  
19 don't know the name of the codefendants. What about the  
20 statements?

21 MR. WEDEKIND: There are two codefendants,  
22 sir, Mr. Broadnax.

23 THE COURT: Mr. Broadnax.

24 MR. WEDEKIND: And Mr. Rumph.

25 THE COURT: Mr. Rumph.

1 MR. WEDEKIND: Detective Collins took an  
2 initial audio recording from Mr. Broadnax, and that has  
3 been provided, a copy of that. It was taken on a  
4 microcassette. We transmitted it over to a digital disk  
5 and provided that to Ms. Fullwood several -- maybe two  
6 weeks ago.

7 THE COURT: I don't think she was concerned  
8 with the codefendant that has given statements. She was  
9 more concerned with the codefendant that has not given a  
10 statement. Is that correct, Ms. Fullwood?

11 MS. FULLWOOD: Well, actually both. The C.D.  
12 I got from the microcassette is an exculpatory  
13 statement. So the point I was trying to make was did  
14 the statement change between the time he made the one  
15 that is on the C.D. and now. Then there is nothing  
16 concerning any of the statements that the second  
17 codefendant might have made.

18 THE COURT: Are there other statements by  
19 Mr. Broadnax?

20 MR. WEDEKIND: No, sir. He has made oral  
21 statements that are duly recorded on the incident  
22 reports, but he did not make a written out statement,  
23 handwritten confession of any sort, way, shape or form  
24 or audio recording in any way, shape or form.

25 THE COURT: And all that has been provided?

1 The incident reports have been provided to Ms. Fullwood?

2 MR. WEDEKIND: Yes, sir, and the summaries of  
3 the statements that he gave to Detective Collins, who  
4 was the only person who interrogated him, were duly  
5 noted and the substance of the conversations, not  
6 verbatim, but the fact he said, I was involved, Rumph  
7 was involved, and Rico Hickman was involved is certainly  
8 documented.

9 Also, the fact that he then contacted --  
10 having talked to Garrick Broadnax first, he says he then  
11 talks to Mr. Rumph as the second witness.  
12 Mr. Rumph says, I'm represented by Jerry Finney, and  
13 Mr. Finney says, I'm representing him.

14 So Detective Collins talks with Mr. Finney  
15 first. Mr. Finney grants him access to talk to his  
16 client, saying he wants to confess and stand up on this  
17 because he knows he was involved in it.

18 At that point he gives a full confession as to  
19 his involvement, implicates Garrick Broadnax, and he  
20 also names Derrick Rumph -- or Rico Hickman. Then there  
21 is a request from Mr. Broadnax to contact Detective  
22 Collins.

23 He goes to the jail and contacts him. He has  
24 no counsel at the time. He gives a full confession as  
25 to his involvement, names Rumph and Hickman as

1 co-conspirators.

2 Detective Collins then provides him with a  
3 photo lineup of Mr. Hickman. He picks out Mr. Hickman  
4 as the perpetrator who was along with him on the crime.  
5 Then the same process independently is done with  
6 Mr. Rumph, who then picks him out.

7 All this is duly noted and copies of those  
8 photo lineups were provided Ms. Fullwood. So there is  
9 no gap or failure to provide any documentation or  
10 recordings of any information that was taken. It was  
11 all summarized in the incident reports.

12 THE COURT: And there is no written statements  
13 by Broadnax or Rumph?

14 MR. WEDEKIND: No, sir.

15 THE COURT: All of their statements are  
16 documented in the notes of Detective Collins?

17 MR. WEDEKIND: Yes, sir, and those have been  
18 provided.

19 THE COURT: And all those notes have been  
20 turned over to Ms. Fullwood?

21 MR. WEDEKIND: That is correct. Sir, now  
22 there was -- I sat down with Detective Collins,  
23 Mr. Screen, I believe, and myself. The three of us sat  
24 down with Mr. Broadnax and talked to him about the case.

25 I orally provided information to Ms. Fullwood

1 about the subject matter and the fact that he said, I  
2 was involved, Rumph was involved, and Mr. Hickman was  
3 involved. So she is aware of that taking place.

4 The same thing was done with Mr. Broadnax --  
5 or no, Mr. Rumph, who is out on bond. He came by Friday  
6 in trial preparation for this, and we spoke with him and  
7 he was consistent and also said that. But I have always  
8 told Ms. Fullwood, Hey, I know there's no statements or  
9 anything, but this is what they are going to say.

10 Further, I would add to the Court that both  
11 have pled guilty here in the Lexington courthouse to  
12 armed robbery with a deal wherein all other charges,  
13 with the exception of the armed robbery charge, would be  
14 not-prossed in exchange for them coming to testify  
15 truthfully in the trial of Mr. Hickman.

16 THE COURT: Did they gave statements in court  
17 of their involvement at the time of their pleas?

18 MR. WEDEKIND: Yes, sir. They allocuted as to  
19 their involvement and Mr. Hickman's involvement and the  
20 presence of firearms being used in the crime. They held  
21 the -- sentencing was held in abeyance.

22 The context of the sentence was to be a 10 to  
23 20-year cap and that Your Honor, at the conclusion of  
24 this trial, would be the sentencing judge because you  
25 would be able to assess that.

1           Regardless of the outcome of what happens to  
2 Mr. Hickman, they are convicted of armed robbery and  
3 will face a 10 to 20-year sentence at your discretion.  
4 That has been provided, that information, has been  
5 provided to Ms. Fullwood.

6           She was able to be present if she wanted to.  
7 I think members of her staff at that time were present  
8 in the courtroom when Mr. Rumph and Mr. Broadnax pled  
9 guilty. I don't know if she has acquired transcripts of  
10 their statements then, but they allocuted as to their  
11 involvement and Mr. Hickman's involvement.

12           THE COURT: All right. Solicitor, when can  
13 you get the seven lay witnesses down to the courthouse?

14           MR. WEDEKIND: I don't know which ones she is  
15 referring to, sir, but she was provided a list of that.  
16 She has already got the names and addresses. All that  
17 information was provided to her.

18           THE COURT: My question to you is when can you  
19 get the seven lay witnesses to the courthouse? When can  
20 you tell them to be here? I'm not telling you that you  
21 have got to go pick them up, Solicitor.

22           MR. WEDEKIND: Tomorrow morning. I will call  
23 them. As soon as she tells me who they are, I will take  
24 that information from the file and try to contact them  
25 from the numbers listed, sir.

1. THE COURT: When can you get the fingerprint  
2 report?

3 MR. WEDEKIND: Tomorrow, if he's not on  
4 vacation or training somewhere. I will send  
5 Investigator Crump out in the hall, sir, and see if he  
6 can contact the fingerprint analyst right now.

7 THE COURT: Yes, ma'am, Ms. Fullwood.

8 MS. FULLWOOD: Your Honor, I just want the  
9 record to be clear about what I have and what I don't  
10 have.

11 THE COURT: Yes, ma'am.

12 MS. FULLWOOD: I don't have any incident  
13 reports in which either of the two codefendants made  
14 statements that say that they committed this crime,  
15 okay. If such things exist, I don't have them.

16 ~~But with~~ THE COURT: Let me stop you there. Solicitor,  
17 you just said she had all the reports where Detective  
18 Collins summarized, I guess for lack of a better term,  
19 the oral statements given concerning the crime and the  
20 respective involvements of Mr. Broadnax, Mr. Rumph, and  
21 Mr. Hickman.

22 MR. WEDEKIND: Yes, sir, I am looking at them  
23 right now. I mean, my knowledge of this case came from  
24 these incident reports.

25 (Pause).

1           MR. WEDEKIND: Sir, on page 45 of the  
2           discovery provided on September 16, it says Broadnax was  
3           later brought to the Lexington County Sheriff's  
4           Department by Isaac Butler and interviewed by Detective  
5           Collins and subsequently arrested in connection with  
6           this incident.

7           Then there is a discovery page 8 that lists  
8           also from September 16 that was provided that says,  
9           Inmate request form, Lexington Detention Center,  
10          documenting Mr. Broadnax requesting to talk with  
11          Detective Collins about, I guess, his charges or  
12          something. It didn't specify.

13          But that's where Detective Collins, I think,  
14          made the audio recording after that. Initially the  
15          audio recording was made independently of that, but this  
16          is when he -- at that point is when he orally told  
17          Detective Collins and did the photo lineup, which is  
18          provided on discovery page 7.

19          Broadnax was provided -- on discovery page  
20          6 -- that is a copy of the photo lineup in which  
21          Mr. Broadnax circled Rico Hickman's face in the photo  
22          lineup and identified him as the co-conspirator, along  
23          with him.

24          The fact that -- also, there was discovery  
25          page 7 where that was provided also where Mr. Rumph

1 circled Mr. Hickman's photograph, and that was provided.  
2 to Ms. Fullwood, all of those from those individuals  
3 documenting that they are the co-conspirators.

4 THE COURT: Show me that document where it's  
5 summarized, either Broadnax's and/or Rumph's oral  
6 statements implicating Mr. Hickman.

7 MR. WEDEKIND: We don't have any...

8 THE COURT: I understand there were no written  
9 statements by Mr. Broadnax or Mr. Rumph, correct?

10 MR. WEDEKIND: Yes, sir.

11 THE COURT: I thought I heard -- maybe I  
12 misheard -- that there were oral statements of  
13 Mr. Broadnax and by Mr. Rumph implicating themselves,  
14 implicating each other, and implicating Mr. Hickman. Is  
15 that correct?

16 MR. WEDEKIND: He says that ultimately takes  
17 place, and that was done orally, yes, sir.

18 THE COURT: So there were oral statements by  
19 Mr. Broadnax and by Mr. Rumph implicating themselves,  
20 each other, and implicating Mr. Hickman?

21 MR. WEDEKIND: Yes, sir.

22 THE COURT: I understood you to tell me  
23 earlier that the officer summarized those oral  
24 statements in his incident reports and that those have  
25 been turned over to Ms. Fullwood. Did I misunderstand

1 that?

2 MR. WEDEKIND: No, sir, indirectly -- I guess .  
3 I misspoke. It's not a verbatim transmission of: He  
4 told me this. He told me that. He says, I met with  
5 that individual, and he gave me a statement. Then there  
6 is this discovery page 43 that shows he took an audio  
7 recording from Mr. Broadnax.

8 THE COURT: Ms. Fullwood has that audio  
9 recording, right?

10 MR. WEDEKIND: Yes, sir.

11 THE COURT: Ms. Fullwood is saying no.

12 MS. FULLWOOD: Judge, Mr. Wedekind is confused  
13 about the timing. He's not trying to --

14 MR. WEDEKIND: I have always told her --

15 MS. FULLWOOD: He is trying to be straight up  
16 with you, but he is confused. The recording is of a  
17 statement Broadnax made, I think, on January 18th, the  
18 day after this robbery --

19 MR. WEDEKIND: Yes, it is --

20 MS. FULLWOOD: It's does not implicate --

21 THE COURT: I can't listen to but one person  
22 at one time. I know my court reporter can't take it  
23 down.

24 MS. FULLWOOD: I'm sorry.

25 THE COURT: That's quite all right, 1/18/09?

1 MS. FULLWOOD: 1/18/08. That was the day  
2 after the robbery, and that was a story about how he was  
3 abducted by two unknown men and forced to --

4 THE COURT: That's an exculpatory statement by  
5 your --

6 MS. FULLWOOD: No, by the codefendant.

7 MR. WEDEKIND: Mr. Broadnax.

8 THE COURT: By your description of the  
9 statement, it's exculpatory.

10 MS. FULLWOOD: Correct.

11 THE COURT: You describe it as exculpatory.  
12 It may be exculpatory, but you describe it as  
13 exculpatory.

14 MS. FULLWOOD: Right.

15 THE COURT: Then there is another statement?

16 MS. FULLWOOD: And it was that that was  
17 recorded.

18 THE COURT: Based on an oral statement on the  
19 17th?

20 MS. FULLWOOD: I have an incident report that  
21 basically summarizes or there is some sort of  
22 documentation of some kind of conversation he had with  
23 the police on the 17th.

24 Then the recorded statement is made  
25 January 18th. Then the inculpatory statement,

1 inculpatory as to all codefendants, is made in March of  
2 2008, and I don't have any recording of it, and I do not  
3 have anything to document that.

4 THE COURT: That is what Mr. Wedekind is  
5 citing for the time in which there is a photo lineup and  
6 such?

7 MS. FULLWOOD: Right.

8 THE COURT: That's where the timing comes in.

9 MS. FULLWOOD: Yes, sir, and he seems to be  
10 thinking that that was recorded, but -- unless I don't  
11 have it.

12 MR. WEDEKIND: I guess what I'm saying is  
13 documented, sir, not verbatim recorded. There is no  
14 handwritten or oral recordings, audio records, but  
15 warrants of the arrest which were provided to the  
16 magistrate document the codefendants implicating  
17 themselves and Mr. Hickman.

18 Those were used to obtain the arrest  
19 warrant and document, I would submit to the Court, that  
20 they are fingering Mr. Hickman as their codefendant.  
21 Then the fact that she received the photo lineups  
22 implicating him, and then they went to open court and  
23 pled on the record to that involvement.

24 She has been on adequate notice, and I think  
25 every time she asked me this question, I said, Yes, they

1 orally told Detective Collins that it was me. My other  
2 codefendants were present.

3 They were in the case of Mr. Broadnax, it was  
4 Mr. Rumph and Mr. Hickman. In the case of Mr. Rumph, it  
5 was Mr. Broadnax and Mr. Hickman. So it's always been  
6 the three amigos involved in this case.

7 THE COURT: We will just take them up in  
8 camera.

9 MR. WEDEKIND: Sir, if these are questions as  
10 to their testimony and validity, they have already pled  
11 guilty. I mean, it's not like we are trying to use  
12 these statements against them.

13 They are going to be subject to impeachment.  
14 I have already told her about this. If she wants to --  
15 it doesn't go to their admissibility, it goes to the  
16 weight.

17 THE COURT: I take it that part of  
18 Ms. Fullwood's concern though is what if they gave other  
19 exculpatory or if they gave other statements. I'm not  
20 questioning you, Solicitor. I'm not questioning  
21 Detective Collins. I don't mean that whatsoever.

22 But what if they gave other statements that  
23 didn't initially implicate Mr. Hickman? I mean, that's  
24 her only point. I just want to know what they told the  
25 officer. Because when they testify, she may want to

1 call the officer as her witness for prior inconsistent  
2 statements. I don't know.

3 MR. WEDEKIND: He certainly would be available  
4 to her.

5 THE COURT: I'm sure he would. As an example,  
6 Solicitor, perhaps a poor example, but that was an  
7 example.

8 MR. WEDEKIND: Yes, sir. I think there was  
9 one other statement from a jailhouse informant,  
10 Mr. Brazell. He said he was cellmates with Mr. Hickman,  
11 and Mr. Hickman was bragging on how he pulled off this  
12 job and stole the gun -- Broadnax, I'm sorry. That's  
13 right. So Broadnax was bragging on how he was involved  
14 in the crime and how he and Mr. Hickman had pulled off  
15 the job.

16 I think that would be rank hearsay, so we have  
17 not used that, but she has been provided that  
18 information from Mr. Brazell stating that Mr. Broadnax  
19 has all along been saying that he and Mr. Hickman were  
20 involved in it. That was documented. I know she has  
21 been provided that in discovery.

22 THE COURT: Ms. Fullwood, when do you want  
23 these witnesses down here, these seven witnesses? I'm  
24 not going to rule on your motion at this time because I  
25 want to see if they get the fingerprint report and other

1. things that develop or don't develop. At the same time,  
2 I am going to press on. So when would you want these  
3 witnesses here?

4 MS. FULLWOOD: At 8:30 tomorrow morning.

5 THE COURT: Just for scheduling purposes, I am  
6 probably under treatment by more doctors than y'all have  
7 witnesses. So I have two of them to go to in the  
8 morning. I won't be here until about 10:30 anyway, I  
9 would imagine at the earliest.

10 So if you could have them here at 8:30 in the  
11 morning, Solicitor. She will give you the list. As I  
12 say, you don't have to go pick them up, Solicitor, but  
13 if you would have them here for her to speak with. They  
14 are not ordered to talk with her, but she can serve  
15 subpoenas on them when they get here. If y'all would do  
16 that, I would certainly appreciate that.

17 That may allow us to press on a little more  
18 efficiently. That would perhaps give you time to check  
19 also on the fingerprint report and see if you have that  
20 over here. I understand she has the D.N.A. chain of  
21 custody, which you do not intend to offer?

22 MR. WEDEKIND: All the D.N.A. comes back  
23 implicating Mr. Rumph. Mr. Rumph has already pled  
24 guilty. So other than mentioning that D.N.A. genetic  
25 material was found on the clothing and it was processed,

1 it came back to Mr. Rumph.

2 I would plainly state on the record, I think  
3 Mr. Collins was -- my plan was to have him say that none  
4 of this D.N.A. came back to Mr. Hickman. It only came  
5 back to Mr. Rumph.

6 That would be the only mention of D.N.A., that  
7 fact that some was found. It was duly followed up, but  
8 it did not come back to implicate Mr. Hickman. It only  
9 implicated Mr. Rumph.

10 THE COURT: What about that, Ms. Fullwood?  
11 I'm not trapping you on your continuance motion yet.

12 MS. FULLWOOD: I understand that.

13 THE COURT: Do you want to think about it?

14 MS. FULLWOOD: No, sir, I am trying to think  
15 how to say it. I guess my point is what if perhaps the  
16 defense wanted to use that D.N.A. evidence.

17 THE COURT: They don't object to that.

18 MS. FULLWOOD: But, you know, the problem with  
19 having the chain so late is that it's very hard to get  
20 the ducks in a row on the chain, I guess is what I'm  
21 trying to say. Of course, if they went to stipulate to  
22 the chain, that can solve some problems.

23 THE COURT: You don't have a problem with  
24 that, Solicitor? If she wants to --

25 MR. WEDEKIND: I freely admit there is no

1 D.N.A.

2 THE COURT: On Mr. Rumph, you don't have a  
3 problem with the chain?

4 MR. WEDEKIND: No, sir. It's all --  
5 Mr. Rumph is it. I think it clearly says a 7.6  
6 quintillion match to Mr. Rumph, but there is absolutely  
7 nothing that indicates Mr. Hickman. I dearly wish there  
8 was. At that point I would be doing back flips trying  
9 to introduce it, but there is nothing here to implicate  
10 Mr. Hickman.

11 THE COURT: Then the Lexington County  
12 Sheriff's Department chain she has. Look at that,  
13 Ms. Fullwood, and see if you have other issues about  
14 that.

15 MS. FULLWOOD: The primary issue, Your Honor,  
16 is the fingerprint. And while it's correct that I knew  
17 they had lifted one, I had no idea that a test had  
18 actually been conducted until I got this late yesterday  
19 afternoon, this S.L.E.D. chain -- I'm sorry -- Sheriff's  
20 Department chain.

21 Again, depending on what the results were and  
22 I don't know what they are, but there is at least the  
23 possibility that it could be exculpatory. I can't tell  
24 the Court one way or the other because we don't know  
25 what it was.

1 THE COURT: We will just have to wait and see  
2 if there is a report.

3 MR. WEDEKIND: Sir, for the record on page 9  
4 of the discovery, it was provided on September 16, 2008.  
5 It clearly states on line -- actually just below line 5:  
6 I processed the scene for latent prints. I lifted one  
7 print. I lifted one print from the front glass door.

8 She has had this information since  
9 September 16, never requested anything to do with latent  
10 prints, never requested to see a report, if one existed.  
11 She has been duly noted of the presence of this for  
12 several months, and she waits until the day or the week  
13 of the trial to make a request of me for this.

14 I would have happily made an attempt to do it.  
15 We are trying to get it to her right now. Investigator  
16 Crump just made a phone call to, I think, the analyst,  
17 Mr. Johnson, and he did not pick up, but he is going to  
18 make every attempt to get the files upon return after  
19 court today. We will see if we can get our hands on  
20 that report.

21 THE COURT: Let's just see if we can get it,  
22 and we will see what it says, Solicitor.

23 MR. WEDEKIND: Yes, sir, and I want to be  
24 clear. She has known of it or had access or known --  
25 whether she read it or detected it, I don't know. She

1 has been provided that information of the presence of  
2 this latent print and that it was looked at.

3 THE COURT: So you will have Ms. Fullwood's  
4 witnesses here at 7:00 o'clock in the morning; is that  
5 right, Solicitor? I mean, at 8:30 in the morning.

6 MR. WEDEKIND: I will have an answer to you as  
7 to whether or not they will be here or if they are  
8 deceased, if they are here or if they are on vacation.  
9 I don't know, but we will do everything we can to track  
10 them down and have them here before Your Honor.

11 THE COURT: I won't be here, Solicitor,  
12 remember?

13 MR. WEDEKIND: Yes, sir. I will make every  
14 attempt to have them here by 8:30, sir.

15 THE COURT: Thank you. Yes, ma'am.

16 MS. FULLWOOD: I don't want Your Honor to  
17 think I'm quibbling after Your Honor is being so nice  
18 with this discovery.

19 THE COURT: I wasn't trying to be nice.

20 MS. FULLWOOD: That was colloquial, since Your  
21 Honor has been so accommodating.

22 THE COURT: Don't talk bad about me,  
23 Ms. Fullwood. Anyway, you can quibble.

24 MS. FULLWOOD: I am just uncomfortable with  
25 having to be able to reach these witnesses using the

1 State as a conduit. I don't want them to be told, This  
2 awful lawyer has got the judge to order you to come up  
3 here and take you away from whatever you want to do.  
4 It's her fault. We're so sorry.

5 THE COURT: Are you asking me to tell the  
6 solicitor not to have the witnesses here?

7 MS. FULLWOOD: No, sir, I'm not. I guess  
8 that's part of the reason I am asking for a continuance  
9 so we can contact them on our own, in our own way, on  
10 our own terms.

11 It's something we can do and we would have  
12 done if we had that information about how to reach them  
13 sooner than noon last Friday. That's all I'm saying,  
14 Judge.

15 THE COURT: I understand. You know, back when  
16 I was sitting out there, Ms. Fullwood, if a defense  
17 lawyer didn't have a witness available, the trial judge  
18 would blame, for lack of a better word, the solicitor.

19 So I was trying to get some assistance from  
20 the solicitor to get the witnesses here, all of them,  
21 rather than you say, I want to talk to A., B., or C.  
22 That way you are not exposing whatever your defense may  
23 be, but you would have all of them here.

24 MS. FULLWOOD: I appreciate that, Judge.

25 THE COURT: It's just the judge trying to move

1 the case along. If you are telling me you don't want me  
2 to do that, I will withdraw my order. If you have the  
3 information, we will press on and see what happens.

4 MS. FULLWOOD: Well, I don't think I'm in a  
5 position to run a risk of being offered the opportunity  
6 to talk to these people and the only way I probably can  
7 now, banking on the chance that it might not get  
8 continued and I would have to go forward, I don't want  
9 to put my client in that kind of situation.

10 But I did want to preserve the record as far  
11 as my belief that there have been discovery problems in  
12 this case, and for that reason I feel compelled to ask  
13 for a continuance. That's all, Judge.

14 THE COURT: It appears to me there was some,  
15 if not lack of communication, perhaps a  
16 miscommunication. You know, I know y'all are both very  
17 busy and have heavy case loads and other commitments and  
18 such like that.

19 At the same time I was trying to facilitate  
20 moving the case along. If it doesn't get to a posture  
21 to where it can be tried, I will certainly continue it.  
22 If it gets to a posture where it can be tried, I will  
23 deny your motion.

24 That is kind of the point I'm at right now.  
25 If there's some issue sitting out there, I would like to

1 have it resolved before we go forward with the case to  
2 my satisfaction, not necessarily to the solicitor's nor  
3 to yours, absolutely not to the solicitor nor to yours,  
4 but to my satisfaction as far as Mr. Hickman's rights to  
5 a fair trial and being able to adequately prepare a  
6 defense.

7 MR. WEDEKIND: I would just like to state for  
8 the record I have always extended an invitation to  
9 Ms. Fullwood to come over and ameliorate these issues.  
10 She has always maintained her steadfast position that  
11 she wanted all the marbles or nothing.

12 She did not wish to reveal who she was  
13 interested in or not. I have extended that offer many  
14 times to have her come over and see if we could resolve  
15 it. She declined that.

16 When I finally realized that she would  
17 probably raise this issue, I just said, The heck with  
18 it. I will give it to her once she promised me that she  
19 would not in way misuse the information.

20 THE COURT: All right. As far as this case is  
21 concerned, we will be in recess until 10:30 in the  
22 morning. If you will have the witnesses here at 8:30 in  
23 the morning. We have our jury still here. Bring me a  
24 jury. Bring me this jury.

25 (The jury returns to the courtroom).

1           THE COURT: I guess the first thing you learn  
2 as a jury is you cannot trust what the judge tells you  
3 about time. I said I would get you back up here  
4 momentarily.

5           However, a wise judge once told me that a good  
6 trial lawyer can't ever estimate time very well, and I  
7 hope it's true for a good trial judge. Be that as it  
8 may, I had some pretrial matters to take up, and I have  
9 some other pretrial matters.

10           If I knew they were going to take this long, I  
11 would have not held you captive as I have done. I am  
12 going to excuse you for your evening recess. I would  
13 remind you during the recess, you are not to discuss the  
14 case with anyone.

15           That includes your fellow jurors, your family,  
16 your friends or anyone involved in the trial. If anyone  
17 tries to talk with you about the case, please let me  
18 know.

19           Do not watch, listen to or view or read any  
20 news report about this case, whether on television,  
21 radio or on the internet. Do not do any investigation  
22 on the internet or any independent, personal  
23 investigation.

24           Remember to keep an open mind about the case,  
25 and do not begin your deliberations until you have heard

1 all the evidence, all the testimony, the closing  
2 arguments of the attorneys, and the charge on the law by  
3 the Court.

4 I will ask you to please return to your jury  
5 room tomorrow at 11:00 a.m. I have some other matters  
6 to take up in this case. So if you would please return  
7 tomorrow at 11:00 a.m. promptly, we will start promptly  
8 thereafter. With that being said, you are now excused  
9 for the evening. Please return at 11:00 o'clock in the  
10 morning. Thank you very much.

11 (The jury is excused for the day at 4:52 p.m.)

12 THE COURT: Thank you. We will be in recess  
13 until 11:00 o'clock in the morning.

14 Sheriff, if you would please take Mr. Hickman  
15 into custody.

16 MS. FULLWOOD: Your Honor, I am giving  
17 Mr. Wedekind a list of seven names.

18 THE COURT: Thank you.

19 (Whereupon the proceedings are concluded for  
20 January 27, 2009).

21 (The following proceedings are reported on  
22 January 28, 2009).

23 CLERK: Indictment 2008-GS-32-2864, the State  
24 versus Rico Hickman, indicted for assault and battery  
25 with intent to kill. Indictment 2008-GS-32-2867, the

1 State versus Rico Hickman, indicted for armed robbery  
2 while armed with a deadly weapon.

3 The Defendant is put to the bar and arraigned  
4 and upon arraignment pleads as charged. They are signed  
5 and properly attested to. Both charges are true billed,  
6 and he is represented by Ms. Fullwood and Mr. Casto.

7 Raise your right hand the best you can.

8 RICO AMADEUS HICKMAN is first  
9 duly sworn.

10 THE COURT: Ms. Fullwood, Mr. Casto, do y'all  
11 represent Rico Amadeus Hickman?

12 MS. FULLWOOD: Yes, Your Honor.

13 MR. CASTO: Yes, Your Honor.

14 THE COURT: For purposes of this proceeding,  
15 may I just ask you the questions, Ms. Fullwood?

16 MS. FULLWOOD: Yes, sir.

17 THE COURT: Have you explained to Mr. Hickman  
18 the charges contained in the indictments, the possible  
19 punishments, and his constitutional rights, including  
20 his right to a jury trial?

21 MS. FULLWOOD: I have.

22 THE COURT: In your opinion does Mr. Hickman  
23 understand the charges, the possible punishments, and  
24 his rights?

25 MS. FULLWOOD: Yes, Your Honor.

1 THE COURT: How does he indicate he wishes to  
2 plead to armed robbery?

3 MS. FULLWOOD: Guilty, Your Honor.

4 THE COURT: How does he indicate he wishes to  
5 plead to assault and battery with intent to kill?

6 MS. FULLWOOD: Guilty, Your Honor.

7 THE COURT: Are you Rico Amadeus Hickman?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Hickman, you will have to  
10 speak up, both for me and for the court reporter, all  
11 right, if you will just speak up into the microphone.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Before I can accept pleas of  
14 guilty, it is necessary for me to make sure your plea of  
15 guilty is made freely and voluntarily; therefore, I need  
16 to ask you some questions.

17 If you do not understand my questions, please  
18 let me know. I will try to explain them to you. If at  
19 any time you wish to talk with your attorney, you may do  
20 so. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How old are you, Mr. Hickman?

23 THE DEFENDANT: Twenty-two.

24 THE COURT: How much education do you have?

25 THE DEFENDANT: Ninth grade, sir.

1 THE COURT: Prior to being incarcerated, what  
2 kind of work did you do?

3 THE DEFENDANT: I didn't have a job, sir.

4 THE COURT: Say again.

5 THE DEFENDANT: I didn't have a job.

6 THE COURT: Have you ever had a job?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you ever been treated for the  
9 abuse of alcohol, drugs or mental illness?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Tell me about that.

12 THE DEFENDANT: I been at the A.T.U. program  
13 at Lee County.

14 THE COURT: Where was the A.T.U. program?

15 THE DEFENDANT: At Lee County, Lee

16 Correctional Institute.

17 THE COURT: So that was during a prior term of  
18 incarceration?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Was that for alcohol abuse or drug  
21 abuse or both?

22 THE DEFENDANT: Drug abuse, what I been looked  
23 up for.

24 THE COURT: Did you successfully complete that  
25 program?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Today are you under the influence  
3 of any medication, drugs or alcohol?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you aware of any physical,  
6 emotional or nervous problem that might keep you from  
7 understanding what you are doing today?

8 THE DEFENDANT: No, sir.

9 THE COURT: You have heard your attorney tell  
10 me that she has explained to you the charges against  
11 you, the possible punishment, and your constitutional  
12 rights, and that you understand these things. Is that  
13 correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I have been handed up two  
16 indictments, Mr. Hickman. The first indictment,  
17 08-GS-32-2864, basically reads that Rico Amadeus Hickman  
18 and/or his codefendants did in Lexington County, South  
19 Carolina, on or about January 17, 2008, with malice  
20 aforethought willfully and unlawfully commit a violent  
21 injury to the person of another that could have resulted  
22 in death, to wit, Rico Amadeus Hickman or a codefendant  
23 did shoot the victim, Jackie Ray Jackson, twice during a  
24 burglary and an armed robbery in violation of 16-3-20 of  
25 the Code of Laws of South Carolina.

1           That is a true bill indictment for assault and  
2 battery with intent to kill, and the possible maximum  
3 punishment on that is 20 years. Do you understand that  
4 charge and that particular punishment?

5           THE DEFENDANT: Yes, sir.

6           THE COURT: The next indictment,  
7 2008-GS-32-2867, reads that Rico Amadeus Hickman and/or  
8 his codefendants did in Lexington, South Carolina, on or  
9 about January 17, 2008, knowingly and willfully, while  
10 armed with a pistol, feloniously take from the person or  
11 presence of Mr. Jackie Ray Jackson by means of force a  
12 pistol with intent to deprive the owner of the use of  
13 such property in violation of 16-11-330(a) of the Code  
14 of Laws of South Carolina as amended.

15           That is a charge of armed robbery while armed  
16 with a deadly weapon. The potential maximum punishment  
17 is 30 years. Do you understand that charge and that  
18 particular punishment?

19           THE DEFENDANT: Yes, sir.

20           THE COURT: When you plead guilty, you give up  
21 certain important constitutional rights. First, you  
22 give up your right to remain silent. That is your right  
23 against self-incrimination, your right to say nothing at  
24 all. You cannot be compelled to testify or to provide  
25 evidence against yourself.

1           Second, you give up your right to have a jury  
2 trial. That is your right to have a jury decide whether  
3 or not you are guilty beyond a reasonable doubt. As you  
4 know in this case, a jury has already been selected for  
5 the trial of your case.

6           In a trial you would be presumed to be  
7 innocent, and the State would have to produce evidence  
8 that would convince all 12 members of the jury that you  
9 were guilty beyond a reasonable doubt.

10           Third, you give up your right to confront and  
11 be confronted by the witnesses against you. That is the  
12 right to see, hear, and cross examine any witnesses that  
13 may be called against you during the trial. Do you  
14 understand these rights?

15           THE DEFENDANT: Yes, sir.

16           THE COURT: Do you understand that when you  
17 plead guilty, you give up these important constitutional  
18 rights?

19           THE DEFENDANT: Yes, sir.

20           THE COURT: Is that what you want to do?

21           THE DEFENDANT: Yes, sir.

22           THE COURT: Do you understand that you will  
23 not get a jury trial if you plead guilty?

24           THE DEFENDANT: Yes, sir.

25           THE COURT: Understanding then the nature of

1 the charges against you, assault and battery with intent  
2 to kill and armed robbery and the consequences of a  
3 guilty plea -- the maximum punishment on assault and  
4 battery is 20 years. The maximum punishment on armed  
5 robbery is 30 years -- do you wish to plead guilty to  
6 these charges?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How do you plead to assault and  
9 battery with intent to kill, guilty or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: How do you plead to armed robbery,  
12 guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: Do you understand that when you  
15 plead guilty, you admit the truth of the charges that  
16 are made against you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Hickman, you may have defenses  
19 to these charges. I don't know. I don't know whether  
20 you do or not. Do you understand that if you plead  
21 guilty, you will waive or give up any defenses you have  
22 to these charges?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You may have given an  
25 incriminating statement in this case. I don't know if

1 you have or not. If you plead guilty, do you understand  
2 that you waive or give up the right to contest or  
3 challenge whether such statement was freely and  
4 voluntarily given in accordance with your constitutional  
5 rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you commit the offense of  
8 assault and battery with intent to kill in Lexington  
9 County on January 17th of '08?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you commit the offense of  
12 armed robbery in Lexington County on January 17th of  
13 '08?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Solicitor, have there been any  
16 plea negotiations in this case?

17 MR. WEDEKIND: Yes, sir. There is an  
18 additional pending charge of assault with intent to kill  
19 which we will nol-pros in exchange for this plea. All  
20 other charges that are pertaining -- any charges that  
21 pertain up to the date of this offense, we are going to  
22 nol-pros in exchange for this plea.

23 I would also further point out, sir, that  
24 these are also going to constitute serious and violent  
25 offenses, most serious and violent offenses, on his

1. record when he gets to the Department of Corrections.

2. THE COURT: Thank you, Solicitor.

3. Ms. Fullwood, has the solicitor correctly and  
4. completely stated the negotiations into the record?

5. MS. FULLWOOD: Your Honor, I believe there is  
6. also an unrelated pointing and presenting a firearm that  
7. has been indicted and is also going to be dismissed.

8. MR. WEDEKIND: Yes, sir. That goes back to  
9. the assault with intent to kill charge, I think from the  
10. same date. All charges will be nol-prossed with the  
11. exception of the two that he is pleading to.

12. THE COURT: Does that adequately and  
13. completely state the negotiations into the record at  
14. this time, Ms. Fullwood?

15. MS. FULLWOOD: It does, Your Honor.

16. THE COURT: Mr. Hickman, has the solicitor  
17. fully and completely stated what you understand the  
18. recommendation to be?

19. THE DEFENDANT: Yes, sir.

20. THE COURT: Is there any more to it in your  
21. mind?

22. THE DEFENDANT: No, sir.

23. THE COURT: Do you still wish to plead guilty?

24. THE DEFENDANT: Yes, sir.

25. THE COURT: Has anyone promised you anything

1 or held out any hope of reward to get you to plead  
2 guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anyone threatened you or used  
5 force to get you to plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Has anyone used any pressure or  
8 intimidation to cause you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you had enough time to make  
11 up your mind as to whether or not you want to plead  
12 guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you pleading guilty of your  
15 own free will and accord?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I want to ask you about your  
18 attorneys, Ms. Fullwood and Mr. Casto. Are you  
19 satisfied with the manner in which your lawyers have  
20 advised you and represented you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you talked with your lawyers  
23 as often and for as long as you feel necessary for them  
24 to properly represent you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you need anymore time to talk  
2 with your lawyers?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you understood your talks  
5 with your lawyers?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have your lawyers done everything  
8 for you that you feel like they could have done or  
9 should have done?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have your lawyers done anything in  
12 this case that you feel like they should not have done?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you totally and completely  
15 satisfied with your lawyers' services?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any complaints that  
18 you want to make about your lawyers, the solicitor or  
19 any police officers involved in this case?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you understood my questions?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is there anything you would like  
24 to ask me about what we have just been over?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you understand that you have a  
2 right to appeal the guilty plea and sentence of the  
3 Court and that you or your lawyers must do this within  
4 ten days?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Solicitor, if you would give me  
7 the facts, please.

8 MR. WEDEKIND: Yes, sir. On January 17, 2008,  
9 at around 5:00 p.m., at a location of 4209 Augusta Road  
10 in West Columbia which is here in Lexington County,  
11 there is a business of Jackson's Gold and Pawn, a pawn  
12 shop operation there.

13 Mr. Jackson, the owner of the store, was just  
14 closing up and had received a phone call from some  
15 customers who wanted him to do an appraisal. He said,  
16 Yes, I'm closing the shop. If you call and knock on the  
17 door, I will be happy to open it and let you in.

18 Some bad luck occurred in that at that time  
19 apparently Mr. Hickman and his two codefendants, Omar  
20 Rumph and Garrick Broadnax, had decided that that was  
21 going to be the exact time they were going to use to rob  
22 the Gold and Pawn.

23 What they had done is they happened to come to  
24 the door at the same time that Mr. Jackson was expecting  
25 the legitimate customers to be approaching the door. He

1 had turned the lights off, made it to all appearances  
2 that the building was closed, was in the back working,  
3 and heard a knock at the door.

4 He walked up to the front of the door to open  
5 it up, and then all of a sudden three young black male  
6 individuals, who were wearing hoods and masks, forced  
7 him backwards and tried to rush into the building.

8 He was armed with a .38 revolver that he keeps  
9 in his pocket in the course of his business. He started  
10 to go for that gun and withdraw it, and a physical  
11 altercation ensued.

12 We are not exactly sure who the individual was  
13 particularly of the three, but the hand of one, hand of  
14 all would certainly be applicable. He was forced into a  
15 side room.

16 A struggle continued there on the floor, and  
17 he was told to, Drop the gun or else, or words to that  
18 effect. Mr. Jackson was helpless with the three  
19 individuals struggling with him, and somebody pulled a  
20 gun out and shot him in the kneecap.

21 The projectile went through the front of his  
22 left knee and exited the back. It hit the carpet while  
23 he was laying on the floor. He said the pain was  
24 excruciating.

25 He then completely complied with them, let go

1 of his firearm. That, in fact, was scooped up and  
2 removed and was the only thing that was actually taken  
3 from the business that we can understand to constitute  
4 the offense of armed robbery.

5           Ultimately they dragged him from that location  
6 to the back where they knew the safe was located, and  
7 the larger more valuable objects were stored. He was  
8 laying there bleeding in pain and being kicked and told  
9 to, ~~Open the safe. Old man, open the safe.~~

10           He was a little reluctant to do that because  
11 he kind of felt that he might get shot, that they might  
12 finish him off if he did that. Well, luck intervened  
13 and there was a phone call and a knock at the door from  
14 the legitimate customers who were coming to the store.

15           That startled the three would-be robbers. Two  
16 of them ran to the front. The best we can discern, that  
17 was Mr. Hickman and Mr. Rumph. They were armed with  
18 their weapons and went to the front.

19           A third individual, Mr. Garrick Broadnax, the  
20 best that we can determine, he ran off into the side  
21 room into a panic and was trying to observe things but  
22 was sort of stuck because there were locked doors and  
23 bullet-proof glass windows in that back room.

24           Unbeknownst to them, Mr. Jackson kept a pump  
25 shotgun located on the top of the safe they were trying

1 to open, but they couldn't see it because the store was  
2 dark at the time.

3 He then crawled himself up from the floor,  
4 used the safe to pull himself upright, reached in the  
5 top and withdrew his 12-gauge pump shotgun, chambered a  
6 round, and thought things were becoming on a more even  
7 footing.

8 He then started to step out to confront these  
9 individuals with the shotgun, and either because of loss  
10 of blood, blood on the floor or just weakness, he lost  
11 his footing. Also, because of his bad leg, he fell with  
12 the shotgun in hand.

13 When he hit the floor or an object, it  
14 discharged the shotgun into the ceiling. That really  
15 set things in motion at that point. Mr. Rumph and  
16 Mr. Hickman we believe ran out the front door and  
17 brushed aside the two legitimate customers who were  
18 outside or at least one who was on the porch and ran out  
19 and jumped into the getaway car, a blue Mazda.

20 Mr. Rumph got behind the wheel. Mr. Hickman  
21 got in the passenger seat. Mr. Broadnax was stuck in  
22 the back room. Unfortunately Mr. Jackson had a jammed  
23 shotgun and wouldn't shuck the round that had fired, but  
24 he was attempting to get a second round in the chamber  
25 to confront Mr. Broadnax.

1           Mr. Broadnax was in a panic. He fired two  
2 rounds into the window, but it wouldn't shatter because  
3 it was bulletproof. He took the remaining rounds of the  
4 gun, snuck around the corner, discharged all those  
5 rounds.

6           One of those impacted the wall, and some  
7 fragments struck Mr. Jackson a second time with the  
8 projectiles. He got struck in the head and cut. At  
9 that point Mr. Broadnax used that to his advantage and  
10 exited out the back door.

11           However, Mr. Hickman and Mr. Rumph had driven  
12 away in a panic. Neither of them, we believe, were very  
13 familiar with the immediate locality because they  
14 crossed Highway 1 and went down Jessamine and ended up  
15 going down a dead end street.

16           Again luck intervened in this case for law  
17 enforcement because when they hit the dead end street,  
18 they didn't know where they were going, but they knew it  
19 was the end of the road.

20           They both bailed out of the vehicle and went  
21 their separate ways. Had they not done that, we would  
22 have never located that vehicle, and they probably would  
23 have gotten away.

24           But in doing so, Mr. Rumph began to strip his  
25 clothing items because he might have been identified.

1 Those were later located and taken into custody. We  
2 were able to obtain D.N.A. from those clothing items  
3 that went back to a perfect match with Mr. Rumph.

4 The V.I.N. number on the vehicle, however,  
5 that's where luck intervened. It was traced back to the  
6 ownership of Mr. Garrick Broadnax, the third codefendant  
7 who had been left behind in the back room.

8 Immediately upon getting that V.I.N. number,  
9 Investigator Collins, who was assigned to the case,  
10 traced that V.I.N. number and found that it was related  
11 to Mr. Broadnax.

12 He obtained an interview with Mr. Broadnax.  
13 Mr. Broadnax was implicated, confessed, and said to the  
14 effect that he named Omar Rumph. Omar Rumph, in the  
15 meantime, had come and picked up -- because he received  
16 a phone call from an irate Mr. Broadnax -- he swung  
17 around with his girlfriend and picked up Mr. Broadnax.

18 They thought for awhile things -- they might  
19 have gotten away, but they didn't know that Detective  
20 Collins was on the car with the V.I.N. number. Broadnax  
21 names Rumph. Rumph gets picked up and brought in. He  
22 names a guy named Rouchie (phonetic).

23 Rouchie, we later found out, was Mr. Rico  
24 Hickman's street name. Mr. Broadnax was confronted with  
25 that. He names Rouchie and basically both of them pick

1 Mr. Hickman out as the photo lineups or photo arrays are  
2 presented to them.

3 They circle and identify Mr. Hickman as their  
4 codefendant who was in the car with them. At that point  
5 Investigator Collins gets arrest warrants for  
6 Mr. Hickman, and he was arrested on these charges.

7 Both the confessions of Mr. Broadnax and  
8 Mr. Rumph were going to be used against Mr. Hickman at  
9 trial. They have pled guilty, but their sentencing will  
10 be held in abeyance.

11 They pled to one count of armed robbery each  
12 with a cap of 20. They will be facing 10 to 20. We  
13 have Mr. Hickman before the Court facing, of course, the  
14 two charges that are before Your Honor. Do you want to  
15 hear about his record, sir?

16 THE COURT: Yes, sir.

17 MR. WEDEKIND: He has a prior record of a  
18 Y.O.A. sentence for distribution of crack cocaine from  
19 2003. Then he has two proximity distributions of crack  
20 cocaine from 2005, both from West Columbia, both  
21 occurred on the 31st, but the pleas were taken on two  
22 separate dates.

23 So we were counting those as two separate and  
24 distinct drug offenses. He dealt one on Brown Street  
25 and Ross Street in West Columbia on the same day but was

1 convicted of those two.

2 THE COURT: Brown Street and Ross Street?

3 MR. WEDEKIND: Yes, sir. That would be the  
4 extent of his record as far as adult offenses, sir.

5 THE COURT: I may not have connected the dots.  
6 Who was the triggerman as far as shooting Mr. Jackson in  
7 the knee?

8 MR. WEDEKIND: Well, in our interviews with  
9 all the Defendants -- of course, Mr. Hickman has not  
10 said anything, maintained his rights -- but Mr. Broadnax  
11 has denied it and Mr. Rumph has denied it; however, my  
12 belief would be that it was Mr. Broadnax.

13 The bullets are .38 special is what went  
14 through Mr. Jackson's knee. We found that. It was a  
15 hollow point. That is consistent with the bullets that  
16 were found in the back room that had been spent by  
17 Mr. Broadnax discharging his gun. They were .38s as  
18 well.

19 THE COURT: When you say they left in the  
20 Mazda, Broadnax and Rumph, and went across Number 1  
21 Highway onto Jessamine, I take it that Jackson's Gold  
22 and Pawn is somewhere around where Mr. Holiday's barber  
23 shop used to be. It's across the street from there; is  
24 that right? Where is it in relation to --

25 MR. WEDEKIND: There is a Dollar General Store

1 that is right across from, I think, Jessamine. It's a  
2 slight diagonal. I think you can see it from the store  
3 front of Mr. Jackson's. You can see it. There is a  
4 B.P. station. On his side of the street is Dollar  
5 General, and then there is a car --

6 THE COURT: When you go down Jessamine Road,  
7 take that left by that stone house, that's the dead end  
8 street that goes back into the trailer park. Is that  
9 where you are referring to?

10 MR. WEDEKIND: No, sir.

11 THE COURT: Where was the dead end street,  
12 Detective Collins?

13 DETECTIVE COLLINS: Your Honor, it was the  
14 second left back into the Lakeview subdivision.

15 THE COURT: Lakeview subdivision?

16 DETECTIVE COLLINS: Yes, sir.

17 THE COURT: Pleasant Lane?

18 DETECTIVE COLLINS: I believe that is one of  
19 the roads back there, yes, sir.

20 THE COURT: I used to live there many years  
21 ago on Pleasant Lane. It's a great address, Pleasant  
22 Lane.

23 MR. WEDEKIND: Yes, sir.

24 THE COURT: Is that the dead end that goes  
25 into the field where Bennie works on the cars? You know

1 where I'm talking about behind his house? You don't  
2 know?

3 DETECTIVE COLLINS: No, sir.

4 MR. WEDEKIND: But also Mr. Jackson is here  
5 and at the appropriate time would like to address the  
6 Court, sir.

7 THE COURT: Certainly. I would be glad to  
8 hear from you, Mr. Jackson. If you would state your  
9 full name for the record.

10 MR. JACKSON: Yes, sir. My name is Jackie Ray  
11 Jackson.

12 THE COURT: Mr. Jackson, I would be glad to  
13 hear from you.

14 MR. JACKSON: I think it's a shame myself that  
15 Mr. Hickman has just got a ninth grade education. That  
16 just really struck me a while ago. I think --

17 THE COURT: Can you speak up. I apologize,  
18 Mr. Jackson. I'm not sure that is a microphone. If you  
19 will speak up for me a little bit.

20 MR. JACKSON: I think it's a shame that  
21 Mr. Hickman has only got a ninth grade education. In  
22 our country now, you can get such a good education and  
23 it's a shame.

24 But anyway these guys, when they broke into my  
25 shop, they were almost to the point of evil. They took

1 me back in the back, and it was, M.F. this, old man  
2 that. We are going -- if you don't do so and so, we are  
3 going to shoot you in the head.

4 They had me down kicking me, two of them  
5 kicking me in the back, and the other one trying to  
6 wrestle the gun away from me. I thought, well, it's  
7 just -- why go through all this? You don't have to do  
8 all this to rob me.

9 If they just wanted it bad enough, I would  
10 have opened the safe and give them the money. But I  
11 just feel like they are getting -- they are going to get  
12 their just due.

13 I'm sorry for everything that has actually  
14 happened to them. It's a shame for young people to get  
15 in these kinds of situations.

16 THE COURT: How old are you, Mr. Jackson?

17 MR. JACKSON: I'm 65.

18 THE COURT: How long have you been in that  
19 business?

20 MR. JACKSON: I've been in business 13 years  
21 total, but that location about a year and half.

22 THE COURT: Where is it in relation to  
23 Mr. Holiday's?

24 MR. JACKSON: If you come up to Number 1 on  
25 Jessamine, it's in between Sherwood Furniture and the

1 Dollar General, directly in between.

2 THE COURT: How long past from when they first  
3 came to the door until Broadnax left? In other words,  
4 what's the total time? Can you estimate that for me or  
5 give me an indication?

6 MR. JACKSON: I would guess total time,  
7 probably less than five minutes.

8 THE COURT: Less than five minutes?

9 MR. JACKSON: It was quick. Had it not been  
10 for Ms. Taylor back there coming in, I would be a dead  
11 man.

12 THE COURT: Ms. Taylor -- you say Ms. Taylor?

13 MR. JACKSON: Ms. Taylor.

14 THE COURT: That was the customer who called  
15 and wanted you to appraise something?

16 MR. JACKSON: Yes, sir.

17 THE COURT: Who is Ms. Taylor? Stand up for  
18 me, Ms. Taylor. Thank you. Thank you so much.

19 Ms. Taylor had called you and, that's why you  
20 were waiting around?

21 MR. JACKSON: Right, yes, sir.

22 THE COURT: So 5:00 o'clock was your normal  
23 closing time?

24 MR. JACKSON: Right, in the wintertime.

25 THE COURT: If it took five minutes, let's say

1 if it took five minutes, how long did it seem like.

2 MR. JACKSON: Three years, four years. It  
3 seemed like a lifetime, Your Honor. I guess I can talk  
4 a little bit about my injury?

5 THE COURT: Yes, sir.

6 MR. JACKSON: I have a gunshot wound that went  
7 through the knee here (indicating), exited the knee here  
8 (indicating). Originally I had a fixator to fix my  
9 knee. A fixator, it goes in and just holds me in place  
10 until they can operate on me.

11 I have a lateral plate running laterally up my  
12 leg, and it generally feels like it weighs 50-pounds;  
13 even though it probably only weighs about three or four  
14 pounds.

15 Lately the ligaments in the back of my knee  
16 have loosened up. I will probably have to have two more  
17 surgeries from it. So, you know, the problem in my leg  
18 is that sometimes I can walk okay without a cane.  
19 Sometimes it just shakes and will want to fall out. But  
20 the two more surgeries are to tighten up the ligaments  
21 in the back. They don't know why they loosened up.

22 THE COURT: And then you have the injuries to  
23 your forehead?

24 MR. JACKSON: It was just superficial wounds,  
25 yes, sir.

1 THE COURT: Thank you. Anything further,  
2 Mr. Jackson?

3 MR. JACKSON: No, sir.

4 THE COURT: Thank you. Thank you very much.

5 MR. JACKSON: Thank you, Your Honor.

6 THE COURT: Mr. Hickman, do you agree that the  
7 State has accurately stated your prior convictions, '03  
8 Youthful Offender Act conviction for distribution of  
9 crack cocaine and then '05 two convictions for  
10 distribution within proximity of a school? Is that your  
11 correct prior accurate record?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: As the solicitor stated, you  
14 understand that these charges are most serious and  
15 violent offenses. If you are ever charged with another  
16 most serious or violent offense in the future, it would  
17 be mandatory for this or any solicitor to seek life  
18 without parole. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That is correct, Solicitor?

21 MR. WEDEKIND: Yes, sir, that is correct.

22 THE COURT: That's correct, Ms. Fullwood?

23 MS. FULLWOOD: That's right, Judge.

24 THE COURT: I find that there is a substantial  
25 factual basis for the plea, that Mr. Hickman's decision

1 to plead guilty to these charges of armed robbery and  
2 assault and battery with intent to kill is freely and  
3 voluntarily, knowingly and intelligently made.

4 He has the advice and counsel of very  
5 competent attorneys with whom he says he is well and  
6 totally satisfied with. His pleas are therefore  
7 accepted. Ms. Fullwood.

8 MS. FULLWOOD: Thank you, Your Honor. Your  
9 Honor, Mr. Hickman is from Columbia, and he lived there  
10 with his mother at the time of his arrest. I realize,  
11 as does Mr. Hickman, that ultimately every person is  
12 responsible for the choices that they make.

13 That being said though, Mr. Hickman's  
14 background is an unusual one, marked by abuse and  
15 deprivation and just very unusual type of circumstances.  
16 I will say that I did not learn of this from Mr. Hickman  
17 himself. He has never tried to blame his conduct or  
18 anything that has happened to him on his background.

19 Rather I learned this when preparing for the  
20 trial of this case. I talked to his former attorney on  
21 those drug charges, Richard Breibart. He filled me on  
22 some of the things I am about to tell you.

23 Apparently during his early childhood,  
24 Mr. Hickman lived in some sort of horrific, chaotic type  
25 of environment and came to meet a social worker located

1 here in South Carolina, probably his D.S.S. caseworker  
2 who took an interest in him.

3           Apparently his household situation got to the  
4 point where she actually became his legal guardian, and  
5 he moved with her when she located or relocated out to  
6 the State of California.

7           He tells me that between the ages of 10 and  
8 13, he lived out sort of near Sacramento -- or is it 13  
9 to 16? It was 13 to 16. He ended up out there going to  
10 middle school out there and having her being his  
11 guardian.

12           He returned to South Carolina with his natural  
13 mother at age 16, and I get the impression, Judge, that  
14 this was the type of adult situation where the parent  
15 didn't value education, didn't make him go to school.

16           Basically after he left the care and custody  
17 of his guardian who was educating him, nobody cared  
18 anymore, and he just simply did not receive any further  
19 education.

20           Like I say, he has never talked about this,  
21 and Mr. Breibart was the one who told me. I know and he  
22 knows that nevertheless, he is responsible for what he  
23 did. We would ask Your Honor to take into consideration  
24 that his background is a lot worse than many people.

25           Another thing I would ask the Court to

1. consider is in a situation like this under these  
2. circumstances, you cannot say that anybody was a minor  
3. player in this crime.

4. I talked to Mr. Jackson before trial. He's a  
5. nice man. I told him myself, I said, I'm so sorry you  
6. had to go through this. But I will say that from the  
7. materials I received in the discovery process and the  
8. things I looked into, it appears that Mr. Broadnax was  
9. the person who decided that Mr. Jackson's pawn shop  
10. should be robbed..

11. It turned out, I believe, Mr. Jackson's son  
12. provided the police with a couple of pawn slips that  
13. showed Mr. Broadnax had been a customer there. He had  
14. sold something to Mr. Jackson or redeemed something from  
15. Mr. Jackson a little more than two weeks before this  
16. robbery.

17. In addition, Mr. Jackson -- Mr. Broadnax made  
18. statements to a witness that would indicate that he is  
19. the person who shot Mr. Jackson. Again, the hand of one  
20. is the hand of all. Mr. Hickman understands that, but  
21. we would ask the Court to consider the relative degrees  
22. of participation.

23. Your Honor, I know he is sorry to be here  
24. today. We hope you will also give him credit for the  
25. fact that he owned up and has taken responsibility for

1 his conduct.

2 He has pled guilty and has shown a willingness  
3 to accept his punishment from the Court. I hope and I  
4 know Mr. Hickman hopes, too, that he can get through the  
5 sentence that he is given and come out a better person  
6 and go about living his life the right way.

7 THE COURT: Thank you very much, Ms. Fullwood.  
8 Anything you would like to say, Mr. Hickman?

9 THE DEFENDANT: I would like to apologize to  
10 Mr. Jackson for what happened, and that's about it.

11 THE COURT: Had you ever been in Mr. Jackson's  
12 business before for 17 January of '08?

13 THE DEFENDANT: No, sir.

14 THE COURT: Where in Columbia were you raised?

15 THE DEFENDANT: In Greenvlew.

16 THE COURT: Greenvlew?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What school was it that you  
19 dropped out of in the 9th grade?

20 THE DEFENDANT: Northside, when we moved over  
21 to Northside.

22 THE COURT: In West Columbia?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Based on all the facts and  
25 circumstances and further based on the fact that the

1 codefendants have entered pleas, and I understand there  
2 are plea negotiations and sentences not to exceed 20  
3 years; is that correct, Solicitor?

4 MR. WEDEKIND: That's correct, sir.

5 THE COURT: Based on Mr. Jackson's statement  
6 to the Court, I would be remiss if I didn't say -- the  
7 solicitor used the term several times, luck. I don't  
8 think it really has anything to do with luck. I think  
9 it has to do with an L-word, which is the Lord and then  
10 law enforcement, maybe two L-words, the Lord and law  
11 enforcement.

12 MR. WEDEKIND: There was definitely providence  
13 taking a hand, sir.

14 THE COURT: Ms. Taylor showed up at the right  
15 time. There were certain distractions that occurred at  
16 the right time. Quite frankly, law enforcement was able  
17 to capture these young men before they ruined their  
18 lives even more than they already have quite frankly or  
19 ruin someone else's or hurt someone even worse than they  
20 hurt Mr. Jackson. I don't know what the answer is. I  
21 wish I did. I wish I did.

22 08-GS-32-2867, Rico Amadeus Hickman,  
23 indictment for armed robbery, having entered a plea of  
24 guilty, the Defendant is committed to the State  
25 Department of Corrections for a determinate term of 25

1 years.

2 08-GS-32-2864, Rico Amadeus Hickman, having  
3 entered a plea to assault and battery with intent to  
4 kill, the Defendant is committed to the State Department  
5 of Corrections for a determinate term of 20 years. Good  
6 luck to you. Good luck to you, Mr. Hickman.

7 MS. FULLWOOD: Thank you, Your Honor.

8 THE COURT: Thank you, Ms. Fullwood. Thank  
9 you, Solicitor.

10 MR. WEDEKIND: Thank you, sir.

11 THE COURT: If you would bring this jury.  
12 That is also credit for time served on that obviously if  
13 I didn't state that.

14 (The jury returns and is excused).

15 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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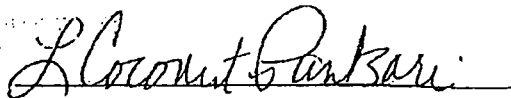
25

## C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 27th and 28th days of January, 2009.

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

November 30, 2009



Court Reporter

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of Lexington

2009 OCT -8 P 1:41

Rico Hickman 297987

Full name and prison number (if any) of Applicant

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2009CP3204560

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE County LCI 990 wisacky H.W.Y  
Bishopville SC, 29010
2. Name and location of Court which imposed sentence Lexington County  
Court house
3. Name(s) of co-defendant(s) (if any) Jared Omar Rumph (and)  
Garrick Broadnax
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2008GS3202867
  - (b) 2008GS3202864

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 20 years, 25 years concurrent **FILED**
- (b) Jan 28, 2009 **2009 OCT -8 P 1:41**
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ **BETH A. CARRIGG**  
**CLERK OF COURT**  
**LEXINGTON SC**
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NA
- ii. NA
- iii. NA
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. NA
- iii. NA
- (c) the date of each such result:
- i. NA
- ii. NA
- iii. NA
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. NA
- iii. NA
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel fail to inform me to my rights to appeal
- (b) Counsel <sup>RE</sup> failed to file motion for appeal

(c)

FILED

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2009 OCT -8 P 1:41

(a) ineffective counsel(b) Constitution violation 5<sup>th</sup>BEYLA CARRIGG  
CLERK OF COURT  
LEXINGTON SC(c) Involuntary Guilty Plea

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a)

Please see Attachments

(b)

(c)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

NA

ii.

NA

iii.

NA

iv.

NA

(b) the name and location of the Court in which each was filed:

i.

NA

ii.

NA

iii.

NA

iv.

NA

(c) the disposition thereof:

FILED

i. NA

ii. NA

2009 OCT -8 P 1:41

iii. NA

iv. NA

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

(d) the date of each such disposition:

i. NA

ii. NA

iii. NA

iv. NA

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

i. NA

ii. NA

iii. NA

iv. NA

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. NA

ii. NA

iii. NA

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

i. NA

ii. NA

iii. NA

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) NA 2009 OCT -8 P 1:41  
 (b) NA BETH A. CARRIGG  
 (c) NA CLERK OF COURT  
 LEXINGTON SC

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES  
 (b) your trial, if any? NA  
 (c) your sentencing? YES  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
NA

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. Beth Fullwood  
205 East main st.  
 ii. Lexington SC, 29072  
 iii.

- (b) the proceedings at which each such attorney represented you:

i. NA  
 ii.  
 iii.

ORIGINAL

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

Reduce of time

FILED

2009 OCT -8 P 1:41

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

NO

CLERK OF COURT  
LEXINGTON SC

2009CP3204560

STATE OF SOUTH CAROLINA )

County of LEXington )

VERIFICATION

I, Hickman A Rico, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Rico Hickman

SWORN to and subscribed before me this 7  
day of Oct 2009.

Debra Sims (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

117  
ORIGINAL

2009CP3204560

FILED

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

2009 OCT -8 P 1:41

I, Hickman A Rico, hereby apply for leave to  
proceed in this action without prepayment of fees or costs or security therefor. In support of my  
application I declare under penalty of perjury that the following facts are true: BETH A. CARBON  
CLERK OF COURT  
LEXINGTON SC

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

*Hickman A Rico*  
Applicant

SWORN or affirmed to and subscribed before me this

2 day of Oct, 2009.

*Debra Jones*  
Notary Public

My Commission Expires: 11-4-2015

2009CP3204560

FILED

ORIGINAL

Page 1

question ⑪

2009 OCT -8 P 1:42

state concisely and in the same order  
 the facts which support each of the  
 Grounds set out in (10):

### INEFFECTIVE ASSISTANCE OF COUNSEL

D ms. Elizabeth Fullwood was ineffective  
 because she did not successfully try  
 an get in contact with my witness  
 to show up in court on my behalf  
 which would have been...

Domonique H. Hollins. ms. Elizabeth  
 Fullwood had Domonique H. Hollins  
 address as well as phone number to  
 reach her if necessary which it was.  
 ms. Elizabeth Fullwood could have  
 subpoena Domonique H. Hollins to  
 court but didn't. 2) DNA Analysis  
 was submitted to the South Carolina  
 Law Enforcement Division Forensic  
 Services Laboratory which came back  
 negative on my behalf, but seemed as  
 if it was looked over. no major  
 argument to the Judge, so as her

## INEFFECTIVE ASSISTANCE of counsel

FILED

page 2

Client I feel she ~~was~~ ineffective because as a lawyer it's <sup>BETH A. GARRIGUE</sup> her job to use such evidence to free her client or get reason to why such evidence can not free her client, evidence which clearly shows that I wasn't there during the crime at hand. 3) she also was ineffective do to the amount of hours/time, she put in on my case. Reason for me sayin so is because ms. Elizabeth fullwood did not start coming to visit me at Lexington county jail until 2 or 3 weeks before trial. ms. Elizabeth fullwood came once to meet with me and let me know she would be my lawyer, A second time when the lab results came back, A third time to see if I wanted to take a plea, A fourth time to let me know I would be going to trial with than a week if I didn't take a plea of 30 years. 4) ms. Elizabeth fullwood also knew the relationship that the judge had with than the solicitor office, with his daughter

## INEFFECTIVE ASSISTANCE of Counsel

FILED

Page 3

2009 OCT -8 P 1:42  
 BETH A. CARRIGG  
 CLERK OF COURT  
 LEXINGTON SC

being a solicitor and waited until the day of trial for a new judge, when that should have been done a head of time. So as a client I feel she was ineffective for not putting in a motion a head of time for a new judge or change of venue.

The day of my trial my lawyer Ms. Elizabeth Fullwood advise me that it would be in my best interest to take a plea, because she felt that she couldn't beat this case do to the fact that I wouldn't get a fair trial for very reasons. 1) Because I had two people willin to testify against me which would have been Jared Rumph and Garrick Broadnax and that they word would have stood up in court because they don't have ~~so much of a~~ <sup>so much of a</sup> ~~criminal~~ <sup>RH</sup> criminal record. 2) Because the judge would nine times out of ten go with the solicitor and ~~with~~ <sup>RH</sup> with the back grand I have does not look good on my behalf.

FILED

Page 4

2009 OCT -8 12 11:42  
DETH ALGABRIS  
CLERK OF COURT  
LEXINGTON SC

I was forced into taking a plea because I was under ~~DETH ALGABRIS~~ <sup>DETH ALGABRIS</sup>, I wouldn't get a fair trial no matter what. After trial, I wasn't advise ~~of~~ <sup>of</sup> no P.C.R nor a motion reconsider by my lawyer, I later found out about my rights by another lawyer we was tryin to get for my P.C.R ~~24~~ <sup>24</sup> ~~1~~ case.

As a client of Ms. Elizabeth Fullwood I contest that if not for my counsels ineffective assistance the outcome of the proceeding would have been different. Therefore because of these factors mention, they rendered the defendants plea not voluntary, knowing or intelligent.

# INEFFECTIVE ASSISTANCE OF COUNSEL

Page 5

FILED

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Thus these actions and lack of actions by Counsel rendered ~~BEITH A. CARRIGG~~ performance well below the professional standard and cause prejudice to the defendant, Counsel violated the rules of Lawyer Conduct. (Rule 1.2 Rule 1.3 Rule 1.4 Rule 3.1 Rule 3.3 Rule 8.4) If Counsel would have properly and adequately did the following...

1) informed client regarding all facts and circumstances of the case 2) investigated all evidence 3) submitted a motion to have the judge removed from case in the early stages do to the fact of daughter father relationship. 4) subpoena witness to court

Clearly the outcome of the case would have been different. The defendant has shown that counsels performance was ineffective and caused prejudice to the defendant and have met the two prong test when applied to

Strickland v. Washington

## Constitutional violation

FILED

Page 1

2009 OCT -8 P 1:42

Entering a guilty plea in a waiver of several constitutional rights and therefore the due process clause requires that guilty pleas are entered into voluntarily, knowingly and intelligently by defendants

Criminal Law 273 (5)

Defendants guilty plea was neither voluntary nor known; trial judge did not affirmatively ask defendant for an admission of guilty; judge did not advise defendant of crucial elements of the charged offenses, judge failed to inform defendant that the armed robbery charge carried mandatory minimum sentence of ten years, seven without possibility of parole and defendant did not fully understand nature of the constitutional right being waived in that he had met with his attorney only four times for approximately 15teen minutes each.

## Constitution Violation

Page 2

FILED

2009 OCT -8 P 1:42

BETH A. CARRIGG  
CLERK OF COURT  
JEXINGTON SC

my constitution rights was violated due to the fact that my lawyer ms. Beth-fullwood did not inform me on my rights to a motion reconsider nor inform me to my rights to a P.C.R. my constitution rights was also violated due to the fact ms. fullwood did not put in for a preliminary <sup>hearing to</sup> ~~show~~ and try and prove my innocents before a trial. my constitution rights was also violated due to the fact that my lawyer knew such things as the bias relationship with the judges daughter with than the solicitor office and did not inform me, until the day of my trial. my constitution rights was also violated due to the fact that ms. fullwood did not put in the amount of time that was needed on my case - w. as a lawyer it's her job to keep me safe and to make sure my rights are not violated

→  
PLEASE  
SEE  
CLERK

in no way, and as a client of  
ms. fullwood I feel and know she did  
not do so.

## Constitutional violation

Page 3

FILED

2009 OCT -8 P 1:42

my constitutional rights were violated  
 do to the fact that I <sup>BETH A. GARRIGUE</sup> <sup>CLERK OF COURT</sup> <sup>LEXINGTON</sup> served a  
 notices to seek a life sentence w/o  
 parole do to my prior convkion which  
 is Distribution of crack within 1/2 mile  
 Proximity of school 2005 GS-32-3805

- N -

Distribution of crack within 1/2 mile  
 proximity of school 2005 GS-32-3806

which by law you have to have  
 three (3) of the same charges to be  
 given a life sentence and as a client  
 I feel my laywer should have told the Judge  
 that, thats a violation of my constitutional  
 rights, and as a Judge of the law  
 he should have ruled against that.

337 SC 597 "Constitutional violation"  
 Timothy James pitman

v.

state of south carolina

No. 25025

## Involuntary Guilty Plea

FILED

Pg=1

my plea was involuntary nor knowing do  
 to the basis relationship with the Judges  
 daughter with in the Clerk of Court's office, which  
 I should have been aware of before  
 trial instead of the day of my trial.

Defendant only completed the 7<sup>th</sup> grade  
 and was not in no predicament to  
 make and intelligent decision which  
 my lawyer Beth Followed was aware  
 of both defendant, mental health  
 condition and education level. my

plea was also involuntary because  
 I was under the influence that if I  
 didn't take a plea I would be given  
 life w/o parole which in my case I was  
 forced to take a plea. my lawyer  
 Beth Followed stated that I did not  
 have a good chance at winning this  
 case for very reasons such as, I  
 had two(2) codefendants that was  
 willing to testify against me and  
 there word would stand up in court  
 because they didn't have a criminal  
 history and that nine(9) times out of  
 ten(10) the Judge would rule in

## INVOLUNTARY Guilty Plea

FILED

pg 2

favor of the solicitor, and even after defendant kept telling lawyer Beth Followood the crime at hand he took no part of from day one, and also gave lawyer and [REDACTED] alibi that would have been very much helpfull to my case, still Beth Followood made it be known that I did not need to go to trail.

Criminal Law 273.

Defendants guilty plea was neither voluntary nor knowing; Judge failed to inform defendant that the armed robbery charge carried mandatory minimum sentence of ten(10) years, seven(7) w/o possibility of parole and defendant did not fully understand nature of the Constitutional rights being waived in that he had met with his attorney only Three or four times for approximately 15 teen minutes each time if that.

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | ELEVENTH JUDICIAL CIRCUIT    |
| COUNTY OF LEXINGTON      | ) |                              |
|                          | ) |                              |
|                          | ) | 2009-CP-32-4560              |
| Rico Hickman, #297987,   | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| v.                       | ) | RETURN AND REQUEST FOR       |
|                          | ) | APPOINTMENT OF COUNSEL       |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
| Respondent.              | ) |                              |
|                          | ) |                              |

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 8, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the August 2008 term of the Lexington County Grand Jury for Assault and Battery with Intent to Kill (2008-GS-32-2864), and Armed Robbery While Armed with a Deadly Weapon (2008-GS-32-2867). Applicant was represented by Elizabeth Fullwood, Esquire, and Bennett E. Casto, Esquire. On January 28, 2008, the Applicant pled guilty as charged. He was sentenced by the Honorable R. Knox McMahon to confinement for a period of twenty-five (25) years for armed robbery, and a concurrent period of twenty (20) years for assault and battery with intent to kill. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

## II.

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

a. Ineffective Assistance of Counsel

- i. "Counsel failed to inform me of my rights to appeal."
- ii. "Counsel failed to file motion for appeal."
- iii. "Counsel was ineffective because she did not successful try and get in touch with my witness to show up in court on my behalf..."
- iv. "DNA analysis was submitted to the SLED forensic services laboratory which came back negative on my behalf, but seemed as if it was looked over."
- v. Not enough time put in on the case.
- vi. Did not object to improper relationship between judge and his daughter, who had worked for the solicitor's office.

b. Involuntary Guilty Plea

## III.

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

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

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

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

#### IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a

direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known. Id. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### V.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.

Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

## VII.

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

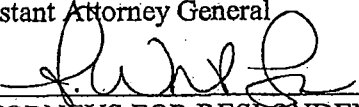
Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

A. WEST LEE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

January 7, 2010

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
 COUNTY OF LEXINGTON )

Rico Hickman, )  
 )  
 )  
 PLAINTIFF, ) PCR HEARING  
 ) 2009-CP-32-01279  
 )  
 -VS- )  
 )  
 State of South Carolina, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

BEFORE THE HONORABLE R. LAWTON McINTOSH, JUDGE

FEBRUARY 3, 2011

LEXINGTON, SOUTH CAROLINA

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

Ryan McCabe, Esq.  
 For the Applicant

A. West Lee, Esq.  
 For the State

REMA K. GANTT THOMAS  
 CIRCUIT COURT REPORTER

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## E X H I B I T S

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Plaintiff's Exhibit Number One, Tattoo Symbol. . 15

1 (The defendant, together  
2 with counsel, was personally present in the  
3 courtroom.)

4 MR. LEE: May it please the Court, Your  
5 Honor?

6 THE COURT: Yes, sir.

7 MR. LEE: This is the case of Rico Hickman  
8 versus the State of South Carolina. It's 2009-CP-  
9 32-4560, and it comes to the Court by way of  
10 application for post-conviction relief filed October  
11 8, 2009.

12 The applicant was indicted at the  
13 August 2008 term of the Lexington County Grand Jury  
14 for assault and battery with intent to kill and  
15 armed robbery while armed with a deadly weapon. The  
16 applicant was represented by Ms. Beth Fullwood and  
17 Bennett Casto.

18 And on January 28, 2008, the  
19 applicant pled guilty as charged. He was sentenced  
20 by the Honorable Knox McMahon to confinement for a  
21 period of 25 years for armed robbery and a  
22 concurrent period of 20 years for assault and  
23 battery with intent to kill.

24 The applicant did not appeal his  
25 conviction or sentence. In his current application,

1 the applicant alleges he's being held in custody  
2 unlawfully for the following reasons: ineffective  
3 assistance of counsel -- specifically, he makes  
4 claims that "Counsel failed to inform me of my right  
5 to appeal.

6 "Counsel failed to file a motion for  
7 appeal. Counsel was ineffective because she did not  
8 successfully try to get in touch with my witness to  
9 show up on my behalf. DNA analysis was submitted to  
10 SLED Forensic Services Laboratory, which came back  
11 negative on my behalf but seemed as if it was looked  
12 over.

13 "Not enough time put in on the case.  
14 Did not object to improper relationship between  
15 Judge and his daughter, who had worked for the  
16 Solicitor's Office." And that's all of the  
17 ineffective assistance of counsel claims.

18 And then there's also a claim made  
19 for involuntary guilty plea. At this time, I will  
20 turn it over to the applicant's attorney, Mr. Ryan  
21 McCabe, to expand on his claims.

22 THE COURT: Mr. McCabe?

23 MR. McCABE: May it please the Court, Ryan  
24 McCabe with Rogers, Jones, and Thomas. I represent  
25 Mr. Hickman. Judge, at the outset, what I'd like to

7

1 do is request a continuance. My client would like  
2 some additional time to converse with some of the  
3 witnesses. And so on that basis, I would ask for a  
4 continuance.

5 THE COURT: What do you hope to obtain  
6 from these witnesses that you haven't had in the  
7 last year to year and a half?

8 MR. McCABE: I think he would like the  
9 opportunity to further discuss some of the merits of  
10 his case. I'm not at liberty to discuss the  
11 details. But there are some issues that he would  
12 like to further discuss with some of his witnesses.

13 THE COURT: At this point, this case has  
14 been pending since October of 2009, is that correct?

15 MR. LEE: The application was filed in  
16 October of 2009, yes, Your Honor.

17 THE COURT: There was more than ample time  
18 to cover those bases up to this point, so I'm going  
19 to deny your motion. But I'm going to note your  
20 objection for the record, Mr. McCabe.

21 MR. McCABE: Yes, Your Honor. I would  
22 call Mr. Hickman.

23 (The witness was sworn.)

24 CLERK OF COURT: Have a seat, please, sir.

25 RICO HICKMAN, having first been duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. McCABE:

4 Q Mr. Hickman, will you state your name for  
5 the record?

6 A Rico Hickman.

7 Q Okay. What's the highest level of  
8 education you've achieved?

9 A Eighth grade.

10 Q Okay. Did you file a petition for post-  
11 conviction relief?

12 A Yes, sir.

13 Q Okay. Why did you file a petition for  
14 post-conviction relief?

15 A Because my lawyer, Ms. Fullwood, was  
16 ineffective.

17 Q Okay. And did you lay out the basis for  
18 that position in your petition?

19 A Yes, sir.

20 Q Okay. Why did you plead guilty?

21 A Because I was advised by Ms. Fullwood that  
22 if I was to go on with the trial, I'd be convicted  
23 and probably be given a life sentence.

24 Q Okay. Did you tell her that you were  
25 responsible for the crimes that you were charged

Rico Hickman - Direct

9

1 with?

2 A Would you say it again?

3 Q Sure. Did you tell Ms. Fullwood that you  
4 were guilty?

5 A Did I tell her that I was guilty in the  
6 beginning stage? No, I didn't tell her. I told her  
7 I was innocent.

8 Q Okay. And at some point in time, did you  
9 meet with her to prepare for your trial?

10 A Ms. Fullwood came to visit me like maybe  
11 two times, two or three times.

12 Q Okay. And how much time did you -- how  
13 much notice did you receive before your case was  
14 actually called for trial?

15 A It wasn't really no notice. It was like  
16 on me to give a plea or a court trial.

17 Q Okay. And did you provide Ms. Fullwood  
18 with a list of witnesses to call for your case?

19 A Yes, sir.

20 Q Okay. And did you provide her with an  
21 alibi?

22 A Yes, sir.

23 Q Okay. And who is the alibi that you  
24 provided?

1 A Takemia Wilson.

2 THE COURT: Who was that?

3 MR. HICKMAN: Takemia Wilson.

4 Q Is that spelled T-A-K-E-M-I-A?

5 A Yes, sir.

6 Q Okay. Did you know the whereabouts of Ms.  
7 Wilson during the time frame that you were getting  
8 ready for trial?

9 A Yes, sir.

10 Q Okay. Did you see Ms. Wilson in the days  
11 leading up to your trial?

12 A Yes, sir.

13 Q Okay. Was she called and asked to appear  
14 for your trial?

15 A Did I call her, did I tell her to be up,  
16 or did Ms. Fullwood?

17 Q Correct. Did Ms. Fullwood?

18 A No, sir.

19 Q Okay. Were you in a gang at the time of  
20 your trial?

21 A Yes, sir.

22 Q Okay. What's the name of that gang?

23 A Bloods.

24 Q Okay. You understand that there were two

Rico Hickman - Direct

11

1 fellows that were providing testimony -- that were  
2 going to provide testimony at your trial, saying  
3 that you were involved in the robbery?

4 A Yes, sir.

5 Q Okay. Do you know those fellows?

6 A Yes, sir.

7 Q What are their names?

8 A Omar Rumph and Garrick Broadnax.

9 Q Okay. And that Garrick Broadnax?

10 A Yes, sir.

11 Q G-A-R-R-I-C-K Broadnax -- B-R-O-A-D-N-A-X.

12 How do you know Mr. Broadnax?

13 A I don't really know Broadnax, but that's  
14 Omar's friend, I guess. And we never had no  
15 dealings with one another, but I used to go with  
16 Omar's sister, Santanna, and that's the way I would  
17 see him every now and again.

18 Q Did you and Mr. Omar Rumph -- R-U-M-P-H --  
19 have an antagonistic relationship, or should I say  
20 were you enemies?

21 A You can say that, yes, sir.

22 Q Okay. What about you and Mr. Broadnax?

23 A Me and Mr. Broadnax was rivals.

24 Q Okay. Was Mr. Broadnax in a rival gang?

1           A     Yes, sir.

2           Q     Okay. What's the name of the gang that  
3     Mr. Broadnax is in?

4           A     Folks. He is in Folk, part of the Folk  
5     Nation.

6           Q     Okay. On January 17, 2008, did you have a  
7     run-in with Mr. Rumph and Mr. Broadnax?

8           A     Yes, sir.

9           Q     Okay. And tell the Court about that  
10    interaction.

11          A     I was with Santanna, Omar's sister, and he  
12    was there that day.

13          Q     Okay. Were you having a cordial  
14    conversation, or did you have a disagreement?

15          A     No, sir, we didn't have no conversation or  
16    any disagreement.

17          Q     Did you ever interact with him socially?

18          A     No, sir.

19          Q     Would you interact with him socially?

20          A     No, sir.

21          Q     Would you interact with somebody in --  
22    what gang did you say Mr. Broadnax was in?

23          A     Folk Nation.

24          Q     Okay. And that's F-O-L-K?

Rico Hickman - Direct

13

1           A     Yes, sir.

2           Q     And do Folk Nation and the Bloods ever  
3     interact?

4           A     No, sir.

5           Q     You're rival gangs?

6           A     Yes, sir.

7           Q     Okay. Did you advise Ms. Fullwood of  
8     that?

9           A     Yes, sir.

10          Q     Okay. And the only evidence, to your  
11     knowledge, that was ever presented was that there  
12     were two witnesses, these rival gang members who  
13     said that you were the third person involved in the  
14     robbery at the pawn shop?

15          A     Yes, sir.

16          Q     Were you involved in the robbery with Mr.  
17     Broadnax and Mr. Rumph?

18          A     No, sir.

19          Q     Then why did you plead guilty?

20          A     My lawyer, Ms. Fullwood, advised me that  
21     it would be in my best interest to plead guilty.

22          Q     Well, you had already picked a jury. Why  
23     didn't you go ahead and proceed with your jury  
24     trial?

1           A     Ms. Fullwood told me if I was to go on, I  
2     would receive a life sentence.

3           Q     Okay. Well, did you tell her you -- did  
4     she have your witnesses ready to go?

5           A     No, sir.

6           Q     Did you have a conversation about her as  
7     to whether or not she would have your witnesses  
8     ready for trial?

9           A     Yes, sir.

10          Q     And what did she say?

11          A     She said that she was sorry and that she  
12     didn't get in contact with them.

13          Q     Were you aware of an exchange that  
14     occurred on the record where she asked for a  
15     continuance?

16          A     Yes, sir.

17          Q     And do you recall the basis for her  
18     request for a continuance?

19          A     I can't recall it right off-hand.

20          Q     Well, did she ask for a continuance  
21     because she wasn't ready?

22          A     Yes, she asked for a continuance because  
23     she wasn't prepared for a trial.

24          Q     Okay. And did that have anything to do

Rico Hickman - Direct

15

1 with she didn't have an opportunity to interview the  
2 State's witnesses?

3 A Yes, sir.

4 Q And your testimony is that she didn't have  
5 an opportunity to interview your witnesses either,  
6 correct?

7 A Yes, sir.

8 Q Okay. How often was Ms. Wilson visiting  
9 you at the Lexington County Detention Center before  
10 your trial?

11 A Sometimes twice a week.

12 Q Okay. Did you have her phone number?

13 A Yes, sir.

14 Q Did you provide that to Ms. Fullwood?

15 A Yes, sir.

16 Q Did you ask her to get in touch with your  
17 alibi?

18 A Yes, sir.

19 Q And I think I asked you this, and I ask  
20 the Court's forgiveness if I did. You did tell her  
21 that they were involved in a rival gang?

22 A Yes, sir.

23 Q Will you show your -- will you show the  
24 Court your tattoo?

1           A     You mean show the Judge?  
2           Q     Please.  
3           A     Sure.  
4           Q     What does that symbolize?  
5           A     That symbolizes that I'm a Blood.  
6           Q     How long have you had that tattoo?  
7           A     For a long time, about five years -- five  
8     or six years.  
9           Q     You had it on January 17, 2008?  
10          A     Yes, sir.  
11          Q     You've seen Mr. Broadnax before?  
12          A     Yes, sir.  
13          Q     Does he have gang tattoos?  
14          A     Yes, sir.  
15          Q     Okay.  
16                MR. McCABE: May I approach, Judge?  
17                THE COURT: Yes, sir.  
18                MR. McCABE: Can I mark this?  
19                COURT REPORTER: Sure.  
20                MR. McCABE: Thank you.  
21                COURT REPORTER: You're welcome.  
22          Q     I'm showing you what's marked as  
23     Plaintiff's Exhibit Number One. It's a depiction of  
24     a symbol. What is that?

Rico Hickman - Direct

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1           A     That's a six-point star. It's a sign for  
2     Folks.

3           Q     Does Mr. Broadnax have one of these?

4           A     Yes, sir.

5           Q     Okay.

6                     MR. McCABE: Do you object to me getting  
7     this in?

8                     MR. LEE: No.

9                     MR. McCABE: Judge, I'd like to move this  
10    into evidence as Exhibit Number One.

11                    THE COURT: Admitted without objection.

12                                   (Plaintiff's Exhibit Number  
13    One, Tattoo Symbol, was entered in evidence.)

14           Q     Okay. On the day of the trial, is it fair  
15    to say you struck a jury -- is it?

16           A     Sir?

17           Q     Did you strike a jury?

18           A     My lawyer struck a jury, yes, sir.

19           Q     Okay. And did the Judge order the  
20    Solicitor to produce some witnesses?

21           A     I can't remember.

22           Q     Okay. Do you -- did the Judge recess the  
23    case after the jury was struck?

24           A     Yes, sir.

1           Q     Okay. What happened the rest of that day,  
2     or what happened after that? That's January 27,  
3     2009.

4           A     After the recess, I think it was Ms.  
5     Fullwood talked to me about going ahead and  
6     pleading. And she was telling me it was really in  
7     my best interest to plead.

8           Q     Did you tell her you didn't want to plead?

9           A     Did I tell her that I didn't want to  
10    plead?

11          Q     Yes, sir.

12          A     In the beginning stage, I told her I  
13    didn't want to plead.

14          Q     Okay. And at some point, you changed your  
15    mind?

16          A     Yes, sir.

17          Q     And when was that, before or after the  
18    jury was struck?

19          A     That was after the jury was struck.

20          Q     Okay. And why did you change your mind  
21    after the jury was struck?

22          A     Because Ms. Fullwood advised me that if I  
23    was to go on, it was likely I would receive a life  
24    sentence.

Rico Hickman - Direct

19

1           Q     Well, what changed in your case the week  
2 before trial and after you selected a jury?

3           A     I'm not sure.

4           Q     Okay. Did you have your witnesses?

5           A     No, sir.

6           Q     If your alibi would have been present on  
7 January the 27th, would you have pled guilty?

8           A     No, sir.

9           Q     All right. Please answer Mr. Lee's  
10 questions.

11                               CROSS-EXAMINATION

12 BY MR. LEE:

13           Q     Did you ever tell Ms. Fullwood that you  
14 were in fact guilty of the crime?

15           A     Did I ever tell her that I was in fact  
16 guilty of the crime?

17           Q     Yes. You stated that you told her at  
18 first that you were innocent. Does that mean at  
19 some point you told her you were guilty?

20           A     Yes, sir.

21           Q     Okay. Now, a couple of quick questions  
22 from the guilty plea transcript.

23           A     I only told her I was guilty because she  
24 advised me to plead guilty.

1           Q     Well, that would be why you told her.  
2     That's why -- never mind. Do you remember telling  
3     the Court that you did commit the offense of assault  
4     and battery with intent to kill?

5           A     Say that again?

6           Q     At the time of the guilty plea hearing,  
7     when the Court asked you if you committed the  
8     offense of assault and battery with intent to kill,  
9     do you recall saying yes?

10          A     Yes, sir.

11          Q     And do you recall -- when they asked you,  
12     "Did you commit the offense of armed robbery?" do  
13     you recall saying yes?

14          A     Yes, sir.

15          Q     And do you recall the Court asking you if  
16     anyone promised you anything or threatened you in  
17     any way to get you to plead guilty, and your saying  
18     no?

19          A     Yes, sir.

20          Q     Okay. Do you recall the Court asking if  
21     you were pleading guilty of your own freewill and  
22     accord, and your saying yes?

23          A     Yes, sir.

24          Q     And do you recall the Court asking if you  
25     were totally and completely satisfied with your

Rico Hickman - Cross

21

1 lawyer's services, and your saying yes?

2 A Yes, sir.

3 Q Okay, thank you. That would be all my  
4 questions.

5 THE COURT: Redirect?

6 MR. McCABE: Just to clarify two points.

7 REDIRECT EXAMINATION

8 BY MR. McCABE:

9 Q When you said you acknowledged being  
10 guilty, were you talking about as part of the guilty  
11 plea?

12 A Sir?

13 Q He asked you if you said at some point  
14 that you were guilty. Are you talking about you  
15 admitted that you were involved in the robbery, or  
16 are you saying that admitted and pled guilty for  
17 your plea agreement?

18 A For the plea agreement.

19 Q Okay. Is there anything else you'd like  
20 to add related to your PCR application? Here is  
21 your chance.

22 A Well, I'd just like to say I feel if Ms.  
23 Fullwood had done her job and been more prepared, I  
24 would have proceeded with the trial of doing it.  
25 But since she wasn't, I kind of felt that hindered

1 me. And if I would have went on the trial, she  
2 wouldn't have been prepared. She could have done  
3 more damage and harm.

4 Q Is there any other issues you want to  
5 raise, any other grounds that you believe you should  
6 raise? This is your last opportunity.

7 MR. LEE: Your Honor, the State would just  
8 note for the record its objection that any  
9 additional allegations at this point would be non-  
10 responsive to cross.

11 THE COURT: Overruled. Go ahead.

12 A Is it all right to go on?

13 Q Yes, sir, you can answer.

14 A It's something about this assault and  
15 battery with intent to kill charge. I didn't commit  
16 the crime, but I was still -- they charged me with  
17 assault and battery with intent to kill, and it  
18 clearly shows in the transcript who the shooter was.

19 And it's other things that the witness,  
20 which they was saying they seen another person or  
21 two people flee into the woods. No one can describe  
22 me as the third person.

23 Q Okay. Anything else?

24 A No, sir.

25 Q Okay, thank you.

Rico Hickman - Redirect

23

1 THE COURT: You may step down, sir.

2 Any additional witnesses, Mr. McCabe?

3 MR. McCABE: Yes, sir. I'd like to call  
4 Ms. Takemia Wilson.

5 (The witness was sworn.)

6 CLERK OF COURT: State your full name  
7 after you're seated.

8 MS. WILSON: Takemia Wilson.

9 COURT REPORTER: Can you spell it?

10 MS. WILSON: T-A-K-E-M-I-A.

11 TAKEMIA WILSON, having first been  
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. McCABE:

15 Q Where do you live, Ms. Wilson?

16 A I live in Hickory Grove, South Carolina.

17 Q Okay. That's near Rock Hill?

18 A Uh-huh.

19 Q Okay. How do you know Mr. Hickman?

20 A He was my boyfriend.

21 Q Okay. Are you dating Mr. Hickman  
22 currently?

23 A No, sir.

24 Q Have you dated him since he was  
25 incarcerated?

1           A     Have I dated him since he's been in jail?

2           Q     Yes, ma'am.

3           A     No, sir.

4           Q     Okay. Do you know Mr. Broadnax?

5           A     No, sir.

6           Q     Okay. Do you know Mr. Rumph?

7           A     Yes, sir.

8           Q     Okay. Do you recall where you were on  
9     January 17, 2008?

10          A     Most likely. I think I was with Rico,  
11     because I used to always want to be with him. And  
12     if he wasn't with me, you know, I'd be mad. I'd  
13     wonder where he's at. So --

14                THE COURT: Just one second. You said  
15     "most likely"?

16                MS. WILSON: Yes.

17          Q     Do you believe that you were with him on  
18     January 17, 2008?

19          A     Yes, sir.

20          Q     Where do you believe you were with Mr.  
21     Hickman?

22          A     At Executive Inn in West Columbia.

23          Q     Okay. And would you have checked out a  
24     room in your name or under Mr. Hickman's name?

25          A     It probably would have been a friend,

Takemia Wilson - Direct

25

1       because I wasn't able to get a room in my name.

2               Q       How old were you at the time?

3               A       I was 17, and I turned 18 February, that  
4       next month.

5               Q       And did Mr. Hickman ever check out rooms  
6       in his name?

7               A       No, sir.

8               Q       Why didn't he?

9               A       I'm not sure.

10              Q       Did you understand that he had an issue  
11       with an ID?

12              A       He didn't have an ID. That's why we had  
13       somebody else put it in their name.

14              Q       Okay. Did you ever receive a phone call  
15       from Ms. Fullwood?

16              A       No, sir.

17              Q       Did you ever receive a phone call from  
18       anyone from the Public Defender's Office?

19              A       The only phone call that I got about it  
20       was from you. You're the only one I've talked to  
21       about this situation.

22              Q       But I mean back in 2009 -- January 2009?

23              A       No, sir.

24              Q       Did anyone call you and interview you  
25       about an alibi witness?

1           A     No, sir.

2           Q     Would your memory have been better a year  
3     ago?

4           A     Yes, sir.

5           Q     Okay. So you were recently asked to go  
6     back and recall where you were January 17, 2008?  
7     You have to speak for the record.

8           A     Oh, yes, sir.

9           Q     Okay. And had somebody interviewed you  
10    two years ago, you think you'd be in a better  
11    position?

12          A     Yes, sir.

13          Q     Is it your sincere belief that you were  
14    with him that night, based on your best  
15    recollection?

16          A     Yes, sir.

17          Q     Were you visiting Mr. Hickman about twice  
18    a week or so, roughly, while he was at Lexington  
19    Detention Center?

20          A     Yes, sir.

21          Q     Did you discuss the case with him in  
22    regard to being an alibi during that time frame?

23          A     No, we talked like we talked about him  
24    getting locked up. But I didn't know about no rival  
25    gang or nothing like that.

Takemia Wilson - Direct

27

1 Q And up until the time he was arrested,  
2 were you spending every night with him?

3 A Like every other day, yes, sir.

4 Q And y'all were staying together?

5 A Uh-huh.

6 Q Okay, thank you. Please answer Mr. Lee's  
7 questions.

8 A All right.

9 MR. LEE: I just have a couple.

10 CROSS-EXAMINATION

11 BY MR. LEE:

12 Q Ms. Wilson, you stated that you believe  
13 that you were most likely with the applicant on that  
14 date?

15 A Yes, sir.

16 Q Okay. And you believe that you were with  
17 him at the Executive Inn, is that right?

18 A Yes, sir.

19 Q Were you with him --

20 A That's the only room we would go to, is  
21 the Executive Inn.

22 Q Okay. But you wouldn't have any receipts  
23 or anything to prove it because it would have been  
24 under someone else's name?

25 A Yes, sir.

1 Q That would be all my questions, thanks.

2 THE COURT: Thank you.

3 Redirect?

4 MR. McCABE: No further questions, thank  
5 you.

6 THE COURT: You may step down. Thank you,  
7 ma'am.

8 Any additional witnesses?

9 MR. McCABE: Judge, may I have just 30  
10 seconds to talk to a witness?

11 THE COURT: Yes, sir.

12 MR. McCABE: I'm sorry.

13 Judge, I'd call Ms. Trina Hickman --  
14 T-R-I-N-A. Hickman is spelled the same as the  
15 defendant.

16 COURT REPORTER: Thank you.

17 (The witness was sworn.)

18 CLERK OF COURT: Have a seat and state  
19 your full name when you're seated.

20 TRINA HICKMAN, having first been duly  
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. McCABE:

24 Q State your name for the record, please.

25 A Trina Hickman.

Trina Hickman - Direct

29

- 1 Q Where do you reside?
- 2 A 448 Lystern Lane.
- 3 Q Okay.
- 4 COURT REPORTER: 448 what?
- 5 MS. HICKMAN: Lystern Lane.
- 6 Q Misty Lane?
- 7 A Lystern -- L-Y-S-T-E-R-N.
- 8 MR. McCABE: You got it?
- 9 COURT REPORTER: Thank you.
- 10 Q Do you recall the January 2008 time frame?
- 11 A Yes.
- 12 Q Do you recall the January 2009 time frame?
- 13 A Yes.
- 14 Q Did anyone call you from the Public
- 15 Defender's Office and ask you to round up witnesses?
- 16 A No, sir.
- 17 Q Did anybody call you from the Public
- 18 Defender's Office and ask you any questions or
- 19 interview you in any way?
- 20 A No, sir.
- 21 Q Okay. Did you know the whereabouts of Ms.
- 22 Wilson in January 2009?
- 23 A Takemia?
- 24 Q Yes.
- 25 A She'd usually be with my boy all the time.

1           Q     All right. In 2008, a year later, at the  
2     time of trial, January 2009, did you know the  
3     whereabouts? Did you have a way to locate Ms.  
4     Wilson?

5           A     No more than she would come to my house  
6     and stay with my son and I.

7           Q     Did anybody ask you to look for Ms.  
8     Wilson?

9           A     Oh, no, no. No, nobody but you.

10          Q     Okay. Has anybody ever called you up to  
11     the trial?

12          A     No.

13          Q     Okay, thank you. Please answer Mr. Lee's  
14     questions.

15                THE COURT: Mr. Lee?

16                MR. LEE: No questions for this witness,  
17     Your Honor.

18                THE COURT: Thank you, ma'am. You may  
19     step down.

20                MR. McCABE: No further witnesses.

21                MR. LEE: Your Honor, the State would call  
22     Beth Fullwood to the stand.

23                       (The witness was sworn.)

24                CLERK OF COURT: Have a seat and state  
25     your full name when you're comfortably seated.

Trina Hickman - Direct

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1                   MS. FULLWOOD: Elizabeth Fullwood -- F-U-  
2                   L-L-W-O-O-D.

3                   ELIZABETH FULLWOOD, having first been  
4                   duly sworn, testified as follows:

5                   DIRECT EXAMINATION

6                   BY MR. LEE:

7                   Q     Ms. Fullwood, where do you work?

8                   A     The Eleventh Circuit Defender's Office.

9                   Q     And were you employed with the Eleventh  
10                  Circuit Defender's Office at the time of this case?

11                  A     Yes.

12                  Q     Were you appointed to this case as part of  
13                  your duties with the Public Defender's Office?

14                  A     The office was initially appointed to  
15                  represent Mr. Hickman sometime in February of 2008  
16                  for an unrelated assault with intent to kill and  
17                  pointing and presenting a firearm. That was due to  
18                  a fight he had had with a man over Takemia Wilson,  
19                  who had been dating other fellows.

20                  Q     And so I guess when this charge came up,  
21                  it just -- you guys just kept representing him?

22                  A     That's right. Those new charges came up  
23                  in May of the same year.

24                  Q     And so during the course of your  
25                  representation, after these charges came down

1       against Mr. Hickman, did you have occasion to meet  
2       with him about those charges?

3           A     I did.

4           Q     Do you recall about how many times you may  
5       have met with him?

6           A     Yes, I met with him concerning these  
7       charges -- let's see. We got discovery October 8,  
8       2008. I met with him October 9, December 2,  
9       December 5, December 8, January 6, January 21, 2009.

10          Q     Okay. And during these meetings, were you  
11       able to get the applicant's version of the events?

12          A     Yes.

13          Q     And I assume, based on the record before  
14       the Court, that at least initially you were planning  
15       to go to trial with this case?

16          A     That's correct.

17          Q     Okay. And so I take it the applicant's  
18       initial position was that he was innocent of the  
19       charges?

20          A     That's correct.

21          Q     So during your meetings with the  
22       applicant, did he provide you with any additional --  
23       I don't want to say additional -- did he provide you  
24       with any defenses for you to investigate on his  
25       behalf?

Elizabeth Fullwood - Direct

33

1           A     Yes. He told me that at the approximate  
2     time that the robbery had occurred that he had gone  
3     late in the afternoon of that day to see his  
4     probation officer, Mr. Riser, in Columbia. And he  
5     was at the office until about 20 minutes till 5:00.

6                 He said he was with his girlfriend. He  
7     told us the name of his girlfriend was Alexis McCoy.  
8     He said from there, they drove to his mom's house at  
9     448 Lystern Lane in Columbia and stayed there.

10                It would have been impossible for him to  
11    have gotten from the Probation Office to the  
12    location of the robbery in Lexington County due to  
13    the time frame.

14           Q     And did you investigate this defense?

15           A     We did. My paralegal talked to Mr. Riser  
16    on October 16, 2008. He said that Mr. Hickman had  
17    come into his office that day, and it was about 9:30  
18    in the morning. We subpoenaed those records, and  
19    they did have a record of him reporting that day at  
20    10:00 a.m. So that did not pan out.

21                My paralegal called Trina Hickman on  
22    October the 17th to get Alexis McCoy's telephone  
23    number. According to Mr. Hickman, she would have  
24    contact information for that woman. She wasn't able  
25    to get it at that time.

1                   She called her again on October 20, 2008,  
2           trying to get the phone number and was not able to  
3           get it.

4           Q     So you were never able to get in touch  
5           with Ms. McCoy?

6           A     No. And in any event, the time frame was  
7           off, because it turned out that he was in the  
8           Probation Office much earlier than he initially told  
9           me.

10          Q     So you took steps to investigate this  
11         potential defense but found that it wasn't  
12         necessarily viable?

13          A     That's correct.

14          Q     And did he provide you with any additional  
15         witnesses to interview in this case?

16          A     No, he did not -- none whatsoever.

17          Q     He never provided you with the name of  
18         Takemia Wilson?

19          A     Never. The only time we talked about Ms.  
20         Wilson was in relation to the assault and battery  
21         with intent to kill charge that ended up being  
22         dismissed as part of these plea negotiations.

23          Q     So have you ever heard that Ms. Wilson  
24         might be able to provide an alibi witness and  
25         comport to that?

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1           A     Not at all. Her name does not appear in  
2     any of these notes.

3           Q     Now, at what point did you shift gears to  
4     a guilty plea, then?

5           A     After I had talked to -- well, I wasn't  
6     taking notes during the trial of the case as far as  
7     my conversations with Mr. Hickman. I had gotten  
8     ready for trial to the extent that I could.

9                 I talked to Mr. Jackson about the place,  
10    and saw the layout, and saw where things were, and  
11    looked into the background of Broadnax and this  
12    other fellow, and closely examined conflicting  
13    statements they'd given about this event to impeach  
14    them, because that was going to be, of course, the  
15    key to defending this case, is impeaching these  
16    alleged co-defendants.

17                I think he's probably right. I think we  
18    probably did have a conversation after our pre-trial  
19    motions that first day of trial. I got Mr. Wedekind  
20    to agree to take the LWOP off the table and allow  
21    him to plead for something less than a life  
22    sentence, and I'm sure we discussed this.

23                I do recall coming to the courthouse very  
24    early the next morning and talking to these  
25    witnesses whose contact information I was only given

1 the Friday before the start of the trial.

2 They did not have anything that would be  
3 helpful insofar as defending the case. And that's  
4 what happened. Mr. Hickman decided he would rather  
5 than plead than risk receiving life without parole.

6 Q And so, if I'm hearing you correctly,  
7 you're saying it was Mr. Hickman's decision to plead  
8 guilty in this case?

9 A That's right.

10 Q Let me just back up a little bit here.  
11 You read off the number of times that you met  
12 before, but it was Mr. Hickman's testimony that you  
13 only met two to three times. Would you say that you  
14 met more than that?

15 A Yes.

16 Q And you did file for I assume -- excuse  
17 me. Did you file a Rule 5 Brady motion in this  
18 case?

19 A I did.

20 Q And the State's evidence, did you review  
21 that discovery with the applicant?

22 A Yes, I did. Let's see -- according to my  
23 notes, we discussed the evidence against him  
24 December 2, 2008; December 12, 2008; December 8,  
25 2008; January 6, 2009.

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1                   And in fact, at that time, we along Mr.  
2     Hickman, he and I listened to the tape of a police  
3     officer's interview with the co-defendant Broadnax,  
4     and discussed about his mother coming to trial, and  
5     discussed the remaining evidence. We talked about  
6     the evidence January 21, 2009, also.

7           Q     Okay. Now, you mentioned these statements  
8     made by the co-defendants. Was there any additional  
9     evidence against the applicant in this case?

10          A     No.

11          Q     Okay. So it would be fair to say that the  
12     credibility of these co-defendants was pretty  
13     important?

14          A     That's right.

15          Q     Okay. So had you gone to trial, what was  
16     your strategy on impeaching them?

17          A     Well, they had given statements where they  
18     didn't mention him as being a co-defendant. They  
19     had given conflicting statements, and we were going  
20     to go over every conflicting item, word for word,  
21     and, you know, one, two, three, four, five, six.

22          Q     So you had a strategy for impeaching them  
23     had you gone to trial?

24          A     That's right.

25          Q     So, again, whose decision was it to plead

1 guilty?

2 A Mr. Hickman's.

3 Q Okay. And did Mr. Hickman ever inform you  
4 about the gang membership of him versus I guess one  
5 of the other co-defendants?

6 A No, he never said anything about gangs.  
7 What he told me about his relationship with these  
8 men is -- and I'm looking at my notes -- he said he  
9 was not completely innocent in this situation.

10 He said that he had provided something to  
11 these men and had heard them plotting this armed  
12 robbery at the home of someone named -- and Olympia  
13 Milledge. He said that that something that he gave  
14 to them was a gun to do the robbery.

15 I asked him who the third man was. He  
16 told me he knew, but he doesn't want to tell me who  
17 the third man was. He never said that there was bad  
18 blood between him and the co-defendants. He never  
19 said anything about anyone being gang members, let  
20 alone rival gang members.

21 Q And the notes that you just read were  
22 notes taken from your conversations with the  
23 applicant?

24 A That's right.

25 Q Okay. Now, did the applicant have notice

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1       that he was going to trial on the day in question?

2           A     Oh, absolutely. It looks like we'd been  
3       working for close to two months on getting this case  
4       ready for trial. And then next, I also have things  
5       about his mother was going to get clothes and bring  
6       into the office, and things of that nature. So,  
7       yes, he knew that he was having his trial.

8           Q     Now, I guess you engaged in conversations  
9       with the applicant about pleading guilty versus  
10      going to trial, the benefits and drawbacks of both,  
11      correct?

12          A     Right.

13          Q     And did you ever pressure or coerce him  
14      into pleading guilty?

15          A     No.

16          Q     Did you tell him that if he went to trial,  
17      he would definitely get life in prison?

18          A     Yes, because there's the LWOP notice  
19      served on him.

20          Q     Right. Well, that was -- you told him  
21      that was on the table, correct -- that life was a  
22      possibility?

23          A     No. If he was convicted, he was going to  
24      get life without parole. He had been served with  
25      the LWOP notice.

1           Q     Well, certainly, okay. But what I'm  
2     asking is, did you tell him that he would definitely  
3     be convicted if he went to trial and definitely get  
4     life?

5           A     I made sure he knew that if he were  
6     convicted, he was going to get life. But I never  
7     told him he would definitely be convicted, thereby  
8     getting life.

9           Q     That was my only question. So if he had  
10    wanted to proceed to trial, you would have done so,  
11    correct?

12          A     Of course.

13          Q     Did you request a continuance on the day  
14    of trial?

15          A     I believe I did because of some discovery  
16    problems.

17          Q     Do you feel you adequately represented the  
18    applicant in this case?

19          A     I do.

20          Q     That would be all my questions. Please  
21    answer any Mr. McCabe has.

22                 THE COURT: Mr. McCabe?

23                 MR. McCABE: Judge, may I approach and  
24    look at the notes she's looking at?

25                 THE COURT: Did you refer to those notes

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1       when you testified?

2                   MS. FULLWOOD: I did.

3                   THE COURT: Yes, you may.

4                   MR. McCABE: Are these Bates labeled? I  
5       just want to make sure that she and I are looking at  
6       the same notes.

7                   MS. FULLWOOD: Those look like the police  
8       officer's notes.

9                   MR. McCABE: I might get this admitted  
10      into evidence. I just want to make sure they're the  
11      same thing. Thank you, Judge.

12                               CROSS-EXAMINATION

13      BY MR. McCABE:

14               Q     I think you just testified that Mr.  
15      Hickman said that he was innocent up until the day  
16      of the trial. Did you say that he wanted a trial?

17               A     No, I actually testified that he had told  
18      me he was not completely innocent.

19               Q     Did he ever tell you that he robbed the  
20      pawn shop?

21               A     I don't recall, but this was not a  
22      situation that -- where a man was saying "I am  
23      innocent, but I am pleading guilty." I do know  
24      that.

25               Q     Okay. Did you ever call Takemia Wilson?

1           A     No, he never said that she was a witness  
2     that had something to provide in this case.

3           Q     But she was a witness in a case that you'd  
4     had for him there, correct?

5           A     That's right.

6           Q     And there was another matter I think you  
7     testified you were representing him on, and it  
8     involved a fight over Ms. Wilson?

9           A     That's right.

10          Q     Okay. And you were handling those charges  
11     at the same time, correct?

12          A     Right.

13          Q     And you got those charges dropped at some  
14     point as a part of this plea deal?

15          A     That's right.

16          Q     Did you ever call Ms. Wilson while you  
17     were working on that matter?

18          A     No.

19          Q     Okay. Did you ever call -- did you ever  
20     meet with Ms. Hickman?

21          A     No, I did not meet with her.

22          Q     Okay. Do you know who Ms. Hickman is?

23          A     That's his mother, I believe.

24          Q     Okay. Do you have her phone number in  
25     your file?

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1 A Yes.

2 Q What's her phone number?

3 A The first number he gave me was 803-463-  
4 2341. He may have given us at some point a new  
5 number for her.

6 Q Four six three?

7 A Uh-huh -- 2341. I believe he gave us  
8 another number later on.

9 Q Do you have that number?

10 A I do. It is 446-1573.

11 Q And those are your notes --

12 A Uh-huh.

13 Q -- or some notes along that line? That's  
14 a "yes"?

15 A Yes, sorry.

16 Q Do you have Ms. Wilson's number in your  
17 file?

18 A No.

19 Q Okay.

20 MR. McCABE: I hate to ask this question,  
21 but this is a part of the record, the transcript,  
22 correct? Is it marked as an exhibit, or is it just  
23 in the record?

24 THE COURT: It's in the record. It's not  
25 an exhibit. It's part of the record.

1                   MR. McCABE: May I hand her a copy of the  
2 transcript?

3                   THE COURT: You need to lay a proper  
4 foundation to cross-examine --

5                   MR. McCABE: Sure.

6                   THE COURT: -- somebody about that.

7                   MR. McCABE: Sure.

8                   THE COURT: I'll tell you what, let's do  
9 this. Go ahead and give that to her. We're going  
10 to take a morning break now, and we'll break until  
11 about a quarter till twelve. That will give Ms.  
12 Fullwood a chance to look through that.

13                   Ms. Fullwood, you know the rules.  
14 You can't talk to anybody about your testimony.

15                   MS. FULLWOOD: Yes, sir.

16                   THE COURT: We'll be in recess till a  
17 quarter till twelve, please.

18                   MR. McCABE: Thank you.

19                   MR. HICKMAN: Thank you, sir.

20                   MR. LEE: Thank you, Your Honor.

21                   (Court in recess.)

22                   THE COURT: All right, Ms. Fullwood, have  
23 you had a sufficient opportunity to look at that  
24 transcript?

25                   MS. FULLWOOD: Yes, sir.

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1 THE COURT: All right, very good. Will  
2 you come back around, please?

3 MS. FULLWOOD: Yes, sir.

4 THE COURT: All right, Mr. McCabe.

5 MR. McCABE: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 EXAMINATION CONTINUED

8 BY MR. McCABE:

9 Q Did Mr. Broadnax and Mr. Rumph get a plea  
10 deal in exchange for testimony against Mr. Hickman?

11 A I believe they did. I don't recall the  
12 particulars.

13 Q Okay. You wouldn't dispute that if it's  
14 in the transcript?

15 A Not at all.

16 Q Okay. Do you recall -- and you mentioned  
17 this earlier -- Mr. Hickman was in Lexington County  
18 Detention Center on some other charges when he was  
19 charged with the robbery, correct?

20 A Correct.

21 Q And were you aware that at the time that  
22 Mr. Broadnax and Mr. Rumph implicated Mr. Hickman  
23 that they were all three waiting on trials at the  
24 Lexington County Detention Center?

25 A I don't have any independent recollection

1 of that, but I'm sure that that's the case -- yes,  
2 that they had recently been charged and were.

3 Q He was already up at the Lexington County  
4 Detention Center on other charges when he was  
5 implicated and charged --

6 A Right.

7 Q -- correct?

8 A Right.

9 Q You understand that?

10 A Right, yes.

11 Q Okay. Did you look into that, investigate  
12 that issue?

13 A Of the other men being pre-trial detainees  
14 at the same time --

15 Q Right.

16 A -- he was?

17 Q Right.

18 A I'm not sure what you mean by that being  
19 an issue.

20 Q Okay. Well, isn't it true that Mr.  
21 Broadnax and Mr. Rumph were arrested right after the  
22 robbery?

23 A That would be in the transcript..

24 Q Okay. And they were carried to the  
25 Lexington County Detention Center?

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1           A     I would assume, yes.

2           Q     Okay. And that was on January 17th?

3           A     Right.

4           Q     Okay. And it's sometime later when Mr.  
5 Broadnax and Mr. Rumph implicate Mr. Hickman?

6           A     According to what I could see in the file,  
7 it's about five months later, right.

8           Q     Okay. And they're given a lesser sentence  
9 in exchange for offering to testify against Mr.  
10 Hickman?

11          A     Right.

12          Q     And that's many months later, and they're  
13 roommates, for lack of a better term, at the  
14 Lexington County Detention Center?

15          A     You mean Broadnax and the other fellow  
16 were roommates?

17          Q     Well, Broadnax, Rumph, and Mr. Hickman  
18 were all at the Lexington County Detention Center on  
19 different charges during that time, correct?

20          A     Correct.

21          Q     Okay. Did that raise any red flags or  
22 issues in your mind?

23          A     No. There's certainly no information  
24 that's made known to me that he had some sort of  
25 difficulty with them while they were incarcerated.

1 He never told me that they had been in the same  
2 cell, in the same pod, the same wing, or anything of  
3 that nature.

4 Q Well, what evidence was there against Mr.  
5 Hickman?

6 A Just those two fellows' testimony.

7 Q And those were the two fellows that were  
8 also at Lexington County Detention Center at the  
9 same time that he was there?

10 A That's right.

11 Q Okay. Was there any DNA evidence linking  
12 Mr. Hickman to the robbery?

13 A There was DNA evidence.

14 Q Right. There was DNA evidence linking at  
15 least one of the other --

16 A That's correct.

17 Q -- defendants, Mr. Rumph, correct?

18 A Correct.

19 Q And there is no other evidence linking him  
20 there such as a gun that he owned or a car or  
21 anything else, was there?

22 A There was not.

23 Q But there was that evidence there linking  
24 the other two defendants?

25 A Right.

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1           Q     Okay. So the only thing -- the only  
2     evidence against Mr. Hickman was the testimony of  
3     the two other prison mates at the Lexington County  
4     Detention Center that was made much later?

5           A     That's right.

6           Q     And all through that time, Mr. Hickman is  
7     insisting not that he's lily white on these other  
8     charges but that he is on this robbery charge?

9           A     Well, he admitted that he had prior  
10    knowledge of this -- he didn't say he had absolutely  
11    no knowledge of this robbery. He admitted that he  
12    had been present when the three robbers planned the  
13    robbery, that he gave them a gun to use in the  
14    robbery, but he refused to tell me the name of the  
15    third man in the robbery.

16          Q     And that was after the jury was struck?

17          A     No -- no, sir. He told me about that --  
18    he told me about that on December 8, 2008, and he  
19    just refused to divulge the name of this third  
20    individual. So we weren't able to look into that  
21    person's background or to try to gather evidence  
22    that might show that he was the third robber.

23          Q     But wasn't there already evidence and  
24    testimony that had been gathered in the record as a  
25    part of the Solicitor's Office investigation that

1       there was a -- I think Mr. Rumph had given a  
2       statement by this time already implicating him and  
3       providing a story about how this all transpired?

4             A       By December 8, 2009?

5             Q       Right.

6             A       Oh, yes.

7             Q       Yes. And then there were other versions  
8       of the same story that were told by Mr. Rumph?

9             A       Right.

10            Q       And Mr. Broadnax?

11            A       Exactly.

12            Q       Okay. By December 8?

13            A       That's right.

14            Q       December '08, okay.

15            A       That's right.

16            Q       Not to beat a dead horse, but really the  
17       only evidence we have tying Mr. Hickman to this  
18       scene or to this crime is the testimony of Mr.  
19       Broadnax and Mr. Rumph?

20            A       Correct.

21            Q       And you acknowledge that they were locked  
22       up at Lexington County Detention Center with him at  
23       the same time they came forward with these  
24       statements?

25            A       That's right.

Elizabeth Fullwood -- Cross

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1           Q     And he was there on something completely  
2     separate?

3           A     Not entirely. When he first was there, he  
4     was -- when he went in, in February of '08, it was  
5     for an unrelated crime.

6           Q     Involving Ms. Wilson?

7           A     That's right. Then, a few months later is  
8     when he was also charged in the pawn shop robbery.

9           Q     And Mr. Rumph and Mr. Broadnax were picked  
10    up in January of 2008?

11          A     That's right.

12          Q     So he was there with them for that three  
13    or four months or whatever that time frame was?

14          A     Uh-huh, that's correct.

15          Q     Okay.

16          A     I don't know if while with them -- he was  
17    in the same facility. I don't know as far as  
18    whether he had physical contact with those men while  
19    he was there.

20          Q     And it is your recollection that in  
21    exchange for their testimony, they received a lesser  
22    sentence?

23          A     That is my recollection.

24          Q     And it is your recollection that they  
25    ended up getting sentenced a much lower sentence

1       than Mr. Hickman got?

2           A     I assume they did. I don't recall being  
3       present at their sentencing.

4           Q     Well, you would defer to what's in the  
5       record?

6           A     Well, the record does speak for itself,  
7       yes.

8           Q     Okay. Mr. Rumph and Mr. Broadnax were  
9       caught shortly after the robbery. Evidently, they  
10      drive a car down to a dead end and get caught,  
11      correct?

12          A     Uh-huh.

13          Q     There's DNA tying them there?

14          A     Yes.

15          Q     They admit being there. They get roughly  
16      half the time that Mr. Hickman gets?

17          A     If that's what their sentencing sheet  
18      shows, yes, that's what they got.

19          Q     And I'm sorry, I didn't get the exact  
20      amount of time they got. My memory wants to say ten  
21      and fifteen. How long have you been a Public  
22      Defender?

23          A     Since '91.

24          Q     In your experience, would you say that to  
25      get ten to fifteen years for their involvement would

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1 be a rather light sentence?

2 A Yes, under the facts of this case,  
3 certainly.

4 Q And it would be fair to say that they  
5 would have every motive and opportunity to find  
6 someone else to blame so that they could mitigate  
7 their sentence?

8 A Sure. I think that co-defendant testimony  
9 is often viewed skeptically.

10 Q And that was the only thing in this case  
11 against Mr. Hickman?

12 A Yes, it was.

13 Q Okay. Now, you said you met with Mr.  
14 Hickman I think on about five different occasions --  
15 October 5, December 5, December 8, January 6, and  
16 January 21, correct?

17 A October 9, December 2, 5, 8, January 6 and  
18 21.

19 Q Five times?

20 A Five or six, yes.

21 Q But you were representing him on other  
22 charges?

23 A Those times, the times I testified to,  
24 were the times I met with him about this charge. I  
25 didn't testify about meeting with him on the other

1 charges.

2 Q So you met with him more than five or six  
3 times?

4 A But initially it was just about the first  
5 ABWIK charge.

6 Q Okay. So then these five times that you  
7 mentioned were for the case that we're here about  
8 today?

9 A They're only about this case.

10 Q Okay. So you met with him additional?

11 A About a different case.

12 Q Now, did you keep separate files, or did  
13 you keep all this in one file for Mr. Hickman?

14 A Kept it in one file.

15 Q Okay. So that would be in this packet  
16 here, all those meetings?

17 A Yes.

18 Q Well, all your notes -- I guess what I'm  
19 trying to figure out is all your notes related to  
20 anything you did for Mr. Hickman would be in that  
21 file, correct?

22 A Correct.

23 Q Okay. And so if you met with him other  
24 occasions, it would also be in that file?

25 A More than likely, yes.

Elizabeth Fullwood - Cross

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1           Q     Okay.. Let's talk about the day of the  
2     trial. Did you tell -- and I'm not criticizing you  
3     here, because obviously you weren't given -- is it  
4     fair to say that you weren't given all the  
5     information timely from the Solicitor's Office?

6           A     Right. I had been given discovery in a  
7     timely manner, but it was redacted with the contact  
8     information for the witnesses marked out. And I had  
9     requested on several occasions -- and I think I  
10    detailed in arguing a motion for a continuance -- I  
11    had asked for that information and just got it the  
12    Friday before the Monday the trial started.

13          Q     Right. And I think -- well, actually, the  
14    trial started on a Tuesday.

15          A     Okay.

16          Q     Tuesday, January 27th.

17          A     Right.

18          Q     And you didn't get a lot of the  
19    information until the Friday before, is that  
20    correct?

21          A     That's right.

22          Q     As a matter of fact, there were eight  
23    witnesses that you had not been able to interview  
24    because you weren't able -- your position was the  
25    Solicitor's Office would not get you the contact

1 information, correct?

2 A That's right.

3 Q And these are in addition -- I know you  
4 disagree with Mr. Hickman, but these do not include  
5 the witnesses that he says he wanted your office to  
6 talk to?

7 A He never said that.

8 Q Okay. But that doesn't include his --  
9 these are just eight of the State's witnesses,  
10 correct?

11 A Those were people I wanted to talk to, but  
12 the information just --

13 Q And if this will make it any easier for  
14 you. I know you have a copy of the transcript. I'm  
15 not going to refer to it. I'm just going to walk  
16 through a few pages. But I'm on page 42 now.

17 Didn't you represent to the Court that you  
18 were having a difficult time finding witnesses and  
19 that they were crucial to your case? And I think  
20 there's one you said you couldn't even find them to  
21 serve a subpoena on?

22 A Well, I wanted to talk to these State's  
23 witnesses, okay. And since I got such late notice,  
24 I hadn't been able to locate them or to find them.  
25 Now, I didn't know whether or not these people knew

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1 anything that was going to be crucial to this case  
2 or something I wanted to subpoena. But I wanted at  
3 least a chance to interview them to see what they  
4 were going to say and whether they could say  
5 anything helpful.

6 Q But you had already picked a jury by this  
7 point. You picked a jury, and then you were having  
8 this discussion on the record with the Judge after  
9 you've already picked the jury and the jury has been  
10 sent out, correct?

11 A Right. But that's the time that you make  
12 this type of motion in General Sessions.

13 Q Well, did you ask the Court -- did you  
14 bring a motion before the Court prior to the hearing  
15 asking them to make sure you get the witness list  
16 and the addresses and contact information for them?

17 A No.

18 Q Okay. So the first time that it comes  
19 before Judge McMahon is after you've already  
20 selected a jury?

21 A That's right.

22 Q Okay. And you said that there were some  
23 witnesses that you needed to subpoena, and you  
24 hadn't done that as of the time you picked the jury  
25 because you weren't able to?

1           A     Can you --

2           Q     Second full paragraph.

3           A     And --

4           Q     And the third.

5           A     Okay. Well, what I meant by that is that  
6     I needed to locate these people, and if they could  
7     present helpful testimony, then I needed to  
8     subpoena. You know, until I talked to them and  
9     interviewed them fully, I didn't know whether or not  
10    they would be able to help us.

11          Q     Right, I understand that. But what I'm  
12    making is we've already picked a jury and we're  
13    moving forward with trial. You're raising this  
14    issue, saying "Judge, there's eight witnesses. I  
15    need to talk to them"?

16          A     Right.

17          Q     And within less than 24 hours, he pleads  
18    guilty?

19          A     Right.

20          Q     But you've already picked a jury. You're  
21    getting ready to start a trial?

22          A     Correct. But these were not witnesses  
23    like alibi or anything like that. These were people  
24    that law enforcement had interviewed in connection  
25    with their investigation.

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1 Q But you still need to talk to them --

2 A Oh, absolutely, I wanted to talk to them.  
3 And I did talk to them. I talked to them the next  
4 morning.

5 Q Day two?

6 A That's right.

7 Q And he pleads guilty by 10:30 that  
8 morning?

9 A Correct.

10 Q Okay. So you met with eight witnesses on  
11 Wednesday, January 28, finished that process of  
12 interviewing eight witnesses, and you plead guilty  
13 by 10:30 on the record?

14 A That's right. And I do have an  
15 independent recollection of being at this courthouse  
16 extremely early in the morning to meet with these  
17 people.

18 Q On page 43 -- and I'm not going to get you  
19 to read it, just see if you can follow along, okay -  
20 - you told -- didn't you represent to the Court that  
21 you believed that there were exculpatory statements  
22 made, that you didn't have those, and that different  
23 statements were made and you needed that to proceed  
24 with trial?

25 A Yes. What I'm saying there is I have a

1 statement that one of these co-defendants made on  
2 the day of the arrest that was exculpatory, all  
3 right.

4 Q And you did --

5 A And it was my understanding, of course,  
6 that his statement or his testimony was going to be  
7 inculpatory. In fact, he was going to admit that he  
8 participated in this armed robbery.

9 And what I was saying is that statement  
10 should have been reduced to writing in some form,  
11 even if it was just in memo form, because it was  
12 Brady material, because it was impeachment evidence.

13 Q And you didn't have that?

14 A No.

15 Q Okay.

16 A Because that had not been done.

17 Q And then, looking to page 44, you're  
18 saying you were asking for -- strike that. But you  
19 made the statement around line 12. You said,  
20 "Coming at this point in time, the testimony of the  
21 witness is simply going to be too late," correct?

22 A Yes, I did say that.

23 Q And Mr. Hickman's in the courtroom with  
24 you, sitting at the table listening to all of this,  
25 correct? That's a "yes"?

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1           A     I am sorry.

2           Q     That's okay.

3           A     Yes, he was there with me.

4           Q     And then below that, I believe you said  
5     there was a witness you couldn't find because you  
6     didn't have the addresses -- I'm assuming that part  
7     -- in order to -- because you believed there was a  
8     witness that might potentially contradict this  
9     statement?

10          A     That's right, I did say that.

11          Q     Did you find that witness?

12          A     I don't have any independent recollection  
13     of who that was.

14          Q     What did you do to look for that witness?

15          A     Again, I don't have any independent  
16     recollection of it. If I don't remember who, I  
17     don't know what I --

18          Q     I understand. Could that witness have  
19     been Ms. Wilson?

20          A     No, because her name never came up.

21          Q     Well, not related, your testimony is it  
22     didn't come up in relation --

23          A     Not in relation to this charge.

24          Q     Okay. And did you specifically ask for a  
25     continuance so that you could get him -- I think the

1 term you used on lines 44 and 45 is effective  
2 assistance of counsel, correct?

3 A Yes, that's what I said.

4 Q And then -- I mean, you didn't get most of  
5 this information till the Friday before. I think it  
6 was around lunchtime, you said someone delivered  
7 some of these documents to you?

8 A Correct. Let's be clear. Let's be clear.  
9 The only information I did not have was the address  
10 and phone number of these people law enforcement had  
11 interviewed. I had the witness statements, the  
12 incident reports, lab reports, chain of custody,  
13 everything else for a long time.

14 Q Correct me if I'm wrong. My understanding  
15 is you didn't have it, and you were asking for it  
16 then because you hadn't been able to contact, or  
17 communicate, or interview them.

18 A I didn't have the contact information.

19 Q Right.

20 A I had the discovery.

21 Q Okay. And the reason you were asking the  
22 Court for it after you selected a jury is because  
23 you felt like you needed it to adequately argue your  
24 case and effectively represent your client?

25 A I had it by then. I was given -- it was

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1       given to me the Friday before trial. What I was  
2       telling the Court is that the State had not complied  
3       with Rule 5 and Brady in a timely manner. And for  
4       that reason, I was entitled to a continuance, or Mr.  
5       Hickman, rather, was entitled to a continuance.

6           Q     Right. Because you needed to work through  
7       that so that you could prepare for his case?

8           A     That's right.

9           Q     You wouldn't have asked for a continuance  
10      if you didn't feel like you needed it?

11          A     Right. I thought that there was a Rule 5  
12      and Brady violation, and I believed that he was  
13      entitled to a continuance as a result.

14          Q     You had the names of the witnesses  
15      beforehand, you just didn't have the contact  
16      information?

17          A     That's right.

18          Q     What did you do to try and contact them so  
19      that you could interview them before the Friday  
20      before the trial?

21          A     I don't recall. I do remember talking to  
22      Mr. Jackson, who was the eyewitness. And I would  
23      imagine we would have tried the phone book or, you  
24      know, on-line, but I don't have an independent  
25      recollection of that.

1 Q Okay. Did you know that Mr. Hickman was  
2 in a gang?

3 A He never told me that.

4 Q Are you familiar with gang culture --

5 A No.

6 Q -- in your experience as a Public  
7 Defender?

8 A Not really.

9 Q Are you familiar with the concept of gang  
10 rivalry?

11 A Yes.

12 Q Are you familiar with a gang rivalry that  
13 exists between members of Bloods and Folk Nation?

14 A Not specifically. I know there are  
15 rivalries, but I don't know how they line up.

16 Q Are you aware of generally, based on your  
17 experience, the notion that gang members don't rat  
18 on each other?

19 A Yes.

20 Q Do you know that Mr. Broadnax and Mr.  
21 Rumph are brothers in the Folk gang?

22 A No, I don't know that.

23 Q Okay.

24 MR. McCABE: May I have one second?

25 Q Do you believe you were adequately

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1 prepared to proceed with trial on January the 27th  
2 considering your witnesses and everything else?

3 A Yes, because by then, I had a chance to  
4 talk to all the witnesses I needed to talk to and  
5 was prepared to try the case if that's what Mr.  
6 Hickman decided he wanted to do.

7 Q Okay, thank you. I appreciate you being  
8 respectful.

9 THE COURT: Mr. Lee?

10 MR. LEE: Just very briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. LEE:

13 Q As you already stated, Ms. Fullwood, it  
14 was the credibility of the two co-defendants  
15 testifying against the applicant was pretty  
16 important in this case, correct?

17 A That's right.

18 Q That was because they were the only  
19 evidence essentially against the applicant?

20 A That's right.

21 Q And isn't it true that you had a plan to  
22 go about impeaching them at trial through cross-  
23 examining them on their conflicting statements,  
24 etc., if you went to trial?

25 A Their conflicting statements, their prior

1 criminal records, things of that nature, yes.

2 Q Did you -- how did you feel about your  
3 chances of being successful in impeaching them?

4 A My best educated guess would be that  
5 they'd be fairly easy to impeach.

6 Q Okay. So you would have been prepared to  
7 do so had you gone to trial?

8 A That's right.

9 Q Okay. But, again, whose decision was it  
10 to plead guilty?

11 A Mr. Hickman's.

12 Q Did you put any pressure or coerce him in  
13 any way to do so?

14 A No.

15 Q And what was the benefit of entering a  
16 guilty plea in this case?

17 A The State withdrew its notice of seeking  
18 life without parole and dismissed an unrelated ABWIK  
19 charge.

20 Q Okay. And so for a young man facing a  
21 fairly lengthy jail stay, not facing life in prison  
22 is a big benefit, is that true, in your opinion?

23 A I would think so, certainly.

24 Q Did you hear about any animosity between  
25 the applicant and the two co-defendants that existed

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1 prior to their being in jail together?

2 A No. In fact, based on what he told me,  
3 they were all friends.

4 Q Did you hear about any animosity that  
5 developed while they were in jail together?

6 A No.

7 Q Okay. So did you have any reason to  
8 suspect that them being housed at the same place  
9 would be an issue in the case?

10 A No.

11 Q Okay. Is it true that discovery is  
12 frequently an ongoing process?

13 A It always is.

14 Q Okay. And have you had situations arise  
15 before where you get some discovery at the eleventh  
16 hour, so to speak?

17 A Oh, yes.

18 Q Okay. And is it fairly common practice in  
19 General Sessions to strike juries before you make  
20 motions before the Court?

21 A Most of us are trained to do it that way.

22 Q Okay. Now, so at your essentially first  
23 opportunity in front of the Judge, did you then make  
24 a motion for a continuance based on your desire to  
25 more fully review the discovery?

1           A     I didn't need more time to review the  
2     discovery. I wanted an opportunity to locate the  
3     witnesses --

4           Q     I misspoke.

5           A     -- mentioned in the discovery and  
6     personally interview them.

7           Q     That was my understanding. I just  
8     misspoke. But essentially was that your first  
9     opportunity to move before the Judge for that?

10          A     It was.

11          Q     Okay. And you were simply denied that  
12     continuance? Did the Judge continue it to the next  
13     day, is that what happened?

14          A     He did. As I recollect and I have been  
15     through this, I believe what Judge McMahon did is he  
16     directed the Solicitor to have those seven other  
17     witnesses at the courthouse first thing in the  
18     morning so that I could talk to them, if they would  
19     talk to me. And I remember talking to them.

20          Q     Okay. So is it your testimony, then, that  
21     by the time you would have started the next day that  
22     you were prepared to go to trial?

23          A     I was ready, yes.

24          Q     But, again, is it your testimony that Mr.  
25     Hickman decided of his own freewill to plead guilty?

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1           A     Yes.

2           Q     Thank you.

3           THE COURT: Redirect that is responsive to  
4     that, please?

5           MR. McCABE: No, sir, thank you.

6           THE COURT: Thank you.

7           MR. LEE: That would be all the State's  
8     witnesses, Your Honor.

9           THE COURT: Any reply to that?

10          MR. McCABE: No, sir.

11          THE COURT: Do you want to make a brief  
12     final statement or closing?

13                     By MR. MCCABE

14          MR. McCABE: Yes, sir. Judge, I would ask  
15     the Court to review the transcript. I know the  
16     Court has. But I'd ask the Court to look at the  
17     transcript.

18                     There's certainly an exchange, and if  
19     nothing else, I think you could look at the  
20     cumulative effect of all these things that were  
21     going on, based on his testimony, based on what  
22     happened that day in the record. And it would seem  
23     that this might be one of those rush-the-judgments  
24     that might have been made under pressure of "You've  
25     got to act fast, or you're going to get something

1 much worse."

2 And if you're sitting in the  
3 courtroom, and you're hearing about eight witnesses  
4 that haven't spoken to, I know it's disputed, but  
5 his statement is he also had an alibi. There's some  
6 evidence in there that there were some witnesses  
7 that weren't reached and that sort of thing.

8 Certainly, the record is replete with  
9 references and there's a whole exchange about what  
10 needs to happen, what needs to be received to go  
11 forward and effectively represent him.

12 And he understands that if he  
13 prevails, this doesn't go away. The best he gets is  
14 a trial. He understands that. They called the  
15 jury. He was ready for a jury trial.

16 The entire time since February to  
17 January, for eleven months, he's sitting in the  
18 Lexington County Detention Center. He's not in a  
19 position to go round up his witnesses. He's not in  
20 a position to go interview witnesses.

21 He's got limited contact. He's got  
22 serious limitations on his ability to effectively  
23 represent himself or to effectively involve himself  
24 in the case. He has to rely on his lawyer.

25 Now, personally, I don't want to

1 criticize Ms. Fullwood, but when you look at the  
2 standard of what's necessary to effectively  
3 represent a client, you have to conduct ample  
4 discovery, you have to timely and adequately  
5 investigate the case.

6 And in this case, I don't think  
7 that's what happened. What happened is the case was  
8 called for trial. Counsel admitted they weren't  
9 prepared to prosecute the case. All this transpires  
10 on the record.

11 I think the record closes -- don't  
12 hold me to this, but I think at 4:52 on January the  
13 27th. The next morning, I believe by 10:30, they've  
14 interviewed eight witnesses, and he's pleading  
15 guilty.

16 And then if you just look at the  
17 facts, while you're looking at this, this is one of  
18 those cases that raises tons of questions. You've  
19 got the two co-defendants admit robbing. They're  
20 caught red-handed.

21 There's DNA linking them to the case,  
22 cars linking them to the case. They're in a rival  
23 gang. They're in the jailhouse. Months later, they  
24 had a conflict with him, he testified earlier.  
25 Sometime around a day or so after the crime, they

1 are both at Lexington County Detention Center.

2 Prosecutors or cops come to them and  
3 say, "Tell us who the third person was, and you'll  
4 get a good deal." And so they didn't rat on a  
5 fellow gang member and say, "It was my brother in  
6 Folk Nation," or whatever it is.

7 No, they get a sweetheart deal  
8 implicating an enemy of a rival. And had effective  
9 representation, counsel looked into all these  
10 issues, I believe this case would have turned out  
11 differently -- again, no DNA, no evidence. The only  
12 evidence is the statement of two felons implicating  
13 a third person that's sitting in the jail with them.

14 Discovery wasn't completed. The  
15 issue should have been brought to court on some type  
16 of motion or something before. This is a serious  
17 case. This isn't a DUI first offense case --  
18 assault and battery with intent to kill, kidnapping,  
19 armed robbery.

20 You can't prepare those cases if you  
21 get the information the Friday before trial. I  
22 understand the Solicitor's Office wasn't  
23 cooperating. But Friday before a trial like this,  
24 you cannot be prepared to effectively try a case and  
25 defend a criminal defendant in a case that serious

1       when the Judge is telling you to bring in eight  
2       witnesses the morning before.

3                       A lawyer's job is to do that before.  
4       And I'd ask Your Honor to review the record. I'd  
5       like to pass up a case to you, Judge. Now, I'm  
6       going to --

7                       THE COURT: Did you give a copy to Mr.  
8       Lee?

9                       MR. McCABE: I'm going to give it to him  
10       right now. I'm handing it to him. May I approach?

11                      THE COURT: Yes, sir, certainly.

12                      MR. McCABE: And I'll approach with one  
13       for you and your law clerk.

14                      THE COURT: Okay, thank you.

15                      MR. McCABE: There's no per se rule on  
16       what the duty of counsel is to effectively  
17       represent. I'll acknowledge that. But I would  
18       refer you to this case, because the Court, while not  
19       setting out a per se rule, basically reverses or  
20       grants a PCR based upon failure of the petitioner's  
21       lawyer to adequately discuss or to engage in  
22       discovery in order to adequately prepare for trial.

23                      I think Your Honor would find that --  
24       that's a February 2010 case, I think, and so it's  
25       pretty fresh. We would add, Judge, that -- one

1 other thing for your consideration.

2 The two fellows that were caught red-  
3 handed, pled guilty, basically said there was a  
4 shooter involved in this robbery. And so they  
5 conveniently point to Mr. Hickman as the shooter.

6 THE COURT: Thank you, counsel.

7 MR. McCABE: Thank you.

8 THE COURT: Mr. Lee?

9 BY MR. LEE

10 MR. LEE: Thank you, Your Honor. The  
11 State would submit that what we here is really a  
12 question of credibility. You have the applicant and  
13 his I guess one-time girlfriend or whatever saying  
14 that he had an alibi witness and that she should  
15 have been called.

16 Well, Ms. Fullwood's testimony is  
17 that that alibi witness was never disclosed to her  
18 and that her name never even came up, Ms. Takemia  
19 Wilson, in this present case, that today was the  
20 first time that she had ever heard such testimony.

21 The State would also submit that, as  
22 this Court is aware and is set out in cases like  
23 Moorehead v. State, when you have evidence that you  
24 claim counsel should have presented or testimony you  
25 claim counsel should have presented, you have to

1 present to the Court what that testimony or evidence  
2 would be and why it would be exculpatory.

3 Well, the State submits that the  
4 reason that fails is Ms. Wilson's testimony is not  
5 concrete. It does not offer a definite alibi  
6 witness. It said that she was -- they were most  
7 likely together. She believed they were together at  
8 the Executive Inn.

9 That is not complete. That is just  
10 her belief. Further, they wouldn't have any  
11 evidence to submit before the Court to prove that  
12 because for some reason she would not -- I guess she  
13 was too young to get hotel rooms, and for whatever  
14 reason the applicant did not do so himself either.

15 So the State would submit that the  
16 alibi witness is not useful, would not have been  
17 useful even had it been disclosed to counsel. But,  
18 again, counsel's testimony was that she was not  
19 disclosed.

20 The State would also submit that  
21 counsel did not say she was not prepared to proceed  
22 to trial. She moved for a continuance simply  
23 because, based on her own testimony, she wanted to  
24 meet with the State's witnesses that she had not  
25 been informed of prior.

1                   She stated that by the next morning,  
2     she was able to meet with those witnesses and was  
3     fully prepared to proceed to trial at that point.  
4     Again, the State would submit that's just a question  
5     of credibility, do you believe counsel, or do you  
6     believe the applicant.

7                   She stated that they had fully  
8     engaged in an investigation. They had attempted to  
9     get in touch with the alleged alibi witnesses, the  
10    Parole Department, which they did actually speak  
11    with. But the time that they gave for his  
12    appointment was very different from the time that he  
13    gave. So the time didn't match up.

14                  She stated they tried to get in touch  
15    with Ms. Alexis McCoy and were not able to, despite  
16    getting in touch with the applicant's mom to try and  
17    get contact information for her. She stated that  
18    she a clear trial strategy in that because the co-  
19    defendants were the only real evidence against the  
20    applicant, her strategy was to impeach them based on  
21    their prior record, based on their involvement in  
22    the crime, based on their conflicting statements.

23                  She stated that she was also ready to  
24    do that if they went to trial. Ultimately, the  
25    record will bear out based on the applicant's

1 discussion with the Judge during the plea colloquy  
2 and Ms. Fullwood's own testimony that the applicant  
3 made a fully, knowing, and voluntary decision to  
4 enter a guilty plea.

5 With regard to the motion for a  
6 continuance and that being made too late, again, it  
7 was counsel's testimony that that was done at  
8 basically her first available opportunity, that it  
9 was generally practiced to strike the jury before  
10 making such motions, that she did make such a  
11 motion, and while it wasn't necessarily granted, she  
12 ultimately did have an opportunity to take care of  
13 all the things that were in her motion.

14 Finally, the State would just remind  
15 the Court the applicant, even in his conversations  
16 with the attorney, said that he gave the gun to the  
17 persons committing the crime, and according to Ms.  
18 Fullwood's testimony, never indicated any animus  
19 between the parties.

20 He stated that he gave the gun to the  
21 co-defendants and knew who this third person was but  
22 wouldn't name them. If you were facing trial with a  
23 potential life sentence for a crime that you  
24 allegedly didn't commit, one would think that you  
25 would be willing to name the third party so you

1     might be able to argue -- more effectively argue  
2     that you didn't do it.

3                     In sum, the State would just submit  
4     that the applicant has not fully carried his burden  
5     of proof. He hasn't proven ineffective assistance  
6     of counsel or resulting prejudice from said  
7     ineffective assistance. As such, the State would  
8     submit that the applicant's application for post-  
9     conviction relief should be denied.

10                    THE COURT: Let me hand this to the Court  
11     Reporter. This is Applicant's Exhibit Number One.  
12     Looking at the application for post-conviction  
13     relief filed by Mr. Hickman, one of his issues  
14     stated and orally mentioned in the record of this  
15     case was that there was failure to be advised on his  
16     appellate rights.

17                    If you look at the transcript in this  
18     case, Judge McMahon clearly advised Mr. Hickman of  
19     his right to appeal this matter, so I'll deny his  
20     petition on that ground. Also, Mr. Hickman raises  
21     here that Ms. Fullwood allegedly did not bring in an  
22     alibi witness, and that is Ms. Takemia Wilson.

23                    Interestingly enough, I looked at the  
24     application for post-conviction relief, and Ms.  
25     Wilson is nowhere referenced in that petition

1       whatsoever. On the other hand, there's a Dominique  
2       H. Collins that is raised by the petition as a  
3       witness that Ms. Fullwood allegedly did not call.

4                       He does not raise the issue of alibi  
5       witness. To the extent, however, that Mr. Hickman  
6       did raise it -- and I am treating it as if he did  
7       raise that issue in his petition -- I find that the  
8       testimony that was presented here in court today was  
9       totally not credible.

10                      I'm finding additionally, as pointed  
11       out by the AG's Office, that even if you take it as  
12       being true, it was non-specific enough to amount to  
13       an alibi defense. Ms. Wilson said "I believe." She  
14       said on this case, "I was there." She said she was  
15       likely to be there. That was corroborated by his  
16       mother, who also testified.

17                      Also note that Ms. Fullwood in the  
18       record did request a continuance, which was denied.  
19       That ruling was not directly appealed, because there  
20       was not a direct appeal in this matter, although the  
21       defendant was given notice of his appellate rights,  
22       direct appeal rights.

23                      Also, he raised the issue of the  
24       recusal based on Judge McMahon's relationship with  
25       the Solicitor's Office by virtue of his daughter

1     working there. That was properly raised by Ms.  
2     Fullwood, as was the request for a continuance.  
3     Both were denied by Judge McMahon properly, and that  
4     ruling was not appealed either, which would have  
5     been the proper way as opposed to asserting that as  
6     a ground at PCR.

7                     But to the extent that it is proper  
8     in this PCR, which I do not think it is, Mr. Hickman  
9     has failed to establish any prejudice that may have  
10    occurred by the continuance motion being denied or  
11    the recusal motion being denied.

12                    Also, there's a lot of questions and  
13    answers back and forth between Mr. McCabe properly  
14    with Ms. Fullwood about these eight witnesses. I  
15    note that, although they obviously may not have been  
16    brought up to properly disclose by virtue of names,  
17    addresses, and phone numbers, as the record reflects  
18    that they were redacted, that Judge McMahon did give  
19    the opportunity for Ms. Fullwood to meet with these  
20    individuals the day of trial.

21                    I agree with Mr. McCabe. That's not  
22    necessarily sufficient time. However, what the  
23    petition in this case has failed to do is establish  
24    what, if anything, these witnesses would have done.

25                    What prejudice did he result or have

1 as a result of them not being called? There's been  
2 zero evidence on that in this record. Therefore, he  
3 has failed to meet the burden of proof with regard  
4 to that.

5 I know the plea record, as far as  
6 what I can read, properly shows that the defendant  
7 or Mr. Hickman, the petitioner, was probably advised  
8 of his constitutional rights. It shows that Mr.  
9 Hickman freely, knowingly, and intelligently waived  
10 his constitutional rights.

11 It shows that the petitioner pled  
12 guilty freely and voluntarily, without being under  
13 threat or coercion to do so. The fact that he was  
14 in trial and made a trial strategy to get life  
15 without possibility of parole off the table would  
16 not amount to coercion that would be sufficient to  
17 grant a PCR for.

18 The fact that Ms. Fullwood was able  
19 to have the LWOP taken off the table so that this  
20 gentleman was not looking at a life sentence without  
21 the possibility of parole was of great benefit to  
22 him. So I find that he doesn't get a benefit there.

23 In short, I find that the petitioner  
24 has failed to establish, one, that Ms. Fullwood  
25 acted below the expected levels of competency for a

1 lawyer and has also failed to show any prejudice  
2 thereby.

3 And that is with regard to any issue  
4 of DNA or any other issue raised in this petition.  
5 The petitioner has failed to meet his burden of  
6 proof in this matter whatsoever, and so I'm denying  
7 the petition.

8 And I'll ask Mr. Lee to draft me an  
9 order, please.

10 MR. LEE: Certainly, Your Honor. Thank  
11 you.

12 THE COURT: Thank you to both attorneys.  
13 You're well prepared, and you did a good job. There  
14 is a 30-day appeal time on this, okay, sir?

15 MR. McCABE: Yes, sir.

16 THE COURT: All right, very good, thank  
17 you.

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON FEBRUARY 3, 2011, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE TWENTIETH DAY OF AUGUST, 2011.

---

REMA K. GANTT THOMAS  
OFFICIAL COURT REPORTER  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Rico Hickman, # 297987,

2009-CP-32-4560

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

### PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 8, 2009. The Respondent made its Return on January 7, 2010. An evidentiary hearing into the matter was convened on February 3, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Ryan McCabe, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were Applicant's trial counsel, Elizabeth Fullwood, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the August 2008 term of the Lexington County Grand Jury for two (2) counts of Assault and Battery with Intent to Kill, Pointing and Presenting a Firearm, Possession of a Weapon During the Commission of a Violent Crime,

Criminal Conspiracy, Burglary – Second Degree, Kidnapping, Armed Robbery While Armed with a Deadly Weapon (2008-GS-32-2860/2861/2862/2863/2864/2865/2866/2867). He was represented by Elizabeth Fullwood, Esquire. On January 28, 2009, Applicant appeared before the Honorable R. Knox McMahon where he pled guilty to one (1) count of Assault and Battery with Intent to Kill and Armed Robbery, and was sentenced to twenty-five (25) years imprisonment for Armed Robbery with a concurrent twenty (20) year term for ABWIK. Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel.
  - i. "Counsel failed to inform me of my right to appeal."
  - ii. "Counsel failed to file motion for appeal."
  - iii. "Counsel did not successful try and get in touch with my witness to show up in court on my behalf..."
  - iv. "DNA analysis was submitted to the SLED forensic services laboratory which came back negative on my behalf, but seemed as if it was overlooked."
  - v. "Not enough time to put in on the case."
  - vi. "Did not object to improper relationship between judge and his daughter, who had worked for solicitor's office."
2. Involuntary Guilty Plea.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

### *Ineffective Assistance of Counsel*

#### Failure to Call Potential Alibi Witness to Testify at Trial

Applicant's first allegation raised at the PCR hearing is counsel was ineffective in failing to investigate and call as a witness Takemia Wilson ("Wilson"), Applicant's girlfriend, who Applicant alleges would have provided an alibi for him on the night of the alleged crimes. Applicant testified he gave counsel a list of potential witnesses, including Wilson, for counsel to interview and prepare for trial, but said counsel never contacted Wilson prior to trial. He also

stated he gave Wilson's phone number to counsel and that Wilson came to visit him in prison roughly two (2) times a week leading up to trial. Applicant went on to say on the first day of trial, counsel told Applicant she was sorry she was unable to contact any of his potential witnesses.

Wilson also testified at the PCR hearing, confirming that she had been Applicant's girlfriend during the time that the crimes occurred, although they were no longer together, nor had they been since Applicant's arrest. She went on to say she was "most likely" with Applicant on the date in question (January 17, 2008) at the Executive Inn in West Columbia, South Carolina because she "used to always want to be with him". Wilson testified the hotel room was checked out in a friend's name and she did not have any receipts or other documentation to prove they were in fact at that hotel on the night in question, but stated that she and Applicant stayed "every other day" together until the time he was arrested.

Counsel testified the public defender's office was appointed to represent Applicant in February of 2008 on a set of unrelated charges when Applicant was arrested for the charges contained in this application, and in May of 2008 she took over representation of Applicant on both sets of charges. Counsel stated she met with Applicant six (6) times in preparation for exclusively the second set of charges, during which she and Applicant reviewed his version of the facts leading to the charges, the discovery materials, and potential witnesses Applicant could call at trial. Counsel said Applicant alleged he was in Columbia meeting his probation officer until roughly four forty-five (4:45) in the afternoon on the day in question, and was accompanied by his girlfriend Alexis McCoy. Counsel went on to say her investigator spoke with Applicant's probation officer and subpoenaed the records from the probation office, both of which reflected that the Applicant was only at the office around ten o'clock (10:00) that morning. Counsel

testified she searched vigorously for Alexis McCoy's contact information including contacting Applicant's mother (Tirina Hickman), but was unable to get any useful contact information. Counsel went on to say Applicant never mentioned any other potential alibi witnesses, including Takemia Wilson, and in fact Wilson's name was never mentioned by Applicant regarding this set of charges. Counsel testified during a meeting with Applicant on December 8, 2008, Applicant admitted to counsel he had known about the plan to commit the robbery and had provided the gun used in the robbery to three men, including his two co-defendants and one person whose name Applicant refused to disclose to counsel. Further, Applicant told counsel he and his two co-defendants were friends, and never mentioned gang rivalry issues between he and his co-defendants as Applicant now alleges.

Based on the testimony presented at the hearing and a thorough review of the record, I find Applicant has failed to prove counsel was ineffective in this regard. First, I find counsel's testimony to be credible, while conversely finding Applicant's testimony to not be credible. Further, I find counsel's performance was not deficient as she carried out her duties within the objective standard of reasonableness demanded of attorneys under the circumstances. Counsel's conduct was reasonable in not contacting or calling Takemia Wilson to provide alibi witness testimony at trial as Applicant never once mentioned Wilson to counsel as a potential alibi. (*A court's measurement of reasonableness may be determined or substantially influenced by defendant's own statements or actions... Counsel's actions are usually based on informed strategic choices made by a defendant and on information supplied by defendant. What investigation decisions by counsel are deemed reasonable depends critically on such information. Strickland v. Washington, supra.*) In fact, Applicant had provided a different woman's name to counsel as his "girlfriend" who had accompanied him to Columbia, Alexis

McCoy, who counsel made diligent efforts to contact. Additionally, Applicant's alibi defense revolving around a late afternoon meeting with Applicant's probation officer proved to be useless when the officer told counsel Applicant's only meeting was early in the day, as confirmed by the probation office's appointment records. I find counsel was not deficient in this regard.

Further, Applicant failed to prove prejudice resulting from Wilson not testifying at trial as an alibi witness, as Wilson was unable to provide a credible and airtight alibi for Applicant based on her testimony. *(since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all. State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980).)* Wilson was only able to say she "thought" she was "most likely" with Applicant on the day in question, basing that assumption on the fact that she "used to always want to be with" Applicant when they were dating. Wilson went on to plainly state she had no physical evidence that she and Applicant had in fact checked into a hotel room in Columbia that night, and said she only spent roughly "every other" night with Applicant, leaving plenty of opportunity for Applicant to have been physically present during these crimes. Therefore, I find Wilson's testimony has failed to establish that, had she been called at trial, she would have provided an alibi sufficient to change the outcome of Applicant's trial. Applicant has failed to establish both deficiency and resulting prejudice, and accordingly this allegation is without merit.

#### Involuntary Guilty Plea - Counsel Unprepared for Trial

Applicant's second allegation is he was forced to involuntarily enter this plea because counsel was unprepared to proceed to trial on the date the case was called and counsel told him to take the plea. First, it is important to note that a defendant who enters a plea on the advice of

counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Therefore, this allegation is actually one of ineffective assistance of counsel which will be analyzed as such herein.

Applicant testified repeatedly throughout the hearing that he entered this plea because counsel told him if he proceeded to trial and was convicted, he would receive a life without parole sentence. Applicant went on to say he felt forced to enter his plea because he believed counsel was not prepared for trial after hearing her motion the court for a continuance to have more time to prepare. Applicant contends these concerns, coupled with his above allegation that counsel did not contact his alibi witness for trial, rendered his plea involuntary.

Counsel testified she met with Applicant six (6) times during the course of her representation during which time she reviewed with Applicant his version of the facts, the entirety of the discovery file, the potential sentences he was facing, and potential defenses to be used at trial. Counsel stated Applicant was served with the state's Notice of Intent to Seek Life Without Parole which she reviewed with him, so there was no doubt if he was convicted at trial he would receive a life sentence. Counsel went on to say the crux of the case was the co-defendants' credibility as that was the only evidence against Applicant. Based on this belief, counsel said she investigated the two co-defendants in depth and prepared a strategy to impeach their credibility at trial, which she believed would have been fairly easy to do. Counsel testified Applicant knew of the trial date well in advanced, and stressed that she never told Applicant he would be found guilty at trial.

Regarding Applicant's allegation that counsel requested a continuance at the start of trial because she was unprepared, counsel said this was not exactly the case. While she did request a continuance at the start of trial, she stated she did so because the state had redacted all witness contact information from its discovery file and she was therefore unable to interview the state's witnesses prior to the start of trial. Counsel went on to say she requested the contact information from the state numerous times prior to trial, but only received such the Friday before the case was convened for trial on a Tuesday. Although the court denied her motion, counsel stated she was able to sufficiently interview all eight (8) of the state's witnesses at the courthouse the following morning before the trial began, thereby eliminating her need for the continuance requested. Further, counsel stated she would have proceeded to trial with Applicant had he not made the voluntary decision to plea, and went on to say she was fully prepared for trial after completing the interviews of the state's witnesses.

I find Applicant has failed to carry his burden in proving counsel was ineffective in this regard. Clearly, based on counsel's credible testimony, she was fully prepared for trial having done extensive preparations to organize a defense strategy based on impeachment of Applicant's co-defendants. I also find Applicant made the voluntary and intelligent decision to enter this plea after being fully and adequately advised by competent counsel of all relevant matters. Applicant's apprehension regarding counsel's advice concerning the realistic potential sentence Applicant was facing at trial (life without parole) is not tantamount to coercion rendering Applicant's plea involuntary. (*pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary. Brady v. United States*, 397 U.S. 742, S.Ct. 1463, 25 L.Ed.2d 747 (1970); *Wicker v. State*, 310 S.C. 8, 425 S.E.2d 25 (1992).) Further, the overwhelming evidence in the record and presented through the testimony of the witnesses at the

hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, I find this allegation to be without merit. Accordingly, it must be denied and dismissed.

#### Failure to Request Recusal of Trial Judge Based on Conflict of Interest

Applicant's final allegation is counsel was ineffective in failing to request the trial judge, the Honorable R. Knox McMahon, recuse himself from hearing Applicant's case where the judge's daughter had a relationship with the solicitor's office. Based on a review of the trial transcript, it appears counsel did in fact make such a motion before the court, which was denied by the court upon a finding that his daughter had no involvement in Applicant's case whatsoever. Therefore, I find counsel did present this objection and, therefore, was not deficient in this regard. Further, Applicant has failed to prove that an actual conflict did exist or that such a conflict affected his decision to enter a guilty plea rather than proceed to trial. This allegation is also denied and dismissed.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective. Further, I find that counsel at all times during his representation of Applicant acted within the range of competence demanded of attorneys in criminal cases, and Applicant was unable to establish resulting prejudice from any alleged deficiency. Therefore, these allegations of ineffectiveness are without merit and must be denied.

#### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

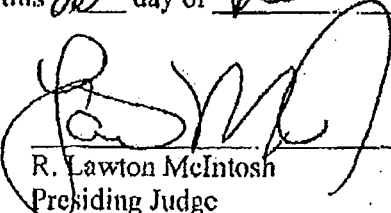
Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. Specifically, Applicant failed to address his allegation regarding "prosecutorial misconduct" as set forth in his PCR application. The Applicant's failure to address this and any additional issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

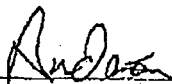
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22 day of Dec, 2011.

  
 R. Lawton McIntosh  
 Presiding Judge  
 Eleventh Judicial Circuit

 South Carolina.

**A TRUE COPY**

  
 Lex. Co. C.C.C.P., G.S. & R.C.

WITNESSES

Lexington County Sheriffs Department

Stephen Collins

Law Enforcement Case #:

DVM

ARREST WARRANT NUMBER

J846338

ACTION OF GRAND JURY

**TRUE BILL**

*Donald L. Lushart*

Foreperson of Grand Jury

Date: 9-2-08

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-32-2867

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

THE STATE

vs.

Rico Amadeus Hickman

CDR #: 139

Indictment for

ARMED ROBBERY WHILE ARMED  
WITH A DEADLY WEAPON

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

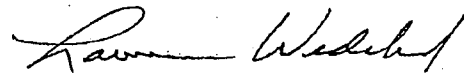
INDICTMENT FOR  
ARMED ROBBERY WHILE ARMED WITH A  
DEADLY WEAPON

§ 16-11-0330(A)

At a Court of General Sessions, convened on AUGUST 2008, the Grand Jurors of Lexington County present upon their oath:

That **Rico Amadeus Hickman and/or his co-defendant** did in Lexington County, South Carolina on or about January 17, 2008 knowingly and willfully while armed with a pistol; feloniously take from the person or presence of Mr. Jackie Ray Jackson by means of force, a pistol, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Stephen Collins

Law Enforcement Case #:

DVM

ARREST WARRANT NUMBER

J846335

ACTION OF GRAND JURY

**TRUE BILL**

*Donald Leapsholt*  
Foreperson of Grand Jury

Date: 9-2-08

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-32-2864

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

THE STATE

vs.

Rico Amadeus Hickman

CDR #: 0014

Indictment for

ASSAULT AND BATTERY WITH INTENT  
TO KILL

§ 16-03-0620

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

INDICTMENT FOR  
ASSAULT AND BATTERY WITH INTENT TO  
KILL

§ 16-03-0620

At a Court of General Sessions, convened on AUGUST 2008, the Grand Jurors of Lexington County present upon their oath:

That Rico Amadeus Hickman and/or his co-defendants did in Lexington County, South Carolina on or about January 17, 2008, with malice aforethought, willfully and unlawfully commit a violent injury to the person of another that could have resulted in death to wit: Rico Amadeus Hickman or a co-defendant did shoot the victim, (Jackie Ray Jackson) twice during a burglary and an armed robbery, in violation of 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR